

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

In the Matter of the Dismissal of:

KELLI KUMA,

A Permanent Certificated Employee,

Respondent.

OAH No. 2017120685

DECISION

This matter came on regularly for hearing before the Commission on Professional Competence (CPC or Commission) in Caruthers, California on April 23, 24, and 25, 2018. The Commission was comprised of Mitchell Brown, Katharine Cuttome, and Administrative Law Judge Erin R. Koch-Goodman.

Jason C. Parkin, Attorney at Law, Fresno County Superintendent of Schools, represented the Caruthers Unified School District (District).

Joshua F. Richtel, Attorney at Law, Tuttle & McCloskey, represented Kelli Kuma (respondent), who was present at hearing.

The Commission met to deliberate on April 26, and May 17, and by stipulation of the parties, the matter was submitted for decision at the conclusion of the Commission's deliberations on May 17, 2018.

SUMMARY

From September 2016 through October 2017, respondent submitted monthly timesheets to the District, verifying she provided Home and Hospital Instruction (HHI) for four students: KS, IS, AA, and AE.¹ Respondent claimed and received HHI compensation for five hours per student per week. By her own admission, respondent's timesheets were

¹ The names of respondent's students, as well as those of their family members, have been replaced with initials, as set forth in the Confidential Names List. A Protective Order has been issued for the Confidential Names List and Exhibit 13, a transcript of IS.

not a true accounting of her time spent on HHI duties. Repeatedly submitting false HHI timesheets to the District constitutes immoral conduct, dishonesty, and an evident unfitness for service within the meaning of Education Code sections 44932, subdivisions (a)(1), (4), and (6), and 44939.² Based upon the evidence, the Commission concluded that respondent's conduct warrants her dismissal from the District.

FACTUAL FINDINGS

1. Respondent has been employed by the District as a teacher since 2003. At all times relevant, respondent was employed as a teacher at MARC Continuation High School (MARC) in Caruthers. In addition to her regular teaching assignment, respondent also provided HHI for students with temporary disabilities. In 2016 and 2017, respondent provided HHI services to four students, KS, IS, AA, and AE, who were all MARC students.

2. On October 23, 2017, the Board of Trustees of the District adopted Resolution #2017-17 Accepting a Verified Statement of Charges in Support of Dismissal, Notice of Intent to Dismiss and Immediate Suspension Without Pay, alleging respondent repeatedly submitted fraudulent HHI timesheets to the District. More specifically, the Statement of Charges contends respondent falsely recorded her HHI time by either greatly inflating or totally fabricating her hours; thereby committing immoral conduct, dishonesty, and evident unfitness for service (Ed. Code, §§ 44932, subds. (a)(1), (4), and (6), and 44939). The Board directed that notice be given to respondent of its intention to dismiss her, pursuant to section 44930 et seq., at the expiration of thirty (30) days from the date of service of the Statement of Charges. The District served the Statement of Charges on respondent on October 24, 2017. On November 2, 2017, respondent timely returned her Demand for Hearing and Notice of Defense.

Policies and Procedures

3. In March 2000, the District adopted Administrative Regulation (AR) 6183, entitled Home and Hospital Instruction, which states, in part:

A student with a temporary disability which makes school attendance impossible or inadvisable shall receive individual instruction in the student's home or in a hospital or other residential health facility, excluding state hospitals. This instruction applies to students incurring a physical, mental or emotional disability after which they can reasonably be expected to return to regular day classes or an alternative education program without special intervention. It does not apply to students identified as individuals with exceptional

² Unless otherwise indicated, all further statutory references will be to the Education Code.

needs pursuant to Education Code 56026 (Education Code [§] 48206.3)

Home or hospital instruction shall be provided only by teachers with valid California teaching credentials who consent to the assignment. (Education Code [§] 44865)

The district shall offer at least one hour of instruction for every day of instruction offered by the district in the regular education program. No student shall be credited with more than five days of attendance per calendar week or credited with more than the total number of calendar days that regular classes are offered by the district in any fiscal year. (Education Code [§§] 48200, 48206.3)

Insofar as possible, the teacher providing home or hospital instruction shall consult with the student's current classroom teacher(s) so as to provide a continuity of instruction that enables the student to stay abreast with the regular school program.

4. The District implements AR 6183 as follows: once a student is designated as HHI eligible, the District seeks out a certified teacher willing to take on the HHI assignment. On a weekly basis, the HHI teacher is expected to: contact the student's classroom teachers; collect all assigned work; transport assignments to the student's home or hospital room; offer at least one hour of instruction for every day of instruction offered by the District; retrieve completed assignments; and deliver the completed work back to the student's classroom teachers. HHI duties occur outside the regular school day, unless the student is assigned to the HHI teacher's classroom. Then, the time taken to prepare, assign, and grade the student's work is already compensated for in the teacher's annual salary, and HHI time would only be claimed for the weekly instruction time, and dropping off and picking up the student's work. An HHI teacher is also responsible for completing and submitting monthly timesheets. The District HHI timesheets have five columns: Date, Duties Performed, Time In, Time Out, and Total Hours, as well as a signature block for the teacher and the supervisor. HHI teachers can claim up to five hours per student per week, with at least one hour per week spent visiting/instructing the student.

MARC Continuation High School

5. MARC provides high school students with an alternative to the comprehensive Caruthers High School (Caruthers HS) experience. Typically, MARC students are in danger of not graduating from a traditional high school. While the requirements to graduate are the same at Caruthers HS and MARC, MARC offers students flexible scheduling to earn credits at a quicker pace. In general, MARC instruction and learning is offered online via Odysseyware (Periods 3, 4, and 6), classroom instruction in English and Math (Period 1) and

Leadership (Period 5), and outside instruction and participation in Physical Education (Period 2). The English, Math, and Physical Education classes are taught by Caruthers HS teachers and Leadership/Prodigy is taught by a Caruthers HS counselor, with respondent as the teacher of record.³ Students are not required to participate in classroom instruction in English, Math, Leadership, and Physical Education, and instead, can complete all core subjects using Odysseyware. Odysseyware offers students material to read and provides quizzes, tests, and projects to complete. MARC also requires Odysseyware students to complete one page of notes on each lesson. Overall, Odysseyware requires little grading by the assigned teacher.

