

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS AND A
COMMISSION ON PROFESSIONAL COMPETENCE
ANAHEIM UNIFIED HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

JILL BRIQUELET,
A Permanent Certificated Employee,

Respondent.

OAH No.: 2016040305

DECISION

The Commission on Professional Competence (Commission) heard the above-captioned matter in Los Angeles on October 10, 11, and 14, 2016, and on February 22 and 23, 2017. The Commission members were Amber Hughes, Adam Camacho, and John E. DeCure, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presiding. The Anaheim Union High School District (the District) was represented by attorneys Daniel R. Shinoff and Amanda M. Friedman, of Artiano Shinoff. Respondent Jill Briquelet (respondent) appeared with her attorney, Richard J. Schwab, of Trygstad, Schwab & Trygstad.

The matter was submitted for decision on February 23, 2017. The Commission hereby makes its factual findings, legal conclusions, and order.

INTRODUCTION AND STATEMENT OF THE CASE

In this proceeding the District seeks the termination of one of its tenured lead counselors, respondent Jill M. Briquelet. Three statutory grounds were asserted as justifying termination: dishonesty (Ed. Code, § 44932, subd. (a)(4); evident unfitness for service (Ed. Code, §§ 44932, subd. (a)(6); and persistent violation of or refusal to obey state laws or regulations, or the district's regulations, for the governance of schools (§44932, subd. (a)(8)).¹

The central allegation of this case is that respondent authored an anonymous letter, which was mailed to a school board member and two other school officials at Oxford

¹ All further statutory references are to the Education Code.

Academy (Oxford), where respondent is the lead counselor. The letter alleged that Oxford's principal, Ron Hoshi, created a negative work environment, was dishonest, and had violated school and district admissions policies by exercising favoritism in the admission of five new students to Oxford for the upcoming 2015/2016 school year. The District further alleged that when respondent revealed information regarding the five students in the letter, she violated school and district confidentiality rules. Lastly, the District alleged respondent continuously obstructed its subsequent investigation into the charge contained in the anonymous letter that Oxford engaged in unfair student admission practices.

Respondent denied all of the allegations. She provided evidence regarding the facts and circumstances of the events referenced in the Amended Notice of Charges, and otherwise provided evidence in support of her retention by the District. The evidence failed to establish the District's factual allegations against her. The Commission finds and concludes, unanimously, that cause for termination has not been established.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Complainant Brad Jackson (complainant) executed the Amended Notice of Charges in this matter while acting in his official capacity as Assistant Superintendent of Human Resources of the District.

2. The District commenced this proceeding on February 22, 2016, when complainant executed a Notice of Charges against respondent. That Notice of Charges was filed with the District's governing board, which thereafter determined to terminate respondent.

3. On February 22, 2016, the District gave respondent written notice of its intent to terminate her, and served respondent with a copy of the Notice of Charges. Respondent made a timely request for hearing. She then filed a Notice of Defense, and this hearing ensued.

4. On July 26, 2016, the District executed an Amended Notice of Charges against respondent. That Amended Notice of Charges was filed with the District's governing board, which thereafter determined to terminate respondent. Respondent made a second timely request for hearing.

5. All jurisdictional requirements have been met.

6. Respondent is a certificated counselor in the District's employ, credentialed to teach math, economics, and to provide pupil personnel services (in the area of school counseling) to high school students. During the spring 2015 semester at Oxford, which is the time relevant to this proceeding, respondent was the Lead Counselor at Oxford, a combined

junior high school and high school serving students from grades 7 through 12, located in Cypress, California. Among the several high schools within the District, Oxford is a nationally renowned college preparatory school known for its rigorous academic standards and a competitive admissions process.

Findings on the Factual Allegations Made Against Respondent

AUTHORSHIP OF THE ANONYMOUS LETTER

7. On or about August 13, 2015, an anonymous letter (the letter), dated the same, was delivered to Annmarie Randle-Trejo, a District appointee on its Board of Trustees, by United States mail.² The letter referenced five students, whose names are redacted herein to protect their privacy rights, and stated:

We are writing to you and the other [District] trustees to let you know about problems that have been developing at Oxford Academy. Mr. Hoshi's poor organization and communication skills, lack of sound judgment, seemingly vindictive behaviors, and the perception he gives of being completely unprepared to serve in his position have created a very negative work environment and have resulted in angry and frustrated teachers, counselors and secretaries. Mr. Matsuda³ knows about these problems but is doing nothing to resolve them because Mr. Hoshi is a personal friend. These are things we encourage you to investigate because we are sure that many staff members will be happy to share their own experiences.

