

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

In the Matter of the Dismissal of:

OLGA VALLE,

A Permanent Certificated Employee,

Respondent.

OAH No. 2013050300

DECISION

A Commission on Professional Competence (Commission) in the above entitled matter convened on February 24, 2014, in Fresno, California, Administrative Law Judge (ALJ) Stephen J. Smith, Office of Administrative Hearings (OAH), State of California, presiding. The matter was convened at the Fresno County Office of Education (Fresno OE) and all proceedings herein were conducted at that site. Proceedings were conducted on February 24-28, March 3-4, April 4, April 15-17, June 18-19, June 24-25 and 30, July 1 and 28-30, 2014.

David A. Moreno, Attorney at Law, of Fagan, Friedman and Fulfroost, LLP, Attorneys, represented the Fresno Unified School District (District).

Olga Valle (respondent) appeared in pro per.

The record was held open for respondent to submit additional documentary evidence pursuant to guidance in an Order by the ALJ made on the last day of the evidentiary hearing, and for the District to have an opportunity to object to any additional evidence submitted by respondent, and for the parties to submit written closing arguments. A schedule was set for all such submissions by the ALJ on the record on July 30, 2014, confirmed by written Order dated August 8, 2014.

Respondent produced documents in response to the August 8, 2014, Order, mostly on August 29, 2014, and a few additional documents on September 2, 2014. The District objected on a variety of grounds to respondent's additional documents and particularly to the documents submitted on September 2, 2014 as untimely submitted. The ALJ overruled the objections in writing and upon the extent of the admissibility of respondent's additional documents.

The ALJ prepared and served the parties with a Consolidated Exhibit List for all of respondent's documentary evidence on September 15, 2014. The ALJ's Order of September 15, 2014, confirmed the closing arguments schedule as well as dates set for the Commission members to deliberate and decide the case.

The District timely filed its written closing argument on October 3, 2014. Respondent's closing argument was due October 31, 2014. Respondent failed to file a closing argument, and did not request an extension of time to file until November 19, 2014. Deliberations took place on November 19 and 20, 2014, with all Commission members participating.

Respondent's request for an extension of time to file her closing argument, as well as several other motions, were received by OAH in Sacramento midday November 19, 2014, at a time when deliberations in Fresno were well underway. The ALJ was not aware of the motion to extend time to file a closing argument and of the motions until the first day of deliberations was fully concluded.

The District strongly objected to any further extension of time, pointing out that respondent had already caused numerous delays due to respondent's untimely and incomplete compliance with numerous previous Orders. Delays caused by respondent for a variety of reasons produced large gaps in the evidentiary hearing and considerable wasted hearing time with the Commission convened and witnesses present. The District has repeatedly contended that respondent's delays and failure to timely comply with orders were attempts to delay the completion of these proceedings as long as possible. Respondent's many protestations that she was doing the best she could, and was not trying to delay the completion of the proceedings but actually wanted them finished, at times had merit and at times did not. Based on all the circumstances present, it is apparent that respondent has little interest in the completion of the proceedings as long as she remains on paid administrative leave. The District's objections were well taken, and the ALJ ruled in writing on November 21, 2014, denying respondent's request for an extension of time to file a closing argument as untimely and lacking good cause. Respondent's other motions were also denied in writing.

Respondent filed an additional letter with the ALJ requesting additional relief on November 25, 2014, and yet a further letter requesting "help" on December 2, 2014. The District objected to any consideration of any of the issues raised in these letters. The District's objections were sustained. None of issues and points raised in the two additional letters from respondent raised meritorious issues or provided good cause to further delay the Decision.

The record was closed and the matter was submitted on December 2, 2014.

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FACTUAL FINDINGS

PROCEDURAL FINDINGS

1. The Governing Board of the District (the Board) approved a Resolution authorizing the District Superintendent, the Associate Superintendent, District Human Resources, or their designee(s) to make and serve on respondent a Statement of Charges (Charges), pursuant to Education Code sections 44932 and 44936, seeking to dismiss respondent from her employment with the District. The Resolution authorizing the action was adopted by the Board on February 27, 2013.

2. Kim Mechum, acting in her official capacity as Associate Superintendent, Human Resources of the District, (the Associate Superintendent) made the Statement of Charges (Charges), dated April 10, 2013, and caused the Charges to be filed on respondent.

3. Respondent timely requested an evidentiary hearing on the Charges.

4. The Associate Superintendent made and filed the verified charges and allegations in the Accusation and caused it to be filed on February 27, 2013. The Accusation fully incorporated the Charges. The Accusation was timely served on respondent.

5. Respondent timely requested an evidentiary hearing before a Commission on the allegations and charges made in the Accusation.

6. Commission members were appointed after protracted pretrial proceedings that included the need to assist respondent with appointing a Commission member, paring down a 120 person list of proposed witnesses and respondent's proposal to offer numerous issues and exhibits extraneous to and unrelated to the Charges. Every effort was made to accommodate the fact that respondent terminated her Fresno Unified Educator's Association (Association) provided counsel and decided to defend herself in pro per. Respondent is not legally trained, as she repeatedly reminded the Commission as the proceedings progressed.

7. Respondent is, and at all times relevant to this Decision was, a permanent certificated employee of the District. Respondent holds a multiple subjects California Teaching Credential (Credential) in good standing, with bilingual (Spanish) certifications, all issued by the Commission on Teacher Credentialing, State of California. Respondent was an elementary school self-contained classroom teacher in the District throughout all times relevant to this Decision.

8. The District has jurisdiction and authority pursuant to Education Code section 44932 and Government Code section 11505 to file the Accusation and seek respondent's dismissal as a tenured certificated employee of the District.

THE DISCIPLINARY ACTION

9. The Accusation, filed pursuant to Education Code section 44932, alleges that respondent is subject to termination from her employment as a tenured teacher with the District for the three specific causes:

1. Unprofessional conduct, in violation of Education Code section 44932, subdivision (a) (1);
2. Unsatisfactory performance, in violation of Education Code section 44932, subdivision (a) (4); and
3. Evident unfitness for service, in violation of Education Code section 44932, subdivision (a) (5).

JURISDICTIONAL PREREQUISITES

10. The District proved it satisfied all jurisdictional prerequisites for bringing this action, including providing the 45 and 90 day notices to respondent of unsatisfactory performance required by Education Code section 44938.

11. The District also proved it provided respondent notice of specific instances of her unacceptable workplace conduct identified in informal memoranda and warnings, and later in a more formal fashion, as detailed below, such as written Memoranda of Concern for Unprofessional Conduct, Memoranda of Counseling Regarding Unprofessional Conduct, Formal Letters of Reprimand, 45 and 90 day Notices of Unprofessional Conduct and/or written Notice to Remediate the unacceptable conduct.

12. The District placed respondent on paid administrative leave, starting at the end of the first semester of School Year (SY) 2012-2013, in December 2012. That administrative leave continues to date, pending this Decision.

BACKGROUND FACTUAL FINDINGS

1. Respondent was a bilingual (English and Spanish) elementary school teacher at District school Hidalgo Elementary School (Hidalgo) at all times relevant to this Decision. Hidalgo is located in one of the poorest, economically depressed areas of the District. Hidalgo was a Title 1 school at all times relevant to this Decision. As a Title 1 school, Hidalgo received an annual special budget augmentation of federal funds earmarked for providing Special Education (SE) services to students approved to receive SE through Individual Education Plans (IEP). The student population of Hidalgo are predominately Spanish speakers, coming from households where Spanish was often the only spoken language. Many of the students are the children of undocumented parents. Much of the Hidalgo education program involves English Language Learner (ELL) components due to the large numbers of Spanish-speaking only students in the enrollment. Parent participation

and involvement was evident during the years under review in this matter, but language barriers and undocumented status were continuing problems to more widespread and active parent participation in school governance and activities, at least during the time period under review here.

2. Respondent has been teaching in the District approximately 20 years as of the date of this Decision. Respondent has taught in at least three District schools during her years of teaching service in the District. Before coming to Hidalgo, respondent taught at John Muir Elementary, where she taught second and third grade for several years. Respondent taught fifth grade upon coming to Hidalgo, about 2002. Respondent taught sixth grade at Hidalgo from approximately 2004 through School Year (SY) 2010-11. Respondent was involuntarily moved and assigned to teach first grade for SY 2011-12. She continued in that assignment to first grade up to the point that she was placed on paid administrative leave in December 2012.

3. Respondent achieved Highly Qualified Teacher status under the No Child Left Behind Program (NCLB) in a year not proved but before 2007. She served as the Lead science teacher for the upper grades for several of the years between 2002 and 2007 when she taught sixth grade. Respondent received a Five Year Evaluation Waiver in 2007, exempting her for that period from the District's general requirement that all certificated personnel be evaluated annually (below).

4. Respondent's primary site administrator from her arrival at Hidalgo up to SY 2011-12 was Principal Jack Jarvis. Principal Jarvis swapped positions with another District elementary school principal, Reynaldo Villalobos, at the beginning of SY 2011-2012. Neither Principal Jarvis nor Principal Villalobos were promoted as part of the swap; the transfer was lateral. Principal Villalobos became respondent's site administrator for SY 2011-2012, and for the first semester of SY 2012-2013, continuing until the time she was placed on administrative leave. Principal Villalobos continues to serve as Principal of Hidalgo to date.

FINDINGS ON THE STATEMENT OF CHARGES ALLEGATIONS

CHARGE 1-THE SEPTEMBER 15, 2010 GRADE LEVEL PLANNING TEAM MEETING

1. The District alleged in Charge 1 that respondent attended, disrupted and behaved unprofessionally toward others during a sixth grade planning team meeting at Hidalgo on September 15, 2010. The planning team meeting was attended by a number of parents, grade-level instructional coaches and other Hidalgo sixth-grade teachers. Respondent was not a member of the planning team and was not responsible for presenting an agenda item or running the meeting.

2. The purpose of the planning team meeting was to discuss plans for improving instruction at the sixth grade level, and how to allocate the sixth grade share of the Hidalgo

site budget to provide assistance for instructional improvement. Instructional coaches assigned to the sixth grade were present at the planning meeting to provide ideas toward improving sixth grade instruction. No Hidalgo site administrators were initially present at this meeting. The planning meeting had a time allocated at the end, when the agenda was completed, for persons such as respondent, interested in the process but not members of the planning team, to comment and address the planning team.

3. Respondent had an ongoing dispute with administration that developed long before September 15, 2010. Principal Jarvis had tasked Hidalgo teachers to rapidly convert and transfer their instructional materials to technology driven education tools, even ahead of District initiation and implementation of such an approach. Principal Jarvis insisted all teachers spend time converting their instructional materials and lessons to employ technology driven tools, such as creating PowerPoint presentations, to use in augmenting their instruction. Respondent increasingly felt that she was being asked to work considerably beyond the hours required by her contract to prepare these electronic teaching materials required by Principal Jarvis, without receiving additional compensation. She repeatedly asked for, but did not receive the additional compensation.

4. There was no evidence that respondent's peers similarly situated agreed or objected that the additional time requirements for converting existing lessons to technology-based instruction was excessive. There was no evidence that any other Hidalgo teacher was concerned that the additional time requirements were such that objecting and/or filing a grievance or a complaint and seeking additional compensation was warranted. Nevertheless, respondent was convinced that Principal Jarvis' demands to convert more and more lessons and materials to electronic media on the teacher's own time had become excessive.

5. Respondent became increasingly frustrated at her inability to persuade Principal Jarvis or the District that she was being required to work more than her contract required for the technology-based lesson conversions work. She continued to press her claim that she was entitled to additional compensation for the extra work.

6. Respondent decided to raise the issue of additional work required for the technology conversions without additional compensation on September 15, 2010, during the sixth grade planning team meeting. The matter was not on the planning team's agenda, nor was the matter relevant to the business of the planning team meeting. Principal Jarvis was not in attendance. No one in attendance at the sixth grade planning team meeting had any ability to provide respondent the additional compensation she sought. Respondent acknowledged that she was aware that no one at the sixth grade planning team meeting had the authority to grant her the relief she was seeking, but she decided to raise the issue because she felt she needed to raise awareness that teachers were being required to perform extra work on their own time without compensation. Respondent failed to explain why she believed the September 15, 2010, sixth grade planning team meeting was an appropriate venue for such awareness-raising, especially when it became rather evident that the planning team wanted to spend their meeting time attending to their own agenda.

7. The planning team chairperson attempted to tactfully tell respondent that she was out of order when respondent interrupted the agenda and raised her issue. The chairperson reminded respondent that there would be time reserved at the end of the meeting, as there always was, for interested persons such as respondent, to make comments and raise issues. Undeterred, respondent continued to interrupt the planning meeting agenda discussion to interject her issue. Respondent was rude and disrespectful to the chairperson and members of the planning team as she ignored the admonitions from the chairperson, persisted and continued to interrupt in an increasingly aggressive, hostile and abrasive fashion. Repeated requests by the chairperson to quit interrupting the meeting and wait until the end of the meeting to address the planning team went unheeded.

8. As the planning team meeting deteriorated into quarreling between the chairperson and respondent, an instructional coach attending the meeting sought assistance from Principal Jarvis, who was in his office nearby. The unnamed instructional coach complained to Principal Jarvis that respondent's rude and disrespectful continued interruptions had ground the meeting to a halt.

9. Principal Jarvis came into the planning team meeting, and tried to talk to respondent and dissuade her from continuing to interrupt the meeting. Respondent rudely ignored him as she called her union representative at the Fresno Teachers Association (FTA) on her cell phone as Principal Jarvis was trying to speak with her. Respondent's rude and disrespectful behavior toward Principal Jarvis was exhibited in front of her sixth-grade teacher peers, the planning team and some parents attending the planning team meeting.

10. Principal Jarvis decided not to continue to try to engage respondent when she was purposefully ignoring his efforts to speak to her. He told respondent he would talk with her about the matter at a private meeting to be scheduled later.

11. Principal Jarvis held a private conference with respondent on September 20, 2010, to discuss her disruptive and discourteous conduct at the September 15 planning meeting. Respondent defensively contended that the issue of teacher compensation for extra time being required to prepare technologically based lessons over and above contract requirements was indeed relevant to the planning team's purpose.

12. Principal Jarvis reminded respondent during the private conference that grade level planning meeting time was to be used for planning and improving instruction, not to raise issues about extra work or compensation. Principal Jarvis also reminded respondent that she had previously raised the same issue at an earlier meeting and had been told what the proper process was to pursue her grievance, and reminded her that he had warned her not to interrupt another meeting. He reminded respondent that she had already taken the issue to District administration through her filing a grievance about the issue after an earlier meeting, and had been given an answer overruling her complaint about extra work and compensation.

13. Principal Jarvis informed respondent that her disruptive behavior at the sixth grade planning meeting on September 15 was unprofessional and unacceptable, and had the

effect of grinding the meeting to a halt, preventing the purpose of the meeting from being accomplished, and wasting the time of the other participants. He also reminded respondent that he should not have had to spend his time to come to the meeting and intervene and tell her to not behave discourteously or inappropriately toward the participants of the meeting.

14. Principal Jarvis also admonished respondent during the private meeting for exhibiting demeanor and behaving towards other meeting participants in a rude, disrespectful and uncivil fashion, particularly so after she was asked by the planning team's chair to desist. Principal Jarvis reminded respondent of the proper process to pursue such an issue; that the issue should first be addressed to him, and if she was still not satisfied, she had the right to file another grievance regarding her additional compensation issue under the FTA contract with the District.

15. Respondent did not deny the allegation in Charge 1 in her evidentiary presentation. Respondent admitted that she interrupted the meeting and raised her issues while the meeting's agenda was not complete. She acknowledged that she was aware that additional issues were reserved for the end of the meeting during the comment period, when time for non-team members could raise issues and participate. She also admitted that she disregarded repeated efforts to persuade her to stand down and wait until the end of the meeting until the comment period, and to dissuade her from continuing to interrupt the meeting.

16. Rather, as she did in the private meeting with Principal Jarvis on September 20, 2010, respondent rationalized and justified her conduct by providing an elaborate explanation and defense of the objective merits of the subject matter of the issue she was raising. Respondent expressed continued frustration in her testimony that she did not feel that her concerns had been heard or recognized at Hidalgo by administration or higher up by District administration. Respondent agreed she had earlier sought redress for these same complaints through filing a grievance through the FTA, her collective bargaining representative. The grievance was apparently denied upon review by the District, but there is no direct evidence of that in the record.

17. Respondent claimed that some others on the Hidalgo staff did receive at least some additional compensation for this additional work. She acknowledged that all of the Hidalgo site teachers were being required to perform the same or similar types of work. Other than a Mr. Gip, she was not able to identify any other teacher who allegedly received additional compensation for the extra work she was complaining about, how much extra compensation was received, or what the circumstances might have been, nor did she provide substantive evidence that any Hidalgo teacher, including Mr. Gip, actually received any additional compensation for the work she claimed she was being required to perform outside of her contract. Respondent had no explanation for why none of her peers, all of whom appeared to have been similarly required to perform the same work, had joined in her complaint.

18. Respondent failed to explain why she thought the manner in which she injected her issue into the sixth grade planning meeting was not what was alleged; unprofessional, disruptive, rude and discourteous. Respondent's demeanor during the planning team meeting was unprofessional, a fact she implicitly admitted. Principal Jarvis tried to point out to respondent during the September 20 private meeting what proved to be a recurring theme throughout this matter; that the problem was not so much the issues respondent raised, but the time, place, and especially respondent's manner in doing so, conducting herself in a uncivil, discourteous, at times abusive and unprofessional fashion.

CHARGE 2a. REMOVAL OF THE SPECIAL ED CHILD FROM THE SIXTH GRADE

19. Elementary school teachers at Hidalgo shared yard duty on a rotating schedule, with each teacher having yard duty approximately twice per week. For those who were taking their turn on yard duty, teachers covered for one another to provide each other an opportunity to use the bathroom, get a snack, and otherwise refresh themselves for the next classroom session.

20. Respondent requested coverage for her yard duty on September 21, 2010. The District alleged in Charge 2a that respondent requested the yard duty coverage so that she "could get involved in a situation" with a student who was misplaced in the sixth grade. The District alleged respondent was informed that administration was handling "the situation," but respondent "refused to accept the explanation," found Principal Jarvis and requested "a break." Since respondent was in tears, Principal Jarvis agreed and released respondent from her yard duty. The District alleged respondent then immediately used the relief time to compose an email she then sent to Principal Jarvis, the Superintendent, and Governing Board members. The District also alleged that approximately one hour after respondent wrote the email, she used instructional time to approach the parent of the student subject to the misplacement issue and scheduled a meeting with the parent regarding the issue.

21. Respondent proved the District's evidence failed by a considerable degree to fully explain the entire factual background of the incident, and omitted any explanation regarding how the circumstances of respondent "getting involved in a situation" came about.

22. The student at issue was a female special needs student who transferred to Hidalgo at the beginning of school year SY 2010-2011. There was no evidence where the student came from. The fact that the child was a SE student was not initially known when she arrived at Hidalgo, because the District's Atlas record-keeping system was, as Principal Jarvis put it, "in chaos," and could not be relied upon for accurate student record information. The District's student placement information that came with the child assigned her to the sixth grade, and she was placed in respondent's sixth grade class at the beginning of SY 2010-2011. There was no evidence regarding where the information that the child should be placed in the sixth grade may have originated.

23. Respondent believed from almost her first contact that the child was a special needs child because she was non-communicative, completely nonverbal and withdrawn, and refused to interact with anyone, or participate in any activity. Because respondent is very experienced and trained in working with SE students, having raised an autistic son to young adulthood, and been very active in the local Regional Center and the SE parent community, she noticed the child's deficits and thereupon believed she was a special needs student, and likely an SE student subject to an IEP. However, no one involved had seen an Individualized Education Plan (IEP) or any other document identifying this little girl for SE services or formally identifying her as a SE child subject to an IEP.

24. The child remained in respondent's classroom for approximately six weeks. During this six-week period, respondent worked a great deal with the child, and enthusiastically engaged in drawing her out and encouraging her. By the sixth week in respondent's classroom, the child had become a still reluctant, but now occasionally verbal participant in some classroom activities. Respondent was very excited that the child had made her first oral presentation to the class, even though it was only a sentence or two, during that sixth week. Respondent was very encouraged with the child's progress. Respondent made acquaintance with the child's mother while working with the child. Respondent testified credibly that the child's mother was delighted with her child's progress in respondent's class.

25. The child's cumulative folder arrived at the Hidalgo front office on September 21, 2010. Principal Jarvis realized that the child was misplaced in the sixth grade, and should be moved to the fifth grade immediately, even though the school day was still in session. He sent the speech therapist to respondent's room in the early afternoon, after lunch recess, with instructions to tell respondent to send the child to the office so that she could be moved to a fifth grade classroom.

26. Respondent sent the speech therapist right back to Principal Jarvis, refusing to disrupt the child and move her before the end of the school day. Respondent insisted that the child's mother be contacted and an IEP meeting be convened with the mother and herself present as the child's current teacher in order to obtain the child's mother's approval for the move to the fifth grade. At this time, respondent was convinced that the child had a currently valid IEP in place, and that the IEP governed and limited what Hidalgo and District administration could do with moving the child.

27. Principal Jarvis called respondent's classroom and loudly scolded her on the phone for her refusal to follow his directions. Respondent's testimony that Principal Jarvis's voice on the telephone was loud enough to be heard by the students in the classroom was not credibly or persuasively rebutted. Principal Jarvis told respondent that a meeting had already been scheduled with the child's mother and that administration would be handling the situation, and she should send the child to the office. Respondent refused to accept the explanation and insisted that the child remain in her class, at least until the end of the school day and she could check with the child's mother.

28. Principal Jarvis' phone call to respondent's classroom came during instructional time. Respondent stood her ground and explained her position. She tried to hang up, but she claimed Principal Jarvis threatened to fire her if she did. The District's claim that this portion of respondent's testimony lacked credibility is rejected. The tension and conflict between respondent and Principal Jarvis at the time of this incident was palpable. Principal Jarvis finally ended the call, realizing he was getting nowhere on the telephone.

29. Principal Jarvis then sent the Vice Principal De La Cruz, to respondent's classroom to repeat Principal Jarvis's instructions, and to pull the child out of respondent's classroom. The Vice Principal came to respondent's classroom at approximately 2:00 p.m., still during school hours and during instructional time, to accomplish this purpose. Respondent continued to protest, with tears, but evidently the child ultimately left with the Vice Principal and was inserted into a fifth grade class before the end of the school day.

30. Principal Jarvis's written documentation of the incident in evidence (Exhibit 52) consists of a very brief paragraph in which none of the material facts leading up to or underlying the incident are discussed. Principal Jarvis's testimony about the matter was equally brief and largely unpersuasive. Principal Jarvis testified that District student placement mistakenly placed the child in the sixth grade. He testified that since the District's Atlas record-keeping system was "in disarray," the system did not tell Hidalgo administration where the child came from or what grade she was in. He testified that the child was not a special needs student and he believed that the child only required English Language Learner (ELL) services, which may have been true, but there was no evidence corroborating or supporting that belief. Since respondent is certified bilingual and has taught hundreds to thousands of students requiring ELL through her many years teaching with the District, it was not clear why Principal Jarvis believed the child's need for ELL required her immediate removal from respondent's class.

31. Principal Jarvis also claimed in his testimony that he contacted the child's parent several times and that the parent had already agreed to move the child to the fifth grade on September 21, 2010, when he ordered the child immediately transferred to the fifth grade. This testimony and that regarding the child's needs lacked credibility. There was no supporting documentation presented in support of any of the statements Principal Jarvis made about the child's status, her educational needs, or contacts with her mother and parental approval for the move, particularly not in the manner in which it was attempted. There was no evidence that District Student Services required the move to be immediate, or even take place on the same day the school site received the child's cumulative folder and realized the child was placed in the wrong grade, and had been the previous six weeks.

32. The District contends that respondent engaged in unprofessional conduct by refusing Principal Jarvis's instructions and precipitating the uproar over the child that ensued. Respondent did refuse to follow the direction, did so the day after the private meeting in which Principal Jarvis admonished her about failing to follow his directions, and did dig in her heels, which resulted in the incident blowing up into a scene involving

administration and respondent's class at least. But her actions were not unilateral, in that the determination of whether respondent's refusal to follow Principal Jarvis's direction about moving the child when and where he said constituted unprofessional conduct is more than the robotic determination the allegation suggests. The contention requires ignoring the manner in which Principal Jarvis precipitated the incident by a poorly timed order that appeared to disregard the needs of the student involved, and all but guaranteed pushback from respondent. Both respondent and Principal Jarvis made poor decisions about this incident that contributed to the creation of the problem, and simply concluding that respondent was unprofessional in refusing the instruction requires ignoring Principal Jarvis's role in bringing about the incident. Rather than calling respondent or going down to her room in person and quietly talking with her about the problem and collaboratively discussing and agreeing upon a solution, Principal Jarvis sent a messenger with an order and a demand that respondent immediately comply. An incident that could have and should have been resolved by a reasonable discussion between an educational professional and her site administrator could not take place because of the already poisoned relationship between the two that already existed at the time of the incident.

33. Principal Jarvis was very upset at respondent's refusal to cooperate. Respondent's refusal followed less than 24 hours upon the heels of the private meeting Principal Jarvis had with respondent detailed above in which an exasperated Principal Jarvis rather forcefully and repeatedly reminded respondent that he expected her to cooperate with his instructions, and not make a scene or disrupt the school when she disagreed with that instruction. Principal Jarvis decided the child should be moved to the fifth grade immediately. There was no evidence that this was other than an entirely unilateral decision by Principal Jarvis in what appeared to be a response to respondent's perceived affront to his authority almost immediately after he explained his expectations in the private meeting.

34. Respondent's all too predictable pushback and refusal to cooperate with Principal Jarvis's decision to make an issue out of respondent's refusal to cooperate with his efforts to immediately move the child was exacerbated by his choice of sending Vice Principal Ms. De La Cruz as his messenger to complete the transaction. Respondent and the Vice Principal already did not get along and have their own conflicts (below), so sending the Vice Principal to pull the student physically out of respondent's custody in her classroom was a poor idea. The poor timing and the thoughtlessly executed manner in which the attempts to immediately transfer the child considerably contributed to causing the incident. The child ended up in the Hidalgo administration office before the school day concluded.