6. In the 2016-2017 school year, respondent was the only credentialed full-time teacher at MARC. Each day, respondent had students in her classroom Periods 3, 4, 5, and 6; she was the assigned teacher for Leadership (Period 5). Periods 3, 4, and 6 were Credit Recovery, during which respondent monitored a classroom of students using Odysseyware at individual computer terminals, and graded their assignments as needed.

Conduct at Issue

7. At all times relevant, KS, IS, AA, and AE were students at MARC. KS, IS, AA, and AE were completing all required coursework online via Odysseyware. If KS, IS, AA, and AE had attended classes, respondent would have been their assigned classroom teacher. In 2016-2017, respondent volunteered to be the HHI for KS, IS, AA, and AE. Almost uniformly, respondent claimed five hours per student per week for every week she was their assigned HHI teacher.⁴ Each month, respondent completed and submitted her HHI timesheets to the District. Under Date, respondent circled all numbers (1 through 31) representing Monday through Friday. Under Duties Performed, she listed “prep” or “visit” or words to that effect, next to the Monday through Friday days circled. Under Time In and Time Out, she would enter specific times (e.g., 3:30 to 4:30 p.m. or 4:00 to 5:00 p.m.) next to the “prep” or “visit” description. Respondent then totaled the hours to five per student per week or 20 hours per student per month. From September 2016, through October 2017, respondent claimed 648 hours of HHI time.

8. Stella Ybarra, District Business Office Technician, processes HHI timesheets for the District. In December 2016, Ms. Ybarra began to find “errors” on respondent’s HHI timesheets. Ms. Ybarra wrote directly onto respondent’s HHI timesheets, placing a question mark next to all days on which respondent recorded time, but the District schools were not in

³ Geographically, MARC and Caruthers HS are a school yard apart.

⁴ On occasion, respondent claimed more than five (5) hours a week; often when the school week straddled two pay periods. For example, respondent claimed six (6) hours for KS and six (6) hours for IS for the school weeks that included February 27 and 28, and March 1, 2, and 3, 2017. In addition, respondent claimed nine (9) hours for KS, nine (9) hours for IS, and eight (8) hours for AA for the school weeks that included November 28, 29, and 30, and December 1, and 2, 2016.

session or respondent was on approved leave. But for two hours, all of the HHI time respondent claimed, while school was not in session, she delineated as preparation time.⁵ On more than one occasion, Ms. Ybarra shared her concerns regarding respondent's HHI timesheets with the District, asking several District administrative staff⁶ whether respondent should be paid for the questionable HHI time. Ms. Ybarra was always told to pay respondent for the HHI time claimed, with the exception of the September 2017 timesheets. From December 2016, through September 2017, Ms. Ybarra noted and reported the following errors:

- a. On December 20, 21, 22, 27, 28, 29, 2016, and January 4, 5, and 6, 2017, respondent claimed 39 hours of HHI time for KS (13 hours), IS (13 hours), and AA (13 hours). December 19, 2016, through January 6, 2017, was winter break for the District and school was not in session.
- b. On January 16, 2017, respondent claimed three (3) hours of HHI time for KS (1 hour), IS (1 hour), and AA (1 hour). January 16, 2017, was Martin Luther King, Jr. Day, and school was not in session.
- c. On February 13, and 20, 2017, respondent claimed four (4) hours of HHI time for KS (2 hours) and IS (2 hours). January 13, 2017, was Presidents Day and February 20, 2017, was Abraham Lincoln's birthday, and school was not in session on either day.
- d. On April 10 through 14, and 17, 2017, respondent claimed 24 hours of HHI time for KS (6 hours), IS (6 hours), AA (6 hours), and AE (6 hours). April 10 through 17, 2017, was spring break for the District and school was not in session.
- e. On May 29, 2017, respondent claimed four (4) hours of HHI time for KS (1 hour), IS (1 hour), AA (1 hour), and AE (1 hour). May 29, 2017, was Memorial Day and school was not in session.
- f. On September 14, 15, and 18, 2017, respondent claimed six (6) hours of HHI time for KS (3 hours) and IS (3 hours). However, on September 14 through 18, 2017, respondent was on pre-approved leave, travelling to Georgia with her daughter for a visit to the University of Georgia. A substitute teacher covered respondent's classroom duties on September 14, 15, and 18, 2017.

⁵ On January 6, 2017, respondent claimed one hour of "call/visit" with KS from 4:00 to 5:00 p.m. On January 4, 2017, respondent claimed one hour of "conference" with AA from 6:00 to 7:00 p.m. January 4 and 6, 2017 occurred during winter break.

⁶ Ms. Ybarra spoke to Deborah Haney, her supervisor; Monica Ibarra, MARC Secretary; Tod Thompkins, MARC Principal; and Susan McCoy, Superintendent Secretary.

PREPARATION TIME

9. Between August 2016 and September 2017, respondent claimed a total of 535 hours in HHI preparation for KS (179 hours), IS (175 hours), AA (137 hours), and AE (40 hours). The District provided an Odysseyware Login/Logout Times Report (Report) listing respondent's Odysseyware activity. In sum, respondent's Odysseyware activity does not match with the preparation times she recorded on her HHI timesheets. For example:

- a. Save for one day, on all days respondent recorded preparation time and District schools were not in session or respondent was on approved leave (December 20, 21, 22, 27, 28, 29, 2016, and January 4, 5, 6, and 16, February 13, and 20, April 10 through 14, and 17, May 29, and September 14, 15, and 18, 2017), respondent did not log into Odysseyware. On December 20, 2016, respondent logged into Odysseyware from 10:19 a.m. to 12:35 p.m. for two hours and fifteen minutes.
- b. From Monday, October 31, through Wednesday, November 2, 2016:
 - October 31: respondent logged into Odysseyware from 10:55 a.m. to 11:55 a.m. Respondent claimed HHI preparation time for IS from 4:00 to 5:00 p.m., KS from 5:00 to 6:00 p.m., and AA from 7:00 to 8:00 p.m.
 - November 1: respondent did not log into Odysseyware. Respondent claimed HHI preparation time for IS from 7:00 to 8:00 p.m., KS from 6:00 to 7:00 p.m., and AA from 5:00 to 6:00 p.m.
 - November 2: respondent was logged into Odysseyware from 11:06 a.m. to 12:31 p.m., and 1:22 p.m. to 3:32 p.m. Respondent claimed HHI preparation time for IS from 7 to 8 p.m., KS from 6:00 to 7:00 p.m., and AA from 5:00 to 6:00 p.m.
- c. From Monday, March 27, through Wednesday, March 29, 2017:
 - March 27: respondent was logged into Odysseyware from 10:14 a.m. to 11:40 a.m., 10:52 a.m. to 12:10 p.m., 12:28 p.m. to 2:02 p.m., and 1:10 p.m. to 2:12 pm. Respondent claimed HHI preparation time for IS from 4:00 to 5:00 p.m., KS from 5:00 to 6:00 p.m., AA from 6:00 to 7:00 p.m., and AE from 7:00 to 8:00 p.m.
 - March 28: respondent was logged into Odysseyware from 10:18 a.m. to 12:35 p.m. and 12:59 p.m. to 4:06 p.m. Respondent claimed HHI preparation time for IS from 4:00 to 5:00 p.m., KS from 5:00 to 6:00 p.m., AA from 6:00 to 7:00 p.m., and AE from 7:00 to 8:00 p.m.