More importantly we need to make you aware of Mr. Hoshi's dishonesty and his violation of school and district policy. Mr. Hoshi is only supposed to accept students who deserve to be at Oxford Academy. Students earn this honor by taking the entrance exam and scoring well enough to be admitted. We have recently discovered that Mr. Hoshi has passed over students who should have earned this honor and has instead admitted students whose parents he knows and favors or those who have siblings he favors. What is even more concerning is that Mr. Hoshi admitted a student named [name redacted] (Rank 40, Area 38), whose mother was paid to arrange an East Coast College Tour that Mr. Hoshi promoted to Oxford families and that he himself attended. Here are the names of several other

² Copies of the letter were also sent to two persons on Oxford's teaching and administrative staff, by U.S. mail, on or about August 13, 2015.

³ Mr. Matsuda is Michael Matsuda, the District's Superintendent.

students we have learned were selected out of rank: [name redacted] (Rank 64, Area 32), [name redacted] (Rank 32, Area 37), [name redacted] (Rank 38, Area 40), and [name redacted] (Rank 32, Area 37). We are certain there are others.

Oxford Academy is an incredible school and we do not want to see its reputation damaged. Can you imagine what would transpire if the cheated students' parents learned about this? What might happen if the media or Gloria Romero⁴ and her charter school supporters were informed of this? Please look into these matters and take action on behalf of the parents, students and staff of Oxford Academy because we deserve better.

Sincerely,

Concerned in Cypress

8. Soon after the letter was received, the District commenced an investigation to determine the source of the letter, and to inquire into the allegations of unfair admissions practices set forth in the letter.⁵ The District asked a licensed private investigator, Nicole Miller, to conduct the investigation. Ms. Miller interviewed multiple witnesses, most of whom were Oxford employees. Ms. Miller also interviewed respondent, and respondent's husband, John Briquelet, a high school principal and former District employee.

9. At no time did anyone subject to the District's investigation, including respondent, admit to having authored the letter. No direct evidence was found to establish who had authored the letter. Instead, the District's allegation that respondent authored the letter was based on circumstantial evidence, theory, and conjecture as follows.

ACCESS TO THE ADMISSIONS LIST

10. The names, rankings, and school areas of the five students referenced in the letter were derived from a master admissions list (list) compiled by Oxford's then registrar, Kartha King. The list was to be used by Mr. Hoshi to determine which students who had applied for admission would be admitted to Oxford for the upcoming 2015-2016 school year. The list was compiled from several sub-lists, one for students in the geographic area of each

⁴ Gloria Romero, a former California State Senator and the former Director of California Democrats for Education Reform, is active in the realm of education reform.

⁵ Although the ostensible purposes of the investigation included an analysis of the letter's contents, the evidence established that the District's primary objective was to determine who wrote the letter.

junior high school in the district, with each such school assigned an “area” number; those sub-lists ranked each student based on his or her overall score on a pre-admission entrance examination that tested students in math, English and essay writing. Every student that applied and was tested appeared on the sub-list for his or her area’s junior high school. Thus, far more than 25 students appeared on each sub-list. The students’ applications and grade-point-averages were also recorded and considered in the selection process. Although the 25 top-ranked students from each junior high school area were initially offered admission, each year a certain number of those students would typically decline Oxford’s offer, choosing to attend school elsewhere. This resulted in a number of additional openings for admission during each admission cycle, and these newly-available positions were filled at the discretion of the school principal. There were also District policies for the principal to consider. One District policy allowed for an exception to the top-25 admission policy for students of District employees, who were offered admission to Oxford as a “perk” attendant to their parents’ employment. Another District policy favored the admission of any new student who had a sibling currently attending Oxford. Mr. Hoshi followed both policies while also exercising his discretion to fill additional openings.

11. The District initially contended that the author of the anonymous letter would have had access to the list prior to authoring the letter, since the letter contained confidential admissions information regarding the five students specifically mentioned. This contention was both logical and reasonable, as several Oxford employees, including Ms. King, Mr. Hoshi, and respondent, testified that the list was the primary source of such specific admissions information.

12. The District’s second contention was that respondent, who had access to the list, was therefore the author of the anonymous letter. This contention was not established by the evidence. Respondent’s access to the list was brief, and preceded Mr. Hoshi’s selection of the students referenced in the letter. Moreover, because the list was unsecured and kept in a busy common space, a wide number of other people may also have had access to it. The specific facts and circumstances are as follows.