35. Principal Jarvis's relentless pursuit and engagement of respondent to force her to comply with his direction compounded the problem and resulted in this child being singled out in the presence of her class peers, in the middle of the afternoon while class was still in session, and made her the focal point of an intense conflict between the adult authority figures in her life at that moment.

36. The District's position that respondent caused and exacerbated the situation by refusing to comply with Principal Jarvis's direction ignores the fact that the timing of the

decision to make an issue out of respondent's noncompliance placed the welfare of the child at risk. Both Principal Jarvis's poor timing and respondent's decision to refuse to comply with Principal Jarvis's administrative directions materially contributed to the incident. Respondent successfully proved that the basis of her refusal to cooperate with Principal Jarvis's demand that she immediately and unconditionally comply with the order to move the child was solidly grounded in genuine concern for the child's welfare and unwillingness to inflict upon the child the sudden shock of being forced to move without any warning or opportunity to adjust and accommodate, and without any consultation with and involvement of the child's mother, to respondent's knowledge.

37. Respondent believed that it was her duty as her teacher to advocate for her student's needs, and her impression that those needs were being disregarded by Principal Jarvis's order for an immediate classroom switch during the course of the school day was not proved to be unreasonable. Respondent was convinced after six weeks day in and day out with the child in her classroom, and in conversations with her mother that the child was an SE child and subject to an IEP. Respondent had not seen an IEP, but she claimed, and the District did not successfully refute, that the mother told her that the child had one in place. An IEP meeting had not taken place regarding the classroom transfer, and respondent was convinced such a meeting was legally required, including both the child's mother and herself, before the child could be moved.

38. These circumstances existing at the time Principal Jarvis decided to move the child called for caution, calm, discussion and inquiry with respect to how and when to move the child, none of which occurred. There was no evidence of any possible harm that could have come to the child if she remained in respondent's classroom at least until to the end of the school day, as respondent insisted, and/or until such time as these relatively straightforward questions could be answered. Even if the placement in respondent's classroom were later shown to be technically incorrect, respondent was aware and presented legal authority¹ that supported her belief that an IEP meeting and the child's parent's consent was a mandatory prerequisite to the move Principal Jarvis ordered. If the child were not subject to an IEP, that fact could have easily been proved with minimal effort and delay. Rather than consider the circumstances pointed out in respondent's objections to making the move immediately while the school day was still in session, Principal Jarvis told respondent to shut up and do what he told her.

39. Both Principal Jarvis and Vice Principal De La Cruz faulted respondent in their contemporaneous brief written reports of the incident for attempting to contact the

¹ Respondent repeatedly referred to Welfare and Institutions Code section 5100, which does indeed require an IEP meeting and consent of the child's parent or authorized representative before a child may be moved from one classroom to another. The District had no response to respondent's allegations, legal or otherwise, other than demanding that respondent comply with administration's direction to immediately move the student even though the school day had not yet concluded and the child's mother had not been contacted and consented.

child's mother and trying to meet with her and inform her of what was happening with her child "during school hours," ultimately resulting in an additional charge in the allegations of Charge 2a. Neither report documents any contact between the child's mother and Principal Jarvis, the Vice Principal, or anyone from the District, advising the mother of the move, obtaining her consent, or informing her that the move from respondent's classroom to an unidentified fifth grade classroom was to be immediate and was to take place during the school day. The District has access to the child's permanent records, and presumably in those records are documents that would refute respondent's claims about whether the child's mother was contacted, was informed and consented before the move, or whether she was a SE qualified student, what those SE needs and deficits were at the time, whether the child was subject to an IEP, and documentation of the details of the child's transfer, before the move was attempted, yet none of this potentially corroborative information was produced.²

40. The District repeatedly contended throughout the proceedings and in closing that it was not Principal Jarvis and his conduct that was on trial. The contention is only true in principle, because in order to determine whether respondent was justified in the manner in which she acted in certain circumstances, such as alleged in Charge 2a and 2b, Principal Jarvis's conduct is very relevant. No one suggested, and the District produced no evidence that in every instance blind compliance with all administrative directives is mandatory, and failure to do so always constitutes unprofessional conduct. The determination of whether respondent engaged in unprofessional conduct in these incidents is not merely a matter of determining whether she simply failed or refused to follow Principal Jarvis's directions, but whether that refusal was reasonable and justified under the circumstances. Regardless of the terse reminders Principal Jarvis gave respondent in the private meeting about the necessity of following his instructions at all times, the district provided no evidence upon which a conclusion of unprofessional conduct is a determination that excludes a review of all the surrounding circumstances to determine whether there was justification for the refusal.

41. Both respondent and Principal Jarvis materially contributed to creating the problem and to its exacerbation. Respondent did not seek to more than temporarily block the removal of the child from her class or her placement in the fifth grade. Respondent did seek to block the immediate inconsiderate manner in which Principal Jarvis ordered the removal and the move. Respondent's resistance was limited. Respondent tried to make it clear at the time that she had no intention of permanently obstructing the transfer. She sought only to slow it down in order to consider the child's emotional welfare and needs, to determine whether the legal process to protect the child and her mother were followed, and whether and to what extent the mother understood and consented to the move. In this respect, respondent refused to believe Principal Jarvis's statement to her that the mother had been contacted and had consented. Principal Jarvis made it equally clear that he demanded that respondent immediately comply with his directions, regardless of what she thought about it.

² Evidence Code section 412 provides, "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."

42. Respondent's conduct as proved did constitute unprofessional conduct. Her conscious choice to refuse to follow Principal Jarvis's instructions, just the day after she had been reminded of her obligation to do so, materially contributed to the scene that followed, that could have and should have been handled in a quiet conversation between a professional educator and her supervisor, where all the circumstances would have been discussed and a solution that incorporated the needs and the welfare of the child reached. Nevertheless, under the circumstances proved, her resistance and refusal was reasonable, and thus mitigates the gravity and blameworthiness of her unprofessional conduct. It is inescapable in this analysis to not consider the impact of respondent's previous incidents of unprofessional conduct and belligerent, hostile and angry behavior on campus, routinely requiring principal Jarvis to intervene, in creating a climate between respondent and her site administrator where such a quiet and dispassionate discussion of the child circumstances and needs could take place. Principal Jarvis had little to no role in the creation of the conflict laden relationship between himself and respondent that was in place by September 21, 2010.

43. The remainder of Charge 2a alleges that respondent was extremely upset by the incident and requested a break that she then used after having been released from her assignment to compose an email to Principal Jarvis, the Superintendent and Board Members. The email was not contained in the record, and respondent's repeated demands during Principal Jarvis's testimony that the email be produced were ignored. Not enough was proved about what respondent did or failed to do during the break that any conclusion could be made regarding whether she did anything unreasonable or unprofessional.

44. The last portion of the Charge 2a allegation contends that approximately "an hour later," respondent used instructional time to approach the parent of the student who was being moved and scheduled a meeting with the parent regarding the placement issue. This portion of the allegation was not proved. "An hour later," it appears the child was out of the fifth grade class placement and was either in, or soon to be in, the Hidalgo administration office. No evidence was presented that respondent met with the student's mother during instructional time. There was no evidence when respondent met with the student's mother, or if she ever did. The allegation that instructional time was encroached upon by respondent allegedly meeting with the child's mother was not proved.

CHARGE 2b. AFTERMATH OF REMOVAL OF SPECIAL NEEDS CHILD

45. Charge 2b continues Charge 2a, as it alleges that on September 22, 2010, during instruction time, respondent argued with Principal Jarvis about the forced removal of the special needs student from her sixth grade classroom and her change to the fifth grade. The allegation continues that later that same day, respondent again used instructional time to dispute the issue with the Vice Principal and informed the Vice Principal she would take the matter to the Governing Board meeting that night.

46. It was not proved that the events alleged in Charge 2b took place on the day alleged. Charge 2a and Charge 2b reflect a continuous course of conduct that took place all on the same day, September 21, 2010, that spilled over into instructional time because

Principal Jarvis decided to force the issue of moving the child out of respondent's classroom at 2:00 p.m., during the instructional day and during class time, and respondent decided to resist, is fully explained just above. Respondent's resistance to the forced move of the child during the school day did indeed encroach to an unproved extent upon instructional time and was indeed disruptive, to an unquantified and unproved extent. Principal Jarvis's decision to force the issue during the instructional day and during class time precipitated the encroachment and any disruption that flowed from it. The entire incident could have been handled without encroachment or disruption by making the move after school, and after the child's mother had been contacted and called to the school site, as respondent requested.

47. The resolution of Charge 2b is the same as for that of Charge 2a above, for the same reasons.

CHARGE 2c. MLD AND BBF JOURNALS

48. Charge 2c alleges that Principal Jarvis was covering respondent's room on September 28, 2010, while respondent observed another teacher's MLD session. Principal Jarvis found respondent's class did not have their MLD or BBF journals. When he asked where the journals were, the students said respondent had them. Over the next four days, three of which respondent missed due to illness, the students were without their journals.

49. The facts underlying the charge were proved, but how those facts proved respondent engaged in unprofessional conduct was not. The District failed to prove that the absence of the journals for the four day period, on three of which respondent was ill, was of any consequence to the students in the class. Respondent took the BBF journals home to work on them, as she admitted, and then was ill and could not return the journals to the class. In the meantime, her substitute was provided alternatives, and the students were able to continue making District mandated daily entries in the journals. In addition, Principal Jarvis admitted, and Ms. Rollins, one of respondent's peers, testified credibly, that respondent did a good job at making sure that her students faithfully wrote in their journals each day that they could, as required by the District.

CHARGE 2d. TELLING STUDENTS PRINCIPAL JARVIS WAS TRYING TO GET RESPONDENT FIRED

50. Charge 2d alleges that a parent reported on October 1, 2010, that on or about September 22, 2010, respondent told students in her class that Principal Jarvis was trying to get rid of her. This specific allegation was not proved. Only hearsay and hearsay on hearsay was offered in support of the allegation. The parent who allegedly heard the statement was not identified and did not testify. How the unidentified parent heard the alleged statement, and from whom, was not identified. Vice Principal De La Cruz claimed in her testimony to be the person to whom the parent made the statement. There is no contemporaneous written report of the statement, and no identification of the parent making the alleged statement. Considering the then present animus between Vice Principal De la Cruz and respondent (below), without some persuasive corroboration, the Vice Principal's testimony regarding a

vague hearsay statement made to her that places respondent in a bad light lacks credibility. Regardless of the Vice Principal's lack of credibility, the uncorroborated and unidentified hearsay statement lacks probative value and may not be relied upon to support a Factual Finding in support of this charge.

51. Respondent did agree generally that she discussed with students and parents the fact that it was her belief that Mr. Jarvis and the District were trying to get rid of her, but only in response to student or parent initiated questions before or after school. Respondent admitted several times discussing with her students and their parents her personnel matters and personal struggles with Hidalgo and District administration, and her perception that administration was trying to get her fired. Respondent's discussion of her personnel difficulties and struggles with Hidalgo and District administration became a regular feature of her interactions with parents, and from time to time took place in the hearing of students. Respondent also discussed her personnel struggles with the District, and the fact that it was her belief that Principal Jarvis, and later Principal Villalobos, were trying to get her fired, with students. This behavior did constitute unprofessional conduct.

52. Vice Principal De La Cruz testified that when the parent in question above asked her whether the District and Hidalgo administration were trying to "get rid of" respondent, she replied "of course not." She reaffirmed that statement in her testimony when asked about the comment in a rather casual and dismissive fashion. The Vice Principal's response was not true, and she knew it not to be true at the time she made the statement. The facts and circumstances proved throughout this evidentiary hearing show that very little about respondent's tenure at Hidalgo in the two and a half year period of SYs 2010-13 was more evident than the orchestrated efforts of the District and Hidalgo administration, including Vice Principal De la Cruz, to "get rid of" respondent. Numerous instances of respondent's unprofessional conduct, angry and intense hostile outbursts and aggressive, inappropriate and disrespectful demeanor had already taken its toll. In a number of incidents and interactions with administrators and peers alike, requiring inordinate investments of administrative time to intervene, investigate and resolve, administrators at Hidalgo and the District had been galvanized in a unified effort to remove respondent from District employment. Respondent had partially succeeded at the time of this incident in unifying her peers in a coordinated effort to get her out of the Hidalgo site work environment because she had so destabilized it and created so much animosity and tension that many of them had filed formal complaints with the Principal and with the District (Exhibit 76-90). They wanted rid of respondent's aggressive and confrontational style and her disruptive, disrespectful, and destabilizing disposition and demeanor (below). The Vice Principal was very much part of the administrative strategic process of seeking respondent's dismissal during SY 2009-2010 and 2010-2011, when she was still at Hidalgo, and respondent was well aware of it.

53. There was considerable evidence of respondent's efforts to build a constituency of parents and students to counteract and push back against what she perceived to be Principal Jarvis's and District efforts to terminate her. Her efforts were particularly directed at her Spanish speaking parents and their children. Respondent's efforts had mixed motives and consequences. No one disputed that respondent's concern for the welfare of her

Spanish-speaking students, particularly those from disadvantaged homes, and with that went concern for their parents as well. Respondent saw herself as the on-campus advocate for this group of students and parents. One consequence, however, was that respondent did not see herself as part of the constituency of her teacher peers, alienating them gradually to the point of avoidance, and ultimately provoking opposition to her continuation as a peer, especially so after she individually disparaged and demeaned several of them (below). One of respondent's motives in recruiting parent support was to create a buffer and an offset to what she perceived to be Principal Jarvis's efforts to get her fired by constantly complaining to parents and students about how she was being unfairly treated, and how her students were being harmed by this unfair treatment.

54. Although the District failed to persuasively prove this specific charge here, the larger problem of respondent inappropriately and unprofessionally discussing her personnel problems with the Principal and the District described here was later proved in response to other charges.

CHARGE 2e. TELLING A STUDENT RESPONDENT WAS NOT RETURNING

55. Charge 2e alleges that a student reported on October 1, 2010, that "respondent or her adult daughter"³ had contacted the student and told him to tell the other students in the class respondent was not returning. At that time, respondent was on a leave of absence. The charge alleges that the student reported that he did tell the other students respondent was not returning.

56. Charge 2e was not proved, and no credible effort was made to do so. No persuasive and reliable evidence was introduced in support of the claim, again only hearsay and hearsay on hearsay. The alleged reporting student was never identified and did not testify. The person to whom the student allegedly reported the above statement was not identified and did not testify. There was some vague second and third hand hearsay evidence offered making allegations that respondent talked to some unidentified students and parents on her cell phone while she was on leave of absence, and told them she was not returning to school, but no substantive evidence was offered in support of these claims.

57. Respondent's adult daughter did testify, and she credibly denied that respondent told other students in the class that she was not returning when she was on her leave of absence. At the time respondent was on her leave of absence, it was always her desire and intention to return to her classroom and continue to teach her class. She did not know when she was on the leave of absence that she was not going to return.

CHARGE 2f. VISIT TO STUDENTS' HOMES ON THE WEEKEND

58. Charge 2f alleges that two students reported on December 16, 2010, respondent visited their homes on the weekend and discussed her return to school with them.

³ The allegation fails for vagueness.

Later that day, a parent was reportedly circulating a petition asking the school to, “Let respondent come back,” even though the school was not preventing respondent from returning from leave.

59. Charge 2f was not proved. The two students and the parents respondent allegedly visited and discussed her return to school were never identified and did not testify. The person to whom these reports were made was not identified.

CHARGE 2g. UNANNOUNCED APPEARANCE AT HIDALGO WHILE ON LEAVE OF ABSENCE

60. Charge 2g alleges that on December 17, 2010, although respondent was on medical leave, she appeared unannounced at Hidalgo School and demanded time with the administration to secure her laptop. Charge 2g also alleges that respondent prearranged for students to meet with her after school, which led several of them to run out of the school at dismissal to meet respondent on the street, and potentially exposed them to injury.

61. Charge 2g was proved only in its factual rudiments. Respondent did indeed go to Hidalgo on December 17, 2010, but her appearance was not unannounced. Respondent called the District office while she was on leave of absence and told an unidentified Superintendent’s office staffer that that she intended to go to Hidalgo and obtain her laptop computer from her room so that she could work during the winter break and prepare for the upcoming semester. The Superintendent’s office staffer told respondent that the staffer would call Hidalgo administration and let them know she was coming to Hidalgo to pick up the laptop.

62. Respondent admitted that she did not directly ask for permission from Principal Jarvis or anyone else in Hidalgo administration to come to the school and obtain the laptop. Respondent’s behavior failed of simple respect and courtesy to Principal Jarvis and the Hidalgo site administrators. It was not proved that respondent was under any directive or requirement at that time, while on medical leave, to ask permission of Hidalgo administration to come to the campus and pick up her computer. She arrived at the end of the school day. The District’s claim in closing that Principal Jarvis testified that he was in an assembly and asked that respondent be told to wait, but that she was so insistent that Principal Jarvis had to leave his duties at the assembly to speak with her finds no support in the record. Although perhaps personally inconvenient to Principal Jarvis, who was surprised by respondent’s appearance and had to leave what he was doing and investigate, there was no evidence that respondent’s arrival caused any disruption to any Hidalgo school function, campus activity or delivery of any educational services. Considering the amount of conflict and tension between respondent and Principal Jarvis and Vice Principal De La Cruz on the date of her campus visit, unannounced to either of them, respondent’s conduct was imprudent and unwise, but was not proved to constituted unprofessional conduct.

63. The second part of the allegation was not proved. There was no evidence introduced that respondent “prearranged” anything with her students. What was proved is

that respondent's students knew and recognized respondent's car when she parked across the street from the school after students had been dismissed at the end of the school day. Respondent had previously lived in the neighborhood and was quite well known to residents, parents and students in the area alike, and at this small school in a densely populated neighborhood, when respondent arrived after school hours and students were still milling about, she was easily seen and some came to talk to her. Some of respondent's students and even some parents saw respondent arrive and came across the street to greet and chat with her. Respondent had nothing to do with the students' behavior, other than the fact that the students had affection for her, and wanted to greet her because she had not been on campus for a while. There was no evidence that any student was in any jeopardy, actual or potential, during respondent's visit.

CHARGE 2h. LESSON PLANS WHILE OUT ON LEAVE

64. Charge 2h alleges that respondent emailed Mr. Jarvis on January 10, 2011, to report that she would continue to be absent for medical reasons. The charge continues that respondent did not provide any lesson plans or any indication she would be out for an extended period, other than to say she was going to the doctor.

65. Charge 2h lacks evidentiary support. Even had the factual allegations been proved, it was not proved that the conduct was unprofessional. At the time respondent told Principal Jarvis that she would continue to be absent, she told him that she was going to the doctor, who was to evaluate her status. She did not know at the time of the alleged email that she would be out for an extended period. Respondent's intention was always to return to her classroom as soon as possible. It was not proved that she did not provide lesson plans for substitutes once she became aware that she would be out longer than she expected. In fact, respondent's daughter provided undisputed testimony that she delivered respondent's lesson plans to respondent's room while respondent was out on medical leave, leaving the lesson plans on the overhead projector or on a ring attached to the classroom wall where displays of student work were posted, and when there appeared to be problems with substitutes finding lesson plans, respondent's daughter delivered those lesson plans to the Hidalgo front office. Hearsay on hearsay that respondent's substitutes complained they could not find lesson plans when filling in for respondent appears to have been the product of factors other than respondent's failures to provide the lesson plans to the school site.

CHARGE 2i. TELEPHONE CONTACT WITH NEW STUDENT

66. Charge 2i alleges that while respondent was still absent from work, respondent made telephone contact on January 13, 2011, with a new student in her classroom while the student was in an afterschool tutoring session. A short time later, that student passed on information to another student, requesting the second student's mother's telephone respondent.

67. No direct evidence was introduced in support of Charge 2i. The new student was not identified and did not testify. No witness identified how the new student was known

to have received the telephone call while in an afterschool tutoring session. Respondent credibly testified that she did make contact with the student, but the student was not new, but rather a returning student who had gone to another school, and then come back to Hidalgo. The student was already known to respondent, and respondent was attempting to help her by trying to find out whether she needed anything to help her ease back into her return to Hidalgo. Respondent denied that the call took place during an after school tutoring session, and it was not proved otherwise. It was not proved when the call took place at all, as respondent did not remember when she placed the call. The student to whom the unidentified student passed on the “information” was not identified, nor was that second student’s mother. None of the parties to whom these communications were allegedly made testified.

CHARGE 2j. UNAUTHORIZED IN CLASSROOM PARENT MEETING

68. Charge 2j alleges that respondent held an unauthorized parent meeting on February 16, 2011, during instructional time. When the Vice Principal went to investigate why respondent was holding such a meeting, based on a claimed parent report the meeting was occurring, it was alleged that respondent told the Vice Principal that it was a “back to school” meeting. Charge 2j continued by alleging that it was later learned that after the Vice Principal was called out of the alleged back to school meeting on another matter, respondent gave derogatory and inaccurate information to parents in front of her students. It was also alleged that all of the incidents set forth above in subdivisions (Charges) (a) through (j) were documented in a March 2, 2011, Memo of Concern.

69. It was not proved that respondent held an “unauthorized parent meeting” during instructional time. Respondent did acknowledge that on her first day back to school after her lengthy medical leave, many parents came to her classroom with their students and chatted with her informally as school was beginning, and she responded to them. Calling this informal chatting at the beginning of school an unauthorized parent meeting misinterpreted what occurred, and the Vice Principal misinterpreted what was taking place. The interaction between respondent and the parents was brief and the Vice Principal arrived to see the tail end of the parent-teacher informal chatting as class was beginning.

70. The allegation that “it was later learned” is ipso facto deficient, impermissibly vague and devoid of any reasonable detail, failing to identify the source of the information or what was “later learned,” failing to identify any specific parent who allegedly heard the information, and failing to identify what “was later learned,” and failing to identify what the allegedly derogatory and inaccurate information was that respondent provided to parents in front of her students. No person testified regarding what was said, what the allegedly derogatory and inaccurate information was that respondent provided the parents in front of the students, the manner in which it was said, or who was present, whether parent or student, in a position to be able to hear what was said after the Vice Principal was called away and left respondent’s classroom. The evidence in support of the charge was vague, uncorroborated hearsay on hearsay, insufficient to sustain any Factual Finding.

71. The District appeared to assume that because Principal Jarvis or another administrator documented his/her views, perceptions and impressions of the incidents written in a Memo of Concern for Unprofessional Conduct, those facts must be deemed affirmative proof of what is written. If this were indeed the case, the need for witnesses would be superfluous. The District is obligated to affirmatively prove each and every allegation of each and every Charge in accordance with the burden of proof (below). This the District failed to do in many instances, including this Charge 2j. Principal Jarvis's testimony regarding the events and perceptions written in the Memos of Concern, Letters of Reprimand, and other disciplinary documents is the primary evidence in support of those claims. To the extent that the author testified inconsistently from what was written in the documents, or did not testify to things that are written in the documents, those facts are not proved, or are merely hearsay that can only support a Factual Finding if supplemented or explained by other evidence in the record. In many instances, that supplemental or explanatory evidence was not presented.

72. Statements by administrators and documents such as Memoranda of Concern or Letters of Reprimand do not stand alone as facts proved, despite repeated arguments by the District to the contrary throughout its closing. If respondent exercised her right to reply to any statement made in any such document, those statements are admissible as admissions of a party opponent and do constitute affirmative evidence. But if respondent did not reply, the only fact certainly proved is that respondent did not reply, for reasons that may or may not have been disclosed. Absence of a reply may raise evidentiary inferences, or even a presumption of the obligation to reply if the statement made was not true, such as if the statement accuses of the commission of a crime, but failure to reply does not necessarily constitute affirmative proof of the statement made in the Memo or Letter, and any inference or presumption that may stem the failure to reply is rebuttable. In either regard, the statement standing alone in the Memo of Concern or other disciplinary document, absent any other evidence, does not constitute affirmative proof of the matter set forth in the statement. Thus, the fact that "a Memo of Concern for Unprofessional Conduct dated March 2, 2011," documented the allegations set forth in Charges 2a through 2j above is of no evidentiary or probative consequence. Charges not proved remain charges not proved, regardless of how documented.

CHARGE 3a. FAILURE TO COOPERATE WITH MORNING DEPLOYMENT

73. Charge 3a alleges that Principal Jarvis went to respondent's classroom on March 3, 2011, to find out why she was not allowing her students to attend their morning deployment for structured universal access/intervention. The charge alleges that respondent told Principal Jarvis that she wanted to use the time for math, but Principal Jarvis reminded her that the time was set aside for an ELA block and directed the students who deployed to come with him. The charge further alleges that respondent replied by repeating the phrase "So you are not honoring my request?" The allegation concludes by stating that Principal Jarvis withdrew from the classroom to avoid a confrontation in front of the students.

74. The District failed to allege and present considerable missing factual pieces of the interaction, leaving the Commission to guess what might have been the problem and why the exchange represented something the District believed to constitute unprofessional conduct.

75. The basic facts underlying the allegations of Charge 3a were proved. The missing part was the lack of evidence to prove that respondent engaged in unprofessional conduct during the exchange. There was no evidence of what happened after respondent asked the question, other than the fact that Principal Jarvis left the room to avoid a confrontation. There was only an inference that respondent's tone in making the comment may have been such that Principal Jarvis perceived that if he pursued the point, there would be a confrontation, and the District argued that point, but failed to present evidence in support of that claim.

76. It was not proved whether any of the students went to the morning deployment, what the issue was of using the time for math instead of the ELA block, whether the time was actually used for the ELA block after Mr. Jarvis told respondent that was how the time was supposed to be used.

77. The allegations suggest in isolation another instance in which respondent failed to cooperate with Principal Jarvis's directions. But the proof adduced failed to provide any information regarding whether this exchange reflected a mere difference of professional opinion regarding how the time was to be used or was another instance of disrespectful refusal to cooperate with Principal Jarvis's directions because she did not agree with them. Respondent testified that she was uncomfortable with her students going with Principal Jarvis to the morning deployment because her students told her that during the sessions, Principal Jarvis yelled at and intimidated them. But there was no evidence that respondent ultimately refused to permit her students to go with Principal Jarvis on this instance, other than the fact that Principal Jarvis evidently decided that whatever was to occur in the morning deployment was not worth getting into a confrontation with respondent, and he withdrew.