- March 29: respondent was logged into Odysseyware from 10:21 a.m. to 12:31 p.m. and 1:19 p.m. to 4:05 p.m. Respondent claimed HHI preparation time for IS from 4:00 to 5:00 p.m., KS from 5:00 to 6:00 p.m., AA from 6:00 to 7:00 p.m., and AE from 7:00 to 8:00 p.m.

d. From Monday, September 11, through Wednesday, September 13, 2017:

- September 11: respondent was logged into Odysseyware from 7:55 a.m. to 9 a.m. and 12:33 p.m. to 2:25 p.m. Respondent claimed HHI preparation time for IS from 4:00 to 5:00 p.m. and KS from 5:00 to 6:00 p.m.
- September 12: respondent was logged into Odysseyware from 8:14 a.m. to 9:19 a.m., 9:58 a.m. to 12:32 p.m., 1:19 p.m. to 3:51 p.m., and 2:51 p.m. to 4:10 p.m. Respondent claimed HHI preparation time for IS from 4:00 to 5:00 p.m. and KS from 5:00 to 6:00 p.m.
- September 13: respondent was logged into Odysseyware from 9:32 a.m. to 10:33 a.m., 9:50 a.m. to 12:46 p.m.,⁷ and 2:59 p.m. to 4:09 p.m. Respondent claimed HHI preparation time for IS from 4:00 to 5:00 p.m. and KS from 5:00 to 6:00 p.m.

VISIT TIME

10. Between August 2016 and September 2017, respondent claimed a total of 116 hours in HHI visits to KS (39 hours), IS (40 hours), AA (29 hours), and AE (8 hours). Respondent never provided in-home instruction to KS, IS, AA, and AE. She did make home visits to deliver assignments and collect completed assignments. Most often, respondent would provide assignments on a jump drive and receive completed assignments on another jump drive.

11. KS was designated as a HHI student in August 2016. IS was designated as a HHI student in September 2016. KS and IS are brothers who reside together with their mother, JS. From August/September 2016, through October 2017, respondent physically visited the KS/IS home on approximately 14 occasions. The first visit lasted approximately 45 minutes. The second visit lasted approximately 30 minutes. The third and fourth visits each lasted approximately 15 minutes. The remaining eight to ten visits lasted five to ten minutes each. At all other times, respondent and KS/IS would not see each other each week; instead, respondent and KS/IS would leave, and pick-up, jump drives via Ms. Ibarra, MARC Secretary, or Ryan Acevedo, Resource Specialist Program (RSP) Teacher.

⁷ A teacher can login on two or more computers at the same time, thereby creating multiple sessions that can show overlapping times.

12. AA was designated as a HHI student from October 2016 through May 2017.⁸ AE was designated as a HHI student from March through May 2017. Respondent physically visited AE at home five or six times, with each visit lasting approximately 30 seconds. Otherwise, respondent would leave assignments for AE on the front door stoop of her house or in the mailbox. On occasion, AE would pick up her assignments from the MARC office.

Interactions with Administration

13. In March 2016, Mark Fowler, Caruthers HS Principal, completed the proposed 2016-2017 Master School Schedule (Master Schedule) for Caruthers HS and MARC. The Master Schedule included a proposed change to respondent's schedule, adding a Period for respondent to manage all HHI students and Independent Study students at both Caruthers HS and MARC. Mr. Fowler provided the Schedule to Tod Tompkins, MARC Principal, and asked him to inform respondent of the proposed change.

14. From September 1, through October 10, 2017, respondent emailed Mr. Tompkins and Mr. Fowler with questions about Independent Study students. Respondent raised concerns about their failure to attend class or timely complete assignments and the threshold for dropping students.

15. On or about September 7, 2017, at respondent's request, Mr. Fowler met with respondent and Jennifer Tweedy, respondent's acting union representative. Respondent raised concerns about her new responsibilities and the addition to her schedule of a dedicated Period to manage all HHI students and Independent Study students at Caruthers HS and MARC. Respondent informed Mr. Fowler that her workday was already full and did not allow for an additional Period of responsibilities. Mr. Fowler walked respondent through her class schedule, identifying three Periods respondent had no teaching responsibilities: Periods 1 (English/Math), 2 (Physical Education), and 5 (Leadership). As such, Mr. Fowler viewed respondent's schedule as two-thirds and not full-time. With the additional teaching Period, monitoring HHSs and Independent Study students, respondent's schedule was full-time. Respondent informed Mr. Fowler that she was the teacher of record for Period 5 – Leadership, and as such, she was responsible for teaching students in Periods 3, 4, 5, and 6. Mr. Fowler indicated he would review her schedule again and get back to her.

16. Mr. Fowler reviewed respondent's schedule and confirmed she was the teacher of record for Period 5 – Leadership, giving her four Periods of teaching and a full-time schedule. On or about September 11, 2017, Mr. Fowler, respondent, and Ms. Tweedy met again. Mr. Fowler told respondent that he confirmed her full-time teaching schedule, and her 2017-2018 schedule would remain "status quo" with no additional Period for HHSs or Independent Study students.