13. Respondent had access to the student admissions information only once, when she was asked by Ms. King in the spring of 2015 to assist her in selecting the top 25 students from each sub-list. Ms. King testified that although this was a process Mr. Hoshi was responsible for completing, he had been “evasive” about following through and had failed to take action, frustrating Ms. King. Respondent spent approximately 15 to 20 minutes working with Ms. King, using a formula to deduce the top 25 ranking students on each area sub-list. When respondent finished, Ms. King took back the list, which she later presented to Mr. Hoshi so that he could engage in his final selection process. According to Ms. King, Mr. Hoshi was grateful to respondent for her assistance when Ms. King described to him how respondent had helped her.

14. The evidence established that respondent’s act of assisting Ms. King with the selection process was respondent’s only exposure to the list. This being so, a reasonable presumption cannot be made that during that brief period while she provided assistance,

respondent could have also gleaned specific student-ranking information regarding the five students whose non-admission would be protested in the letter. The sub-lists were substantial, as they contained information regarding every student applicant from each District area, not just the 25 top students. As she sat with Ms. King and compiled top 25 rankings for every sub-list, respondent also would have had to memorize information about other students beneath the cusp of the top 25, on several sub-lists. All this she would have to accomplish within a time-window of 15 to 20 minutes, and with the school registrar sitting beside her. This was hardly a prime opportunity for respondent to study the list for other information regarding students who were below the cusp of the top 25. The evidence did not establish that Respondent could plausibly perform such a feat of memory.

15. The timing of respondent's only exposure to the list also fails to implicate her. In short, her exposure came too early: At the time respondent helped Ms. King with the preliminary selections, Mr. Hoshi had not yet seen the list. Thus, as respondent went over the admissions information with Ms. King, she would not have known what to even look for in order to argue later that Mr. Hoshi engaged in an inequitable selection process or committed admissions-policy violations. It was too soon for respondent to even consider those possibilities, because no controversy existed. Mr. Hoshi had yet to make his selections.

16. The District further alleged respondent also had access to the list at a later date, which would have facilitated her in writing the letter. But the evidence failed to establish this contention. After Ms. King retired as Oxford's registrar in June 2015, she was replaced by Josefina Laris in July 2015. Ms. Laris testified that sometime before the 2015-2016 schoolyear began, respondent asked Ms. Laris for a list of new students, to be used for the new-student orientation process. However, Ms. Laris had no recollection of actually locating or providing such a list to respondent. Ms. Laris was also unclear as to whether the list of new students was a list that would have contained student admissions information.

17. The District presented no other evidence to prove respondent accessed the list at a later date. Respondent adamantly denied she ever saw the list after Mr. Hoshi made his final admissions selections.

18. The evidence established that any number of people other than respondent potentially had access to the list, as follows.

19. At one point in the summer of 2015 the list's location was uncertain. After Ms. King retired, her registrar's items, some of which were placed in binders, were boxed up and placed in a conference room. Ms. Laris could not recall whether she located Ms. King's binders before or after the District's investigation. Ms. Laris believed there was an original list, and one copy, but she could not recall ever seeing either list. Mr. Hoshi kept the original, and the registrar had the copy.

20. Mr. Hoshi testified that to his knowledge, the list never went missing.

21. The copy of the list was kept in a drawer in the registrar's desk. The evidence did not establish that any specific security measures were routinely taken to secure confidential documents kept in the registrar's desk. The desk's location was also problematic. Sometime during the previous school year, Oxford's administration had the registrar's desk moved from a private office into the school's main office, in a busy spot open to foot traffic from teachers, students, administrators, parents, and others. Because the registrar's desk was a place where confidential student information was kept, several witnesses, including Ms. Laris, Ms. King, and respondent, testified that this main-office location was less than ideal, as the desk was not cordoned off in a cubicle or protected by a surrounding countertop. Too many people routinely occupied the same space, and there was no privacy. When Ms. Laris began her position as school registrar in July 2015, which was after the 2015-2016 admissions selections had been made, she was concerned about her desk being "out in the middle" and requested that the school provide her with a locking file cabinet. A few weeks after the District's investigator interviewed her, Ms. Laris received the locking file cabinets she had requested.

22. The sum of the evidence established that the list was kept in an open space in a main office and was not consistently secured or safeguarded. Thus, no reasonable inferences can be made as to who may have had access to the list, and whether such a person would be more likely to have written the letter. Under the circumstances, those possibilities were too broad to be probative of respondent's alleged conduct.

