

BEFORE THE COMMISSION ON PROFESSIONAL COMPETENCE
LITTLE LAKE CITY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Notice of Intention to
Suspend and Dismiss, and the Accusation
Against

EILEEN HAWKINS,

Respondent,

OAH CASE NUMBER: 2011031053

DECISION

The Commission on Professional Competence (Commission) heard this matter on October 10-13 and 18-19, 2011, in Santa Fe Springs, California. The Commission consisted of Commission Members Jenie Vargas, Larry Sturm, and Administrative Law Judge Chris Ruiz (ALJ), Office of Administrative Hearings (OAH), presiding.

Jordan Conrad Meyer, Esq., represented Phillip Perez, Ed.D.(Complainant), Superintendent of Little Lake City School District (District).

Eileen Hawkins (Respondent) was present on each day of hearing and represented herself.

Oral and documentary evidence was received, argument heard, and the matter was submitted on October 19, 2011. The Commission began and concluded its deliberations in executive session on October 19, 2011. After due consideration, the Commission makes the following factual findings and legal conclusions.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant made the Accusation in his official capacity.
2. On February 22, 2011, the District adopted a Notice of Intention to Suspend and Dismiss Respondent, effective March 1, 2011. On March 14, 2011, Respondent was served with the Notice of Intention to Suspend and Dismiss, a Statement of Charges, a Request for Hearing and relevant Education and Government Code sections.

3. On March 1 and 22, 2011, Respondent's Request for Hearing and Notice of Defense were received, respectively, by the District, which led to the instant hearing.

4. The charges filed against Respondent are immoral conduct, unprofessional conduct, willful refusal to perform, unsatisfactory performance, and evident unfitness for service. The Notice of Intention to Suspend and Dismiss, the Accusation, and Statement of Charges are based on the same events and are the operative pleadings (pleadings)..

Background Information

5. Respondent has been employed by the District for 13 years. She is 74 years of age. She is employed as a Resource Specialist Teacher. She works with students who are in a general education classroom at least 51 percent of the time. However, these students also received special education services and were sent to the Resource Specialist Program (RSP) because they need assistance and support in order to remain, partially, in a general education classroom.

Performance Evaluation for the 2007-2008 school year

6. In May 2008, Respondent received a Performance Evaluation from Dr. Grant. (Exhibit 3.) The evaluation, which rates five areas of a teacher's performance, stated that Respondent's overall performance met her job requirements, but that in the area of "professionalism" her rating was "not met." As to Respondent's professionalism, it was not established that Respondent was failing to collaborate with the general education teachers, or anyone else. The District offered no testimony from any teacher who had a problem or issue with Respondent's ability to collaborate, or lack thereof. Dr. Grant's other critique, that Respondent's students appeared bored, was established. However, the students were bored because Respondent was utilizing the Systematic Instruction in Phoneme Awareness, Phonics, Sightwords (SIPPS) program which Dr. Grant herself described as "highly scripted and very slow paced." Thus, Respondent was merely teaching her students with the materials that the District had instructed Respondent to utilize. Dr. Grant's critique that Respondent was "often late in arriving in the morning" and was late to staff meetings was not established by the evidence. It strains credibility to imagine that a teacher, namely Respondent, would be tardy when she had a nearly perfect attendance record for 13 years, volunteered for "Monday Morning Gate Duty," and stayed until 9 or 10 p.m. on many workdays. As a result of receiving a "Not Met" rating in the category of "Professionalism," Respondent was required to be re-evaluated the next year, only in that area. Had Respondent not received a "Not Met" rating, she would have not had to be evaluated until the 2009-2010 school year. The other allegations as specified in the pleadings, as related to this school year, were not established by the evidence.

Performance Evaluation for the 2008-2009 school year

7. In May 2009, Respondent received a Performance Evaluation (exhibit 5) from Dr. Grant and Ms. McIntosh. She received a rating of "met with reservation" in the area of

“professionalism.” Respondent was rated as “overall performance has met job requirements and performance objectives with reservations in one or more areas (Area: Professionalism).” Again Respondent was critiqued for not communicating with other teachers concerning the progress of her RSP students. This critique was not established for the same reasoning as set forth in Factual Finding 6. The other allegations as specified in the pleadings, as related to this school year, were not established by the evidence.

Performance Evaluation for the 2009-2010 school year

8. In May 2010, Respondent received a Performance Evaluation (exhibit 6) from Ms. McIntosh. Respondent received one “met,” three “met with reservation,” and one “unsatisfactory” rating. In the two prior school years, the District took issue with Respondent’s “professionalism.” In this evaluation, she received a “met” rating in that area, but she received an “unsatisfactory” rating in the area of “teaching strategies.” Specifically, Respondent was critiqued for not using the CELL/ExLL strategies. This allegation was established. It was established that Respondent should have been utilizing up-to-date teaching strategies as required by the District. If necessary, Respondent should have requested additional resources, training, or assistance from the administration. The critique that Respondent should utilize graphic organizers was also established. The other allegations as specified in the pleadings, as related to this school year, were not established by the evidence.

9. Exhibit 6, page 8, describes what is supposed to occur when a teacher receives an “unsatisfactory” rating in “teaching strategies,” as did Respondent. In pertinent part, “the teacher is required to receive assistance from a Consulting Teacher as specified in the ‘Permanent Teacher Intervention Component’ in the Peer Assistance and Review program.”