17. On September 14, 2016, Veronica Villareal sent an email clarifying for staff that "[IS] is remaining on Independent Study for the semester." The same day, respondent

⁸ AA did not testify at hearing.

sent an email to Ms. Villareal and Mr. Tompkins, seeking help in setting a time to meet with KS and for permission to reclassify IS from an Independent Study student to a HHI student. Respondent's email stated:

I am meeting with KS on Thursday this week and on Wednesdays other weeks. So if she [JS] is taking him to the school will anyone be there [at home] for me to see KS. I also spoke to Tod [Tompkins] last night and with [JS] this morning regarding getting all his [IS] homework and servicing him [IS] at his house when I service [KS]. I must have spoke [sic] with her [JS] first because she didn't mention having spoke [sic] with you. Mom [JS] had said it would be a lot easier and would guarantee him [IS] doing the work knowing I am coming to pick it up and check on him. Since dr [sic] did write a not[e] for getting them [KS and IS] their work and making sure they [KS and IS] complete it each week. [sic] Can we go ahead and do that? I had already made IS a folder and have weekly homework templates made out for him [IS] anyway because I[n] Speaking [sic] with [JS] the last couple weeks that was the plan. Let me know as I will be going out to see KS tomorrow and need to know whether or not to take IS work or not.

18. The same day, Ms. Villareal replied, sending an email to respondent, copied to Mr. Tompkins and Mr. Fowler. The email read:

You will have to speak with the S family regarding someone being home for your meeting with KS. As the home hospital teacher you schedule the time with the family for your 1 hour weekly meetings.

Mr. Tompkins will follow-up with you regarding IS.

Respondent's Contentions

DISCRIMINATION AND RETALIATION

19. Respondent has been a full-time teacher with the District for 13 years. Prior to her fulltime work, respondent was employed by the District for two years as a part-time teacher at the Adult School. Overall, she believes the District has treated her quite poorly, perpetrating multiple acts of intimidation and discrimination against her. Respondent pointed to several examples. First, in 2010, without cause, she was reassigned from her teaching responsibilities at Caruthers HS to Caruthers Elementary School for the 2010-2011 school year. In addition, in December 2010, without cause, she was removed as the coach for the Caruthers HS girls' softball team. Respondent believes she was transferred to Caruthers Elementary School and stripped of her coaching duties because she publicly

criticized the District for failing to comply with Title IX of the Education Amendments Act of 1972. In Fall 2010, respondent spoke at several District meetings, seeking a girls' softball field on the Caruthers HS campus, instead of being forced to practice and play in the park across the street from the school. Respondent noted that Caruthers HS has two boys' baseball fields and no girls' softball fields. Respondent did not file an appeal or grieve her reassignment to Caruthers Elementary School or her removal from coaching.

20. Second, in 2017, the District attempted to change her teaching schedule without notice. Respondent first learned of the schedule change (i.e., her new Period managing HHI and Independent Study students at both Caruthers HS and MARC) three weeks into the Fall 2017 semester. When respondent learned of her new responsibilities, she requested a meeting with Mr. Fowler. Respondent asked Mary Bettschild, union president, to attend, but Ms. Bettschild was unavailable and Ms. Tweedy came in her stead. In the meeting, Mr. Fowler threatened respondent, telling her she was a two-thirds teacher, and to remain employed, additional responsibilities had to be added to her schedule. Mr. Fowler rescinded the proposed schedule change after respondent informed him she was the teacher of record for the Period 5 – Leadership class, and therefore, already had a full schedule.

21. Third, in October 2017, after respondent was dismissed, Caruthers HS became an uncomfortable environment for respondent's daughter SK. Respondent removed SK from Caruthers HS and placed her at Washington Union HS in the Washington Unified School District. SK is an avid and competitive softball player, with pending college scholarships; because of her school change, the California Interscholastic Federation (CIF) rules precluded SK from playing softball for Washington Union without an exemption. SK applied for the CIF exemption, but Mr. Fowler challenged the exemption three times. Ultimately, SK was granted the exemption and allowed to play softball at Washington Union. Fourth, in Fall 2017, respondent's ex-husband, DK, was informed he would no longer be a coach for the Caruthers HS boys' football team or the local Pop Warner team either.

THE DISTRICT DOES NOT FOLLOW POLICY

22. Respondent believes the District routinely does not follow proper policy. First, respondent testified that she had no knowledge of a District HHI policy. She was never given such a policy and was not trained on such a policy. The District either has no such policy or provides no guidance for teachers to follow such a policy. Respondent does not believe she should be punished for the District's failures to inform and train staff.

23. Second, the District encouraged respondent to falsify her Independent Study student attendance, in violation of the Education Code. In September 2017, respondent attempted to educate the District about Independent Study attendance requirements, including dropping a student from the Independent Study program after two absences; respondent refused to sign attendance logs recording more than two absences for an Independent Study student. Mr. Fowler informed respondent that he would decide when to drop a student from the Independent Study program. In the end, Mr. Fowler took

responsibility for signing the Independent Study attendance logs and respondent simply recorded student attendance and transferred the information to him.

HHI TIMESHEETS

24. Respondent has provided HHI since 2008. The District has never informed respondent that her HHI timesheets contained accounting/reporting errors or needed corrections, nor has the District ever provided instruction on how to complete HHI timesheets. In 2008, while teaching at Caruthers HS, respondent volunteered to be a HHI teacher. Janette Poraz, Caruthers HS Secretary, provided respondent a blank HHI timesheet and said: "you are to receive five hours each week." Ms. Poraz provided no other instruction to respondent on how to fill out the HHI timesheet. Respondent was never told to provide a weekly hour of instruction to each HHI student.

25. Respondent never believed the accuracy of her HHI timesheets mattered, because of the direction provided by Ms. Poraz. As such, respondent uniformly completed her HHI timesheets by listing five hours per student per week: four hours of preparation and one hour for visit time. Furthermore, Orin Hirschhorn, Caruthers HS Principal in 2008, signed respondent's HHI timesheets each month and never raised any concerns with her. As such, respondent continued, until her dismissal, completing her HHI timesheets in the same manner she had since 2008. In 2016-2017, Mr. Tompkins signed respondent's HHI timesheets each month and he never raised any concerns with her. Respondent is willing to make changes to how she completes HHI timesheets, but she was never given the opportunity to do so.