RESPONDENT'S AGREEMENT WITH THE LETTER'S CONTENTS;
WORKING WITH MR. HOSHI

23. The District contended that because the letter contained multiple criticisms of Mr. Hoshi, and because respondent was similarly critical of Mr. Hoshi, she was the letter's likely author. This theory was undermined by the testimony of multiple witnesses who were currently or previously employed at Oxford and had worked with Mr. Hoshi. All but one of those witnesses expressed reservations and concerns regarding Mr. Hoshi's abilities as principal. The District further posited that respondent did not get along with Mr. Hoshi, and due to her frustration with him, she authored the letter. Although the evidence established that respondent and Mr. Hoshi did not always enjoy a good working relationship, by most accounts, including their own, they continued to work together. None of the evidence regarding their workplace collaboration allowed for a further reasonable inference to be made that respondent was thereby compelled to write the letter. The relevant evidence regarding these issues is as follows.

24. Kathy Scott was Oxford's principal for seven years, from approximately 2006 until 2012, and she worked with Mr. Hoshi acting as her assistant principal during that time. She recalled that Mr. Hoshi and respondent had problems working together at times, but they often agreed with one another and collaborated as a team. Ms. Scott knew respondent was sometimes frustrated with Mr. Hoshi's lack of leadership, but other faculty members made similar complaints about Mr. Hoshi. Ms. Scott viewed Mr. Hoshi as having weaknesses as a leader and taking workplace events "very personally." He also took it personally if others

criticized his work. If he grew upset, he was known to have “temper tantrums.” Ms. Scott did not recall respondent complaining to her that Mr. Hoshi was “vindictive,” as set forth in the letter, nor did respondent complain that Mr. Hoshi was unprepared, or had a personal relationship with Superintendent Matsuda.

25. Ms. King saw Mr. Hoshi as “not a very organized principal” who was often occupied with other things, and was not a good communicator. Ms. King believed respondent disliked Mr. Hoshi as a principal and did not conceal her concerns about him. However, Ms. King was aware that other Oxford staff shared mutual concerns about Mr. Hoshi.

26. Shelly Nicola, an Office Assistant at Oxford since 2004, had worked with Mr. Hoshi since 2009, when he became assistant principal. Ms. Nicola recalled witnessing stress and tension between Mr. Hoshi and respondent at times, when they “didn’t see eye-to-eye.” She did not recall respondent speaking critically of Mr. Hoshi to others.

27. Hiba Taylor, a Teacher on Special Assignment at Oxford who has been employed at the school since approximately 2007, testified that Mr. Hoshi was not a good communicator, was not organized, and had a general reputation at Oxford as not being a very good leader. Ms. Taylor was aware that sometimes there was stress or tension between respondent and Mr. Hoshi when those two worked together. Respondent’s reputation as Oxford’s lead counselor is excellent. She is known as a strong leader on campus and a hard worker who is very honest, straightforward, and willing to say what she believes.

28. Bruce Stevens, a teacher of biology and eighth-grade math, has taught at Oxford since the school first opened in 1998. He has worked with Mr. Hoshi since 2000, when Mr. Hoshi began at Oxford as a choir director, then later when Mr. Hoshi became an assistant principal, and finally the principal. He described Mr. Hoshi as a poor communicator who often does not finish his own sentences when he speaks. Mr. Hoshi is not well organized during his meetings with staff, and as a result, his meetings were often “a jumble.” Mr. Stevens believed Mr. Hoshi exercises unsound judgment, sometimes prioritizing students’ participation in sports and musical events over the students’ timely completion of their school work. Because Oxford is primarily an academically rigorous college preparatory institution, Mr. Stevens sees Mr. Hoshi’s priorities as principal as not aligned with the school’s main objectives. Halfway through Mr. Hoshi’s first year as principal, Mr. Stevens, who was then the science department chairperson at Oxford, resigned from his post. The chairpersons of the math, English, and social studies departments also resigned from their posts at or about the same time. Mr. Stevens and the other department chairs resigned in response to having meetings with Mr. Hoshi, during which Mr. Hoshi would dictate his own meeting agenda and essentially tell the chairs “how to run their departments.” Mr. Stevens never told Mr. Hoshi why he resigned because he believed Mr. Hoshi was vindictive. Mr. Stevens has discussed Mr. Hoshi’s problems as principal with other staff at Oxford several times. Respondent had complained to Mr. Stevens about things Mr. Hoshi did that she did not like, but Mr. Stevens did not consider respondent to be a “gossip.” Mr. Stevens has worked with respondent for approximately 13 years and said she

is known as being hard-nosed, amenable, forthright, honest, diligent, and well-respected at Oxford.

29. Deanna Miner, Oxford's instrumental-music teacher, has worked on the school's teaching staff since approximately 2004. She described Mr. Hoshi as being frustrated with respondent for not always being "on board" with his objectives. Because Mr. Hoshi is Ms. Miner's current boss, she felt reluctant to criticize him, but over time, his style of running the school has made it difficult for her to do her job. She described respondent as not being a "gossip" about Mr. Hoshi.

