

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARDINGS AND A
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE
COMPTON UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Dismissal of:

MELISSA RIVERA,

A Permanent Certificated Employee,

Respondent

OAH No. 2020010711

DECISION

A Commission on Professional Competence (Commission) heard this matter by videoconference on September 14 through 18, 2020. The Commission members were Mark Hill, Ed.D.; Davina Keiser; and Administrative Law Judge Thomas Heller, Office of Administrative Hearings, State of California, who presided.

Barrett K. Green, Esq., and James A. Becerra, Esq., Littler Mendelson, P.C., represented the Compton Unified School District (District).

Richard J. Schwab, Esq., Trygstad, Schwab & Trygstad, represented respondent Melissa Rivera.

The parties presented oral and documentary evidence. At the end of the hearing, the record was held open for the submission of redacted copies of three exhibits and a list of names of students to be kept confidential. The District timely submitted those items and the record was closed on September 21, 2020.

Thereafter, the ALJ ordered the District to lodge the transcripts for the first three days of the hearing. The District did so and filed a Notice of Lodging of the transcripts on December 1, 2020. By order dated December 4, 2020, the ALJ reopened the record for the notice and lodging of the transcripts, and then reclosed the record and deemed the matter submitted for decision.

SUMMARY

The District seeks to dismiss respondent, a high-school mathematics teacher, on grounds of immoral conduct and evident unfitness for service. Respondent allegedly posted lewd and lascivious messages and other inappropriate content on social media, dressed provocatively and inappropriately for class, called students "stupid" and repeatedly used profanity in class, repeatedly yelled at and embarrassed students, and told students she was not qualified to teach their level of math. Respondent admits she posted inappropriate messages on Twitter but denies the other allegations and requests she be allowed to return to teaching.

The evidence established cause for dismissal for immoral conduct and evident unfitness for service with respect to respondent's posts on Twitter. Between late August and mid-September 2019, respondent publicly posted messages that were vulgar and sexually graphic, glorified drug use and violence, demeaned the District's curriculum, and used a racially offensive term. Students discovered respondent's

Twitter account and word spread to other teachers and District administrators. Respondent's public posts demonstrated a serious lapse in judgment and lack of understanding of her professional responsibility as a role model for students.

The District did not establish cause for dismissal with respect to the other charges. But the charges with respect to respondent's posts on Twitter warrant dismissal on their own. The Commission concludes that respondent should be dismissed from her position as a permanent certificated employee of the District.

FACTUAL FINDINGS

Background

1. Respondent holds a single subject credential in foundational-level mathematics with an English Learner authorization. She has worked as a teacher for the District for about 12 years. Respondent first worked for the District as an AVID (Advancement Via Individual Determination) tutor when she was 18 years old. About two years later, she became a computer laboratory coordinator for the District. After about one year in that position, she began working as a full-time math teacher.

2. The District serves over 22,000 students in all grade levels at 36 sites in South Los Angeles. Respondent worked at Compton High School during her paraprofessional employment and first 10 years of teaching. She then worked as a teacher at the Cesar Chavez High School (Chavez) satellite campus at Dominguez High School (Dominguez). Chavez is a continuation school that supports students who are credit deficient and at risk of not finishing high school. Chavez has satellite campuses at Dominguez, Compton High School, and Centennial High School.

3. Respondent was born and raised in the Compton community and attended school in the District for most of her childhood. She graduated high school in the nearby Bellflower Unified School District. After high school, respondent attended Compton Community College, where she earned an associate's degree. Respondent then attended California State University, Dominguez Hills, where she earned a bachelor's degree in 2008, her teaching credential in 2010, and a master's degree in 2012.

4. As of September 2019, respondent taught five class periods totaling about 115 students at Dominguez/Chavez. Two periods were math classes for Chavez students and two others were math classes for Dominguez students. Respondent also facilitated a class period for online students. She has no prior record of disciplinary action with the District.