CHARGE 3b. FAILURE TO SEND STUDENTS TO CORRECTIVE READING INTERVENTION

78. Charge 3b alleges that Principal Jarvis learned that respondent did not send students assigned to corrective reading intervention to their sessions.

79. The basic facts underlying the allegations of Charge 3b were proved, but again it was not proved how those facts demonstrated that respondent engaged in unprofessional conduct. Respondent credibly testified without rebuttal or contradiction that some of her students did not want to go to the corrective reading intervention deployment because Principal Jarvis was the deployment teacher, and they complained to her that instead of teaching them during the sessions, he yelled at them. Respondent was concerned about the

welfare of her students, and tried to be responsive to their expressed concerns about attending the corrective reading intervention session.

80. There was no evidence that respondent disobeyed a direct instruction to have the students attend the sessions or that she was violating any particular rule by allowing her students who were reluctant to attend the deployment to stay in class with her and receive instruction in the regular classroom education program during this time. There was also undisputed evidence that other Hidalgo classroom teachers had the liberty to determine whether students who were to attend the deployment could stay in the classroom and receive the regular and education program. The evidence did not point out why respondent did not have this liberty when it was given to other teachers on the campus.

CHARGE 3c. FAILURE/REFUSAL TO MEET WITH PRINCIPAL JARVIS

81. Charge 3c alleges that respondent declined to meet with Mr. Jarvis later that day (March 3, 2011) even though the meeting was designated as informational and not disciplinary.

82. Respondent admitted that she did not attend the meeting. She explained that she was feeling ill, stressed and overwhelmed at the time, and needed rest. It was not proved that respondent declining to attend a meeting designated to be informational only and not disciplinary due to illness constituted engaging in unprofessional conduct.

CHARGE 3d. MARCH 2011 EMAIL TO SUPERINTENDENT AND BOARD

83. Charge 3d alleges that on March 3 or March 4, 2011, respondent engaged in unprofessional conduct when she sent an email to the Superintendent and Governing Board members “misrepresenting facts you had previously been made aware of.” The charge further alleges that in the same email, respondent requested Principal Jarvis and Vice Principal Sylvia De La Cruz to “stay away from you” because you were “very afraid” of what they were “capable of” doing.

84. Respondent admitted Charge 3d in part, in that respondent agreed in her testimony that she did send an email to the Superintendent and Governing Board members regarding her concern about how Principal Jarvis and Vice Principal De La Cruz were treating her and interfering with her ability to teach her class. Respondent complained that Principal Jarvis yelled at her, and that Vice Principal De La Cruz blindly did Principal Jarvis’ bidding.

85. The allegation complains that respondent “misrepresented facts she had previously been made aware of.” The allegation’s vagueness and imprecision cause it to fail. There was no evidence regarding what it was respondent was supposed to have misrepresented in the email that she had “just been made aware of.”

86. Principal Jarvis did yell at respondent, and others, including students, on the Hidalgo campus. His denial in his testimony that he has ever yelled at students or at respondent on campus was followed almost immediately by qualification of that denial with an explanatory admission that he does have “an unusually loud voice,” especially when he is excited, that is occasionally misinterpreted as yelling. This testimony was rather unpersuasive, especially in light of the fact that when Investigator Pierce (below) interviewed Principal Jarvis, and took his statement that appears in Investigator Pierce’s February 7, 2008, investigative report, Principal Jarvis told the investigator the following;

With respect to Ms. Valle’s allegations that Mr. Jarvis yelled at students, he admits that he does have to raise his voice at students from time to time, but that he has an excellent record of minimal violence at Hidalgo since he has been the Principal there. *When he yells at students*, it is usually on the playground in a big open area where students are in a group. He lets them know immediately that certain behavior will not be tolerated. He has never had any complaints about him yelling at students. Exhibit OV 158 at 160, p. 12, italics added)

87. There was considerable evidence of Principal Jarvis’ many fine and praiseworthy traits, almost all of it presented by respondent. Respondent praised Principal Jarvis for his hands-on facilitation of respondent’s class volcano project year in and year out, his facilitation and support of respondent’s school Victory Garden project, including buying pizza from time to time for the student participants and making the campus available on Saturdays, and for his considerable “ahead of the curve” technological prowess applied to the learning environment. Respondent described Principal Jarvis as a skillful and supportive principal, one of the best she had ever had in her career with the District. Tempering his admittedly loud and forceful voice, and yelling at respondent and students from time to time, especially when he was upset, was not one of those positive traits.

88. Respondent described a largely supportive and professional relationship with Principal Jarvis from her first arrival at Hidalgo, ultimately resulting in him endorsing respondent for a Five Year Evaluation Waiver in 2007 (below). But respondent made an instant bitter and unrelenting enemy of Principal Jarvis in late December 2007, when respondent announced at a Board meeting, without a hint of warning to anyone, her accusation that Principal Jarvis physically abused a SE special needs child in the Hidalgo school cafeteria in September 2007. Respondent completely blindsided Principal Jarvis by making her accusation in an open session of the fully convened Governing Board without warning and without any further pursuit of an investigation of the incident she spoke about months earlier, where her participation in the investigation was minimal, and later closed because respondent did not witness the event, reported and complained based upon hearsay alone, and those who did witness the incident were found more persuasive in their reports of Principal Jarvis’s conduct with the child. Dissatisfied with the results of the investigation, rather than continuing to pursue the matter through channels in the District office or through SE channels such as the Regional Center or SE authorities, she chose blunt force trauma to

Principal Jarvis's character and reputation by accusing him of child abuse of a SE child in front of the entire District governance structure in a very public fashion. Principal Jarvis perceived respondent's comments as both betrayal and deeply damaging to his professional reputation and stature in the District. Respondent's accusation produced the anticipated shock and awe in her hearers, and especially to Principal Jarvis, who was thrown immediately into a months-long stress-packed defensive posture, trying to respond to and repudiate the allegations during an outside investigation, and to rehabilitate the considerable damage to his professional reputation the comment made. Respondent acknowledged several times in her lengthy testimony making the accusation about Principal Jarvis to the Board, acknowledged it "crunched some toes," acknowledged her awareness that the accusation was a turning point and forever thereafter poisoned their professional relationship, and that Principal Jarvis's oversight as her Principal at Hidalgo almost immediately went from cooperative and supportive to adversarial and acrimonious. What she never explained was why she chose character and reputation assassination in the most damaging setting possible in the District as her vehicle to make her point. She did provide a rather elaborate factual recitation of why her claim was true, regardless of what the independent investigation concluded. Even if a genuine difference of opinion resulted from whether Principal Jarvis did or did not use excessive force to control the child after the investigation was completed, it can only be concluded that the venue and the means selected reflected respondent's intention to do maximum damage to Principal Jarvis's professional reputation and esteem within the District.⁴ Under these circumstances, Principal Jarvis's enduring animus toward respondent was understandable.

89. None of the allegations in Charge 3d were proved to reflect unprofessional conduct per se. The allegations, however, are reflections of respondent's developing behavior pattern toward administrators and peers, featuring aggressive, angry, hostile, disrespectful and uncooperative responses to Principal Jarvis's directions, and, on occasion to her peers, staff and parent volunteers in certain instances. Respondent's admitted statements in the email, where she requested that Principal Jarvis, and particularly Vice Principal De La Cruz, "stay away from me," and that respondent was afraid of "what they were capable of doing," are reflections of respondent's changing disposition, temperament and style of interpersonal behavior between late 2007 and her last presence on campus in December 2012.

90. The email was not the only or last time respondent told Vice Principal De La Cruz to stay away from her. Respondent's hostility toward others on campus she perceived to be aligned with Principal Jarvis and District administration to pressure her and seek her termination increased. Her on campus relationships deteriorated between late 2007 and December 2012. Respondent blamed this deterioration on her reaction to the bullying, hostile work environment and unfair treatment at the hands of administration, as expressed in the March 4, 2011 email quoted in the Factual Finding just below. Respondent failed to see that her increasing isolation was the product of her off-putting disposition and lack of

⁴ Evidence Code section 665 provides that a person is presumed to have intended the ordinary consequences of his or her voluntary acts.

reticence to loudly and aggressively make disparaging, demeaning remarks and unflattering and suggestive references about administrators, peers and staff, who then either shunned, or actively sought to have her removed from the workplace. By the end of SY 2010-2011, there was no evidence that any of respondent's on-campus peers supported her because she had managed to either directly offend or scare them off.

CHARGES 4a-c. INSTRUCTION TIME TO EMAIL SUPERINTENDENT AND BOARD AND DELIVERY OF A WASTEBASKET CONTAINING VOMIT AND A NOTE

91. Charge 4a alleges that respondent used instructional time on March 4, 2011, to email the Superintendent and the Governing Board members regarding Principal Jarvis's email he sent her the night before, directing her to attend a meeting with him on March 4. Charge 4a further alleges that respondent's email to the Superintendent and the Governing Board blamed her evaluation ratings on her students' performance on tests and claimed Mr. Jarvis' "constant interruptions" had adversely affected her students' test scores. The charge further alleges that respondent wrote as follows:

So will you stop your criminal actions of repeatedly violating the Civility Policy as well as all other laws you continue to violate with FUSD administrative and board approval. STOP THE HOSTILE ENVIRONMENT! YOU ARE AFFECTING MY STUDENTS LEARNING! STOP THE FUSD ADMINISTRATION AND BOARD APPROVED HOSTILE ENVIRONMENT!

92. Charge 4b continues the same allegation, alleging that respondent wrote (unclear whether the same or a separate email) in an email to the Superintendent and the Governing Board as follows:

Just send me a resolution in writing that states your action plan to let me teach in peace without you or the people you sent to harass me and my students during school and my duty time, and how you will stop your retaliation for trying to get you to follow the California Special Education Procedural Safeguards you are so familiar with due to your active involvement in the Hidalgo IEP teams and FUSD (CAC) Community Advisory Committee Principal Representative for many years.

93. Charge 4c alleges that in the same email, quoted in Charge 4b just above, that respondent informed Principal Jarvis she was too ill to attend the disciplinary meeting scheduled for 3:00 p.m., March 4, 2011. Specifically respondent wrote:

I am so sorry, but I really am feeling very, very ill. I have tried to hold on until the end of the day even though I have felt ill,

and I also have to stop by downtown to run an errand before I go to the doctor. I will leave you proof that I am sick in the office.

94. Charge 4c continues by alleging that respondent left a wastebasket containing vomit in the front office of Hidalgo School containing a note from respondent addressed to Principal Jarvis on March 4, 2011, informing him that the wastebasket contained “proof” she was sick.

95. Respondent admitted writing the emails. There was no evidence that the emails were written on instructional time. There was no evidence that writing the emails constituted unprofessional conduct. The emails express respondent’s opinions at the time about her view of her working conditions. The last sentence of the email quoted in Paragraph 93 above, however, was a prelude to an egregious act of unprofessional conduct.

96. Respondent acknowledged that she vomited in the wastebasket and took it to the Hidalgo front office, and left it along with the note for Principal Jarvis. She testified she did so because she thought Principal Jarvis did not believe her claim that she was sick. Respondent acknowledged that her active vomiting in the wastebasket, writing the note, and then delivering it to Principal Jarvis reflected a conscious and thoughtful choice of conduct.

97. Respondent acknowledged in matter-of-fact fashion that her conduct in vomiting in the wastebasket and leaving it in the front office with a note for Principal Jarvis was unprofessional. But the admission omitted expression of any sense of awareness of the gravity of her misconduct. Despite her acknowledgement her conduct was unprofessional, she did not apologize for her conduct, or express recognition or remorse that the method she chose to make a point she thought important in her dispute with Principal Jarvis crossed well over all boundaries of reasonableness, and was repulsive and repugnant behavior for any professional educator.

98. The text quoted of the emails above reflects further evidence of deterioration in respondent’s control of her disposition, temperament and on-campus behavior toward administrators, peers, staff and parent volunteers. Respondent increasingly lashed out verbally or in writing at administrators and/or peers in response to her perceptions of hostile work conditions, circumstances and situations with administrators that she found unacceptable. The emails reflect an increasingly aggressive and confrontational personal style respondent increasingly employed as a weapon in beating back administrators and peers in the workplace she viewed were involved in creating a hostile work environment and pressuring her to quit.

CHARGE 5. STATEMENT OF CONCERNS AND INQUIRY MARCH 2011

99. Charge 5 alleges that respondent met with Principal Jarvis on March 7, 2011, to receive a written Statement of Concerns for the conduct set forth in Charge 4 and its subparts above. Charge 5 alleges that during the meeting, respondent acknowledged that she

regularly contacted students without going through their parents, provided her cell phone number to all of her students and encouraged them to call her for help or homework or “anything else they may need,” and initially told Principal Jarvis that she brought the wastebasket to the office on March 4, 2011, because she thought she would be sick on the way. The charge further alleges that respondent changed her answer regarding the wastebasket when Principal Jarvis reminded her that she had sent an email from her classroom stating that she would “leave my proof that I am sick in the office.” The Statement of Charges in the Accusation make no specific allegations that respondent engaged in dishonesty.

100. Respondent admitted that she said most of what Charge 5 alleges during the March 7, 2011, meeting with Principal Jarvis, with the exception of the last portion, in which she acknowledged that she brought the wastebasket to the office after having already vomited in it. Respondent claimed that some of what she told Principal Jarvis and the meeting was misinterpreted and mis-recorded.

101. Respondent planned, organized and ran a Victory Garden project on campus during the period of time covered by Charge 5. Principal Jarvis provided respondent and her students a considerable amount of help and latitude in bringing the project to reality. Respondent obtained an outside funding grant that she used for seed capital to build and start the garden, and she involved students of several grade levels, and not just her own. Respondent did not hesitate to give Principal Jarvis credit for his help in making the Victory Garden a reality. The project work almost exclusively took place after school hours or on weekends. The extracurricular activity of the Victory Garden required respondent to be able to stay in touch with students and parents, so that students and parents would know when the participating students could work in the garden, and when they could be picked up to go home after school and on weekends when they worked in the garden. The District failed to prove that respondent giving students and parents access to her via cell phone was inappropriate under these circumstances.

102. Many of respondent’s students during the period of time under review were from one parent homes, homes of undocumented persons, or from homes where both parents worked all day and had a designee or a babysitter appointed to pick up their children after school. Many students participated in afterschool programs or were picked up from school or afterschool programs by parent or guardian-authorized friends or relatives. Communication with parents and students to ensure that students are all accounted for and get home safely and properly under the circumstances that existed at Hidalgo during the period of time under review was rather important. Cell phone communication between respondent, students, authorized representatives and parents facilitated this assurance that students were being dropped off or picked up properly or were cared for and got home safely.

103. Additionally, respondent made a habit of making herself available to parents and students after school hours via cell phone in order to answer their questions and provide them assistance with school work or in navigating the school environment. The District

failed to prove that respondent's communication practices constituted unprofessional conduct. The District failed to prove that respondent's communication practices were inappropriate and were not in the best interest of parents and students alike.

104. The allegations regarding the vomit in the wastebasket were dealt with above. Charge 5 added nothing to this. The District suggested in closing that respondent's first statement to Principal Jarvis during the meeting about the vomit in the wastebasket reflected a willingness to lie about what happened, and thus adversely upon the larger issue of respondent's general credibility. The contention lacks merit. Respondent corrected herself during the meeting with Principal Jarvis and admitted her conduct when it was pointed out that her first statement during the meeting appeared to be different than what actually happened. This correction occurred when the apparent inconsistency of the statement was called to her attention during her testimony, where she admitted the conduct and made no effort to try to stick with the first version of the statement. She merely claimed her belief that her conduct was necessary to prove to the unbelieving Principal that she was indeed sick. Under these circumstances, the inconsistent statement made to Principal Jarvis about the vomit in the wastebasket during the meeting does not reflect adversely on respondent's credibility, which was, throughout these proceedings, was generally good. The proof adduced showed respondent had deficits with her disposition and her temperament and often behaved unprofessionally in the manner in which she chose to deal with others in the workplace. What the evidence did not show was that respondent was a liar.

CHARGE 6. \$500 FOR PETITION SIGNATURES

105. Charge 6 alleges that respondent offered students at Hidalgo \$500 on March 11, 2011, if they would gather 200 signatures on a petition in support of keeping her as a teacher at Hidalgo. Charge 6 further alleges that when two students gathered signatures and tried to turn them in to collect the offered money, respondent told the students "there was a misunderstanding and (sic) were not offering them money." Charge 6 further alleges that "numerous students" in respondent's class "confirmed" that respondent did offer students money in exchange for obtaining signatures on a petition. Continuing, Charge 6 alleges that respondent went to the home of the two boys who had gathered the signatures and reiterated that she would be willing to pay them \$500 for the signatures, but that the payment would have to come through respondent's attorney.

106. Charge 6 was not proved. The "petition" referred to in Charge 6 had no foundation, and was not identified or authenticated by any witness. The evidence offered in support of the Charge was entirely hearsay and hearsay on hearsay, and may not be relied upon for any Factual Finding sought in support of Charge 6 (below).

107. A petition claimed to be "the petition" referred to in Charge 6, for which it was alleged the students gathered signatures in expectation of payment from respondent, was produced, but not as an individually marked Exhibit for which a foundation was laid and offered in evidence. Rather, "the petition" appeared as one of numerous attachments to District's Exhibit 96, Mr. Pierce's lengthy June 5, 2011, investigation report. Exhibit 96 was

admitted as hearsay only, with the exception of an incomplete, lengthy (56 pages) transcribed interview with respondent, admitted as statements of a party opponent.⁵ The reliability of the transcription of respondent's statements was greatly diminished because the entire interview was not transcribed and presented. Other than the transcribed interview, the attachments to Exhibit 96, composed of a variety of statements of alleged witnesses, including interviews of 10 unidentified students, constituted hearsay, hearsay on hearsay and hearsay on hearsay on hearsay.

108. No evidence was presented that "the petition" attached to Exhibit 96 was genuine (it was a photocopy without foundation or connection via affidavit to the original), or that it was "the petition," alleged in Charge 6. No person who testified in the evidentiary hearing was shown the petition attached to Exhibit 96 and identified it as "the petition" referred to in Charge 6. No person authenticated the petition attached to Exhibit 96 and described the process regarding how it was obtained, from whom it was obtained, under what circumstances it was obtained, and how it came to be attached to Exhibit 96; there was no evidence of the chain of custody of the document purporting to be "the petition" alleged in Charge 6 from the time it was obtained to the time it showed up in the documents offered in evidence attached to Exhibit 96. All these essential foundational facts were merely assumed without anyone stating such under oath. The District failed to lay any evidentiary foundation the petition attached to the investigative report Exhibit 96 and connected that petition as the product of respondent's offer to obtain signatures for money as alleged in Charge 6.

109. What evidence there was offered regarding the petition attached to Exhibit 96 was hearsay and hearsay on hearsay offered to identify and authenticate hearsay, prima facie deficient as foundational evidence. The hearsay and hearsay on hearsay offered in support of the petition attached to Exhibit 96 was contained in witness statements written by Investigator Pierce following his interviews of Mrs. Shields and one of her sons, as well as a number of other students, produced to support the hearsay testimony of the Vice Principal. None of the witness statements obtained from Mrs. Shields and the students by Investigator Pierce that appear in Exhibit 96 were statements made under oath. The lack of any foundation reflecting any evidentiary merit, reliability or credibility was evident in these uncorroborated and unverified hearsay statements, regardless of who repeated them.

110. No person actually involved in obtaining signatures on the petition attached to Exhibit 96 testified about the creation of any one, some or all of the seven pages of the attachment purporting to be "the petition." No person who actually heard the alleged offer made by respondent of payment for obtaining signatures on a petition testified, and no person who claimed to be able to connect that offer with the petition attached to Exhibit 96 appeared and testified in support of that claim. Vice Principal De La Cruz and Investigator Pierce, an outside investigator hired by the District to investigate a number of the allegations, were the only witness called in support of the Charge 6 allegations. Neither witness had any firsthand knowledge of any of the subject matter encompassed by the allegations.

⁵ Government Code section 11513, subdivision (d), Evidence Code section 1220.

111. The Vice Principal testified that “Mrs. Shields” was the parent of the two boys who allegedly gathered the signatures and understood respondent had offered the money. Mr. Pierce’s report reflects that the Vice Principal was present when Investigator Pierce interviewed Mrs. Shields about the petition allegations.

112. The District claimed in closing argument “that the Vice Principal heard students discussing the petition and actually confiscated it from the students.” The record does not support the claim. The Vice Principal did not testify she confiscated the petition attached to Exhibit 96 from any student, in fact, she failed to mention anything about how the petition attached to Exhibit 96 came into Investigator Pierce’s possession. She was not shown the petition during her testimony, did not identify that petition or confirm during her testimony that she had any role in obtaining the Exhibit 96 attachment petition, nor did she testify to how, when, from whom or under what circumstances the petition attached to Exhibit 96 was obtained from any person. Although Principal Jarvis obliquely testified that “we intercepted a petition,” there was no evidence that “a petition” was “the petition,” the same petition referred to in Charge 6, or the same petition attached to the Exhibit 96 investigative report. Nor did he provide any information regarding when, where or from whom this alleged interception took place, who “we,” were, or any evidence that would satisfy any of the other foundational deficits connecting the petition intercepted and the claims of Charge 6.

HEARSAY ISSUES

113. Mrs. Shields did not testify, nor did her son or any of the other witnesses identified in Investigator Pierce’s report regarding the claims made in charge six, other than the Vice Principal and Mr. Pierce. The District contended in closing, referring to Mrs. Shields and her two sons interviewed by Investigator Pierce in the Exhibit 96 report:

The two brothers and their family have moved out of the area and were not available to testify. However, the District believes their contemporaneous statements to the investigator should be given serious weight. The brothers and their mother had no reason to make up such a story. The investigation produced the actual petition showing the gathered signatures. (See Exhibit 96: June 5, 2011 Investigative Report prepared by Mr. Pierce). In addition, both Principal Jarvis and Vice Principal De La Cruz independently received information about respondent’s signatures for cash scheme. This evidence clearly outweighs respondent’s denial.⁶

114. All of these contentions lack merit and evidentiary support. The District impermissibly argued outside the record when it claimed above that Mrs. Shields and her

⁶ District Closing Brief 10: 5-12.

sons could not be summoned as witnesses because they had “moved out of the area.” No evidence other than a comment by counsel was offered regarding why Mrs. Shields and her sons were not available and/or were not summoned by the District to appear. A comment by counsel is not evidence, nor is an argument outside the evidence produced during the evidentiary hearing. The District made no evidentiary showing during the evidentiary hearing documenting efforts to locate these witnesses and summon them, and no affidavit supporting the efforts to obtain service of process on and produce these witnesses without success was offered in evidence. The District’s outside of the record claim that Mrs. Shields was unavailable because she had moved out of the District has no weight or evidentiary merit, and is prima facie insufficient to prove the unavailability of any of these witnesses. The reach of this tribunal’s subpoena power is statewide, and is not limited to the boundaries of “the area.” Under these circumstances, District’s claim these witnesses were unavailable to testify has no merit.

115. The District claimed that Mrs. Shields and her sons “contemporaneous statements to the investigator” should be given serious weight is equally devoid of merit. These statements were not contemporaneous in any sense, having been made weeks to months after the alleged incidents they purport to describe. “Contemporaneous” statements are defined legally as statements offered, “to explain, qualify or make understandable the conduct of the declarant [the person making the statement] during a time when the declarant [the person making the statement] was actually engaged in such conduct.”⁷ The witness statements under review were obtained between March 25, 2011, and April 13, 2011 when Mrs. Shields and one of her sons was interviewed. Mrs. Shields stated almost immediately during her April 13, 2011 interview with Investigator Pierce that the incident she was describing where respondent came to her door took place “1-2 months ago,” and that the alleged petition signature gathering offer was made at a time somewhat before that. There was nothing “contemporaneous” about what Mrs. Shields and the one son she permitted to be interviewed had to say to Investigator Pierce.

116. Hearsay statements of unavailable witnesses require a foundational showing of reliability, another showing the District failed to make with respect to Mrs. Shields or her sons. Mrs. Shields’ statements were not made under oath, nor did she sign a written statement confirming that her statements were accurate and correct. Her statement and that of her older son are hearsay, regardless of the vehicle through which those statements were offered. Hearsay is admissible but may not support a Factual Finding on its own unless it is supplemented or explained by other reliable evidence in the record, or would be admissible over objection in a civil proceeding.⁸ In a civil proceeding, the hearsay offered in support of this charge from Ms. Shields and her sons would not be admissible over objection absent proof of unavailability and foundational proof of reliability, neither of which exist here. Juxtaposing the same contention, the District repeatedly argued in closing that respondent’s

⁷ Evidence Code section 1241.

⁸ Government Code section 11513, subdivision (d).

evidence in response to a number of the charges should be disregarded because it consisted of nothing but the same sorts of uncorroborated hearsay offered in support of Charge 6 here.

117. Vice Principal De La Cruz took pains to testify how upset Mrs. Shields was about respondent offering her sons money to collect signatures on the petition. But the Vice Principal had a great deal of trouble remembering whether respondent offered \$200 or \$500 for the signatures, was unable to remember whether that was her recollection or what Mrs. Shields actually told her, or whether one or another of the other boys told her how much was offered and for what, when the offer was made, or what the terms were for gathering the signatures and getting paid. The several hearsay student witness statements attached to Investigator Pierce's report Exhibit 96 about this alleged incident contain the same wide range of disparity and lack of consistency in key details. Investigator Pierce commented that three of the eight students he interviewed remember the amount allegedly offered was \$200, a fact he thought reflective of credibility and consistency, a conclusion the Commission does not share. Investigator Pierce did not record in his witness statements or general report the source of the witnesses' knowledge of the information they claimed, which easily could have been these witnesses sharing that information with one another rather than having heard the offer from respondent. The sort of hearsay being passed from student ear to student ear and the great potential for distortion of information transmitted in this fashion is precisely why the hearsay barrier exists to prevent unreliable information from finding its way into Factual Findings.

118. The number and gravity of important supporting details Vice Principal De La Cruz did not recall far exceeded what she did. The Vice Principal also told the investigator that she overheard respondent talking to students about "a petition," but again her recollection failed regarding pertinent detail. Additionally, Vice Principal De la Cruz exhibited almost as much personal animus toward respondent as Principal Jarvis, but with much less visible cause. Absent independent corroboration, which was not produced, any testimony by the Vice Principal adverse to respondent must be viewed with distrust.