30. Respondent testified she had experienced difficulties and frustrations at times working with Mr. Hoshi, and he with her. However, she maintained a professional relationship with him and tried to make improvements. In May 2015, she contacted Dr. Jared Fried, the District's Assistant Supervisor in charge of Human Resources, and asked Dr. Fried to set up a meeting with her and Mr. Hoshi, so that she and Mr. Hoshi could explore how to better work together. Dr. Fried was aware of respondent's concerns that the overall work environment was at times chaotic, and that communication between she and Mr. Hoshi was not always good. In June 2015, Dr. Fried conducted the meeting. Respondent and Mr. Hoshi were able to air their concerns, and they discussed how they might improve their working relationship. Respondent and Mr. Hoshi ultimately agreed they were happy to be working together, and overall, respondent felt the meeting was productive.

31. The evidence established that respondent offered to help Mr. Hoshi with his principal's duties in a manner that went beyond her role as lead counselor. In 2014, Mr. Hoshi sought assistance from respondent through her husband, John Briquet, who was the principal at Loera High School, which is also within the District, from 2012 to 2016. Upon Mr. Hoshi's request, respondent set up a meeting between her husband and Mr. Hoshi, and Mr. Briquet provided advice and suggestions to Mr. Hoshi regarding how to plan out his first school year at Oxford as its principal. The meeting was productive, and Mr. Hoshi was grateful to respondent and Mr. Briquet for their support. On another subsequent occasion, Mr. Briquet provided advice to Mr. Hoshi about whether Mr. Hoshi's proposed class assignment for a teacher at Oxford might run afoul of the current teacher's-union employment contract.

32. Nicole Miller, the private investigator, interviewed Mr. Briquet, among others, during the course of her investigation. Mr. Briquet testified credibly that when Ms. Miller interviewed him, she asked him whether Mr. Hoshi was a good leader. Mr. Briquet responded by saying he had no firsthand knowledge of Mr. Hoshi's leadership abilities. Ms. Miller then told him, "I don't think Mr. Hoshi was a good leader."⁶

⁶ When Ms. Miller testified, she admitted having told Mr. Briquet she did not believe Mr. Hoshi was a very good principal.

33. Only one witness testified in support of Mr. Hoshi's abilities as a principal. Hilda Vasquez, Oxford's Assistant Principal, described Mr. Hoshi as a good communicator and a fine leader who enjoyed a solid reputation as principal. Ms. Vasquez observed respondent and Mr. Hoshi in weekly leadership meetings, and she believed respondent was abrasive, defensive, and reactive toward Mr. Hoshi, undermining his authority. In particular, Ms. Vasquez took exception that respondent, a counselor, would speak to Mr. Hoshi, an administrator, as if respondent was on the same level with him as an Oxford employee. Ms. Vasquez displayed a substantial bias in favor of Mr. Hoshi, as he was her current supervisor and had been her assigned mentor many years ago when she was a new teacher at another high school. Ms. Vasquez displayed an equally substantial bias against respondent, having clashed with her in a school-related incident in which she allegedly called respondent a racist. Because Ms. Vasquez had "truncated" her side of the story, she was required to apologize to respondent in order to resolve the matter.

34. Mr. Hoshi described his relationship with respondent as "challenging." He met with respondent frequently on a leadership team, and felt she was undermining his authority by speaking with others after these meetings, and by not being "transparent" during the meetings. In general, Mr. Hoshi felt respondent was challenging his leadership. However, he did not contend that he and respondent could not work together. Mr. Hoshi denied he had temper tantrums on the job, explaining that he was passionate about his work. He conceded that several department chairpersons had resigned during his first year as Oxford's principal, but he did not believe their resignations were due to their objections to his leadership skills.

35. In sum, the evidence established that Mr. Hoshi had many critics at Oxford, including respondent. This generally negative view of the principal's abilities was even shared by the District's investigator. The evidence further established that respondent and Mr. Hoshi did not always get along well, yet they continued to work together. None of this evidence allowed for a reasonable inference to be made that respondent authored the letter.

INVESTIGATOR'S OPINION OF RESPONDENT'S CREDIBILITY

36. To prove respondent authored the letter, the District offered Ms. Miller's testimony that in her view, respondent lacked credibility. However, Ms. Miller's opinion was not persuasive.