26. Respondent acknowledged claiming HHI preparation time during winter break. SK would have to come to school for soccer practice and respondent would work in her classroom on Odysseyware until practice was over. Respondent knew Mr. Tompkins allowed Odysseyware to be left open during winter break, so students could continue to work on assignments. Respondent also acknowledged claiming HHI preparation and visit time in September 2017, while she was in Georgia with her daughter for a college visit, indicating she worked on Odysseyware during her trip, specifically, in the airport.

27. Notwithstanding the above, respondent always completed her HHI responsibilities, spending more than five hours per student per week committed to HHI duties. KS, IS, AA, and AE never fell behind in their classwork, completed all credits assigned, and AE graduated on time. In fact, respondent indicated KS completed 80 to 90 credits and IS completed 120 credits in 2016-2017: "the most ever earned" in a year. Further, respondent always made herself available to KS, IS, AA, and AE by cellular phone. On the other hand, KS, IS, AA, and AE were not always ready, willing, and able to see respondent or provide her with their completed assignments. On several occasions, respondent arrived at the KS/IS home and no one was home or she was not invited in because both KS and IS were in bed asleep or they had not completed their weekly assignments. In addition, KS and IS frequently cancelled their home visits without rescheduling. Further still, respondent was frightened by the 10 pound Chihuahua mix

canine owned by KS/IS, who bit respondent when she came for one of her first visits; respondent did not report the bite to anyone. Finally, Mr. Tompkins approved the exchange of jump drives through Ms. Ibarra and/or Mr. Azavedo, meaning the practice was acceptable to the District. For AA and AE, respondent visited both on a weekly basis, noting the students would have fallen behind on assignments if she had not provided weekly assignments to them. Respondent did not keep a log of her home visits for any students, and acknowledged her visits with KS, IS, AA, and AE were short; lasting about five to 10 minutes each visit. She also acknowledged that once KS/IS delivered a jump drive to school each week, she made no home visits thereafter.

28. Ultimately, respondent describes the MARC teaching appointment as challenging. MARC students required a great deal of individualized attention: personalized subjects, customized lessons, and modified curriculum. Some MARC students were assigned classroom teaching in English and/or Math and outside time for Physical Education, but most were assigned online learning via Odysseyware. Much of respondent's time was spent monitoring and grading in Odysseyware; with one to 10 units in a subject, one to 20 lessons in a unit, a page of notes to grade following each lesson, and reassignment of any quiz or test to a student scoring below 60 percent. Yet respondent was the only credentialed, full-time teacher at MARC. Overall, MARC resources were often limited. For example, MARC had to share a guidance counselor with Caruthers HS; and the counselors only visited MARC once every six weeks, even though they were required to visit once a month. In the interim, respondent had to contact the counselors by email, because the counselors had no direct telephone line. At all times relevant, respondent believes she completed her teaching responsibilities and HHI duties, often spending far more time than the regular work day to complete her teaching responsibilities and more than five hours per student per week for HHI duties.

Other District HHI Teachers

JENNIFER TWEEDY

29. Ms. Tweedy is the Agriculture teacher at Caruthers HS. Ms. Tweedy provided HHI in February 2015 for one student (TM) for six weeks. Ms. Poraz provided Ms. Tweedy with the HHI timesheet and told her: "you can claim no more than five hours" or words to that effect. Ms. Tweedy was given no further instructions on how to fill out the HHI timesheet, nor was she told she had to provide one hour of weekly instruction to TM. TM was not an Odysseyware student and Ms. Tweedy had to pick-up and drop-off assignments for TM. After respondent's termination, the District sent an email to all staff regarding HHI, reminding teachers to report actual time on timesheets and to offer HHI students one hour of instruction per week. At this time, Ms. Tweedy would not volunteer for another HHI assignment, given what happened to respondent and the admonitions included in the District email about HHI requirements going forward.

MARTHA MARTINEZ

30. Ms. Martinez is a Science teacher at Caruthers HS. Ms. Martinez began providing HHI in 2014; she continues today. Ms. Poraz provided Ms. Martinez with the HHI timesheet and told her: “you can claim up to five hours per student per week” or words to that effect. Ms. Martinez was given no further instructions on how to fill out the HHI timesheet, nor was she told she had to provide one hour of weekly instruction to HHI students. In 2015-2016, Ms. Martinez submitted monthly HHI timesheets for one HHI student: November 2015 - six (6) hours, December 2015 – three and three-quarter (3.75) hours, January 2016 – three and one-half (3.5) hours, and February 2016 – 17.85 hours. Recently, Ms. Martinez received a District email with instructions for HHI timesheets, indicating an HHI student should receive a minimum of one hour of instruction time each week and no more than four hours should be claimed for preparation time each week.

SELIA GARCIA

31. Ms. Garcia is a Special Education teacher at Caruthers HS. Ms. Garcia has provided HHI for multiple school years, beginning in 2013-2014, for one student (CR). For her HHI timesheet, Ms. Garcia was told to record up to four hours preparation time and one hour visit time. Without further instruction, Ms. Garcia sought additional guidance from her Department Chair. Ms. Garcia has only claimed the actual time she has dedicated to HHI, up to five hours a week. In 2015-2016 and 2016-2017, Ms. Garcia submitted monthly HHI timesheets: February 2016 – eight and one-half (8.5) hours, March 2016 – 27.5 hours, April 2016 – 17 hours, August 2017 – 13 hours, September 2017 – 20 hours, October 2017 – 19 hours, November 2017 – 16 hours, and December 2017 – eight (8) hours. CR is a special education student and Ms. Garcia has to modify his weekly assignments for his skills/abilities.

District's Contentions

32. The District denies discriminating or retaliating against respondent. First, the District reassigned multiple Caruthers HS teachers in 2010-2011, because of low student enrollment and the recession. The District chose to eliminate positions at Caruthers HS and to reassign those teachers to Caruthers Elementary School, because the Elementary School had received a Quality Education Investment Act (QEIA) grant requiring smaller class sizes and more teachers. At the time, respondent was teaching a Life Skills class at Caruthers HS. The District eliminated the Life Skills class and merged the subject-matter into the Science class curriculum. The District then reassigned respondent to the Elementary School. In addition, in 2010, the District received a signed petition from the girls' HS softball team requesting respondent not coach their team going forward. The District acted on the petition by informing respondent she would not be asked to coach next season. Second, the District proposed a 2017-2018 schedule change for respondent because her teaching assignment appeared to be less than full-time. She was a tenured teacher who required a full-time schedule. When Mr. Fowler learned that respondent did indeed have a full-time schedule, the proposal was rescinded.