119. The District failed to corroborate the hearsay from Mrs. Shields and her sons with any extrinsic evidence in any meaningful fashion. Noteworthy in this respect is the fact that when Mrs. Shields and her sons, who Mrs. Shields claimed accepted the offer, obtained the signatures and expecting to get paid were interviewed, none of the three were shown the petition attached to Exhibit 96, consisting of seven pages, and none were presented with and asked to identify all or any portion of the alleged petition as something they had any part in obtaining. There was no evidence of or mention in Investigator Pierce's report of his interview of Mrs. Shields, or in Vice Principal De La Cruz's report or testimony that Mrs. Shields was shown the alleged petition contained in Exhibit 96 and asked to identify it as the petition she claimed her sons obtained by seeking signatures in hopes of obtaining money from respondent. There is no identifying information on any of the seven pages of the alleged petition that provides any clue as to who obtained the signatures, or if any single or to individuals, or more were involved in that process. The copies of the petition pages attached to Exhibit 96 also contain certain indicia of unreliability that was not explained by any witness, not the least of which is the fact that the pages appear to have been produced at

different times, have writing and entries on them that are not consistent with the bulk of the writing on the pages, and have entries that appear to have been added later and by a different writer than the bulk of the writing. These unexplained questions about the validity and the method of the preparation of the pages, were not answered, because no one who actually had anything to do with the petition attached to Exhibit 96 testified about it.

120. In his very lengthy interview of respondent by Investigator Pierce that took place on May 23, 2011, incompletely transcribed as a 54 page attachment to Exhibit 96, Mr. Pierce's June 5, 2011 investigative report⁹, Mr. Pierce questioned respondent at some length about this alleged petition. Not once during this lengthy questioning did Mr. Pierce show respondent the alleged petition he later attached to Exhibit 96 and ask her about it. Investigator Pierce did raise the question of what motive Mrs. Shields might have to lie about claiming that respondent solicited students, including her sons, to obtain signatures on a petition for a cash payment, or coming to her house to check on where the petition might be. Respondent expressed no awareness of such a motive, but this does not exclude mistake or inaccurate report, since Mrs. Shields was not reporting what she did, but what she heard from others, i.e., she was also reporting hearsay. None of the collateral details were pinned down to provide assurance of the reliability of Mrs. Shields' statements. No evidence was offered to bolster or augment the reliability or credibility of the hearsay reports by Mrs. Shields in her statement to Mr. Pierce.

121. Respondent testified consistent with what she told the investigator in May 2011, that when the District originally charged that she solicited signatures and offered students money for obtaining signatures on a petition seeking her retention, and commenced the investigation, ultimately culminating in Exhibit 96, respondent repeatedly demanded during a meeting where respondent, her FTA representative and District representatives were present, that the District produce the alleged petition so that she could see it, because she did not believe it existed beyond rumor. During the meeting, after insisting several times that "the petition" be produced without result or satisfactory response from the District, respondent commented that she would be willing to "pay money" to see it, and that this comment had been misconstrued and misinterpreted ever since. The District failed repeatedly to produce "the petition" in the face of respondent's repeated demands so many times that respondent's FTA representative told her she could assume "the petition" did not exist, or if it did, it failed to confirm what the District charged. Respondent claimed, then and now, that she had never seen any alleged petition until she obtained a copy of Exhibit 96 in these proceedings.

122. The District produced no credible or persuasive evidence to refute respondent's claims. The District appeared to assume without foundational proof that the petition attached to the Exhibit 96 investigative report is the same petition respondent solicited and offered students money to obtain signatures alleged in Charge 6. Assumptions and arguments do not constitute admissible evidence in support of the claims. No admissible

⁹ Mr. Pierce's unflattering comment about respondent's credibility and responding to his questions about the petition are not germane and are irrelevant to this determination.

evidence was offered regarding how, by whom, under what circumstances, or any other information that would explain the manner and method of the preparation of the petition attached to Exhibit 96. Even the hearsay statements of Mrs. Shields, her sons, and other students, attached to Exhibit 96 regarding the claimed solicitation and offer of money to obtain the signatures, fail to connect the petition attached to Exhibit 96 with the activities and actions of the witnesses interviewed purported to be involved in obtaining the signatures hoping to obtain money for their efforts.

123. Muddying the water even further, there was evidence of at least one other petition circulating during this general period of time, referenced by Ms. Mora in her email (Exhibit 93) in which Ms. Mora reports there exists a petition being circulated by parents seeking to “get rid of” respondent. There was also rumor of a petition seeking transfer or removal of Principal Jarvis. Respondent testified and told the investigator that she was aware of “a petition” through rumors, but had never seen such a petition, and was unaware whether the petition was in her support, was against her to get rid of her, or was against Principal Jarvis seeking his removal. Since she had never seen any such petition, she did agree that she discussed the possibility of “a petition,” that she would like to see it, and when she was told that students were involved in gathering signatures on “a petition,” she did say that she would “pay money” to see such a petition, never mentioning an amount. But she never did see any petition until she first saw a copy of Exhibit 96.

124. It may be that what Mrs. Shields, her son and some of the student witnesses interviewed by Investigator Pierce told him the truth, and maybe not. The District materially failed to carry its proof burden to demonstrate the allegations of Charge 6 were true and supported by admissible and reliable evidence. The Charge was not proved.

125. Respondent was given a Letter of Reprimand for Unprofessional Conduct and suspended for 15 days without pay on October 27, 2012, for the incidents set forth in Charges 4-6 above. Despite being alleged as such in Charge 6, the fact that respondent was formally disciplined and sanctioned is of no consequence to the evidentiary determinations here.

CHARGE 7a. SIGNATURE GATHERING ON ADMINISTRATIVE LEAVE

126. Charge 7a alleges that while respondent was on administrative leave pending investigation of the allegation, that she solicited students to obtain signatures for “your petition,” after she was directed not to contact students. Charge 7a alleges that respondent sent text messages to students and drove by their homes to pass out flyers for a meeting that she was organizing.

127. Charge 7a was proved to the extent that respondent acknowledged sending and receiving text messages from students and having contact with students and parents. However, it was not proved that those contacts occurred during the period of time respondent was on administrative leave. Respondent credibly testified that she did not understand that she was not permitted to communicate with her students because she believed and it was

always her intention that she would be returning to school in a short time and had continuing lessons ongoing. Since the term of the administrative leave was indefinite, respondent believed that she could be called to return to school any day. The District failed to prove any different.

128. It was not proved that respondent drove by students' homes and passed out flyers about a meeting she was organizing. The only evidence introduced in support of the allegation was hearsay and hearsay on hearsay. No witness having actual knowledge of the alleged event testified, and no flyer was produced.

CHARGE 7b. CLAIM JARVIS INTERRUPTED CLASS

129. Charge 7b alleges that respondent accused Principal Jarvis of interrupting her class too often in March 2011, and that he was trying to get her fired. Charge 7b further alleges that respondent told Principal Jarvis that she was having a meeting to get him fired, and that she solicited parents to complain about Mr. Jarvis.

130. Respondent admitted that she repeatedly accused Principal Jarvis of interrupting her class too often. Respondent believed that Principal Jarvis's presence in her classroom, at the frequency he came, daily whenever he was on campus after she returned from leave in February 2011, and in the amount of time he spent in the class at each visit, was disruptive, constituted harassment and made it difficult for her to teach. She claimed that Principal Jarvis's frequent and repeated presence in her classroom was intended to intimidate her and her students, created a hostile classroom environment for her teaching and applied subtle pressure, hoping to get her to quit. Respondent also claimed that as a result of the frequency of Principal Jarvis's visits and presence in her classroom, her students repeatedly asked her if she was "in trouble."

131. The allegation and respondent's claims are benchmarks for just how badly respondent's relationship with Principal Jarvis had deteriorated by late spring of SY 2010-2011. It was never proved how much in classroom presence by the Principal was "too much," too little, or appropriate, but what was clear was that the amount of time a Principal spent in any teacher's class room was often a function of the circumstances extant, and that those circumstances varied from time to time. For example, Principal Jarvis spent a good deal of time in respondent's classroom helping her class prepare a volcano project which was a big hit with the students, and for which Principal Jarvis received a great deal of praise and admiration from respondent and her students for the manner in which he assisted the students in carrying out the project. Principal Jarvis received similar praise from respondent regarding his considerable help and facilitation for her Victory Garden project. Certainly no one would suggest that the amount of time Principal Jarvis spent in respondent's classroom helping the students with the volcano or Victory Garden projects was excessive. It was equally clear that regardless of Principal Jarvis's intention in being present in her classroom at any given time, she and her students had become very sensitive to his presence and her students behaved differently when he was present, making it more difficult for respondent due to the added implied pressure his presence added to the classroom. It did not appear

during this late SY 2010-2011 period of time that Principal Jarvis being present in respondent's classroom was a benign event, as perceived by either respondent or her students.

132. The allegation that respondent complained Principal Jarvis spent "too much" time in respondent's classroom appeared to be a matter of differing subjective opinions, the perceptions of respondent, her students, as observed by respondent's appraisal of their demeanor, and Principal Jarvis at the time, and not a matter or reflection of unprofessional conduct. Respondent had her opinion and she expressed it, and an allegation that seeks to impose discipline for expressing her opinion in a medium that was not proved to have caused disruption or harm to peers or staff does not constitute unprofessional conduct. The problem was to whom respondent expressed these opinions.

133. There was an aspect of the allegation that was proved to be unprofessional conduct. Respondent expressed that one of the reasons Principal Jarvis was in her classroom so often was that Principal Jarvis was trying to get her fired, and respondent admitted she told students and parents that she believed Principal Jarvis's classroom intrusions and disruptions resulted in lower student test scores and poor performance evaluations for her, and Principal Jarvis was trying to fire her as a result. Respondent's discussion of these administrative and personnel issues with her students, in and out of the classroom, constituted unprofessional conduct.

134. By March 2011, the claim that Principal Jarvis was trying to get respondent fired was indisputably true. Having just returned from a lengthy medical leave, within just a few weeks of her return, respondent had already caused a good deal of trouble for administration, and provoked dissension and disruption on campus to the extent that District administration was now involved. There was no doubt that Principal Jarvis was actively working with District administration on efforts to terminate respondent's employment by March 2011. It was no secret at Hidalgo that administration's efforts to persuade respondent to curb and correct her behavior had failed, respondent's behavior toward administration and peers alike was becoming more hostile and aggressive, threatening to peers and polarizing to the school site environment, and that a more permanent solution to respondent's disruptive, workplace- polarizing behavior was being strategized. Respondent clearly understood the process of attempting to get her dismissed was underway and it was evident to anyone paying attention that a documentation trail was being assembled through the numerous write-ups, such as Memoranda of Concerns and Letters of Reprimand that are present elsewhere in this record. The fact that the complained of process was in play and that respondent was well aware of it should not have been a mystery to anyone under the circumstances.

135. It was not proved that respondent "solicited" parents to try to get Principal Jarvis fired. Principal Jarvis by this point in time had independently acquired his own set of detractors. It was no secret that the subject of an effort to get Principal Jarvis fired or transferred had been discussed between respondent and parents at various times not proved. The details of exactly what was said, when, to whom, and under what circumstances was not

proved. It appeared that these matters were discussed in brief and casual snippets of conversation between respondent and parents at various and sundry times.

136. By March 2011 there was some hearsay evidence that some parents were dissatisfied with Principal Jarvis's behavior toward their children and his administration of Hidalgo. Respondent admitted she repeatedly complained to District administrators about Principal Jarvis and sought his removal as head of Hidalgo school site administration, and several emails in evidence confirmed that. Respondent claimed she had parental support for her claims, and that there existed a petition somewhere taken up by parents seeking Principal Jarvis's removal. There was no direct evidence in support of any of these claims.

137. None of these matters appeared to be closely held secrets at Hidalgo during the relevant period of time under review in this matter. Regardless, there was no evidence that respondent actually actively "solicited" any parent to try to get Principal Jarvis fired, and no parent testified that such occurred.

CHARGE 7c. RETENTION OF DISTRICT ISSUED LAPTOP

138. Charge 7c alleges that respondent was directed to turn in her District-issued laptop computer when she was placed on administrative leave on March 11, 2011, and that she failed to comply with that directive. The allegation was proved, and respondent admitted it. Respondent still has the laptop.

139. Respondent repeatedly contended that the District laptop contained her work product stored on the hard drive, and when the District cut off her access to District servers, the laptop could not be used and she could not retrieve her work product. When respondent was placed on administrative leave on March 11, 2011, she attended a meeting in Principal Jarvis's office with Ms. Mazzoni, a District HR administrator, in which she was specifically directed to surrender the laptop. Respondent retained the laptop, contending that it contained her personal work product and that she should be entitled to retrieve and retain it before returning the computer.

140. The matter of respondent retaining the laptop came up again during the lengthy May 23, 2011, interview with the District's investigator Mr. Pierce. Respondent's attorney, Mr. Tuttle, was present throughout. When Mr. Pierce asked respondent about the laptop, Mr. Tuttle, representing respondent, entered into an agreement with Mr. Pierce on behalf of the District, to "get her materials copied and if the District wants their computer back, they can certainly have it and I will get it to them in a few days." (Exhibit 96, statement taken May 23, 2011, page 7, District exhibit page 809). Mr. Tuttle agreed to oversee the copying of the data of concern to respondent and return the computer by the following Tuesday. Respondent did not surrender the laptop to Mr. Tuttle, who was in turn, unable to return it to the District, as promised during the interview, and respondent continued to retain the laptop.

141. Respondent's stated reasons for retaining the District laptop varied over time, and as time passed, her retention of the computer appeared to be a diversionary tactic. Later circumstances suggested that respondent intended to retain the computer, regardless of the retrieval of her personal work product from its hard drive, in an effort to use the laptop as leverage to negotiate with the District to respond favorably to some of her demands, such as being given access to the Hidalgo school site to return and retrieve property she claims belongs to her that is still present on the school property, as well as to respond favorably in a wholly unrelated matter regarding her claims that FUSD is violating her son's Special Education rights.

142. Near the end of the evidentiary hearing, July 29, 2014, the ALJ arranged for the creation of a forensic mirror image of the hard drive of the laptop computer, and thus to preserve the personal data of which respondent expressed so much concern, and still get the laptop returned to the District. Although respondent agreed to the process, she insisted on arranging the mirror image process herself, and agreed she would have the hard drive copied and then surrender the computer on July 30, 2014, the final day of the evidentiary hearing where all parties were present. When the time came to surrender the computer, respondent failed to do so, and offered some rather vague and unpersuasive excuses as to why she failed to get the laptop's hard drive mirrored and return the computer as ordered.

143. Respondent never denied that the laptop belongs to the District, and what belongs to the District should be returned to the District. But by the same token, she refused reasonable offers in May 2012 and June 2014, to respond to her expressed concern regarding why she needed to retain the laptop, to preserve her work product stored on the laptop and get the computer back to its rightful owner. Respondent has not returned the laptop computer to date, and continues to condition its return upon the District's favorable response to her demand to return to Hidalgo to reclaim property she claims is still on site the belongs to her, and to resolve her SE claim regarding her son in the fashion she insists.

144. Respondent raised many meritorious issues and concerns throughout the evidentiary hearing. But her behavior and supporting thought processes in many instances, such as her reasoning in support of her retaining the laptop computer she acknowledges does not belong to her, made it very difficult to take her claims seriously. Respondent's retention of the laptop computer constitutes unprofessional conduct, as well as demonstrating a temperament and disposition reflecting evident unfitness for service.

CHARGE 7d. THE INTEGRITY OF THE INVESTIGATION-NO CONTACT

145. Charge 7d alleges that "to ensure the integrity of the investigation," respondent was directed to not have contact with students, staff or parents regarding the investigation or other personnel issues pending against her. Charge 7d alleges that during March and April 2011, while administrative leave, respondent attempted to hold a press conference regarding her personnel issues, contacted parents at home regarding those personnel issues, and contacted students in their neighborhood and gave them notices about a meeting she wanted to have and asked them to pass out the notices.

146. Part of Charge 7d was proved. The arrival of the local news channel's television broadcast truck across the street from Hidalgo one afternoon created quite a stir in the neighborhood, in the Hidalgo front office and at District administration. The news team came at respondent's invitation to interview respondent and any Hidalgo administrators who might be available and willing to comment. Respondent did not deny she told the news reporter about her personal grievances and made claims of misconduct by Hidalgo and District administrators.

147. Response was swift and comprehensive. Hidalgo site and District administrators were required to drop what they were doing immediately and intervene. A District level Human Resources administrator came to Hidalgo and spoke to the news reporter on site and persuaded the reporter not to run the story on the evening news.

148. Respondent admitted that she summoned the media in order to get her story of being harassed by Hidalgo and District administration into the public view. She wanted local media to know how Hidalgo and District administrators were creating a hostile work environment where she could not successfully teach her largely low income and disadvantaged students. Respondent testified that she felt that her claims and concerns that she was being harassed by Principal Jarvis were not being taken seriously, and that she needed to "go public" with her concerns so that the community at large would know what was going on at Hidalgo and in FUSD.

149. With exquisite understatement, respondent acknowledged that her calling the press conference and summoning the news team to Hidalgo "crunched a few toes," meaning Principal Jarvis in particular, other Hidalgo and District administrators, and others who with the targets of her intended statements and those at the District office. Respondent used this euphemism several times to describe instances of engaging in conduct that embarrassed, demeaned, denigrated, irritated, insulted and offended others in her pursuit of getting relief from or redress of her grievances about the manner in which she believed Hidalgo and District administration had bullied, harassed, and created a hostile work environment where she felt she could not do her job.

150. Respondent did not deny that the objective of her summoning the news media to the Hidalgo school site was to point out the details of how Hidalgo school site administrators, District administrator, and perhaps some peers and volunteers she thought to be aligned with the administration had created a hostile work environment of which she complained in a very public fashion, intending to embarrass and manipulate the targets of her criticism. Respondent described herself as a "whistleblower" when confronted with the unprofessional nature of some of her public exercises of disparagement of administrators and peers, and claimed legal protection for her statements and disclosures that "crunched toes" because of her self-description as a whistleblower. Respondent completely missed the point about the nature of her unprofessional behavior. The point was not the nature and substance of her concerns, it was the tactless, hostile, angry, belligerent and scorched-earth manner in which she verbally decimated those she blamed for her circumstances. Describing herself as a whistleblower proved to be a convenient rationalization for her attempt to use the media to

enlist a larger audience as an ally and a buffer against Hidalgo administration and District efforts seeking to persuade her to desist her attacks on others and behave professionally and civilly toward administrators, peers and staff. In other instances, respondent repeatedly testified that all she wanted to have happen was to be left alone so that she could do her job and teach her students, which was a not uncommon reply to questions from the District about why she did not timely and contemporaneously report through existing channels some of the mischief and inappropriate behavior on the Hidalgo campus by some of her Hidalgo peers and administrators which she contended should be the subject of her intended media disclosures and a whistleblower type inquiry. A typical example of this was her untimely, retaliatory accusation of her peer Ms. Mendez claiming at a school site council meeting she physically abused special day class (SDC) SE children (below).

151. Respondent did have contact with parents and students as alleged in Charge 7d. However, it was not proved that respondent had contact with students or parents “regarding the investigation,” or during the time she was on administrative leave. No contact with any specific parent or student was proved, and no evidence of any date upon which such contact took place was identified. No parent or student with whom such contact took place was ever identified, and none testified. Since respondent was never informed what the investigation was about, she credibly stated that she had no idea what the “integrity of the investigation” meant under the circumstances. It was not proved that respondent engaged in unprofessional conduct with respect to these particular allegations.

CHARGE 8. 45 DAY NOTICE OF UNPROFESSIONAL CONDUCT

152. Charge 8 merely recites that respondent received a 45 day Notice of Unprofessional Conduct on October 27, 2011 for the acts and omissions alleged in Charges 1 through 7 above. The allegation was purely procedural.

CHARGES 9-10. JANUARY 2012 SCHOOL SITE COUNCIL MEETING

153. Charges 9 and 10 relate to the same incident, that the District alleged occurred at a SSC meeting held at Hidalgo in January 2012. In Charge 9, the District alleged that during this SSC meeting, respondent stated that Hidalgo’s administration showed preferential treatment toward some teachers more than others, and specifically, that respondent claimed during the meeting that she had to wait as long as a month for teaching materials, while other teachers received their supplies sooner. The District further alleged that one person present during the meeting, (later identified as Ms. Mendez), reported that she had seen respondent fail to pick up supplies that were unclaimed waiting for her for extended periods of time.

154. Charge 10 continues by alleging that after the SSC meeting, respondent confronted the SSC President, Paula Mora, and told Ms. Mora that she did not follow the law during SSC meetings, did not perform her job well and that she was going to call the prior SSC President because she did a better job than Ms. Mora. The District alleged that respondent’s comments intimidated Ms. Mora, who described respondent’s voice as “ugly” and her demeanor as unprofessional.

155. Hidalgo is a Title I school, and the SSC is a collaborative parent-teacher effort to determine how to best use the Hidalgo Title 1 allocation. The SSC meets periodically and make decisions about how Title I funds received by Hidalgo school are to be spent. The SSC is headed by a President selected by its membership who conducts the meetings and puts together an agenda. Ms. Mora was a parent of a Hidalgo student at the time of the January 2012 meeting, and was entering the second half of her first year as SSC President.

156. Ms. Mora did not testify. The Vice Principal's claim that Ms. Mora did not testify because she is afraid of respondent was uncorroborated hearsay and is rejected. However, the Vice Principal's testimony about Ms. Mora's reaction during the meeting to respondent's behavior, and Ms. Mora's reaction and complaints about the ugly and hostile tone and comments of respondent's-after meeting denunciation of her leadership and competence constituted admissible and probative statements regarding Ms. Mora's existing state of mind and emotion offered through the Vice Principal's contemporaneous observations, as she was also present at the meeting.¹⁰ Ms. Mendez was also present, and testified about Ms. Mora's adverse reaction to respondent's conduct at the SSC meeting. Respondent also testified about the incident. Ms. Mendez made no secret about how much she dislikes respondent, not surprising in light of the defamatory comment respondent made about Ms. Mendez in the presence of parents after the meeting (below). More hearsay about Ms. Mora's reactions to respondent's behavior was offered through Mr. Pierce the investigator.

157. Respondent did indeed complain during the SSC meeting about intolerably slow delivery of teaching supplies she had requested, and about what she believed to be a discrepancy regarding other teachers' requests for supplies that appeared to be filled much more rapidly than hers. Respondent often repeated her claim that "favored" teachers received quick attention to their requests for supplies, and disfavored teachers like her were ignored. There was no evidence that the problem with the supplies respondent pointed out was not genuine or ongoing, or that delay in the delivery of necessary supplies was very frustrating for classroom teachers. Respondent's efforts to timely obtain materials such as, glue, tape, construction paper and so forth that she could use to present her students' work and post on the walls of her classroom seemed recurring. The District did not introduce any information to contradict respondent's claim that the requested supplies had not been timely made available to respondent at the time of the SSC meeting, nor the fact that respondent had requested them. One of the purposes of the SSC meeting is to address, among a great number of other things, expenditure of funds to obtain things like supplies for teachers like respondent. Repeating the common pattern now well developed with respondent's behavior toward genuine problems, such as the one with timely provision of supplies, it was the inappropriate and unprofessional manner and means by which respondent chose to address these genuine issues that became the larger problem.

158. Respondent acknowledged most of the facts alleged above regarding her interaction with Ms. Mora after the SSC meeting. What happened at the January 2012 SSC

¹⁰ Evidence Code section 1250.

meeting was the culmination of accumulated frustration and disagreement between respondent and Ms. Mora generally, and specifically about interpreter services provided for the parents who attended the SSC meetings. Respondent and Ms. Mora did not get along generally, and respondent made no secret of the fact that she thought Ms. Mora was incompetent, and did not believe that Ms. Mora ran the SSC meetings in an effective manner. Despite the fact that Ms. Mora is a Spanish speaker, the dispute primarily centered around the provision of inadequate interpreter services for the many Spanish-only speaking parents who attended the meetings. Ms. Mora was responsible for arranging adequate interpreting services because many of the parent participants at the SSC meetings were not fluent in English. Respondent was increasingly agitated that the interpretation services Ms. Mora arranged were incompetent to incomprehensible, depriving the parent participants of the ability to understand the proceedings. Respondent felt that Ms. Mora's lack of concern about the low quality of interpretation disenfranchised the non-English speaking parents because they did not understand what was going on at the meetings. Sometimes respondent was so frustrated with the process that she interpreted for these parents herself. Ms. Mora did not appreciate respondent stepping in in this fashion, and the two quarreled about it several times mildly, finally breaking out at the January 2012 meeting.

159. Ms. Mendez's and the Vice Principal's impressions of respondent's tone of voice and demeanor directed at Ms. Mora was that respondent verbally berated and belittled Ms. Mora in an angry, hostile and demeaning tone of voice. The manner in which respondent delivered her objections to Ms. Mora, during the meeting with respect to how Ms. Mora conducted the meeting, and afterward, when she attacked Ms. Mora's competence, constituted unprofessional conduct.

CHARGE 11. THREATENING COMMENTS AT IEP MEETING

160. The District alleged in Charge 11 that respondent made threatening and unprofessional comments "to staff members" during an IEP meeting on February 15, 2012. Charge 11 alleges that, specifically, respondent threatened to sue three District employees because, as a respondent said, the District was "too large to sue." It was also alleged respondent told one SE staff member that she was going to start a petition to get her fired and made her feel threatened when respondent told her, "A Board member spent last night at Children's Hospital with their child. That could be your kids someday." In addition, Charge 11 alleges that respondent began recording the meeting without advising the others in the meeting or asking for permission to make the recording. It was also alleged that during the meeting respondent solicited the support of three staff members present in support of her candidacy for a representation position with the FTA. The allegation concludes by stating that those present at the meeting described respondent's behavior as belligerent, aggressive, offensive and demeaning, and that her lack of professionalism "made her fellow educators feel uncomfortable."