37. Ms. Miller stated that when she evaluates a witness's credibility, she judges whether the witness gives honest answers that are consistent with other evidence. She also judges whether the witness shows a consistency in her statements. In other words, if a witness says she has information but won't supply it, the witness lacks consistency. Ms. Miller offered one example to show why respondent was, in her view, not a credible witness. Respondent had criticized Mr. Hoshi's abilities as principal, and told Ms. Miller three department chairs had stepped down from those positions due to Mr. Hoshi's incompetence. However, respondent would not provide Ms. Miller with the names of the department chairs. Thus, in Ms. Miller's opinion, respondent was not credible. Ms. Miller's testimony on this

issue was unpersuasive. The incident involving the resignation of several department chairpersons during Mr. Hoshi's first year as principal was well known to Mr. Stevens and Mr. Hoshi, both of whom testified about it at the hearing. Withholding the names of the department chairs is therefore not a basis for disbelief in light of this other evidence.

38. Ms. Miller was similarly unpersuasive in her assertion that respondent was not an honest witness. Respondent's statements were candid and substantive when Ms. Miller interviewed her. When respondent was shown the letter, she denied having authored it, but she did not shy away from discussing its contents, telling Ms. Miller she agreed with the assertions contained in it.⁷ Respondent also offered the opinion that she believed Ms. King would not have authored the letter. Respondent further described how she had assisted Ms. King in making admissions-process selections, a fact which concretely established respondent's exposure to the list. Respondent also openly described Mr. Hoshi's ability, as principal, to select students he wanted to see admitted to Oxford, and she further opined that the selection of the five students mentioned in the letter was unfair. None of respondent's assertions were self-serving: instead of distancing herself from the letter, she agreed with it; she offered an opinion eliminating a colleague as the letter's suspected author; and she described her use of the list. This suggests respondent was answering Ms. Miller's questions truthfully, without concern for how she might be perceived.

39. As detailed above, the evidence established, by the testimony of multiple witnesses, that respondent is a straightforward, direct, assertive person who often speaks her mind without hesitation. Judging by the content of her answers, respondent was being frank and honest, in keeping with her reputation at Oxford, when she spoke with Ms. Miller.

40. Ms. Miller exhibited biases favoring the District and against respondent. Although Ms. Miller was tasked with performing an independent investigation, her firm regularly works for the District and she receives a \$5,000 per month retainer fee from the District for performing such services. This arrangement suggests that Ms. Miller viewed the District as a regular client, an arrangement which would make it more difficult for her to approach each investigation in an unbiased fashion.

41. Ms. Miller exhibited bias against respondent when she interviewed Mr. Briquet, who testified credibly that during that interview, Ms. Miller had openly accused respondent of having written the letter. When Mr. Briquet voiced his firm disagreement, Ms. Miller further challenged him, stating that if respondent did not write the letter, then Mr. Briquet himself must have written it. Although Ms. Miller denied having confronted Mr. Briquet in this way, she was a less credible witness than was he. The evidence established that during Mr. Briquet's interview, Ms. Miller spoke disparagingly of Mr. Hoshi, stating that he was not a good principal. In doing so, the investigator was plainly repeating

⁷ Respondent qualified this viewpoint when she testified, explaining that she had no knowledge of Mr. Hoshi being vindictive or creating a hostile work environment; nor did she know who Gloria Romero was, or what Ms. Romero or the media would do if Oxford's admissions policies were discovered.

information told to her by witnesses in other, confidential interviews. Ms. Miller was also suggesting the answer to a question that she had just asked Mr. Briquelet. For an investigator conducting an independent, fact-finding investigation, such conduct showed a lack of neutrality and discretion.

42. In view of the evidence presented, complainant's logic regarding respondent's credibility was at cross-purposes. On one hand, complainant argued respondent's agreement with the letter's contents when she spoke with Ms. Miller indicates that she wrote the letter. Yet concurrently, the District offered Ms. Miller's testimony to allege that respondent was not being honest when questioned, indicating that respondent authored the letter. Neither of these disparate contentions established that respondent did any such thing. This was a constant evidentiary problem for the District: while it suggested that one inference could be made from the evidence, another, opposite inference could also be drawn. In this instance, respondent's candor regarding her views of the letter's contents just as readily suggest she is not the letter's author; had she written the letter, she would better conceal her authorship by denying any agreement with its contents, or even rejecting it outright. Instead, respondent said what she believed.

43. Considering all of these factors, the evidence established that respondent was a credible witness during the course of the District's investigation. No reasonable inferences could be made that based on respondent's interview with Ms. Miller, respondent was the author of the letter.

ALLEGED CONTINUOUS OBSTRUCTION OF THE COURSE OF THE INVESTIGATION

44. The District contends respondent continuously obstructed the course of its investigation. As evidence in support of this allegation it offered the testimony of four witnesses with whom respondent had spoken after the investigation commenced.