10. The District did not follow its own policy and did not provide Respondent with a Consulting Teacher as discussed above. Instead, the District proceeded as discussed below. The panel concludes that the District’s failure to follow its own policy makes the discipline imposed on Respondent improper.

The 2010-2011 school year

11. On May 26 and June 18, 2010, Respondent met with Dr. Joseph Ibarra (Ibarra). Ibarra prepared a written summary of what they discussed. (Exhibit 2.) He instructed Respondent to complete all Individualized Education Plan (IEP) goals and objectives within one month of the initial date of the IEP meeting. He also directed Respondent to input all components of the IEP into the SEIS program within three days of the IEP meeting. SEIS is a computer program which is utilized to complete the IEP report. He also directed her to perform three other tasks which are not necessary to discuss for purposes of this Decision. The Commission finds that Dr. Ibarra’s instructions in these two areas were reasonable, albeit inappropriate for the reasoning set forth in Factual Finding 10.

12. On September 2, 2010, the second day of the school year, Respondent was

required to meet with her administrators. They provided her with a “90-day Performance Improvement Plan” (PIP)(exhibit 8). Respondent did not agree to the PIP, but acknowledged that she received a copy. Instead of including Ibarra’s prior instructions to Respondent, the PIP required Respondent to “sign and attest” all IEP reports immediately after the meeting and also required her to bring a pre-prepared IEP report to the IEP meeting using the SEIS computer program. These directives were more stringent than those recommended by Ibarra only two months earlier. Additionally, although the District was aware that Respondent was having difficulty with her workload, the District added additional Response to Intervention (RTI) students to her workload. The Commission finds that requiring Respondent to “affirm and attest” all IEP reports on the same day of the IEP meeting is unreasonable, as is adding additional RTI students to Respondent’s already heavy caseload. Further, having an IEP report almost completely filled out before the IEP meeting is unreasonable. The whole point of an IEP meeting is for the team members to discuss the student’s specific needs, goals and objectives. As such, much of the IEP report can not be completed before the IEP meeting concludes, especially since meeting notes need to be added, goals require updating, some pages require signatures, and the team needs to be in agreement.

13. In sum, the District’s PIP was unreasonable and virtually ensured Respondent’s failure. After the PIP, there were various conferences, warnings, and letters of reprimand issued to Respondent or with Respondent. Ultimately, Respondent was evaluated for the final time on February 8, 2011. Within hours thereafter, Respondent was given a “2010-2011 Performance Evaluation” and a “Final Evaluation of 90-day PIP.” (Exhibits 41 and 42.) The District concluded in the 90-day evaluation that Respondent had failed to perform the action(s) as stated in the PIP. The District concluded in the performance evaluation that Respondent rated as “unsatisfactory” in the areas of “subject matter knowledge”¹ and “teaching strategies.”

14. Evaluating Respondent and then immediately issuing the two evaluations discussed directly above established that the District had already decided to take additional disciplinary action against Respondent prior to her final evaluation on February 8, 2011. As discussed in Factual Finding 9, the “Performance Evaluation” (exhibit 42) again uses the language that, “the teacher is required to receive assistance from a Consulting Teacher as specified in the ‘Permanent Teacher Intervention Component’ in the Peer Assistance and Review program.” Again, the District failed to follow its own policy. Instead, the District suspended and dismissed Respondent.

15. The Commission notes that Respondent did not initially respond to the 2007-2008 and 2008-2009 evaluations that were critical of her performance. Respondent could, in general, have been more assertive and communicative with the District regarding her need for assistance. She could have been more open-minded to new teaching strategies and the use of a computer. She could have had a more positive attitude toward the implementation of the SEIS program. However, Respondent was submissive to the District’s directives.

¹ This was the first time the District found Respondent’s “subject matter knowledge” to be “unsatisfactory.”

That is, when she had a heavy caseload, she did not complain or ask for help. Instead, she worked late. Her workload was so heavy that when she was suspended her students were reassigned to two RSP teachers, rather than only one. When the District began issuing critical evaluations, she attempted to appease the District by attempting to perform the tasks they wanted done, no matter how difficult or unreasonable. While Respondent may not be a perfect teacher, it was undisputed that she deeply cared for her students and she tried to do her very best. The overall evidence established that the District did not follow its own policy and proactively try to assist Respondent. Instead, they asked her to perform in an almost physically impossible manner. It was established that the District did not have any basis to impose any discipline against Respondent. Any allegations stated in pleadings that are not discussed above were not established by the evidence.

LEGAL CONCLUSIONS

1. The standard of proof in this proceeding is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

2. The grounds for the dismissal of a teacher in this state are enumerated in Education Code section 44932, subdivision (a). In this case, the District relies on the following grounds: immoral conduct/unprofessional conduct, willful refusal to perform, unsatisfactory performance, and/or evident unfitness for service.

3. Respondent should not have been suspended or dismissed. The District did not establish that Respondent should be subject to discipline pursuant to California Education Code section 44932 or section 44939. This conclusion is based on Factual Findings 1-15.

//

//

//

//

//

//

//

//

//

ORDER

The Notice of Intention to Suspend and Dismiss, the Accusation, and the Statement of Charges against Respondent Eileen Hawkins are dismissed. Respondent Eileen Hawkins shall be retained as an employee of the Little Lake City School District and her period of suspension was unwarranted.

DATED: _____

Jenie Vargas, Commission Member

DATED: _____

Larry Sturm, Commission Member

DATED: _____

Chris Ruiz, Commission Member,
Administrative Law Judge