161. This IEP meeting was contentious before it began. The IEP meeting was called by Ms. Smith and her District SE colleagues present at the meeting to try to obtain respondent's consent to an already announced move of respondent's son out of his

integrated, mainstreamed placement at Fresno High School into what respondent described as “the warehouse,” a special day class (SDC) populated by only SE students in District warehouse space that was allegedly being rehabilitated to accommodate the students. Respondent was adamantly opposed to removal of her son from the Fresno High placement, where he was mainstreamed with a regular education student population and she felt he was happy and succeeding. She repeatedly expressed her concern that the proposed SDC class would be populated with SE students who were far more impaired than her son, and that it was proposed that he would be in a group setting with mildly and moderately mentally retarded SE students, and that the setting would erase all of his gains achieved when he was mainstreamed. Respondent was very unhappy that the purpose of the IEP meeting appeared to her to be for Ms. Smith, Ms. Evangelinos, and their unnamed associate, to pressure respondent into moving her son out of the Fresno High placement and into the SDC at the warehouse. Respondent was already angry before the meeting began over how the meeting was called, its purpose and its subject matter, and was quite unreceptive to the pressure. Respondent verbally pushed back and pushed back hard, acknowledging in her testimony that perhaps some of the things she said in advocating for her son “might have come out a little bit angry and hostile,” and “I may have crunched some toes.”

162. Ms. Smith described respondent’s behavior during the IEP meeting in her testimony as angry, aggressive, hostile and belligerent, and respondent did not dispute that characterization. Respondent acknowledged that she was very angry about how she felt she and her son were being treated, and she believed very strongly that her son’s SE rights were being trampled, in violation of the protection provisions for SE students set forth in the Education Code.

163. The Charge 11 allegations in the District’s evidence in support failed to accurately characterize the nature and the context of the meeting and what was taking place. The allegations of Charge 11 misrepresent and mis-apprehend the nature and role of respondent’s presence at this IEP meeting. Respondent was not present at the IEP meeting as a “staff member,” a “fellow educator,” or a peer with the SE staff members who claimed to have been made “uncomfortable” by respondent’s allegedly unprofessional conduct. The allegations are deficient in that they assume that respondent’s presence at this IEP meeting came with a duty to behave towards the SE staff members present as her professional peers and co-professional educators.

164. The allegations of Charge 11 contain a flawed assumption; the mere fact of District employment does not create the duty assumed by the allegations, nor does it require, under the circumstances of this meeting that respondent behave toward the SE staff members as she would in her capacity as a classroom teacher toward “other staff members,” or “fellow educators.” This IEP meeting was not a meeting among educator peers such as would assemble to discuss an agenda at a SSC, at a conference or a grade level or school site staff meeting. Respondent’s status as a certificated employee of the District had nothing to do with her role or her presence at the IEP meeting. Respondent was present at this IEP meeting solely and exclusively in the capacity of a parent/advocate for her autistic son, not as a “fellow educator,” or as a “staff member,” as the allegations imply, or even as a peer to the

District SE personnel who ran the meeting. Other than the incidental fact of common employment with the District, respondent in her role and capacity at the meeting, and the District SE employees present had no common peerage or professional interest, and, in fact, there existed intense enmity and opposition in an advocate/adversary relationship. Respondent was present at the meeting solely as their adversary.

165. The District SE employees present were shocked and surprised at the forcefulness and vehemence of respondents resistance, and her position that the attempt to place her son at the SDC warehouse was insulting, and in derogation of her son's right to be placed in the least restrictive public school setting in which he was capable of functioning, which, in her opinion, had already been proved to be his placement at Fresno High School.

166. It was not proved that respondent made "threats" against the SE team members present at the IEP meeting in the manner in which the allegations suggest. The evidence presented suggests that the SE team members overreacted to the forcefulness and belligerence of respondent's resistance and got their feelings hurt when she threatened to take action against them for trying to force her to agree to an IEP change of placement that she thought to be very much against her son's best interests.

167. Respondent acknowledged that she threatened to sue some of the persons present at the meeting, as she believed they were violating the SE law set forth in the Education Code in trying to force her son out of the current successful placement where he was happy and thriving. The threat by respondent to engage in litigation over the matter could not have been a surprise to Ms. Smith, as she implied in her testimony, as litigation is not uncommonly initiated by dissatisfied SE parents and advocates when disputes arise over IEP issues, and sometimes individuals get sued when they exceeded the bounds of their authority and violate a SE student's rights. Unable to obtain the result she sought at the IEP meeting, respondent did threaten to resort to legal process.

168. Respondent also acknowledged that she made the comment about the Board member's child having to go to Children's Hospital, but pointed out persuasively that Ms. Smith and her colleagues took the comment out of context and misconstrued it. Respondent's explanation was persuasive, and Ms. Smith's misperception of respondent's explanation was not. Respondent explained that she told the persons present than any one of them or their children could be disabled at any time, and find themselves facing the same problem she was experiencing at this IEP meeting with her child being forced into what she believed was an inappropriate placement that would deprive him of the gains he had made at Fresno High. Her comment was intended to point out that the problem she was experiencing could happen to anyone, and had indeed just happened to one of the Board members. She may not have been heard well due to her angry tone, belligerence and forcefulness of the manner in which she was advocating for her son, but comment was not proved to be anything other than an effort to persuade the SE staff persons present at the meeting to be a bit more sensitive to the difficulty she was facing raising an autistic child being forced into a SDC group placement that she believed to be completely inappropriate for her son. Respondent did contribute to the misunderstanding because by this time, her angry, hostile and

aggressive demeanor raised the potential that her comments would be construed as threats rather than efforts to persuade.

169. Ms. Smith's claims to having felt "threatened" and "uncomfortable" by respondent's advocacy were overstated. It was not proved that Ms. Smith's or her SE colleagues' complained of perceptions of threat and discomfort were anything other than one of the features that comes with the territory in conducting meetings like this one, where the oftentimes stressed out parents of developmentally disabled children advocate forcefully for the best possible outcomes for their children. Respondent's zealous advocacy for her son at the IEP meeting, in the face of the provocation of what she believed to be the effort to force upon her a foregone conclusion of an unwanted, involuntary and very disadvantageous transfer of the placement of her autistic son, is not proved to constitute unprofessional conduct, considering the circumstances, the context and the lack of proof of a duty owing from respondent to the SE employees requiring her to conduct herself in the fashion alleged. Ms. Smith's, and her SE colleagues' hearsay claims that they felt "uncomfortable" during the course of the IEP meeting with respondent assumes that unproved duty. A contentious IEP meeting is not always comfortable. An IEP meeting where a parent is being pressured to consent to what the parent believes to be an inappropriate and unlawful placement can be and often is adversarial. Adversarial settings where hotly contested issues are being presented are often "uncomfortable" as tempers and passions rise.

170. Respondent also admitted that as the IEP meeting was concluding, she told the three SE staffers present that she was seeking support for her candidacy for an associate position in the FTA. The District contended that respondent inserted her employment into the meeting by informing these three District employees of her candidacy. The statement is only true after the fact, as respondent's candidacy for the FTA position had nothing to do with her advocacy in her role during the IEP meeting. The allegation about seeking support in the FTA election had nothing to do with unprofessional conduct, nor did the District offer any evidence to demonstrate that respondent's advice to the other employees that she was running for a position on the FTA constituted unprofessional conduct or created a duty on respondent to behave in a different fashion as advocate/adversary during the IEP meeting. The inference contained in the allegation portraying respondent as engaging in bizarre behavior as the IEP meeting was concluding was disregarded by the Commission, giving it the merit to which it was due.

171. In sum, the District proved no facts that the adversarial and parent/advocate role occupied by respondent at the IEP meeting in question created the same "fellow educator," "staff member," duties and obligations of professionalism and civility toward those District SE employees present at the IEP meeting as would exist were respondent and these District SE employees occupied the relationship of true "fellow educators" at the time, working in a peer to peer relationship delivering educational services to District students.

172. Although unprofessional conduct was not proved, the facts adduced in support of the allegations of Charge 11 demonstrated another instance of respondent's untoward temperament, angry and hostile disposition and explosive personality style in dealing with

others who are between her and the desired objective. Respondent displayed lack of reticence to use verbally abusive tactics, aggression, intense anger, hostility and words easily perceived as threats as weapons to deal with others and accomplish her objectives. In so doing, respondent revealed temperament and personality traits manifested in a distinct and habitual behavior style in dealing with others in the workplace.

CHARGE 12. SSC MEETING AND MS. MENDEZ

173. Charge 12 alleges that respondent disrupted a SSC meeting on March 28, 2012, when respondent again raised the issue during meeting time of not having her supplies that she ordered delivered to her in a timely fashion. Respondent also complained that technology she had in her classroom was insufficient. It was also alleged that during the meeting, respondent told fellow teacher Della Mendez that she “hurts kids.” It was alleged that respondent approached Ms. Mendez “in an aggressive manner” and told her she would not be at the school site for long, which Ms. Mendez perceived as a threat. It was also alleged that respondent “misinformed the parents present,” by stating that the bilingual program was being eliminated, when, in fact it remained on the SPSA. It was alleged that the SSC President Ms. Mora told respondent there was a process to voice such complaints and that respondent could not simply disrupt the meeting with her “personal issues.”

174. Ms. Mendez, a Hidalgo teacher assigned to teach the Special Day Class (SDC) for SE students and kindergarten, attended this SSC meeting as she had the earlier SSC meeting also disrupted by respondent (above). Ms. Mendez was tired of listening to respondent complain about supplies and other personal issues unrelated to the SSC meeting agenda, and was tired of respondent disrupting meetings with her personal issues generally. Ms. Mendez was also tired of respondent’s open disrespect of Ms. Mora and Principal Villalobos, and she did not like respondent’s tone of voice and demeanor in raising these issues at the SSC meeting. She was tired of hearing respondent complain that “only favorites get supplies,” which she did not believe was true. Ms. Mendez was also very upset that respondent continually berated Ms. Mora throughout the meeting, claiming that Ms. Mora did not run the meeting correctly, which had Ms. Mora in tears.

175. Ms. Mendez took it upon herself during the meeting to straighten respondent out, and, in so doing, brought down fury and wrath upon herself. Ms. Mendez went into the supply room and brought a box of supplies with respondent’s name on it into the meeting, and, holding up the box in the presence of all the others attending the meeting, said to respondent, “Here are your supplies, you did not pick them up.” Ms. Mendez failed to find out before she brought the supplies into the meeting that respondent was aware of the existence of those supplies, that the supplies in the box Ms. Mendez brought out were duplicates of supplies she had already received, and were not the supplies she was requesting that had not been furnished. When Ms. Mendez brought the box into the meeting, she sarcastically told respondent that she was complaining about supplies that were already delivered to respondent and present in the supply room. Ms. Mendez’s decision to call respondent on her complaining during the meeting was also a matter off-topic and not on the meeting agenda.

176. Respondent instantly changed focus and became very angry at Ms. Mendez, and verbally unloaded on Ms. Mendez. In a nasty, hostile and angry tone, respondent told Ms. Mendez that the supplies Ms. Mendez had brought into the meeting were not the supplies respondent was talking about, that the supplies in the box were duplicates that respondent was well aware of, did not need and had not requested, and that Ms. Mendez did not know what she was talking about. That retort apparently ended the matter, until the meeting ended.

177. Ms. Mendez was chatting with four parents who had attended the meeting just after the meeting ended. Respondent walked up to the conversation and injected herself, but Ms. Mendez started to walk away. Respondent pursued and said to Ms. Mendez, in the presence and hearing of the four parents, “Who are you to speak up, you hurt kids.” As Ms. Mendez tried to walk away, respondent continued to tell the group of four parents that Ms. Mendez was “hurting kids.” Ms. Mendez tried to persuade respondent to stop, but respondent became even more focused and intent on telling the four parents that Ms. Mendez was hurting kids. Respondent closed distance between herself and Ms. Mendez, and approached Ms. Mendez quite closely, put her finger in Ms. Mendez’s face, and said in a voice Ms. Mendez found menacing, “You need to get away from me.” When Ms. Mendez started to walk away, respondent said, in a louder and still menacing manner, “That’s right, get away from me.”

178. Other teachers and parents besides the four parents Ms. Mendez was chatting with were also present and watched and heard this exchange. Ms. Mendez was “shocked and dumbfounded.” Respondent walked away telling Ms. Mendez that Ms. Mendez was not “going to last much longer” at the school. The exchange with respondent abruptly stopped.

179. Respondent admitted she made the statement about Ms. Mendez hurting kids, and the other statements. She excused making the comment about Ms. Mendez hurting kids by claiming her statements were justified because “it was true,” based upon her own claimed observations that Ms. Mendez used rough, hands-on treatment when dealing with SE SDC students, including pushing them when they were slow to respond to her directions, slapping them on the head when they did not do what they were supposed to do and grabbing them by their backpack handles and pushing them when they did not go where they were supposed to. Respondent’s adult daughter testified she witnessed an occasion or two of Ms. Mendez’s rough physical contact conduct with some of the SDC SE children, but she was unable to place the dates or times of her observations. Respondent’s testimony about her claimed observations had the same flaws, and both claims also suffered from any record of contemporaneous complaint to anyone or any agency in authority, or any documentation of the claimed observations by either respondent or her daughter of indisputable serious, and even potentially criminal conduct. Respondent agreed she is a mandated reporter, and that she understood her obligation to report such alleged misconduct to authorities, both on and off campus, so acknowledgement that there exists no documentation or evidence of such complaints is material. Thus, it is impossible to determine whether respondent’s claimed statements were accurate reflections of incidents, or misapprehensions, misconstructions, simply erroneous, as the failure to contemporaneously report and document the observations

at or near the time the alleged incidents took place is fatal to giving such claims any credibility now.

180. Respondent claimed she did report Ms. Mendez's conduct to Child Protective Services (CPS). The suggested inference was not proved to have any substance. She claimed CPS refused to take a report and told respondent to report her claims to her Hidalgo site administrators. Respondent claimed she told the CPS person to whom she was trying to report to that she already told Hidalgo site administrators, who would not treat her report as credible and take a report, and were ignoring the conduct. As noted above, the problem with giving any credibility to respondent's claims is that there was no note, memo, complaint copy, email, phone message or any other reasonably contemporaneous documentation of respondent's efforts to report this allegedly abusive behavior to CPS or any other outside authority. Perhaps any reports respondent or her daughter might have made about physically abusive behavior toward SC children by Ms. Mendez were unlikely to have been taken seriously by administration due to her poor relationship with Hidalgo and District administration and her rapidly growing reputation of making baseless allegations against others might not have been taken seriously, as respondent claimed. In this environment, all the more reason to document and corroborate such claims, if true, exists, in order to backstop respondent's repeated claims her voice was not heard when she reported misconduct on campus. Respondent materially contributed to this unresponsive environment due to her by then oft-repeated angry, belligerent and aggressive temperament and disposition, and her well-known habit of angrily and verbally denouncing others. This conduct took its toll.

181. Respondent's claim that what she said about Ms. Mendez was justified because what she said was true wholly missed the point, and at the same time, helped the District prove a different point about deficits in respondent's professional demeanor, temperament and disposition. Even assuming that what respondent said during and after the meeting to Ms. Mendez was partially or completely factually accurate, the issue was not whether what respondent said about Ms. Mendez was true. The issue was the time, place and manner of the making of admittedly defamatory, disparaging, derogatory and demeaning comments to Ms. Mendez in the meeting, and later in the presence of parents. What respondent said was exacerbated by how she said it; her threatening body posturing, closing distance between herself and Ms. Mendez to well inside reasonable and comfortable personal space, her aggressive demeanor and her vicious tone. Respondent did not hesitate to angrily and viciously disparage a peer in front of other peers and parents in order to damage the reputation of her peer, in what appeared to be an immediate effort to retaliate for Ms. Mendez making an embarrassing comment to respondent earlier in the meeting about the supplies, for Ms. Mendez's defense of Ms. Mora, and to short-circuit Ms. Mendez's verbal reply to respondent's complaints. It is not insignificant that respondent's claims accused Ms. Mendez of a potentially serious crime, and potentially exposed the District to civil liability.

182. Respondent's behavior in making the comment to Ms. Mendez was unprofessional and inappropriate in every sense of the word; verbally aggressive, rude and demeaning in tone and manner, disparaging and disrespecting to a peer in the presence of other peers and parents, engaged in in order to damage that peer's reputation and esteem in

the eyes of those peers and parents. In repeating these claims during her testimony in the evidentiary hearing, respondent augmented and exacerbated the gravity of her unprofessional conduct, supporting the District's claim that respondent is unable or unwilling to control her disposition and demeanor, rendering her unsuitable for continuation as a District employee. Shortly after Ms. Mendez testified about respondent's behavior at the meeting, and afterwards in the presence of the parents, respondent "doubled down" on her unprofessional conduct by raising it again as a justification, again contending that her admittedly unprofessional conduct was justified and excused because what she said about Ms. Mendez at the time "was true." In so doing, respondent helped the District prove its claim that she has no reservation about resorting to defamation and character destruction of a peer in order to justify and explain her unprofessional conduct, and to respond to perceived attack. In repeating her claims in her testimony about Ms. Mendez, respondent proved that she did not understand why her behavior was unprofessional, hollowing out her admission of any real substance. She demonstrated in doing so the same sort of retaliatory behavior toward Ms. Mendez's testimony in this matter as she did toward Ms. Mendez during the meeting and afterward in 2012, when Ms. Mendez called her out for complaining about the supplies. Respondent repeatedly claimed that many of the allegations against her in this matter were the result of retaliatory conduct toward her for complaining about the misconduct of others on the Hidalgo campus. Yet the best evidence of retaliatory conduct in this matter proved to be what was evident here, respondent's retaliation against Ms. Mendez for Ms. Mendez's comments during the April 2012 meeting, and again in 2014 for Ms. Mendez coming forward and testifying in this matter about that incident.

CHARGE 13a-g. APRIL 2012 PRELIMINARY/FIRST EVALUATION

183. Charge 13 alleges that respondent received and refused to sign a Preliminary Evaluation for SY 2011-2012, on April 20, 2012. The Preliminary Evaluation was written by Principal Villalobos. This Preliminary Evaluation was the first of two that led to the later imposition of a Teacher Development Plan (TDP) for SY 2012-2013, and allegations made here and below by the District that respondent's teaching performance during SYs 2011-2012 and 2012-2013 constituted unsatisfactory performance, within the meaning of Education Code section 44932. The fact that respondent refused to sign the Preliminary Evaluation as alleged is of no legal or disciplinary consequence.

184. The allegations that respondent's teaching performance was unsatisfactory during these two school years were not proved, for reasons set forth in detail in the discussion regarding Charge 18 and its subparts. The facts and circumstances proved about the evaluation and assessment process, and the surrounding circumstances, revealed an evaluation and assessment process that was so fatally flawed and so subjectively tainted that the claimed deficiencies set forth in the evaluations, although largely factually accurate and descriptive of what was observed and identified during the observations made by Principal Villalobos, nevertheless failed to produce a reliable evidentiary foundation supporting the

District's allegations of unsatisfactory performance.¹¹ As a result, a conclusion in support of the allegations that respondent's classroom performance during SYs 2011-2012 and the first semester of SYs 2012-13 was beneath minimum accepted standards cannot be made, based upon the evidence in this record. Thus, the details of these allegations are not discussed.

THE FIVE YEAR EVALUATION WAIVER CONTRACT WITH THE DISTRICT

185. Respondent presented uncontroverted evidence that the District entered into a contract with respondent in which she was given a Five Year Waiver from the performance evaluation process, dated March 1, 2007, but evidently not adopted and approved until June 2007. The Five Year Waiver was approved and signed by Principal Jarvis. The Five Year Waiver contract was approved by the District and received in the District's Human Resources Department and Personnel Departments, as evidenced by official District time and date receipt stamps on respondent's documents.¹²

186. The Five Year Waiver contracts¹³ (there are two versions in evidence) are entitled "At Least Every Five-Year Evaluation Cycle Agreement Form." The certificated employee that receives a Five Year Waiver contract agreement must earn the privilege by meeting all of the following requirements:

1. Permanent status with FUSD;
2. Employed by the District at least ten (10) consecutive years;
3. 'Highly Qualified,' as defined in 20 USC 7801, et seq.;
4. Most recent evaluation rating is 'meets' standards in all areas; and
5. Evaluator and unit member consent to the five year cycle.

187. The Five Year Waiver contract contains the following recitals:

Note: The unit member or the evaluator may withdraw from the agreement at any time. Should withdrawal occur, and in order to comply with the FUSD/FTA Collective Bargaining

¹¹ Respondent only taught for the first semester of SY 2012-2013, until December 2012, at which time the District placed respondent on the administrative leave that continues to date; respondent has not been permitted to return to the classroom since December 2012.

¹² The date stamping of these documents by the District is inconsistent.

¹³ Exhibits OV 142, OV 143.

Agreement, Article XV1, Section 1 Number Four, the unit member must be informed before the close of the first two weeks of any school work year that the unit member will be evaluated that year. This provision shall not preclude a supervisor from making informal observations at any time.

We, the undersigned, formerly agree that Olga Valle at Hidalgo (site) has met the above requirements and will be evaluated on the “At Least Every Year Five-Year Evaluation Cycle,” beginning the 2006/2007 school year. In order to comply with the requirements of this cycle, the teacher must be evaluated again during the 2011/2012 school year.

188. Respondent repeatedly brought up the existence of the Five Year Waiver and the fact that the District had signed and bound itself to this contract agreement with her as reasons that all references to the unsatisfactory Evaluation alleged in Charge 13 should be barred. The terms of the Five Year Waiver agreement introduced by respondent are quite clear; during the duration of the Waiver period, respondent could not be subjected to a Preliminary, Summary or Final Performance Evaluation. The Five Year Waiver period was effective until SY 2011-12, at which time respondent was once again subject to being evaluated annually.

189. Respondent’s contention that consideration of the Preliminary Evaluation alleged in Charge 13 is barred by the Five-Year Waiver contract with the District lacks merit. The five year waiver period barring any additional evaluation contemplated by the Five-Year Waiver contract expired at the end of SY 2010-2011. The Charge 13 Preliminary Evaluation respondent objected to was for SY 2011-2012. Respondent being evaluated in SY 2011-2012 is actually mandated by the Five Year Waiver contract document respondent introduced and claimed created a bar from being evaluated. In addition, since these evaluations cannot be used to support a claim of unsatisfactory performance (see Discussion of Charge 16), respondent’s claims are moot with respect to that point. However, the existence of the Five Year Waiver contract, particularly its recitals regarding respondent’s qualifications in order to obtain the benefit, provide substantial evidence that at least before the end of 2007, her classroom performance more than met standards.

190. In addition, respondent credibly testified that Principal Jarvis told her during the evaluation process during SY 2010-2011, that as soon as he could give her an unsatisfactory evaluation and get her on a TDP, it would take him about one and a half years to “get rid of you.” The comment later proved to be prophetic (below).

191. The existence of the Five Year Waiver tends to confirm that respondent exceeded than existing performance standards by satisfying the substantial competence, experience and skill requirements recited in the document. Principal Jarvis endorsed approval of the Five Year Waiver to the District, who accepted it its face value. Respondent materially changed from a classroom teacher who was evidently, at the time of the Five Year

Waiver in 2007, performing skillfully and competently, and evidently getting along reasonably well with others, to a person who deteriorated rather profoundly, especially in the spring semester of 2012.

CHARGES 14-15. TEACHER'S LOUNGE LUNCH INCIDENT GARCIA, FLORES

192. Charges 14 and 15 are closely related and are based on two incidents that were part of one continuous course of conduct. Charge 14 alleges that respondent confronted Hidalgo Office Clerk Margaret Garcia in the teacher's lounge at lunchtime on April 27, 2012, about Mrs. Garcia transferring calls to respondent's classroom. Charge 14 continues to allege that respondent, in "a forceful and extremely rude tone of voice," told Mrs. Garcia "all you do is make mistakes," or words to that effect. Charge 14 continues by alleging that other staff members who were present were "uncomfortable" with respondent's conduct. The allegation continues, after respondent left the room, Mrs. Garcia began to cry while other staff members tried to comfort her. It was further alleged that respondent returned to the lunchroom and repeatedly asked the entire group, including Mrs. Garcia, "Who is going to comfort me, huh?"

193. Charge 15 alleges that the same incident in the teacher's lounge on April 27, 2012, continued when, after respondent returned to the lunchroom, teacher Melanie Flores, who was trying to comfort Mrs. Garcia, told respondent that she was being "unprofessional" in her criticism of Mrs. Garcia. Charge 15 alleges that respondent replied to Ms. Flores in Spanish, saying, "Tu que le enseñaba las verijas a Jack," or words to that effect, which translates to, "You who used to show your crotch area to Jack," or words to that effect, and that when respondent made that comment to Ms. Flores, she was looking at Ms. Flores and rubbing herself with her hand, and then told Ms. Flores that she, "Better be careful." Charge 15 continues by alleging that Mrs. Flores interpreted respondent's comments to be about former Principal Jarvis, and that Mrs. Flores felt insulted, humiliated and threatened by respondent's comments.

194. What actually occurred during this April 27, 2012 incident in the Hidalgo staff lunchroom area revealed shockingly unprofessional behavior by respondent directed specifically at first a staff member and then a peer, and indirectly, at several other peers who sat by dumbfounded and were unable to escape when respondent unleashed her fury. The facts reveal that the conduct engaged in by respondent directed at Mrs. Garcia and Ms. Flores was even more egregious than alleged.

195. Respondent had, within the week previous to these incidents, received the unsatisfactory Preliminary Evaluation described in Charge 13. She had been told by Principal Villalobos during the process of presenting respondent her Evaluation that her students' test scores were poor and she needed to focus upon improving the deficiencies he pointed out in her teaching. Respondent was very offended and hurt by the Evaluation, as she had never had a bad Evaluation in her 18 years of teaching, and she takes great pride in

the quality of her instruction. Her intense personal investment in the welfare and educational progress of her students is a core part of who respondent is.

196. After being hurt, respondent became angry. Respondent already believed that Principal Jarvis previously, and now Principal Villalobos, her site administrator, were working together trying to get her fired, and that the negative Evaluation was one part of that process. Respondent also believed that both Principals were hampering her and contributing to her classroom difficulties by constantly disrupting her class by coming in and spending significant periods of time in the classroom, making it more difficult for her to deliver the lessons, and then downgrading her when her students performed poorly. She was convinced, in no small part because Principal Villalobos told her so, that he was there to “complete the process” Jarvis began of “getting rid” of respondent.