45. Kartha King retired in June 2015, before the letter was mailed and before the District's investigation began. She was interviewed by Ms. Miller, but could not recall receiving any instructions to not talk with anyone else about the investigation. In the summer of 2015, she attended a Los Angeles Angels of Anaheim baseball game as part of a Loera High School employees' reunion. Respondent was present at the game and expressed her unhappiness with Mr. Hoshi as a principal. Later that summer respondent called Ms. King at home. Ms. King could not precisely recall the subject of the conversation, but respondent said nothing to her about the letter.

46. Amanda Bean, a school counselor at Oxford since January 2015, testified that during the summer of 2015, she had asked respondent to refrain from having respondent's children, who were students at Oxford, walk through private school spaces reserved for school employees and staff. Respondent replied that she felt this prohibition was "funny, considering the letter going around."

47. Ms. Laris recalled attending a meeting with District administrators, Oxford teachers, and respondent, regarding an investigation. Ms. Laris did not recall anyone at the meeting directing Oxford staff, including herself, not to talk with each other. Just after the meeting, respondent told Ms. Laris the meeting was regarding the letter, but she did not tell Ms. Laris anything specific about the letter. At times during the investigation, other people told Ms. Laris about the letter, but she was unconcerned, as she felt it had nothing to do with her. Respondent once called Ms. Laris at home and told her the District was blaming the letter on respondent. Ms. Laris told respondent she did not want to discuss it. Respondent respected Ms. Laris's wishes and said no more.

48. Ms. Nicola testified that in the summer of 2015, respondent once asked her if she had spoken with Ms. Miller. At the time, Ms. Nicola did not know who Ms. Miller was, and respondent explained she was an investigator seeking information regarding Oxford's admission process. Ms. Nicola recalled no further details about this conversation. Another time, in October 2015, sometime after Ms. Nicola was interviewed by Ms. Miller, respondent had a brief conversation with Ms. Nicola in the school parking lot, telling her she believed the District thought she wrote the letter. Respondent also asked Ms. Nicola if she had told the investigator that respondent "hated" Mr. Hoshi. Ms. Nicola said no.

49. Respondent denied she ever attempted to interfere with the District's investigation, or to frustrate, in any way, the cooperation of others involved in the investigation. When she called Ms. King at home one night, it was because Ms. King had retired from Oxford, yet Ms. King had been emailed, along with respondent, about an upcoming private meeting involving school business.⁸ Respondent had called to ask Ms. King why she was being contacted about a school meeting following her retirement. By the time respondent spoke with Ms. Nicola regarding the District's belief that respondent wrote the letter, the District had already notified respondent and her lawyer in writing that respondent was to be formally charged. Respondent's attorney had directed respondent to begin speaking to people she knew who might be potential witnesses on respondent's behalf.

50. No evidence was presented to show respondent attempted to coerce, threaten, harass, intimidate, or discourage the cooperation of any witnesses during the District's investigation. Ms. Miller testified at length about her investigation, yet she made no claims that respondent interfered with her inquiries, or that any person refused to provide testimony or evidence to the District due to respondent's actions.

51. The District alleged that because it did not inform respondent in writing that its investigation had concluded, any related communications she had with others, including those occurring after the District determined to charge her with misconduct, were forbidden. Yet the evidence did not establish that the District was in the practice of providing such written notice, nor did the evidence show such written notice was ever provided to

⁸ Respondent testified that unbeknownst to her at that time, the meeting had been scheduled to inform certain Oxford employees about the letter and discuss the upcoming investigation.

respondent. Considering that the District’s investigation was plainly focused on respondent, the District’s contention that she could speak to no one until they deemed the investigation concluded was unreasonable. By this logic, the District could have indefinitely withheld notice that its investigation had concluded, rendering respondent incapable of contacting potential witnesses in preparation of her defense. Such a policy would appear unfair and in violation of respondent’s fundamental rights to due process of law.

CONFIDENTIALITY ALLEGATIONS

52. Because the evidence did not establish respondent authored the letter, the Commission need not address the corresponding allegation that she violated district policy and federal laws preserving the privacy and confidentiality of student information. The District did not prove respondent included confidential student information in the letter and, by mailing the letter, disseminated that information to others.

OTHER MATTERS

53. Multiple witnesses testified that Respondent is an exceptionally capable, excellent lead counselor with a strong reputation among the Oxford staff as well as the students and parents she serves. The evidence established that respondent has to her credit many years of good service to the District and its students. In 2015, the Coca-Cola Scholars Foundation bestowed an Educator of Distinction Award upon respondent due to her exemplary dedication to the field of education.