Report and Investigation

5. On September 20, 2019, Nora Valle, a teacher at Dominguez/Chavez, texted Fredricka Brown, Ed.D., the principal of the Chavez satellite campuses, about posts on respondent's Twitter account. Twitter is a social networking site on which users post and interact with messages known as "tweets." Ms. Valle's first text message stated, "Just want to quickly share with you that the students showed me . . . (Rivera's twitter posts) . . . I just have a bad feeling this is going to turn ugly for her." (Exhibit 8A.) In several subsequent messages, Ms. Valle forwarded screenshots of tweets and "retweets" (i.e., reposted or forwarded messages from other Twitter users) from respondent's Twitter account. The tweets and retweets were from September 6 through September 13, 2019, and included the following:

- "It's Friday the 13th and I'm tryna get this pussy murdered [skull emoji][knife emoji]" (retweet)
- "So my hg [homegirl] tellin me she got taken to dinner for her bday, got some nice ass flowers, went to the drive in movies w her boo and the movie sucked. [¶] So I'm like so suck his dick y'all at the drive ins. [¶] She like no it's MY bday [emoji]"
- "She goes on to tell me she enjoys sucking dick but prefers not to. [¶] And she loves this man!! Got spoiled on her damn bday [¶] Talking bout the clean up is hard. I was like oh u don't swallow? [emoji] [¶] Anyway if I was a nigga I'd be cheating too sorry [emoji]"
- "We used to lay up and then stay up [¶] Have sex and then blow dank [¶] I shouldn't have played no games with you, just leveled up my rank [¶] Last time I saw you we ain't speak that was strange [¶] Guess it's nothing I can do, man it's true, ex's change, yeah [¶] [emojis]"

6. The District immediately began an administrative investigation, interviewing students and reviewing other posts on respondent's Twitter account. District administrators also questioned students about respondent's attire and manner of speaking to students in class. On September 23, 2019, Kanika White, Ed.D., the District's Executive Director for Human Resources and Title IX Coordinator, interviewed respondent and placed her on administrative leave while the District continued its investigation.

Notice of Intent to Dismiss

7. On November 6, 2019, Dr. White notified respondent that the District administration was considering recommending that the Superintendent and Board of Trustees (Board) terminate her employment and suspend her immediately without pay for immoral conduct and evident unfitness for service. The written notice identified the Twitter posts described above, additional Twitter posts discovered during the District's investigation, and respondent's allegedly inappropriate attire and statements to students in class as the reasons for considering those actions. Dr. White wrote that respondent had a right to respond to the allegations and scheduled a meeting for that purpose on November 13, 2019. Respondent did not appear at the meeting.

8. On November 19, 2019, Mario Marcos, the District's Executive Director for Elementary Education, sent respondent a Notice of Recommendation of Dismissal and Statement of Charges (Statement of Charges) proposing to proceed with the recommendation. The Statement of Charges identified the Twitter posts described above and the following additional posts from between August 29 and September 14, 2019, as grounds for the recommendation:

- "If you pull my face to kiss me after I sucked your dick . . that just makes me want to suck it even more." (a retweet with respondent's comment "Yassssss [emojis]")
- "Why her? She don't fit the type [emoji] [¶] Yup cuz ima WHOLE ASS VIBE. [¶] And yes Im like ya homie but w good ass pussy and some good ass u know what [tongue emoji] [¶] And yes u will seek that vibe in a whole nother bitch [¶] But u not gon get that Melissa vibe baby [emojis]"

- "I ain't gon lie I don't like goin on vacation unless ima get some dick [shrug emoji] [¶] I definitely like to take sand to the beach [¶] Everything else is fun too but idk I like fuckinn away from home [crying laughter emojis] [¶] I can only take so many bitch trips"
- "It's Friday, let's get this pussy popping."
- "I gave you top of the line I know you miss it baby [tongue emoji]"
- "Titty* cuz I ain't got no ass [emojis]" [in response to "I just wanna send you good night booty pics"].
- A video of two persons having sex on a couch.
- "Y'all ever get high and go eat up all the kids snacks [emojis]"
- "Damn [¶] Beats [emoji] Brunch [emoji] Blunts [emoji] BBQ [emoji], & Booze [emoji]"
- "How come these bitches eyelashes don't be less towards the inside"
- "Did this nigga jus bang 706 on my timeline [emojis]"
- "I like continuation students cuz they don't hesitate to offer to beat somebody ass for you [crying laughter emojis]"
- "Fuck #commoncore."