197. By April 27, 2012, respondent had become hypersensitive to classroom interruptions, and exceedingly suspicious of anything she associated with District and Hidalgo administration investigating and observing her.

198. The phone in respondent’s classroom rang several times during classroom time on the morning of April 27, 2012. In each instance, the caller was Mr. Pierce, the District’s retained investigator, who was both aggressive and persistent in his efforts to interview respondent about his investigation of other complaints and allegations that appear elsewhere in this matter, and for which the District had retained him. Respondent did not want to talk to Mr. Pierce, particularly not during class time. Mr. Pierce was well aware that respondent was avoiding him. Mrs. Garcia was a new employee in the Hidalgo administration front office and was responsible for handling and routing incoming phone calls. She was eager to do well, but had not had a great deal of training. She was unaware of respondent not wanting to speak to Mr. Pierce, or respondent’s hypersensitivity to having her classroom time interrupted. Trying to do what she thought was a good job, she got caught in the middle. She put Mr. Pierce’s calls through to respondent’s classroom. By the time the lunch break arrived, respondent was very agitated that the disruptions that flowed from Mrs. Garcia continuing to put phone calls through to her room. Mrs. Garcia was not aware that respondent, absent a bona fide emergency, did not want to be interrupted by phone calls during her class time.

199. Respondent believed the continual phone call interruptions were further evidence of efforts by Hidalgo administration to disrupt her teaching, causing her to be unable to progress her students academically, and then using that deficiency as an additional excuse to terminate her. Unthinking, she associated Mrs. Garcia with those administrative efforts to disrupt her teaching, and assumed Mrs. Garcia was acting in concert with administration to continue to hamper her classroom performance.

200. When respondent went to the Teacher’s Lounge area in the Hidalgo cafeteria during the first lunchtime, a short time later, a perfect storm of misunderstanding and accumulated anger exploded when respondent saw Mrs. Garcia sitting at a lunch table,

enjoying a cordial and pleasant conversation over lunch with several of respondent's teacher peers.

201. Hidalgo staff typically took their lunch breaks together in the on-site Teacher's Lounge, and the date of the incident was no exception. Staff and teachers often ate together. Several teachers including Ms. Flores, Linda Rollin, Sandy Smith, Maria Navarro, and Reyna Gaxiola were present eating lunch at a shared table, and Mrs. Garcia was with them, enjoying the company. Respondent walked into the lunchroom, saw Mrs. Garcia eating lunch with several of her teacher peers, and, according to Ms. Rollin, "zeroed in" on Mrs. Garcia. Ms. Rollin elaborated in her testimony as respondent, "locking in to an intense, unblinking glare" on Mrs. Garcia, and physically closing the space between them to "in her face," in a fashion that both Ms. Rollin and Ms. Flores described as rather threatening and uncomfortable. Mrs. Garcia appeared terrified under respondent's glare, with what appeared to Ms. Rollin to be an intense anger. Then respondent "unloaded" verbally on Mrs. Garcia.

202. Respondent did not deny that she said the things to Mrs. Garcia that are alleged in Charge 14, nor did she deny that she did so in an aggressive, hostile and angry tone. She did not deny that, after she was finished verbally unloading on Mrs. Garcia, she started to walk out of the lunchroom, but saw through the lunchroom windows as she was walking away, her peers, especially Ms. Flores, comforting Mrs. Garcia as she burst into tears. Respondent admitted that she came back into the lunchroom and did angrily demand of Ms. Flores and her other peers, "Who is going to comfort me, huh?"

203. Ms. Flores then spoke up and told respondent to stop. Ms. Flores told respondent she was behaving "unprofessionally" toward Mrs. Garcia. Respondent immediately shifted the focus of her verbal attack to Mrs. Flores, announcing in a threatening manner, "You better watch yourself Melanie, I know a lot about you." Respondent admitted she made the sexual insult remark in Spanish to Ms. Flores, and acknowledged it meant Ms. Flores had behaved in a sexually inappropriate fashion with Principal Jarvis at some unspecified time when he was still the Principal on the campus. She also admitted that the primary implication of the comment was that Ms. Flores had received preferential treatment as a staff teacher in exchange for sexual favors provided to Principal Jarvis.

204. It was not proved that respondent rubbed her crotch area in the manner stated in the allegations when she made the statements to Ms. Flores. Neither Ms. Rollin nor Ms. Flores, both of whom testified about the incident as eyewitnesses, mentioned this behavior in their testimony.

205. Ms. Flores was stunned and did not reply to respondent's intense verbal assault. Ms. Rollin, sitting quite near Mrs. Garcia, also tried to persuade respondent to quit and leave. She does not understand Spanish, so she did not understand the nature of the sexual insult, but she clearly understood the insulting and accusatory tone. Respondent finally left the room.

206. Mrs. Garcia did not testify, but Ms. Flores did. The most telling and persuasive testimony about the Garcia and Flores incidents in the lunchroom actually came not from the targets of respondent's verbal wrath, but from Ms. Rollin. Ms. Rollin was one of the most senior teachers at the Hidalgo site at the time of the incident. Ms. Rollin was a very credible and persuasive witness. She presented herself as thoughtful, restrained, well-spoken and informed, giving credit where it was due, along with pointing out deficiencies in a tempered and mildly understated fashion. Unlike some other District witnesses who wrote their observations in statements, she did not indulge herself in hyperbole when describing respondent's behavior and the reactions of others to it.

207. Ms. Rollin's testimony was ironic because she was at one time a strong supporter of respondent. Ms. Rollin gave respondent considerable credit for respondent's passionate caring about the welfare and progress of her students and their families, her skills in the classroom, and her innovative ideas, such as the Victory Garden project. She pointed out that respondent was frequently on the "right side" of an issue, that she had the courage of her convictions, passion and diligence in her pursuit of what she believed to be right and proper. She praised respondent for not being afraid of speaking out in accordance with her convictions. But Ms. Rollin also noted that respondent's method for advocacy of the causes in which she so strongly believed had become in the most recent couple of years before the lunchroom incident increasingly abrasive, excessively argumentative and confrontational, and personally derogatory of those she perceived were opponents. Ms. Rollin pointed out that, despite the many merits of respondent's causes, the manner in which respondent advocated for the causes in which she believed in the most recent couple of years had become unprofessional, unnecessarily confrontational, intimidating, hostile and aggressive, making many on campus including herself fearful that they might be respondent's next target. Respondent's increasingly hostile demeanor, belligerence and aggressiveness in advancing her causes often made her advocacy counterproductive, offending and insulting to administrators and peers, and disruptive to the campus environment and peer relationships.

208. Ms. Rollin described an unsettling exceptionally rapid cycling up in the intensity of respondent's demeanor during the Garcia and Flores lunchroom incidents in disturbing detail, pointing out that she had, "never seen anyone become so angry so quickly, or so focused in on the target of her anger so intensely." She described respondent "rapidly cycled up into a rage," when she verbally attacked first Mrs. Garcia, and then turned her fury on Ms. Flores, when Ms. Flores stepped in. Ms. Rollin described respondent as having approached quite closely and "locked on" face-to-face with Mrs. Garcia, and then Ms. Flores during the confrontations, in a fashion she described as "menacing." Ms. Rollin expressed concern about the volatility, intensity and speed at which respondent went into a full rage as she observed it, and her concern that such intense anger might result in more than just verbal violence toward the objects of her rage.

209. Ms. Rollin expressed a broader concern about respondent's explosive anger and unprofessional demeanor by observing that this incident in the Teacher's Lounge was by no means respondent's first or only such a verbal outburst toward others on campus to which she was a witness. Ms. Rollin opined that respondent's behavior exhibited toward Mrs.

Garcia and Ms. Flores was part of a developed pattern of respondent's behavior toward others on campus when she was upset with them. Ms. Rollins wrote in her statement and testified that she was upset with herself for not having spoken out sooner.

210. In describing her concern about a developing pattern in respondent's belligerent, angry and hostile demeanor, Ms. Rollin described a similar instance of respondent's unprofessional angry and insulting outburst during an all-school site staff meeting earlier in the same semester, January 30, 2012. Ms. Rollin wrote a complaint letter to Principal Villalobos dated February 2, 2012 (Exhibit 84) in which she documented her concerns. The object of respondent's derogatory and disparaging comments during the staff meeting was Principal Villalobos, as well as teachers Sharon Hollis and Della Mendez, who came to the Principal's defense in response to respondent's accusations.

211. The topic that set respondent off in the January 30, 2012 staff meeting was Principal Villalobos letting the Hidalgo staff know that a District audit team was coming to Hidalgo soon to review how Title 1 funds had been spent at Hidalgo. Respondent accused Principal Villalobos of encouraging staff to lie to the District review team about how the school was spending its Title I funds. Ms. Rollin expressed surprise and shock at both the nature of respondent's accusation, and the aggressive, accusatory tone of respondent's remarks. She said the staff meeting came to an immediate halt, and observed that the other teachers present also appeared to her to be stunned, as the nature of respondent's accusation sunk in.

212. Ms. Rollin testified that Principal Villalobos deflected respondent's accusations quite professionally and with a deft, even-tempered disposition. But some of respondent's teacher peers were incensed that respondent would suggest that they and Principal Villalobos were willing to commit federal crimes by lying to the audit team, and said so during the meeting. Respondent snapped back at them with such force, intensity and verbal viciousness that Ms. Rollins said it appeared to shock everyone in the room into stunned silence, which evidently was the objective. The "discussion" abruptly ended.

213. Ms. Rollin expressed a broader concern and fear at witnessing what appeared to her to be a pattern of escalation in respondent's belligerent and bellicose behavior toward others on campus, and the increasing incidence of intense rage and vehemence toward others with whom she was upset as the spring semester of SY 2011-2012 went on. She expressed those concerns in writing, not only her February 2, 2012, letter to Principal Villalobos (Exhibit 84), but also in her email to Principal Villalobos of April 27, 2012 (Exhibit 80). Ms. Rollin stated in her complaint email to Principal Villalobos, written the same day as the Garcia/Flores incidents in the Hidalgo Teacher's Lounge (Exhibit 80) that she was "sick of" respondent's explosive, hostile and aggressive demeanor, with her outbursts poisoning staff meetings and other group functions at Hidalgo. In each instance of such outbursts she witnessed, Ms. Rollin expressed her concern that respondent's anger was so intense and so aggressive that she believed respondent's anger was expressed in each instance in a fashion that appeared to Ms. Rollin to be intended to inflict maximum personal and emotional harm upon the objects of her wrath.

214. Ms. Rollin concluded her testimony by stating that after respondent was placed on administrative leave at the end of December 2012, the Hidalgo campus became a much more peaceful and collegial place to work up, that continued until the time Ms. Rollin retired.

215. The District repeatedly claimed in its closing argument that respondent never acknowledged any wrongdoing throughout the entire case. The District also claimed that respondent never expressed remorse. The former claim is partially accurate, the latter fully accurate. With the Garcia and Flores incidents in the lunchroom, the previous incident in the staff meeting, and with other incidents involving inappropriate or unprofessional behavior, such as the planning and SSC meetings above, respondent admitted candidly that she behaved unprofessionally and badly toward her peers, that she would not appreciate such conduct directed at her, and that she “really crunched some toes,” by the manner in which she behaved toward her peers, particularly in the instance of her outbursts in the lunchroom.

216. Respondent’s admissions of unprofessional conduct were lacking in insight, and thus appeared hollow, sterile and superficial. Respondent antiseptically acknowledged only the facts as they occurred, and that those facts, as agreed, reflected unprofessional or inappropriate behavior toward her supervisors, peers, parent volunteers or staff. She failed to exhibit any introspection, awareness or concern about what the intensely personal, destructive and derogatory nature of her attacks on others reflected about herself and what was going on in her mind and heart when she lit into others in the fashion that she did. She failed to exhibit any awareness of the great personal harm to the objects of her attacks that, from the nature of her conduct, appeared intended, in the defamatory nature, intentional hurtfulness, and the intensely threatening manner in which her attacks on others were made. The manner in which respondent’s attacks took place suggested an intention to inflict maximum emotional and personal harm upon her targets, and callous disregard for the personal dignity and emotional welfare of her targets.

217. Respondent expressed no remorse for or awareness of the consequences of the personal hurt or harm to reputations her remarks caused, or the manner in which her attacks were made. She expressed no recognition that her behavior toward her peers, particularly in the January 30, 2012 staff meeting, and in the Teacher’s Lounge on April 27, 2012, created a hostile work environment and exhibited verbal bullying toward several of her peers, of which she so often complained of being victimized herself. In fact, respondent’s explanations of her behavior, rather than exhibiting remorse for the harmfulness of her conduct upon the objects of her attacks, instead consisted of elaborate rationalizations and justifications of her verbal attacks as warranted, because what she said about others was true, or that the previous misconduct of her targets justified her remarks.

218. For example, respondent spent a considerable amount of effort trying to justify her attack on Ms. Flores and her insulting sexual innuendo by attempting to prove that her claims of sexual impropriety and inappropriate flirtatiousness by Ms. Flores with Principal Jarvis were true. Respondent made repeated efforts to claim that Ms. Flores attempted to use her physical attractiveness to curry favor with Principal Jarvis by dressing in a sexually provocative manner on campus, being overtly flirtatious with him, and that she from time to

time spent what appeared to be inappropriate amounts of time in her classroom alone with Principal Jarvis. She made similar charges later in her testimony about the behavior of a co-first grade teacher, Jennifer Coul, toward Principal Jarvis, alleging that Ms. Coul received favorable treatment from Principal Jarvis as well because she was constantly “draping herself all over him on campus.”

219. Respondent claimed Ms. Flores was originally posted in third grade when she came to Hidalgo, and that she was unprepared and untrained to successfully teach at that grade level. Respondent claimed that she believed that because of Ms. Flores’s overtly sexually provocative behavior toward Principal Jarvis, he covered her inadequacies by reassigning Ms. Flores to teach in the kindergarten, where she could function because her lack of teaching preparation and skills was less visible. Respondent claimed Jennifer Coul was not required to do many things respondent was when respondent was reassigned to the first grade, for the same reasons, and received favorable treatment when the two competed for the position of lead teacher.

220. Like Ms. Flores, respondent sought a grade level assignment accommodation, but with a very different result. Respondent was involuntarily assigned from sixth grade to first for SY 2011-2012, an assignment she desperately sought to avoid and reverse (below). Respondent begged to stay in the fifth or sixth grade at the beginning of the SY 2011/2012, and not be moved to first grade, where she had never taught in her then 17 years in the District, and where she was convinced she would perform poorly. Her pleas were ignored, as Principal Jarvis, and then his successor, Principal Villalobos, and respondent claimed both appeared to be committed to moving her to a grade where her chances of success as a teacher were as low as they possibly could be within the Hidalgo setting. Respondent was incensed because it appeared that Ms. Flores received the accommodation due to sexual favoritism that was denied respondent in what respondent viewed as similar circumstances.

221. Respondent also sought to prove that her criticism of Mrs. Garcia was justified. Her claim that her outburst toward Mrs. Garcia was warranted due to the fact that Mrs. Garcia kept putting disruptive phone calls through to respondent’s classroom, fully missed the point. Whether criticism that Mrs. Garcia made mistakes that day was warranted was not the point; the problem was the horrifically disproportionate and vicious manner and means by which respondent delivered her criticism, and her decision to excoriate Mrs. Garcia rather than discuss the matter with Mrs. Garcia’s supervisor.

222. Respondent’s explanatory comments in attempting to justify her behavior toward Mrs. Garcia and Ms. Flores produced an occasion in which respondent displayed additional exhibitions of the same unprofessional conduct of which she was accused here and in the Mendez matter (Charge 12 above). Rather than exhibiting insight and remorse into the nature and harmfulness of her conduct, respondent attempted to defend herself by exhibiting more of the conduct for which she was accused of behaving unprofessionally. Attempting to demonstrate that her claims were either true, or justified because they pointed out the misconduct of others, in her attacks on Mrs. Garcia, and Ms. Flores, Ms. Cole, and Ms. Mendez (above and below) respondent launched defamatory and personally destructive

competence and character attacks on those toward which she was accused of behaving unprofessionally, especially Ms. Flores (sexual impropriety with Principal Jarvis and sexually provocative behavior on campus) and Ms. Mendez (Charge 12, reaffirming her accusations of physical abuse of SE SDC children). In this respect, respondent's defense to Charges 14 and 15, and Charge 12 above, tended to augment the proof of the charges.

223. It appeared that respondent had accumulated a considerable reserve of repressed anger and frustration generally by late April 2012, due to a combination of her difficulties with Principal Jarvis and Principal Villalobos, dealing with the first grade assignment she wanted no part of, and believing that the Hidalgo and District administration had lined up in a concerted effort to get her terminated. Respondent decided to unload her frustrations and resentments on Mrs. Garcia and Ms. Flores during the Teacher's Lounge incident on April 27, 2012. Respondent's claims that her outburst against her peers were justified because they were factually accurate or provoked were absolutely devoid of any merit. Respondent's attacks on her peers were wholly disproportionate to anything said or done in claimed provocation, frighteningly intense and intimidating to her targets, delivered in a maximally harmful and personally demeaning and derogatory fashion. Respondent's temperament and disposition, exhibited in her conscious choice to behave as she did directly toward Mrs. Garcia and Ms. Flores, and indirectly, causing collateral damage to horrified onlookers Ms. Rollin and the four other teachers sitting with them at the table at the time of respondent's attack, revealed another instance of respondent's willingness to employ a scorched-earth approach in attacking the character and reputations of administrators, staff and peers she resented, or with whom she had disagreements. She did so in what appeared to several witnesses who commented on it, an effort to intimidate others into reorganizing her environment in a way that suited her, and/or stifling or silencing any rebuttal or reply, whether from administrator, peer or staff who took issue with her.

CHARGES 16a-g. MAY 2012 SUMMARY EVALUATION THE SECOND OF THREE

224. In Charge 16 the District alleged that respondent was provided her Summary Evaluation for the SY 2011-2012 on May 16, 2012, but she refused to sign it. The Summary Evaluation was written and signed by Principal Villalobos on May 16, 2012. This Summary Evaluation was seminal in this matter, in that it resulted in the imposition of the TDP, effective for SY 2012-2013, leading ultimately to respondent being charged with unsatisfactory performance as a cause for termination.

225. Principal Villalobos rated respondent's classroom and professional performance in this Summary Evaluation as "Does Not Meet Standards," in Standard III: Understanding and Organizing Subject Matter for Student Learning; Standard IV: Planning Instruction and Designing Learning Experiences for All Students; Standard V: Assessing Student Learning; and, Standard VI: Developing as a Professional Educator.

226. In addition, the Summary Evaluation mentions that respondent received on April 20, 2012, a Summary of Written Complaints (Summary) against her that had been

received by the District. The Summary Evaluation also faulted respondent because it alleged that on April 27, 2012, respondent questioned a parent that had filed one of the complaints with the District, after respondent had been directed not to speak to any of the complainants during the investigation of the complaints reflected in the Summary. The Evaluation also mentions, almost as an aside, that respondent was absent a total of 15 days due to illness since January 17.

227. Principal Villalobos' May 16, 2012, Summary Evaluation of respondent closes with the following statement, "As a result of lack of demonstration of maintaining professional responsibilities, Mrs. Valle's students have been greatly affected on their test scores with inconsistent teaching happening in her classroom."

A FATALLY FLAWED PROCESS

228. The specifics and details of deficiencies observed and noted in the SY 2011-2012 Summary Evaluation, repeated in part in the subdivisions of Charge 16, appear to be mostly factually accurate. Commission members observed that many of the exemplars of respondent's student work offered by respondent in the evidence during the period of time covered by the Summary Evaluation support the concern expressed in the Summary Evaluation that respondent's students were working at a rather low level of rigor, and well beneath expected grade level performance for the first grade.

229. There were several fatal flaws in the process of respondent being evaluated for SY 2011-12. These flaws had the effect of stripping out the foundation from beneath the Summary Evaluation's conclusions rating respondent's performance "Beneath Standards." This is not to say that respondent's classroom performance in SY 2011-12 met or exceeded standards either, simply that the SY 2011-12 Preliminary and Summary evaluations performed by this evaluator, under the circumstances proved, for this class, during this particular school year, were so tainted with these flaws that the Summary Evaluation may not be relied upon for any meaningful or reliable conclusions about the sufficiency of respondent's classroom performance, one way or another. Since the imposition of the seminal TDP was triggered by the SY 2011-12 Summary Evaluation, and the basis upon which the TDP was imposed is fatally flawed, success or failure to meet the requirements and standards set forth in the TDP are irrelevant, and cannot be used to support a conclusion of unsatisfactory performance.

230. The fatal flaws of the evaluation process were common to SY 2011-2012 and the first semester of SY 2012-2013, and are:

1. SUBJECTIVITY AND LACK OF IMPARTIALITY OF EVALUATOR

231. Performance evaluations such as those at issue in this matter are inherently subjective. The person being evaluated is subject not only to the expressed objective standards of the evaluation, but also the fact that process is always influenced by the personal

passions and prejudices, points of view, implied standards, personal dispositions and a host of other human factors of the evaluator that can never be fully excised from the process, are often never expressed, not the least of these human factors is the quality of the relationship between the evaluator and the evaluated. Concerns about the subjective nature of the evaluation process, as it was to be applied to respondent in SY 2011-2012 and 2012-2013 were not unexpressed. The quickly deteriorating and dysfunctional relationship between Principal Villalobos as site administrator/evaluator and respondent as classroom teacher cannot be separated from the potential for tainting all of the numerous subjective judgments that are required to be made and appear in these evaluations.

1.a. AN IMPORTANT MEETING AND OBJECTIONS

232. Respondent's reservations about the subjectivity of being evaluated by Principal Villalobos was the subject of a meeting that took place in late August, 2011, just before the beginning of SY 2011-2012. The meeting was attended by respondent and her FTA representative, and District HR and Principal Villalobos, just after he took over at Hidalgo. The primary purpose of the meeting was to discuss respondent's concern about her being assigned to the first grade over her repeated objections, and to her pleas to remain in the sixth grade being brushed off by Principal Villalobos. During the meeting, respondent's objections to the reassignment to first grade were overruled as a matter of the exercise of the District's delegated discretion to Principal Villalobos as the Hidalgo site administrator to make assignments and reassignments as he thought best.

233. Respondent and her representatives then raised the issue of how she would be evaluated as a new first grade teacher, and expressed their concerns that evaluations by Principal Villalobos could not possibly be fair and impartial to respondent, and bore the appearance of impropriety before they even began. Respondent and her FTA representative "begged" the District to have respondent's performance in the first grade evaluated by any qualified non-Hidalgo administrator, and certainly not Principal Villalobos. Respondent and her representative expressed their concerns that Principal Villalobos had already expressed to respondent what she perceived to be his interest in her failing in the upcoming assignment, and told her he saw his job with respect to her was to "finish what Jarvis had begun." Respondent correctly interpreted this comment to mean finish the process of having her terminated.

234. Respondent and her representatives proposed to have respondent's first grade performance in SY 2011-2012 evaluated by "any qualified uninvolved outside evaluator." Respondent's proposals were rejected, and Principal Villalobos performed, by himself and without oversight, all of the relevant evaluations that form the basis of the District's claim of unsatisfactory performance. Respondent's concerns proved to have had merit.

1.b. LACK OF IMPARTIALITY OF EVALUATOR

235. Principal Villalobos as the evaluator was hardly an impartial assessor of respondent's classroom performance. Even absent any other evidence in this record, the

obvious incentive to use the evaluation process to hasten the process of terminating a constantly disruptive and destabilizing campus problem creates a strong appearance of impropriety, and taints any evaluation performed by this Principal. Principal Villalobos personally bore (when respondent directly attacked him and his character) and indirectly, through having to receive and process the firestorm of complaints from peers and staff, the brunt of respondent's rude and unprofessional conduct on campus throughout the first evaluation year, SY 2011-2012. Several of the most serious incidents charged of unprofessional conduct and evident unfitness for service took place in this school year subject to the evaluation. Regardless of Principal Villalobos's protestations in his testimony that he conducted the evaluation process as fairly as he could, it is inescapable that he had an obvious motive to find fault with respondent's performance, and to follow through on the comment that he was "here to finish the process that Jarvis began." Expecting Principal Villalobos to be completely fair and impartial to respondent under the circumstances surrounding these evaluations proved sought to have him to perform a superhuman act. The ease of opportunity to use the SY 2011-12, and 2012-13 evaluation processes to further the process of terminating respondent, and by so doing, bring peace back to the Hidalgo school site created an irremediable appearance of impropriety.

236. If a truly fair and impartial assessment of respondent's classroom performance measured against the District standards set forth in the Preliminary and Summary Evaluations was the true objective of this process, an uninvolved, independent evaluator from another school site should have been appointed to perform the evaluations. The evidence showed Principal Villalobos to be an effective and capable school site administrator, and he received many positive reviews for the manner in which he ran the Hidalgo school site from many of the teachers who testified. Ms. Rollins described him as "a teacher's principal." Notwithstanding, he made an error when he went forward and performed respondent's evaluations himself; an error if any credence was expected to be given to the numerous subjective opinions and conclusions that are contained in the evaluations.

2. ADDITIONAL REASONS THE EVALUATIONS WERE FLAWED:

2a. ABSENCES, DISRUPTION, LACK OF CLASSROOM CONTINUITY

237. Respondent was absent from campus and her first grade classroom for several periods of leave in SY 2011-2012. Respondent taught the first grade classroom to which she was assigned only a portion of SY 2011-2012. According to documents in evidence, it appears that after respondent began the school year in August, 2011, respondent took leave, beginning as soon as September 17, 2011, and on a number of other instances throughout the remainder of the school year. The Preliminary and Summary Evaluations both recite that respondent was absent for sick leave at least 15 school days from late January until June in the spring semester of SY 2011-2012.