33. Next, the District makes every effort to follow policy. First, Independent Study students may be dropped after two absences, but are not required to be dropped after two absences. Additionally, Mr. Fowler took responsibility for signing the Independent Study students' attendance roster because respondent was no longer assigned to manage them. Second, the District has a HHI policy, including AR 6183.⁹ Teachers volunteer for HHI duties and can claim up to five hours per student per week of actual time spent. Teachers must offer one hour of instruction per week to each student. Teachers cannot claim time for collecting or grading work for their own classroom students. Teachers submit a monthly HHI timesheet and the District trusts teachers to record and submit only the hours actually worked. District supervisors do not question HHI timesheets for accuracy. The District did not question respondent's HHI timesheets until respondent claimed HHI time while she was on leave and out-of-state. As a result, the District began an investigation and found a plethora of fabrications on respondent's 2016-2017 HHI timesheets. The District did not provide respondent with notice or an opportunity to correct her behavior because her conduct showed blatant dishonesty. At hearing, the District believes respondent continued to display a propensity to lie: (1) respondent understood her HHI duties were compensated on an hourly basis, hence the monthly timesheet requiring hours to be specifically documented, and not paid as a flat-rate, like her softball coaching stipend; (2) she claimed IS completed 120 units in 2016-2017, when his transcript only shows 74 units completed; and (3) she claimed extensive Odysseyware preparation time, but the Report does not corroborate her claims.

Discussion

34. Respondent admits she uniformly logged five hours per student per week on her HHI timesheets, regardless of the amount of time she spent providing HHI. She did not alter her recording practices when school was not in session, continuing to record five hours per student per week through school holidays and breaks and personal leave. She created her recording practice in 2008, based upon the one-sentence instruction of the MARC Secretary. Respondent blames the District for neglecting to notify her of a need to correct her timesheets and failing to provide adequate HHI training for teachers. She denies any personal responsibility.

35. In sum, respondent's testimony lacked credibility. First, respondent's HHI timesheets are wholly inaccurate. During school holidays and breaks and approved time off (22 days), respondent logged 80 hours of HHI or Odysseyware preparation time. However, the Report shows respondent did not log into Odysseyware except for two hours and fifteen

⁹ While not at issue here, the Commission would encourage the District to develop policies, procedures, and training for all programs, including voluntary programs like Home Hospital Instruction, to ensure clarity of responsibilities and accountability, as well as to prevent misunderstandings and conflicting interpretations. For example, AR 6183 says: "The district shall offer at least one hour of instruction for every day of instruction offered by the district in the regular education program." However, Superintendent Hirschkorn described the HHI District policy to require one hour of instruction per week per student.

minutes on one day. She claimed 79 hours of HHI visit time for KS and IS for the 2016-2017 school year. However, KS, IS, and JS testified at hearing, and recounted only 14 home visits throughout the 2016-2017 school year, with 10 visits lasting five to 10 minutes each, at most. Respondent recorded eight (8) hours of HHI visit time with AE from March through May 2017. However, AE testified at hearing, and recalled five or six visits, each lasting approximately 30 seconds. Furthermore, KS, IS, AA, and AE were all students assigned to respondent's classroom, requiring her to prepare and grade their work as a part of her daily job duties and annual compensation.

36. Second, her failure to understand the obligation to be honest when submitting a timesheet to her employer is a death knell. Her inability to see the harm in uniformly logging five hours per student per week as well as making up the times she completed the work is problematic. Her contention that how she recorded her time did not matter because she always worked more than five HHI hours per student per week is improbable. As a 13 year tenured teacher, respondent should have understood the necessity to honestly record the hours she worked, because in exchange, the District would provide her payment for those exact hours. Further, respondent knew the difference between a flat-rate stipend and an hourly wage. For her softball coaching, she received a stipend and was not required to submit a monthly timesheet (i.e., the flat-rate stipend was the same no matter how many hours she dedicated to softball); versus an hourly wage that required a timesheet and an accounting, and then she was paid based upon the exact number of hours she worked.

37. Third, respondent criticized the District for failing to accurately record Independent Study attendance, and vociferously refused to sign her name to an Independent Study student attendance roster, but respondent felt no remorse for signing her name to a blatantly false HHI timesheet. Fourth, respondent's ardent reliance on a single sentence instruction in 2008 is nonsensical and self-serving. Other District HHI teachers also received limited instruction for completing HHI timesheets from Ms. Poraz, however, at least three other District HHI teachers understood the instruction to be "up to five hours" per student per week, and not "you get five hours." Jennifer Tweedy, Martha Martinez, and Selia Garcia all testified at hearing and recalled the direction to be "up to five hours." Instead, respondent asks the Commission to believe that she would blindly follow a one-sentence direction, regardless of her personal knowledge and experience, and repeatedly act in a fraudulent manner, without seeking any guidance from the District or finding the District policy at issue. Her compulsive dishonesty displays an inherent character trait.

38. Respondent is an educated and credentialed teacher. She is intelligent and capable; at hearing, she opined on Federal and State laws, as well as on the terms and conditions of employment for tenured teachers. Based on her testimony, respondent was aware of the finer points of providing HHI duties and the total hours allowable each week. For example, the one-sentence instruction in 2008 did not direct respondent to record four hours of preparation time and one hour of visit time to total five hours per week, as the District policy states; yet every HHI timesheet respondent submitted included exactly that accounting, except during school breaks, when respondent would record only preparation time. Respondent's "accounting" was not without thought. In addition, as recently as

September 14, 2016, in an email from Ms. Villareal, respondent was reminded of her HHI obligations: “As the home hospital teacher you schedule the time with the family for your 1 hour weekly meeting.” Respondent did not reply to Ms. Villareal with shock or disbelief regarding her required one hour weekly visits to HHI students.

Morrison Criteria

39. Education Code sections 44932 and 44944 create the statutory framework for this proceeding. The statutes give discretion to both the District and the Commission. The District has the right to determine when to seek disciplinary action against a teacher and what discipline to seek. The Commission, however, is not bound by the District’s choice. It has broad discretion in disciplinary matters. Its role is not limited to determining whether charged conduct in fact occurred, but it must also decide whether that conduct demonstrates unfitness to teach when measured against the criteria set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-30. (*Fontana Unified School Dist. v. Burman (Fontana)* (1988) 45 Cal.3d 208, 219-22.) In exercising its discretion in this matter, the Commission determines whether dismissal is warranted by the facts established at the hearing.