54. No evidence was presented to establish respondent has fixed character traits that make her unsuitable for school counseling.

LEGAL CONCLUSIONS

Legal Conclusions of General Application:

1. The Commission has jurisdiction to proceed in this matter, pursuant to section 44944, and Factual Findings 1 through 5.

2. “Unprofessional conduct” as used in section 44932, subdivision (a)(1), may be defined as conduct which violates the rules or ethical code of a profession or is such conduct that is unbecoming of a member of a profession in good standing. (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553.) However, the conduct in question, to amount to unprofessional conduct, must indicate unfitness to teach. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

3. “Evident unfitness for service” as used in section 44932, subdivision (a)(5), means “‘clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies.” Unlike “unprofessional conduct,” “evident

unfitness for service” connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, at 1444.)

4. “Immoral conduct” is not confined to sexual matters. It has been defined to mean that which is hostile to the welfare of the general public and contrary to good morals. It includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness. Or, it can be conduct that is willful, flagrant, or shameless, conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal. App.2d 808, 811 (*Weiland*); *San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466.)

5. In order for a teacher to be dismissed under section 44932, subdivision (a)(8), for persistent disobedience of applicable rules and regulations, it must be established that there has been continuous and constant refusal to obey, or behavior motivated by an attitude of continuing insubordination; a single instance of disobedience is insufficient. (*Governing Bd. of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.)

6. Even where unprofessional conduct, immoral conduct, dishonesty, evident unfitness for service, or refusal to follow rules and regulations is or are established, it must also be established that such conduct renders the Respondent unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230 (*Morrison*); *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208, fn. 12; *Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444-1445; See *Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317, 321.)

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

7(b). The rejection of testimony does not create evidence contrary to that which is deemed untrustworthy. That is, disbelief does not create affirmative evidence to the contrary of that which is discarded. That the trier of fact may disbelieve the testimony of a witness who testifies to the negative of an issue does not of itself furnish any evidence in support of

the affirmative of that issue, and does not warrant a finding in the affirmative thereof unless there is other evidence in the case to support such affirmative. (*Hutchinson v. Contractors' State License Bd.* (1956) 143 Cal.App.2d 628, 632-633, quoting *Marovich v. Central California Traction Co.* (1923) 191 Cal.295, 304.)

Legal Conclusions Pertaining to the Specific Allegations of the Accusation:

8. The evidence did not establish that respondent committed an act of dishonesty within the meaning of section 44932, subdivision (a)(4). The evidence failed to establish that respondent authored the anonymous letter in question.

9. The evidence did not establish that respondent displayed evident unfitness for service within the meaning of section 44932, subdivision (a)(4). The evidence failed to establish the allegations that respondent authored the anonymous letter in question, revealed confidential student information in the letter, or continuously obstructed the District's investigation. Even if the District had proved a single alleged violation, it did not establish that respondent has fixed character traits that make her unsuitable for school counseling. To the contrary, the record established that respondent is an excellent school counselor with many years of good service to the District and its students.

10. The evidence did not establish that respondent engaged in the persistent violation of or refusal to obey state laws or regulations, or the district's regulations, for the governance of schools within the meaning of section 44932, subdivision (a)(8). There was no evidence that respondent obstructed the District's investigation in any way. Instead, the District's investigation proceeded as planned and the witnesses the District interviewed cooperated. The handful of brief, inconsequential conversations respondent engaged in with other school personnel did not amount to her persistent refusal to obey the District's rules and regulations.

11. The Commission agrees unanimously that grounds for termination have not been established, and that consideration of the *Morrison* factors is therefore not necessary.

12. The Commission unanimously views this case as deeply regrettable, both for the complainant, who pursued the matter vigorously despite a notable lack of reliable evidence; and for respondent, whose direct, outspoken manner with the school principal cost her dearly, as it made her the prime suspect in the District's investigation.

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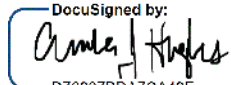
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ORDER

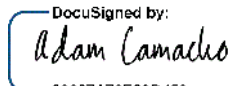
Respondent Jill Briquelet shall not be dismissed as a certificated employee of the Anaheim Union High School District.

DATED: March 23, 2017

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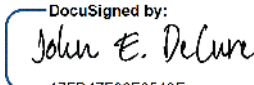
AMBER HUGHES
Commission Member

DATED: March 23, 2017

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ADAM CAMACHO
Commission Member

DATED: March 23, 2017

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JOHN E. DECURE
Administrative Law Judge
Office of Administrative Hearings