238. The 2011-12 Preliminary and Summary Evaluations both purport to evaluate respondent's efforts to interact with a student population with whom she had sporadic and inconsistent teacher/student relationship. Respondent's absences interrupted her teaching relationship and interaction with these students for irregular periods of the time. When respondent was absent, her class was randomly assigned to be taught by one of two on-site long-term substitutes, Ms. Cha and Ms. Cervantes. The evaluations held respondent responsible for the learning deficiencies and behavioral problems of this first grade class during this particular school year, yet it is exceedingly difficult to determine which portion of responsibility should be borne by any one, two or more, or all of the three teachers who shared duty for this first grade class in SY 2011-2012. The evaluations make no mention of the shared responsibilities in teaching this class, and make no allowance for the fact that respondent did not teach the class by herself the entire school year. The District failed to offer any evidence regarding why respondent should be held solely responsible for the lack of academic progress, low rigor in addressing the academic needs of this class, or the behavioral problems of some of the students. The District also failed to proffer any evidence why no mention or allowance in the evaluations was made to account for the fact that Ms. Cha and/or Ms. Cervantes taught this class a not insignificant portion of the school year.

239. This particular first grade class population during this particular school year was subject to so many disruptions to the class and the learning progress of these students that some of the parents of these first grade students took to calling respondent's classroom a "beehive," and asked her several times how she could teach in a beehive. Principal Villalobos confirmed in his closing comments in respondent's evaluations that the instability and inconsistency in the teaching of this class, at times seemingly at random, over the course of the year led to an undisputed impairment of these students' academic progress, was at least a contributory factor to poor performance on standardized testing, and led to deterioration of classroom discipline. Several of the parents of respondent's first-graders complained about the lack of continuity, lack of academic progress, and lack of discipline in respondent's first grade class, and the negative impact these problems were having on their children's learning progress and deportment. These problems flowed at least in some unquantifiable part from the fact that for a significant part of this school year, the class was often taught by two inconsistently and randomly assigned substitutes. The District's evidence completely failed to address whether it was reasonable to expect that this particular first grade class, under these particular circumstances, could progress at anywhere near the standards expected and against which respondent was evaluated.

240. There is a good deal of hearsay evidence in this record, confirmed by some of the District witnesses, that respondent's numerous and sporadic absences from her classroom in SY 2010-2011 through SY 2011-2012, had become a significant source of campus-based friction and contention, creating problems for administrators, peers, substitutes, parents and teachers, with the problem even reaching the ears of District administration. Lack of classroom teacher continuity and inconsistency in instruction occasioned by respondent's frequent absences and lengthy medical and administrative leaves in SYs 2010-2011 and 2011-2012 appeared to have been a topic of frequent discussion and some complaints by parents to Hidalgo administration, with parents often expressing concern about the constantly

disrupted environment and inconsistency in student/teacher interaction for their children, which many of the parents claimed, with good reason, was the cause of a significant uptick in behavioral problems in children being sent to the Principal's office for disciplinary action in this particular class during SY 2011-2012. Inconsistency, lack of continuity of instruction and little consistent discipline in the classroom resulted in part from the unpredictability of not knowing who would be teaching the class for any significant period of time. Respondent's absences thus became a problem that quickly grew large and problematic.

241. Regardless of any other negative allegations or findings made about respondent in this matter, every witness who testified in this matter who worked with respondent; administrator, peer, parent or former student, all agreed that respondent cared very deeply for the welfare and academic progress and achievement of her students. Principal Villalobos unqualifiedly gave respondent her due in this respect in his testimony, readily confirming that respondent was a passionate advocate for her students and deeply concerned for their welfare, academic achievement, and prospects for future academic advancement. The fact that respondent's persistent absences and the negative impact caused by her absences to her students' academic achievement and progress was painfully evident and wore heavily upon respondent.

242. The final comments at the end of each of the Preliminary and Summary Evaluations were half true. Principal Villalobos stated, "As a result of lack of demonstration of maintaining professional responsibilities, Mrs. Valle's students have been greatly affected with inconsistent teaching happening in her classroom," and, "As a result of lack of demonstration of maintaining professional responsibilities, Mrs. Valle's students have been greatly affected on their test scores with inconsistent teaching happening in her classroom." The causes stated were not correct, but the consequences of the inconsistencies and disruptions were.

2b. INVOLUNTARY REASSIGNMENT

243. Respondent was involuntarily reassigned to teach first grade for SY 2011-2012. Respondent claimed the move was orchestrated to set her up to fail, which would further the process of terminating her. It is difficult to conclude otherwise, based upon the evidence presented regarding the way the events took place.

244. Well aware of the imminent peril to her continued employment with the District at the end of SY 2010-2011, respondent desperately wanted to stay in the sixth grade where at least she knew the curriculum and the materials, and a good deal of her preparation and her lesson plans were already completed, and required only some fine tuning. She correctly perceived that she would be unlikely to survive as a teacher at Hidalgo if she was required to teach an entirely new grade level and required to conform to an entirely new and yet unlearned set of standards being imposed by Principal Villalobos. She was aware that she would have to write all new lesson plans for every day and week of school, rather than being able to use the materials she had already created and evidently had been employed successfully in a number of previous school years. She also knew she was subject to her first

performance evaluation since 2007, to take place assessing her performance in a completely new and totally unfamiliar environment.

245. By the time Principal Villalobos replaced Principal Jarvis, respondent's continued employment with the District was in jeopardy, even before the reassignment. The decision to assign respondent into the first grade, a grade she had never taught, against her will, at a time when she was already in trouble on all other fronts at Hidalgo and with the District, unnecessarily lent substance to respondent's claims that she was being bullied and harassed and forced to quit.

2c. NEW STANDARDS

246. Principal Villalobos significantly changed the required teaching methodology and associated standards and expectations for Hidalgo classroom teachers that had been required and followed by Principal Jarvis, when he replaced Principal Jarvis at Hidalgo at the beginning of SY 2011-2012. There was no evidence that the Foundations Standards were imposed by Principal Villalobos with the singular idea that doing so would apply additional pressure to respondent transferring into the first grade. Nevertheless, it was one more in a number of factors combining to greatly diminish respondent's chances for success in the assignment. One of the key changes was Principal Villalobos's focus on what was set forth in Charge 16 d, that all lesson plans would now have to be aligned with elements of Foundations Standards of objective, aligned instructional activities, closure and assessment, and many of the problems cited in the evaluation regarding respondent's deficient lesson plans flowed from this change.

247. Principal Villalobos did not introduce his requirement to teach to the new Foundations Standards on the Hidalgo staff without warning and training. Several in-service trainings were provided at Hidalgo for the school site teachers, where Principal Villalobos explained what he expected and how to teach the Foundations Standards. Principal Villalobos also made it clear during these in services that he expected all lesson plans to conform to the Foundations Standards. Unfortunately, due to her several periods of leave, and one period of administrative leave where she was prohibited from attending, respondent missed the in-service trainings during in the early part of SY 2011-2012 school year. Respondent did not know and had never used the Foundations Standards, and did not receive the benefit of the in-services. Principal Villalobos knew that respondent did not receive the training. Respondent had to pick up the knowledge in bits and pieces from others. There was no evidence that Principal Villalobos offered the training directly to respondent, or facilitated it through others, nor was there evidence that respondent sought that training out. The District presented no evidence regarding how respondent was supposed to know how to teach to the Foundations Standards without receiving the in-service trainings. Principal Villalobos did not address the issue in his testimony. Yet respondent was repeatedly faulted in both the Summary and Preliminary Evaluation for SY 2011-2012 for failure to align her lesson plans with the Foundations Standards. Respondent found herself in SY 2011-2012 assigned to teach a grade she had never taught, attempting to apply standards she had not been taught and being held accountable for her shortcomings in meeting standards applicable

to that grade required by Principal Villalobos. Under these circumstances, it is no surprise that Principal Villalobos faulted respondent in the evaluations for instruction that failed to align with the elements of Foundations Standards that were central to the manner in which he wanted teachers at Hidalgo to teach.

2d. DETERIORATING HEALTH AND ABILITY TO PERFORM

248. There was a good deal of inferential evidence that respondent's physical and emotional health was deteriorating to an unknown extent into SY 2011-2012. Respondent took a lengthy medical leave in SY 2010-2011 that lasted several months, and a number of other shorter medical leaves in SY 2011-2012. Although strictly the province of the Worker's Compensation system regarding cause, effect and consequence, nevertheless, it was evident by SY 2011-2012, that the deterioration of respondent's physical and emotional health was having an unquantified, unrecognized but evident effect. The immediate effect of respondent's deteriorating health upon the evaluation process was that the necessity for several periods of medical leave took her out of the classroom, and had a domino effect. Medical leave resulted in the need for her class to be covered by substitutes, increased incidence of disruption, inconsistency, and student behavior difficulties. The stress of defending herself and trying to maintain her position at Hidalgo and as an employee of the District was a factor, albeit minor and unquantifiable, but nevertheless present. No recognition of these factors was made in either evaluation.

3. OVERALL FAIRNESS OF THE EVALUATION PROCESS

249. The District failed to adequately respond to respondent's evidence that, concerning all of the circumstances, that the evaluation process was unfair and was the last piece in a process where she was set up to fail. For the most part, Principal Villalobos sloughed off respondent's claims of unfairness in the evaluation process as histrionic and simply stood pat, with little explanation, on his claim that he fairly evaluated respondent. Despite the fact that his school site teachers speak very highly of his skills and abilities as a principal, nevertheless, Principal Villalobos's testimony during his second appearance in July 2014 to testify about the evaluations, the process and the surrounding circumstances, and particularly about how the TDP was imposed, administered and evaluated, was largely lacking in credibility and unpersuasive.

250. It could not have been any surprise to Principal Villalobos that respondent was struggling in the classroom at the time he performed the Preliminary and Summary Evaluations of respondent for SY 2011-2012. Considering all the circumstances proved, it appears that this was expected. Respondent had become more and more isolated from peers and any source of support, and more frequently absent from campus beginning in SY 2010-2011 and onward. Many, if not most of respondent's problems with Principal Villalobos, her isolation and alienation from classroom teacher peers and support staff and some others were the product of self-inflicted wounds, caused by her disrespectful and abusive behavior toward others. Nevertheless, respondent was forced into taking an assignment where the probability of her failure was almost assured, and then subjected to an evaluation process in

SY 2011-2012 where the outcome had a very high probability of being adverse. Considering all the facts and circumstances surrounding these evaluations, as set forth above, this process was neither fair nor impartial.

251. The District made little effort in its evidentiary presentation to rebut any of the evidence respondent presented or her claims that the evaluation process was unfair and the surrounding circumstances were designed to have her fail and facilitate her termination, other than dismiss her claims as unfounded. The District appeared to assume ipso facto that the evaluation process was fair and produced a reasonably reliable result upon which the imposition of the TDP (below) could be based. The District was under an affirmative obligation to prove the evaluation process was fair, and the District failed to do so. Since the District failed to prove the Preliminary and Summary Evaluations of respondent's classroom teaching for SY 2011-2012 were fair, free from taint or bias and thus reliable, the TDP that was imposed based upon these tainted evaluations was also flawed. Thus, since the District's evidence of unsatisfactory performance was fatally flawed, the district failed to prove the claim.

CHARGE 17

252. The District alleged in Charge 17 that respondent followed teacher Linda Rollin into the Hidalgo staff parking lot on May 25, 2012 and handed Ms. Rollin what respondent called an "invitation." Charge 17 alleges that what respondent actually handed Ms. Rollin was a subpoena to appear and testify at a SE hearing involving respondent's son, who is not a student at Hidalgo. The allegation contends that respondent's son had "in fact, exited the District, via Fresno High School." Charge 17 continues to allege that respondent served similar subpoenas on several other Hidalgo employees, and that respondent's conduct resulted in the writing of a written Statement of Concern and an Amended Letter of Reprimand.

253. Ms. Rollin did not confirm the allegation that respondent said that she was giving Ms. Rollin an invitation when she handed her the subpoena. Respondent did hand Ms. Rollin a subpoena as well as several other Hidalgo staff members. Respondent's son was often on campus at Hidalgo, and respondent felt that especially Ms. Rollin, as well as some of the other staff members to whom she gave subpoenas had opinions and important information about her son's functioning and condition that was relevant to her son's SE case. It was not proved that anything that respondent did with respect to the subpoenas was untoward, or unprofessional. Respondent was simply exercising her Sixth Amendment rights to summon witnesses that she felt had relevant and material information, and did so outside of school hours, off the immediate campus area, and there was no evidence that she did so in any fashion that caused disruption to the school environment.

254. Ms. Rollin's testimony proved fatal to this allegation. Just after finishing her chilling description of respondent's behavior in the lunchroom with Ms. Garcia and Ms. Flores, she then discussed the service of the subpoenas in a rather matter-of-fact fashion, without complaining that she was particularly disturbed or concerned about what occurred,

merely curious about why. Once she found out what respondent intended for her regarding the subpoena, it did not appear that she had any further objection to it, or the manner in which she received it, and the District failed to prove otherwise.

CHARGE 18

255. The District alleged in Charge 18 that respondent permitted her husband, who is not a District employee, to attend a grade level assembly in the Hidalgo cafeteria on June 8, 2012. Charge 18 alleges that respondent's husband was seen using his cell phone to videotape the assembly and some of the children and other staff members present. The allegation further charges that respondent's behavior was unprofessional because no one present gave respondent or her husband consent to be videotaped during the assembly.

256. Charge 18 under alleges what occurred and its gravity. Respondent agreed that she invited her husband to come to the grade level assembly at the Hidalgo cafeteria as alleged, and that he used his cell phone to videotape not only other staff members, but also parents and children. No consent was obtained in advance, or at any other time, from any participant for respondent's husband to capture video images with his cell phone of children and adults present at the assembly. Two staff members present repeatedly asked respondent to have her husband to stop videotaping the adults and children present at the assembly. Respondent repeatedly ignored the requests.

257. Respondent agreed in her testimony that her husband did indeed capture video images with his cell phone of adults and children present at the assembly. She acknowledged that she behaved unprofessionally during the incident by both encouraging her husband to capture the video images with his cell phone, and refusing to respond to repeated requests of staff members present to have him stop. Respondent's admissions were not unconditional. Respondent sought to excuse the unprofessional conduct by stating that she felt the videotaping was necessary to "make a record of what was occurring," and how she was being treated, in order to document the mistreatment.

CHARGE 19

258. Charge 19 alleges that on June 14, 2012, respondent confronted another teacher, Ms. Leanos-Laura, and told her that she was going to call the mother of one of Ms. Leanos-Laura's student about an incident that had just occurred on the playground. Charge 19 alleges that respondent raised her voice at Ms. Leanos-Laura and told her again that she was going to contact the child's mother, and that when Ms. Leanos-Laura replied and told respondent she was handling the situation, respondent again raised her voice and, speaking to Ms. Leanos-Laura's students, said "Oh, look at the princess. Look at your teacher; look at how she is acting. She thinks she is a princess."

259. Ms. Leanos-Laura was late to her recess yard duty because she was nursing. Respondent was on the yard and was watching both classes, and as Ms. Leanos-Laura's students lined up, one of Ms. Leanos-Laura's students was slugged in the midsection by

another student. The victim of the attack was one of Ms. Leanos-Laura's female students, who folded up into a fetal position. Ms. Leanos-Laura did not witness the incident because she had not yet returned to the yard from nursing. Respondent intervened and was in the process of sending the assailant student to the office for discipline by the Principal when Ms. Leanos-Laura arrived at the site of the incident where her students were all gathered around respondent.

260. Respondent knew the little girl who was the victim of the assault, and was aware that the child was asthmatic. Respondent also knew the child's mother. Respondent believed that the victim child was having trouble breathing as a result of being slugged in the midsection, and suspected that the blow triggered an asthma attack. The child remained a fetal position. Respondent wanted to call the child's mother immediately and have the mother come to school with asthma medication to help the child.

261. When Ms. Leanos-Laura came out to the yard, respondent demanded that Ms. Leanos-Laura call the child's mother immediately and discipline the assailant. Ms. Leanos-Laura told respondent to back off, and that that she would handle the situation with her students in her own way, and that she wanted to hear for herself from the students involved what happened before she took any action. Ms. Leanos-Laura told respondent she wanted to handle the situation and inquire about what happened in her own way, and she told respondent that she wanted respondent to leave her and her students alone. Respondent was not satisfied with Ms. Leanos-Laura's answer, and was not satisfied that Ms. Leanos-Laura was dealing with the situation effectively or aggressively enough. Respondent persisted in trying to intervene, particularly demanding that the girl's mother be called immediately and summoned to school. Ms. Leanos-Laura continued to rebuff respondent, and tried to attend to her students, but respondent persisted, getting louder and more aggressive. As Ms. Leanos-Laura tried to line up her students to get them back into her classroom, respondent began to speak in Spanish directly to Ms. Leanos-Laura's students, calling attention to Ms. Leanos-Laura, and calling Ms. Leanos-Laura a "princess" to her students at least twice. The tone of respondent's comments was mocking, demeaning, disrespectful and disdainful of Ms. Leanos-Laura.

262. Respondent admitted that her behavior was unprofessional. Respondent rationalized and justified her conduct through a lengthy explanation about the little girl's circumstances, and her concern that Ms. Leanos-Laura was failing to handle the situation effectively, allowing the assailant to escape discipline, and failing to promptly respond to the child's need for asthma medication and her mother's intervention. The explanation may well have been factually accurate, but completely missed the point. The issue was not whether Ms. Leanos-Laura handled the situation with her students correctly, it was respondent's behavior choice and demeanor in response to Ms. Leanos-Laura telling respondent to back out of her involvement and let her handle her own students in her own way, something that respondent refused to do. Respondent mocked, disrespected, disdained and demeaned her peer teacher to Ms. Leanos-Laura's students; unprofessional conduct and inappropriate in every sense of the word for a professional educator.

CHARGE 20

263. On the same date as the incident that took place with Ms. Leanos-Laura alleged in Charge 19, later in the school day, the Hidalgo school conducted a Kindergarten to Third Grade Fourth Quarter Awards Assembly in the school auditorium. Charge 20 alleges that during the awards assembly, respondent told the parents and the students in the audience that her students were not able to learn because of her frequent absences that were due to constant stress from harassment at the hands of Hidalgo staff and administration and other District personnel. Charge 20 alleges that respondent's behavior during the awards assembly embarrassed and humiliated some of her teacher colleagues, including some who received rude comments from parents following respondent's comments.

264. Respondent admitted the factual allegations of Charge 20, and that her conduct was unprofessional. Respondent's conduct during the awards assembly was selfish. Her comments shifted attention off the students, who were the proper focus of proceedings commenced to recognize student progress and achievement, and called attention to herself and her own claims of harassment and a hostile working environment against District administration and Principal Villalobos, embarrassing some of her teacher colleagues present. It was not proved that respondent's teacher colleagues received rude comments from parents following respondent's comments.

CHARGE 21- THE TDP

265. Charge 21 alleges that the TDP referred to several times above was imposed on respondent on August 28, 2012. Charge 21 alleges the TDP identified teaching Standards III, IV and V as requiring improvement, and identified what respondent would be required to do in order to meet standards, with assistance from a teacher development coach and the Principal. The TDP contained directives that respondent would: (1) Prepare lesson plans that included key components of Foundations Standards with clear objective, aligned instructional activities, closure and assessment; (2) Submit one math lesson and one ELA lesson each week with all the elements above; and (3) Submit weekly lesson plans electronically every Monday before the beginning of the school day.

266. Charge 21 is procedural, and merely sets forth facts that were not disputed; that the TDP was imposed upon respondent on August 28, 2012, and was to be in effect for the first semester of SY 2012-2013.

267. Imposition of the TDP presupposed the existence of a "Beneath Standards" prior evaluation, which in turn presupposed a fair and impartial evaluation process supporting the Beneath Standards conclusions. As such, proof of a fair and equitable evaluation upon which the TDP could be imposed is a foundational condition precedent for that imposition. Proof of fair implementation of the TDP and proof of respondent's unexcused failure to comply with the TDP's provisions are essential proof requirements precedent to dismissing respondent on the basis of unsatisfactory performance.

268. As set forth above, the District failed to prove the foundational condition precedent for the imposition of the TDP under review in this matter. The paucity of the District's evidence regarding the TDP simply assumed the presence of the required proof prerequisites; that the TDP was fairly imposed and enforced based upon a fair and impartial evaluation process that precipitated the imposition. None of the District witnesses other than Principal Villalobos mentioned the TDP imposition process at all, and Principal Villalobos only made a couple of conclusory comments about it in passing during direct examinations on the two different days he testified. The process under which the Preliminary and Summary Evaluations for SY 2011-2012 were performed, upon which foundation the TDP was imposed, were unfair and fatally flawed, as set forth above, and cannot support the imposition of the TDP. Since the TDP was not properly imposed, no charging allegations that flow from alleged failures to conform to the TDP in SY 2012-2013 may be sustained.

CHARGE 22

269. Respondent called the teacher absence call-in line for Hidalgo on Sunday, October 7, 2012, late in the evening. She reported that she would be absent due to illness on the following day, Monday, October 8, 2012. Charge 22 alleges that on Monday, October 8, 2012, respondent attended a community event in Keene, California and was quoted in an article about that community event that appeared in the Fresno Bee on October 9, 2012.

270. Respondent admitted she called in sick on Sunday, October 7, 2012, for absence on Monday, October 8, 2012. She further admitted that she attended a rally sponsored by the United Farm Workers in Keene, California, at which President Obama was the featured speaker. Respondent was indeed interviewed by a reporter for the Fresno Bee at the event, and her comments appeared in an article printed the following day in the Fresno Bee. Principal Villalobos, saw and read the article and was aware respondent had called in sick the day of the rally.

271. Respondent contended that she truly was ill and was physically unprepared and unable to teach a full slate of classes the following Monday, but was not too sick to ride in a car for an hour and a half to Kern County and sit in the handicapped section of the gallery to hear the President's speech at the event. She did not document the illness, did not present any medical or other information in support of her claim, and the first time that she claimed she was genuinely ill on Monday, October 8, 2012, was during her evidentiary hearing testimony in this matter. The District was thus deprived of an opportunity to prove otherwise due to the untimely raising of this explanation.

272. Respondent pointed out that District absence reporting procedures in effect at the time encouraged and even solicited the manner in which she reported her absence. According to respondent, the District made it clear to teachers that the District was less concerned about the reason for an expected absence than it was about receiving notice so that a substitute could be obtained. Without such notice, obtaining substitutes could be difficult, particularly if, on any given day, many teachers were absent, owing to the large size of the District. Cause for reported absence was evidently at that time not a strictly regulated

reporting requirement, and teachers had time allowances available for absence for personal leave, vacation, and training, as well as for illness.

273. The District did not produce evidence refuting respondent's claim that at the time of the alleged report, the manner in which she reported her absence did not reflect common practice in the District. The District also failed to present evidence that respondent's claim that, on the day in question, she was entitled to and had available for use a personal leave day, for which cause for absence was not relevant. Under the facts proved, it was not demonstrated that respondent's conduct in calling in sick and attending the rally constituted unprofessional conduct.

274. Nevertheless, respondent's conduct, calling in sick and then attending a political rally that took place a considerable distance from Fresno, and then chatting with the media about it, was borderline reckless, unwise and imprudent, considering the exceedingly tenuous nature of her employment and her relationship with Principal Villalobos at that time. Respondent's actions reflected poor professional judgment under the circumstances, considering respondent's then constant complaints that she was being subjected to unwarranted scrutiny and harassment for her workplace behavior. Taking such liberties with the absence reporting procedures all but guaranteed the very sort of scrutiny she complained about receiving. Respondent's conduct reflected in this incident was provocative to District administration and particularly to Principal Villalobos, and all but assured she would draw down upon herself more of the administrative scrutiny of which she complained.

275. The flexible and accommodative absence reporting procedures respondent sought to take advantage of at the time of the incident alleged appeared to have developed in practice as a method to balance District staffing needs and the almost infinite variety of teacher individual needs that might require absence and coverage by a substitute. This flexible, accommodative policy required mutual extensions of considerable trust from the District and teachers alike that the process will not be abused. The allegations of Charge 22 appear to be a reflection that the District's extension of accommodation and trust was abused by the manner in which respondent behaved to attend the UFW rally and hear the President's speech while calling in sick. Respondent's reply to these concerns was dismissive, expressed when she said, "Well it is not every day one gets to hear the President speak in person." Respondent's conduct potentially jeopardized the availability of the flexibility and accommodation in the future for her peers.

CHARGES 23-24

276. Charges 23 and 24 are related, as well as being related to Charges 25-27 below. Charge 23 alleges that Principal Villalobos contacted respondent verbally and via email on October 2, October 15 and October 22, 2012, regarding respondent's need to complete and submit lesson plans. On October 2, 2012, Charge 23 alleges respondent provided Principal Villalobos with the math and ELA lessons via email, but said she was having technology issues with her weekly lesson plans. Charge 24 alleges that respondent received a notice of unprofessional conduct and/or unsatisfactory performance on October

10, 2012. The allegations of Charges 23-24 were not specific allegations of instances of unprofessional conduct or unsatisfactory performance. These allegations were merely made to prove that required procedural steps precedent to later charges were taken.

CHARGES 25-27

277. Charges 25-27 relate to the TDP requirement that respondent submit weekly lesson plans to Principal Villalobos. Charge 25 alleges that Principal Villalobos received respondent's weekly lesson plans and one ELA lesson plan via email on October 15, 2012, along with an explanation that respondent said she did not have time to finish the math lesson, and that she requested to be paid for the "extra work," or have a substitute day. Charge 25 further alleges that respondent wrote in the email the following:

When I was a Campesina I was paid for the work I did. Do I not have that right as a teacher? Why are other teachers supported and I bullied and harassed? I am requesting that I be supported and provided with the time and materials to do my job effectively. My student's education suffers when I am harassed at work. Please be supportive and make a good faith effort to provide a healthy work environment for me.

278. Charge 26 alleges that Principal Villalobos told respondent that he had not received her math lesson plan on October 22, 2012, and that the ELA lesson plan respondent submitted was not written on the Foundations template, as required. Charge 27 alleges that Principal Villalobos did not receive a copy of respondent's weekly lesson plans on October 29, 2012, nor did he receive the one ELA in the one math lesson utilizing the classroom Foundations template as respondent had been directed. Charge 27 continues that Principal Villalobos sent respondent an email on October 30, 2012, requesting the lesson plans but respondent still did not submit them.