40. Before a decision can be made as to whether respondent’s conduct was immoral (Ed. Code, § 44932, subd. (a)(1)), dishonest (Ed. Code, § 44932, subd. (a)(4)), and/or constituted evident unfitness for service (Ed. Code, § 44932, subd. (a)(6)), the Commission must determine whether respondent’s conduct demonstrated she was unfit to teach using the *Morrison* criteria. (*Board of Education v. Jack M.* (1977) 19 Cal. 3d 691, 696.) The Morrison criteria are: (1) the likelihood the conduct may have adversely affected students or 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, if any, surrounding the conduct; (6) the likelihood of the recurrence of the questioned conduct; and (7) the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Morrison v. State Board of Education, supra*, 1 Cal.3d at p. 229.)

LIKELIHOOD CONDUCT MAY HAVE ADVERSELY AFFECTED STUDENTS OR TEACHERS

41. Respondent’s conduct risked depriving students with temporary disabilities of mandated interaction and instruction, risking their knowledge and understanding of required subjects. Respondent’s timesheets also risked funds allocated to the District for the delivery of educational services to students with temporary disabilities. Further, respondent’s failure to provide instruction and assistance to HHI students risked classroom teachers having to spend more time with HHI student when they returned to class with inadequate knowledge and understanding of the previous lessons.

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THE DEGREE OF THE ADVERSE EFFECT

42. Respondent acted as no more than a courier and provided no benefit to students in need of instruction and guidance. Her HHI students will be forever deprived of the learning associated with the assignments respondent should have supervised and instructed upon. In addition, after respondent's dismissal, the District sent emails to all teachers about HHI duties, requiring at least one hour of instruction per student per week and the necessity to record actual time worked. The result: a chilling effect on teachers, who are no longer interested in volunteering for HHI assignments; and a potential for concern among teachers about District policies and procedures.

PROXIMITY OR REMOTENESS IN TIME OF THE CONDUCT

43. While respondent submitted HHI timesheets to the District in 2008, at issue here are 2016-2017 and 2017-2018 HHI timesheets respondent completed and submitted to the District.

TYPE OF TEACHING CERTIFICATE

44. Respondent is a Multi-Subject Credentialed teacher with 15 years of teaching experience.

EXTENUATING AND AGGRAVATING CIRCUMSTANCES

45. The HHI assignment requires a credentialed teacher. The position is voluntary. The District has HHI regulations, which are guided by the Education Code. While the District does not provide training on HHI policy, the District can provide any and all guidance upon request.

46. Respondent volunteered as a HHI teacher for four students in 2016-2017. Respondent asked no questions of the District regarding HHI policies and procedures. Instead, she assumed the District would inform her of any relevant policies and procedures and/or when her conduct violated any such policies and procedures. In other words, respondent assumed the District would know about her failure to spend an hour per week with each student, even though they were not present and respondent recorded an hour of visit time per student per week on her timesheet; or that the District would know that a credentialed teacher would enter untrue information onto a timesheet and submit it. In this case, the onus is on respondent; she alone controls her actions, omissions, and submissions and only she can measure them against the District policy. The District is left to trust its credentialed teachers to make good choices and seek assistance when needed.

47. At all times relevant, respondent had a responsibility to be familiar with the policies and procedures affecting her duties or to seek out information from the District to ensure her conduct was within the rules; she did neither and should have known better. In the end, respondent was motivated by the substantial sums of money she received via her

falsified HHI timesheets, for little to no additional work than was required by her regular job duties. Respondent's duties as a MARC teacher included the instruction of KS, IS, AA, and AE, whether designated as HHI students or not. Yet, respondent claimed five HHI hours per student per week. Respondent's behavior was egregious and blameworthy. Without insight, respondent defended her behavior to the end, alleging she was following the one-sentence direction given in 2008 by a MARC secretary. Given respondent's inability to see the obvious, her conduct would have continued if left unchecked; raising legitimate concerns about respondent's overall character and her ability to make trustworthy decisions.

LIKELIHOOD OF RECURRENT

48. More likely than not, respondent was aware of the HHI policy and procedure, but chose not to follow it because she substantially benefitted from her recording practices. Ultimately, respondent had no personal incentive to cease. Left unchecked, respondent showed no sign of stopping; in general, her decision-making is gravely suspect.

49. In addition, respondent takes no personal responsibility for her fraudulent conduct, and she expressed no feelings of remorse. Respondent knew or should have known her method of recording HHI time was untruthful and displayed a complete lack of integrity. She knew or should have known to seek assistance from the District as to whether her HHI timesheets were compliant. Her failure to seek any assistance while continuing to uniformly document five hours per student per week is evidence of a nefarious motive: to ensure she continued to receive her HHI paychecks. Respondent's acts were deliberately designed to defraud the state and the District and were essentially criminal in nature. (See *Board of Ed. of San Francisco Unified School Dist. v. Weiland (Weiland)* (1960) 179 Cal.App.2d 808, 812.)

ADVERSE IMPACT OR CHILLING EFFECT UPON THE CONSTITUTIONAL RIGHTS OF THE TEACHER INVOLVED OR OTHER TEACHERS

50. There was no evidence that dismissing respondent would inflict an adverse impact or chilling effect upon the constitutional rights of respondent or other teachers.

CONCLUSION

51. After considering the *Morrison* factors outlined above, the evidence established that respondent is unfit to teach.

Causes of Action

IMMORAL CONDUCT

52. In general, the term "immoral" is defined as "that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude or indicative of corruption,

indecency, depravity, dissoluteness; or as willful, flagrant or shameless conduct showing moral indifference to the opinions of respectable members of the community, and an inconsiderate attitude toward good order and the public welfare.” (*Weiland, supra*, 179 Cal.App.2d at p. 811.) The immoral conduct of a teacher has been compared to the unprofessional conduct or moral turpitude of an attorney. “Moral turpitude is sometimes used synonymously with dishonesty or a high degree of unfairness.” (*Ibid.*)

DISHONESTY

53. Dishonesty indicates a lack of honesty; a disposition to lie, cheat, or steal (www.dictionary.com); or to deceive. (*Midway District of Kern County v. Griffeth* (1946) 29 Cal.2d 13, 18.) “Dishonesty necessarily includes the element of bad faith.” (*Smith v. Smith* (1971) 16 Cal.App.3d 450, 456.) “[I]t means fraud, deception, betrayal, faithlessness; an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray.” (*Ibid.*) “Dishonest conduct may range from the smallest fib to the most flagrant lie. Not every impropriety will constitute immoral or unprofessional conduct, and not every falsehood will constitute ‘dishonesty’ as a ground for discipline.” (*Fontana Unified School District v. Burman (Fontana)* (1998) 45 Cal.3d 208, 220, fn. 12.).