279. Charges 23-27 all related to failure to comply with TDP requirements allegations. As set forth above, it was not proved that the TDP was properly imposed. Therefore, respondent's failure to comply with an improperly imposed TDP cannot constitute cause for concluding respondent's performance was unsatisfactory, within the meaning of Education Code section 44932. As such, it is unnecessary to reach respondent's contentions that the District failed to meet its obligations required by the TDP to provide her a teacher development coach and a peer coach, as well as the principal's assistance and support, but she was provided negligible professional development time to work with a mentor, observe and improve, and that the manner in which the TDP was imposed and enforced all but guaranteed her failure.

280. Respondent described disillusionment, discouragement and confusion with the TDP process by October of SY 2012-2013, stemming from her realization that she was only going through the motions of what appeared to her to be a foregone conclusion. This expression of disillusionment and realization became reminiscent of the statement Principal

Jarvis made to respondent in SY 2010-2011, when he was trying to evaluate her. Respondent asked him then why he was trying to evaluate her, when her Five-Year Waiver appeared to prohibit it. Principal Jarvis told respondent that “all I need to get rid of you” is a bad evaluation, upon which he could impose a TDP, and 18 total months in which to complete the process. Nothing that took place between then and December 2012 did much but confirm in respondent’s mind that Principal Villalobos had fully adopted Principal Jarvis’s game plan for her termination, confirmed by his comment to respondent when he took over that his job was to “finish what Jarvis started.” Coincidentally or not, Principal Villalobos presented respondent with news that she had failed the TDP, gave her a new unfavorable Preliminary Evaluation for SY 2012-2013 in the middle of December, 2013, and told her she was subject to termination for unsatisfactory performance, on a date 18 months after he ordered respondent to take the first grade class for SY 2011-2012 against her will.

CHARGE 28

281. Charge 28 is a procedural allegation, setting forth the fact that respondent received an Amended Notice of Unprofessional Conduct and/or Unsatisfactory Performance regarding her conduct and performance as described in Charges 1 through 19 above, and that the notice was required to be amended because the original 45 and 90 day timelines that began on October 10, 2012, were modified at respondent’s request.

CHARGE 29

282. Charge 29 alleges that Principal Villalobos emailed respondent on November 6, 2012, requesting that she submit her lesson plans as required by her TDP. The allegation says nothing more. As set forth above, any alleged failure to meet the requirement of an improperly imposed TDP is not considered here.

CHARGES 30-31

283. Charges 30-31 are more procedural allegations. Charge 30 alleges that respondent met with Principal Villalobos on November 30, 2012, during which he gave her a Written Statement of Concern. Respondent acknowledged that she wrote on the Statement of Concern when she signed that she had received it, “Please stop the retaliation. Please provide an appropriate work environment. Stop the intimidation, bullying and harassment.”

284. Charge 31 alleges that, at the same date and time, respondent met with Principal Villalobos as described in Charge 30, and Principal Villalobos gave respondent a Letter of Reprimand and imposed a suspension without pay. Respondent admitted that when she received the document, she wrote on it, “The harassment and intimidation against (sic) needs to stop. You are not providing a healthy employment environment. Please stop the bullying.”

CHARGE 32, SUBDIVISIONS a-g

285. Charge 32 alleges that Mr. Villalobos gave respondent a Preliminary Evaluation for the SY 2012-2013, on December 19, 2012. Charge 32 alleges that the Preliminary Evaluation rated respondent's performance as "Does Not Meet Standards" in Standard I: Engaging and Supporting All Students in Learning; Standard III: Understanding and Organizing Subject Matter for Student Learning; Standard IV: Planning Instruction and Designing Learning Experiences for All Students; Standard V: Assessing Student Learning; and Standard VI: Developing as a Professional Educator. The charge concludes by alleging that respondent's performance was rated "Meets Standards Minimally" in Standard II: Creating and Maintaining Effective Environments for Student Learning.

286. Allegations flowing from the Preliminary Evaluation for SY 2012-2013 suffer from the same flaws as did the Summary and Preliminary Evaluations for SY 2011-2012, detailed above, and more. Thus, the fate of the SY 2012-2013 Preliminary Evaluation is the same.

RESPONDENT'S ROLE

287. Respondent was certainly not blameless in contributing to the creation of an environment in which a fair and dispassionate evaluation and assessment of her classroom teaching could actually take place. Respondent's attack-mode disrespectful and disruptive on campus behavior and demeanor polarized the Hidalgo campus during the periods of time she was to be evaluated. The sorts of supports and assistance that she could have and should have been able to expect from peers quickly dried up. Throughout SY 2011-2012, Principal Villalobos was required to invest a great deal of time and energy fending off respondent's disrespectfulness and dealing with problems she caused with peers and parents alike. Respondent had personally attacked, mocked and disparaged teacher peers Ms. Flores, Ms. Mendez, and Ms. Leanos-Laura directly, and subjected Ms. Rollin to so much fallout that she joined the chorus of complainants as well.

288. By the time of these evaluations, respondent's combative and disagreeable demeanor had destabilized the academic environment at Hidalgo to the point where her peers feared and avoided her. Respondent so offended and intimidated her teacher peers at Hidalgo that she became totally isolated and unable to count on the support of any peer at the time the evaluations took place. This lack of support in her peer community continued through the evidentiary hearing, as no peer stepped up to testify in her support, and no peer with whom respondent served as a teacher wrote a letter of support or reference attesting to respondent skill or a character as a classroom teacher in the environment in which they jointly worked, a fact the Commission found to be very telling.

289. Charge 32, subdivisions a-g allege specific deficiencies cited in the SY 2012-2013 Preliminary Evaluation. Each of these allegation subdivisions describe factual deficiencies in respondent's classroom that appear to have been factually accurate. But these descriptions cannot stand in isolation, and none of these alleged deficiencies have any

meaning in this assessment because of the flawed nature of the evaluation process, voiding the evaluations and the imposition of the TDP. The SY 2012-2013 Preliminary Evaluation and any claim that respondent failed to satisfy the requirements of the TDP cannot support a Factual Finding that respondent's performance was unsatisfactory within the meaning of Education Code section 44932, subdivision (a) (five).

CHARGE 33

290. Charge 33, the final allegation, collectively alleges that respondent's ongoing unsatisfactory performance, unprofessional conduct and evident unfitness for service are detrimental to the education of her students. Charge 33 additionally alleges that despite "continuing efforts to assist and guide respondent," she has failed to correct her performance deficiencies, and that her performance has resulted in a loss of trust in her ability to effectively serve students and the District.

291. The evidence in this record of the District's efforts to "assist and guide" respondent, as alleged, were difficult to impossible to find with respect to "assist," and were numerous with respect to "guide". Respondent played a considerable role in this as well, as she proved all but impermeable to numerous documented efforts to persuade her through a variety of means to correct her behavior. The nature and gravity of respondent's unprofessional conduct, which also revealed respondent's unwillingness and/or an inability to correct her demeanor and disposition toward others that renders her evidently unfit for service (below), more than offsets the failure of the unsatisfactory performance cause for termination allegation and the significant deficits in many aspects of the District's case.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. The District has the burden of proving the allegations of the Statement of Charges and the Accusation by a preponderance of the evidence.¹⁴

LEGAL CAUSES FOR DISMISSAL OF A TENURED TEACHER

2. Education Code section 44932 provides, in pertinent part:

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

[¶]...[¶]

¹⁴ *Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.1035-1038.

(2) Unprofessional conduct.

[¶]...[¶]

(5) Unsatisfactory performance.

(6) Evident unfitness for service.

[¶]...[¶]

I. UNPROFESSIONAL CONDUCT

3. Respondent admitted several instances of engaging in unprofessional conduct in a variety of settings, and with varying degrees of gravity, from SY 2009-2010 and through December 2012, when she was ultimately dismissed from the Hidalgo school site by being placed on paid administrative leave. Several of these instances of unprofessional conduct involved behavior that was so repugnant and reprehensible that they violated all reasonable norms of conduct expected of a professional educator, regardless of the elaborate rationale of respondent's explanations seeking to justify her conduct. These particularly egregious instances of unprofessional conduct included presenting her vomit in the wastepaper basket with a note to Principal Jarvis in order to make a point, her vicious verbal berating of Mrs. Garcia and Ms. Flores in the Hidalgo cafeteria teacher lunchroom, together with the character and reputation damaging sexual insult delivered to Ms. Flores, when Ms. Flores tried to dissuade respondent from the verbal attack on Mrs. Garcia, and her effort to mock, belittle and demean Ms. Leanos-Laura in the presence of her class. Respondent's elaborate justification and rationalizations for her conduct lacked insight and fully missed the central point; that the time, place, and customary manner of delivering her message in intensely derogatory and personally disparaging fashion, and her evident efforts in so doing to personally denigrate and demean her targets, were wholly unwarranted and unjustified, regardless of whether what she said in justification had any merit.

4. Respondent repeatedly expressed her frustration that her voice was not heard at either the Hidalgo site or District administration levels. Even if wholly true, that provides no justification for why she opted for such personally destructive, anti-social and unprofessional opprobrium and inappropriate channels in attempting to make her voice heard. Whether Principal Jarvis and/or Principal Villalobos behaved badly, inappropriately or even unprofessionally toward respondent still provides no justification for the unprofessional manner and means by which respondent chose to make her points. No amount of harassment, bullying, retaliation or vindictive behavior respondent claimed toward her could ever justify the manner in which she chose to make her points by vomiting in the wastebasket and delivering it to the front office, or the vicious demeaning and insulting of Mrs. Garcia, Ms. Flores, Ms. Mendez, and Ms. Leanos-Laura, or accusing Principal Villalobos and her peers of conspiring to commit crimes with respect to the District audit team reviewing Title I funds expenditures. Nothing Principal Jarvis or Principal Villalobos did or failed to do had anything to do with the manner in which respondent behaved toward her school site peers during these incidents.

5. The District's Code of Conduct, incorporating standards from the Education Code, point out that the hallmarks of professional conduct for an educator include self-restraint, good social and professional judgment and prudence and civility in the manner and means by which that educator advocates for issues important to that educator. Respondent's conduct in the several instances set forth in the Factual Findings were well outside all reasonable bounds of professional conduct for an educator. As a result, the District successfully proved that there exist legal grounds for respondent's dismissal as a tenured teacher with the District, pursuant to Education Code section 44932, subdivision (a) (2), unprofessional conduct warranting dismissal.

II. EVIDENT UNFITNESS FOR SERVICE

6. The terms 'evident unfitness for service' ... ha[s] become [a] term of art and ha[s] been defined by appellate courts in a manner different than what the plain meaning of the words might suggest. Additionally, [the] terms must be defined within the context of whether the alleged behavior reflects an 'unfitness to teach,' another term of art.

... 'Evident unfitness for service' in section 44932, subdivision (a)(5), properly means 'clearly not fit, not adapted to or unsuitable for teaching, ordinarily *by reason of temperamental defects or inadequacies*.' Unlike 'unprofessional conduct,' 'evident unfitness for service' connotes *a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district*.¹⁵

[¶]...[¶] (emphasis added)

'Unprofessional conduct' is, as it were, often a lesser included form of proscribed behavior within 'evident unfitness for service.' Thus, conduct constituting 'evident unfitness for service' will often constitute 'unprofessional conduct.' But the converse is not true. '*Evident unfitness for service*' requires *that unfitness for service be attributable to a defect in temperament*--a requirement not necessary for a finding of unprofessional conduct.¹⁶ (emphasis added)

¹⁵ *Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.

¹⁶ *Id.*

7. In *Morrison*, the terms “evident unfitness for service” and “immoral conduct” were held to be sufficiently specific to give proper notice to an employee of proscribed conduct when “applied to a specific occupation and given content by reference to fitness for the performance of that vocation.”¹⁷ The *Morrison* court set forth a nonexclusive list of factors against which a teacher’s conduct should be assessed to determine whether the conduct reflects unfitness to teach. The “*Morrison*” factors are as follows:

1. The likelihood that the conduct may have adversely affected students and fellow teachers;
2. The degree of such adversity anticipated;
3. The proximity or remoteness in time of the conduct;
4. The type of teaching certificate held by the party involved;
5. The extenuating or aggravating circumstances surrounding the conduct;
6. The likelihood of the recurrence of the questioned conduct;
7. The motives for the conduct; and
8. The extent to which disciplinary action may inflict an adverse or chilling effect upon the Constitutional rights of the teacher involved or other teachers.

8. Evident unfitness for service still must be assessed within the context of the fitness to teach criteria set out in *Morrison*.¹⁸ These criteria must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service.¹⁹ If the *Morrison* criteria are satisfied, the next step is to determine whether the ‘unfitness’ is ‘evident’; i.e., whether the offensive conduct is caused by a defect in temperament.²⁰ Not all

¹⁷ *Governing Board of Ripon Unified School District v. Commission on Professional Competence* (2009) 177 Cal.App.4th 1379, 1388, citing *Morrison*, p. 239.

¹⁸ *Id.*, *West Valley-Mission Community College District v. Concepcion* (1993) 16 Cal.App. 4th 1776, *Gardner v. Commission on Professional Competence*, *supra*, citing *Morrison*, *supra*, at p. 233, and *Woodland*, *supra*, at p. 1453.

¹⁹ *Id.*, citing *Board of Education v. Jack M.* (1977) 19 Cal. 3d 691, 696.

²⁰ *Id.*

the *Morrison* factors need be proved to support a finding of unfitness.²¹ Findings on the most pertinent factors, based on the facts and circumstances, is all that is required.²²

9. The District proved numerous of the *Morrison* factors were present and satisfied by the evidence presented of respondent's conduct, satisfactorily proving unfitness for service, as set forth in the Factual Findings. The *Morrison* factors as applied to the facts proved are:

Factor 1. Ms. Rollins's testimony most clearly pointed out the profound and wide ranging negative impact respondent's unprofessional conduct had upon the Hidalgo school community, including other teachers, parent volunteers, staff members, administrators, and often directly or indirectly involving students. Respondent's abrasive and abusive conduct toward peers who crossed her belied her claim that she had any respect or regard for peers. Bringing home-cooked food for everyone to share on occasional Fridays was nowhere nearly enough to offset several instances of viciousness toward some of her peers that invoked a general Hidalgo site-wide concern among her peers that they had better stay out of her way or risk being the subject of her next explosive outburst. Some of these incidents of lack of respect for peers were very public. The incidents where respondent viciously attacked Mrs. Garcia and Ms. Flores in the teacher's lounge of the school cafeteria at lunchtime, where several of her teacher peers were seated at the same table with respondent's targets, and where she mocked and berated Ms. Leanos-Laura were in full view of a number of other teachers, staff members and students. The incidents at the grade level assembly, the planning committee and the SSC meetings negatively impacted parents and peers, and there was evidence that these were merely exemplars of a much larger problem, where respondent felt free to disrupt on-site meetings with her own personal issues, and then behaved disrespectfully when she was asked to defer to the meeting's purposes and treat others participating in the meeting with professionalism and courtesy. These Factual Findings and others more than satisfactorily demonstrated that the likelihood that respondent's unprofessional indeed adversely affected students and fellow teachers;

Factor 2. The degree of adverse impact of respondent's unprofessional conduct became increasingly severe starting from late 2007 onward, to the point where in SYs 2010-2013, respondent's unprofessional conduct was not just anticipated, it was expected, anticipated as inevitable but unpredictable, and dreaded by fellow teachers and administrators, to the point that numerous on-site teacher peers testified that they avoided respondent to the extent possible for fear of confrontation;

Factor 3. Respondent's unprofessional conduct and unpredictably explosive demeanor manifested itself with much more frequency during Principal Jarvis's last year on campus, SY 2010-2011, and escalated through her departure from campus in December 2012 on administrative leave. During this period of time respondent's self-restraint deteriorated

²¹ *Id.*

²² *Id.*

and her willingness to engage in increasingly vicious and aggressive attacks on others to have the last word or end a discussion or argument greatly increased;

Factor 4. The type of teaching certificate held by respondent is significant only to the extent that respondent's teaching responsibilities involved teaching some of the youngest, most impressionable and vulnerable of the District's regular education program students. Respondent is only credentialed to teach at the elementary, self-contained classroom level. Respondent's undisputed deep caring for the welfare and educational progress of her students got progressively shoved aside by her own personal issues during her last three semesters on campus, when her students were increasingly subjected to collateral and negative impacts from the breadth and intensity of respondent's interpersonal conflicts with Principal Jarvis, Principal Villalobos, and a number of her teacher peers and staff on campus, culminating in the incident where respondent mocked, belittled and berated Ms. Leanos-Laura to her students and in the presence of respondents' own. Increasingly, respondent brought her students into her personal disputes with administrators and staff, using them as foils to deflect or criticize administration or peers, such as during the incident with the SE student misplaced in her classroom, during the incident with Ms. Laura-Leanos, and at the grade level assembly, where she held her students captive to her diatribe against administration, depriving them of a moment dedicated to allowing her students to shine. As time passed and the intensity and frequency of her conflicts with administration and peers increased, respondent displayed no apparent effort to keep her students separated and well away from several very public disputes;

Factor 5. The extenuating or aggravating circumstances surrounding the conduct, as set forth in the Factual Findings, were numerous but not necessarily equally weighted. Respondent presented a great deal of evidence she claimed was extenuating and justifying of her conduct, together with great faith that her explanations and justifications were valid reasons for the manner in which she behaved, and even for the incidents of unprofessional conduct she admitted. As set forth in the Factual Findings, very little of these self-justifications and rationalizations had any merit, and most of respondent's explanations were wholly lacking in insight. The District presented significant evidence that some of the incidents of respondent's unprofessional conduct represented behavior well outside the bounds of civilized conduct in a professional setting, regardless of claimed justification, such as sending a message to Principal Jarvis via vomiting in a wastebasket and delivering it to him;

Factor 6. The likelihood of the recurrence of the questioned conduct was proved to be all but a certainty if respondent is not dismissed. By the time respondent was placed on administrative leave in December 2012, respondent's pattern of antisocial behavior toward administrators, staff and peers was habitual, fully developed and although unpredictable, nevertheless inevitable. The evidence of respondent's disposition and temperament is of such a nature that if respondent is not dismissed and is returned to a teaching position of one sort or another with the District, conduct similar to that proved in this matter is all but a certainty to recur. Respondent gave herself liberty to substitute her own judgment as to whether she thought following administrative direction was warranted in any given

circumstance, making respondent rather difficult for any site administrator to work with. The untoward traits respondent displayed in the incidents proved in the Factual Findings will only become further cemented if respondent's self-justifications and rationalizations for her misconduct proved in this matter are ratified and endorsed by this Commission in any fashion by any order reinstating her, regardless of the severity of an intermediate sanction. The nature and frequency of respondent's conduct made clear that the only possible remedy is termination, as respondent's steadfast resistance to all efforts to persuade her to remediate her conduct were stoutly rebuffed and failed miserably. Respondent made it clear that she had no intention of unhesitatingly cooperating with administrative direction from any level, and filtered whether she would comply with such direction through her own perception and judgment of the circumstances. She was steadfast, uncompromising and unyielding in her resistance to all corrective efforts. There were proved to be times in which that unyielding and uncompromising stance was praiseworthy and an asset, such as advocating for the safety, welfare and needs of her students. But respondent showed no evidence of a willingness or ability to temper and balance her praiseworthy traits when circumstances required self-restraint and good judgment. Respondent failed to evidence any level of insight into her own rather substantial role in creating, and then contributing to and exacerbating, the hostile, tension-filled school site environment she so frequently decried. Respondent's intricate and elaborate self-justification and rationalizations for her misconduct all but assured another angry, hostile, aggressive outburst the next time respondent disagrees with any administrative directive or behavior of a peer;

Factor 7. The motives for respondent's unprofessional conduct were addressed at length in the Factual Findings and just above. Despite respondent's frustration and exasperation with her perceived inability to find an interested audience willing to act upon her expressed concerns and issues, the manner, means and channels through which she chose to air those grievances were wholly unjustified, and at times ruthless, vicious and personally destructive to others, regardless of the merits of her expressed motives; and

Factor 8. The extent to which disciplinary action may inflict an adverse or chilling effect upon the Constitutional rights of the teacher involved or other teachers is only minimally impacted. Respondent viewed her right to express herself and air her grievances, and her right to seek alternate means to express those grievances when she could not get her voice heard through appropriate channels, as core to her justification and motivation for expressing herself as she did. The U.S. and California Constitutions have always permitted the imposition of reasonable limitations on the time, place and manner of protected expression, and have never provided justification for the vicious and abusive self-expression proved in the Factual Findings. This limitation on free expression is especially strong in a professional setting such as employment with the District as a tenured teacher, where professionals are expected to yield a bit of their Constitutionally-protected freedom of expression in order to maintain high department standards for the benefit, welfare and protection of young and impressionable students. Constitutionally protected self-expression does not shield the manner in which respondent behaved. Under the circumstances, disciplinary action against respondent has no material impact upon any other teachers' right to exercise their Constitutional rights.

10. “Teachers, particularly in the light of their professional expertise, will normally be able to determine what kind of conduct indicates unfitness to teach.”²³ Indeed, respondent’s was the kind of conduct ‘which any reasonable teacher must know would be cause for discipline or dismissal from employment *whether described in a rule or not.*’²⁴ The *Woodland* court describes a deficit in the subject teacher’s [Zuber] temperament that closely parallels what was proved about respondent’s unprofessional conduct in this matter.

We cannot imagine how a teacher of Zuber’s experience could have failed to realize the wrongfulness of his acts.²⁵ Substantial evidence supports the trial court’s finding that Zuber’s unacceptable conduct was likely to recur and was ultimately traceable to a defect in temperament, i.e., the contempt he felt for fellow teachers and the administration. Moreover, contrary to Zuber’s claim, the evidence, taken in the aggregate, shows that Zuber’s retention would pose a significant danger of psychological harm to students and fellow teachers. ... When a camel’s back is broken we need not weigh each straw in its load to see which one could have done the deed. We conclude that in determining whether Zuber’s conduct made him unfit to teach under *Morrison*, the trial court properly considered the totality of his offensive conduct.²⁶

11. The incidents in Charges 12, 14, 15 and 19 revealed most clearly respondent’s personal style, disposition, demeanor and attitude toward administrators, peers and staff with whom she had disagreements, harbored resentments, or those who had given her directions were instructions in the workplace with which she chafed or disagreed. What Ms. Rollin described regarding the manner in which respondent had polarized the Hidalgo campus workplace, and the tension respondent’s continued presence created after these incidents, goes a long way to explain the fact that of none of her professional peers stepped forward and testified on her behalf in support of her quest to retain her position. The final effect of respondent’s persistent unprofessional mood and demeanor driven destabilization of the Hidalgo workplace was the alienation of her peers and isolation from all professional workplace support she could have and should have been able to expect. Several of the District teacher peers are witnesses pointed out that respondent’s removal from Hidalgo on administrative leave resulted in an almost immediate return to a peaceful, tranquil and welcoming educational environment.

²³ *Woodland*, p. 1453, citing *Morrison*, p. 233 and *Cranston v. City of Richmond* (1985) 40 Cal.3d 755, 766.

²⁴ *Cranston*, p. 787-8.(italics in original)

²⁵ *Woodland*, *supra*, at 1454.

²⁶ *Id.*, at 1456-57.

12. Aristotle is quoted as saying, “We are what we repeatedly do.” The District was patient through the litany of incidents described in the Factual Findings as those incidents escalated in frequency and severity. The District provided a structured series of repeated warnings, paired with increasingly serious sanctions, in an effort to persuade respondent that her behavior toward administrators, peers and staff was unacceptable and needed to be at least curbed and controlled, if not permanently modified. Respondent steadfastly failed to respond in any fashion, other than upping the ante with the increasing frequency of the incidents and the increasing severity of her diatribes and outbursts toward administrators and peers alike. The District was no obligation to continue to expose administrators, peers staff and support at the Hidalgo school to the potential of additional outbursts that had become all but inevitable at the time respondent was placed on administrative leave. It is an understatement to point out that respondent was repeatedly warned by a variety of persons in authority at the District in progressive discipline that took the form of a number of different means, both orally and in writing, that her conduct must be remediated, and that she must restrain and discipline herself in accordance with the District Code of Conduct, treat administrators, peers, staff, and parent volunteers with the same modicum of respect she expected to be shown toward herself, and failing that, she was subject to termination. In the face of such repeated warnings, respondent’s message to the District, delivered not verbally, but by her conduct, was that she was unwilling or unable to do so.

13. In sum, respondent’s conduct demonstrated unfitness to teach within the meaning of *Morrison* and its progeny, particularly *Woodland*. Respondent’s behavior set forth in the Factual Findings revealed the temperamental and dispositional deficits required for proof of evident unfitness for service. Respondent’s unprofessional conduct is the product of an irremediable deficit in her demeanor, disposition and temperament, within the meaning of *Woodland*.

14. Therefore, a separate and additional legal basis exists to sustain the District’s dismissal action, within the meaning of Education Code section 44932, subdivision (a) (6).

III. UNSATISFACTORY PERFORMANCE

15. As set forth in the Factual Findings, the District failed to prove that respondent’s performance was unsatisfactory within the meaning of Education Code section 44932, subdivision (a) (5). The cause for discipline alleging unsatisfactory performance was not proved and must be dismissed.

DISPOSITION

16. All facts and circumstances, including all facts in aggravation, mitigation, justification and rehabilitation were carefully considered by the Commission, mindful of the fact that termination is an exceedingly serious sanction with wide ranging negative consequences for a tenured teacher. Nevertheless, under all the facts and circumstances proved, the District’s action to dismiss respondent from employment with the District is well

supported in the evidence and is a reasonable and appropriate disposition under the circumstances. The District's action to terminate respondent's employment with FUSD is sustained.

ORDER

The action of the Fresno Unified School District to terminate the employment of tenured teacher Olga Valle for unprofessional conduct and evident unfitness for service, separately and severally, is **AFFIRMED**.

Respondent's appeal of the Cause for Dismissal based on unsatisfactory performance is **AFFIRMED**, but in all other respects, respondent's appeal is **DISMISSED**.

We the members of the Commission on Professional Competence, certify that the attached Decision in the Matter of the Accusation Against Olga Valle is our true and correct Decision.

/s/

JOSHUA EZEKIEL
Member, Commission on Professional Competence

DATED: March 19, 2015
AT: Salinas, CA

/s/

LORI WELCH
Member, Commission on Professional Competence

DATED: March 23, 2015
AT: Sanger, CA

/s/

STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings
Member, Commission on Professional Competence

DATED: March 26, 2015
AT: Sacramento, CA