54. “Where dishonesty is involved, notice ‘would not serve the purpose of § 44938, which is to allow a permanent employee the chance to correct his or her conduct and thus overcome grounds for the charge.’” (*Bassett Unified School Dist. v. Commission on Professional Competence* (1988) 201 Cal.App.3d 1444, 1447.) “[N]otice would serve no useful purpose in cases of dishonesty: ‘It is rather clear that the stigma of recognized immorality, known dishonesty, conviction of a felony or of a crime involving moral turpitude, or of guilt of criminal syndicalism or sedition could not be removed by ninety days’ good behavior.’” (*Fresno City H.S. Dist. v. De Caristo* (1939) 33 Cal.App.2d 666, 674-675.)

EVIDENT UNFITNESS FOR SERVICE

55. Evident unfitness for service 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 (Woodland)* (1992) 2 Cal.App.4th 1429, 1444.) The *Morrison* criteria must be analyzed as a threshold matter to determine if the conduct indicates unfitness for service. (*Id.* at p. 1445.) If the *Morrison* criteria are met, the next step is to determine if the teacher’s unfitness is “‘evident’; i.e., whether the offensive conduct is caused by a defect in temperament.” (*Ibid.*)

56. In sum, the Commission finds respondent repeatedly falsified her HHI timesheets by: (1) uniformly claiming five hours per student per week and not recording the actual time she spent on HHI duties; (2) logging preparation time when she was the teacher

of record for KS, IS, AA, and AE, and was, therefore, already compensated for preparing and grading their class assignments; (3) recording weekly visit time when she did not see the students and/or her interactions lasted no more than five to 10 minutes; and (4) documenting preparation and visit time when she was on leave/out of state. Overall, respondent displayed willful, flagrant or shameless conduct showing a moral indifference. Her behavior was deceitful and fraudulent, displaying corruption, betrayal, and a fixed character trait of dishonesty. Given the above, a preponderance of the evidence established that respondent's conduct was immoral and dishonest and displayed an evident unfitness for service.

57. Finally, all arguments and evidence presented to support respondent's alleged affirmative defenses have been considered and are rejected.

LEGAL CONCLUSIONS

1. A permanent employee may be dismissed for cause. (Ed. Code, § 44934.) Causes include: immoral conduct, dishonesty, and evident unfitness for service. (Ed. Code, §§ 44932, subds. (a)(1), (4), and (6) and 44939.)

2. A permanent employee served with a Notice of Dismissal is entitled to a due process hearing. (Ed. Code, § 44934.) Education Code section 44944 establishes the right to a hearing, the process for selecting the three-member CPC, and sets forth the CPC's authority to issue a final decision. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) A preponderance of the evidence means that the evidence on one side of an issue outweighs, preponderates over, and is more than the evidence on the other side of the issue, not necessarily in number of witnesses or quantity, but in the convincing effect the evidence has on those to whom it is addressed. In other words, the term refers to evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Causes for Discipline

3. First, facts can be evaluated in the aggregate. A trier of fact is entitled to consider the totality of the offensive conduct. (*Woodland, supra*, 2 Cal.App.4th at p. 1456-1457.) When a camel's back is broken, the trier of fact need not weigh each straw in its load to see which one could have done the deed. Second, causes can be consolidated. "It is true that a particular act or omission on the part of a teacher may constitute more than one of the causes for his removal specified in Education Code section 13403, [now 44932]." (*Tarquin v. Commission on Professional Competence* (1978) 84 Cal.App.3d 251, 260.) "Acts that are unprofessional conduct may at the same time be evidence of evident unfitness, i.e. a fixed character trait or temperamental defect which renders the teacher incapable of avoiding acts that are unprofessional." (*Ibid.*) "The prohibitions against immoral, and unprofessional conduct, and conduct involving moral turpitude by a teacher constitutes a general ban on conduct which would indicate his unfitness to teach." (*Morrison, supra* 1 Cal.3d at p. 233.)

“Unprofessional conduct,” as used in section 44932, subdivision (a), has been viewed broadly as ‘conduct such as to indicate unfitness to teach.’” (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

4. Based upon the Factual Findings as a whole, cause exists to dismiss respondent under Education Code section 44932 and 44939 for immoral conduct, dishonesty, and an evident unfitness for service based upon her repeated submission of fraudulent HHI timesheets to the District.

Discipline

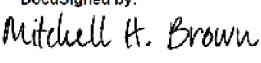
5. Here, the Commission has only two choices: to dismiss or not to dismiss. (Ed. Code, § 44932, subd. (a).) “The commission shall not have the power to dispose of [a] charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension . . . shall be available only in a suspension proceeding authorized pursuant to subdivision (b) of Section 44932 or Section 44933.” (*Fontana, supra*, 45 Cal.3d at p. 216.)

6. Based upon the Factual Findings as a whole, the District proved by a preponderance of the evidence, respondent violated sections 44932, subdivisions (a)(1), (4), and (6), and 44939, and the conduct supports dismissal of respondent.

ORDER

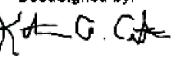
The Caruthers Unified School District dismissal of respondent Kelli Kuma from her employment as a teacher at MARC Continuation High School is UPHELD. Respondent’s appeal of her dismissal from employment with the Caruthers Unified School District is DENIED.

Dated: June 18, 2018

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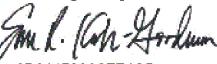
Mitchell Brown
Commission Member

Dated: June 18, 2018

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Katharine Cuttome
Commission Member

Dated: June 18, 2018

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Erin R. Koch-Goodman
Administrative Law Judge
Office of Administrative Hearings