9. The Statement of Charges also alleged respondent dressed provocatively and inappropriately for class, called students "stupid," repeatedly yelled at and embarrassed students, and told students she was not qualified to teach their level of math.

10. Mr. Marcos advised respondent that the Board would consider the recommendation at a meeting on December 11, 2019, and that respondent could address the Board at the meeting before it acted. On December 3, 2019, respondent's counsel wrote to Mr. Marcos denying that the evidence warranted dismissal but declining the opportunity to address the Board. On December 11, 2019, the Board voted to suspend respondent immediately without pay and give her notice of its intention to dismiss her within 30 days for the reasons stated in the Statement of Charges. On December 12, 2019, Dr. White gave respondent written notice of the Board's action, and respondent acknowledged receipt of the notice and requested a hearing.

11. The District filed the Notice of Intent to Dismiss with the Office of Administrative Hearings (OAH) on January 22, 2020, and OAH originally scheduled the hearing for April 2020. OAH continued the hearing until September 2020 and held it by videoconference due to the COVID-19 pandemic.

Hearing

DISTRICT'S CASE

12. The District presented screenshots of the Twitter posts listed in the Statement of Charges, except for the tweet allegedly stating, "It's Friday, let's get this pussy popping," which did not appear in the screenshots. The video described in the Statement of Charges as two persons having sex on a couch was the subject of testimony, but the video itself was not moved into evidence. The District called seven witnesses to testify and played excerpts from respondent's videotaped deposition.

Kanika White, Ed.D.

13. Dr. White testified that upon learning of the allegations against respondent, she directed Dominguez Principal Blain Watson to forward respondent's Twitter postings of concern, collect statements, and conduct an initial investigatory meeting with respondent. Dr. White then met personally with Ms. Rivera and her union representative on September 23, 2019, to go over the allegations and give her an opportunity to respond. During the meeting, respondent began to call the students who found her Twitter account "nosy" and said she was an adult and had a right to discuss the matters in the posts. When asked if using the "N" word in the posts was appropriate, respondent replied it was okay because she was black. Dr. White was concerned about respondent's lack of remorse because an employee can only correct behavior if the person first acknowledges wrongdoing and is open to making a correction.

14. Dr. White also testified about her concerns regarding respondent's Twitter messages, Dr. White testified that the post stating, "I like continuation students cuz they don't hesitate to offer to beat somebody's ass for you" is particularly concerning because it seems to encourage violence by students that are already at risk and attempting to recover from whatever circumstances caused them to become credit deficient. Respondent's use of the "N" word in the messages is also highly offensive and in direct contradiction to District policy that speaks to employees maintaining the highest ethical standards and supporting the integrity of the District. The post stating, "Fuck #commoncore" is problematic because the District teaches the common core curriculum, and the post evidences the attitude of a teacher who may not be looking to have a true impact on the livelihood of students who need it most. The references to drug use in the posts are also inappropriate in a community where

there have been past issues with drug abuse. In addition, the lewd content of many of the posts is inappropriate for a teacher and role model for impressionable students.

Nora Valle

15. Ms. Valle has been a teacher for 16 years and is in her third year of teaching at Dominguez/Chavez. She teaches United States history, government, and economics. She described the student body at Chavez as a group of challenged students who need help from teachers to get their course credits and graduate.

16. In September 2019, Ms. Valle heard a group of students in her class talking about whether they had each seen respondent's posts on Twitter. Ms. Valle does not have a Twitter account and had another teacher, Heidi Bolling, show the posts to her. Ms. Valle then looked up respondent's Twitter account on her own phone and forwarded screenshots of some of the posts to Dr. Brown. Ms. Valle made her best efforts not to spread the information around the school.

R.A.

17. R.A. is currently a student at Dominguez/Chavez. In September 2019, respondent was a substitute teacher in one of his classes for about a week. R.A. was in class with a group of friends, one of whom asked if R.A. knew respondent had a Twitter account. The group of friends included four other students. R.A. replied he did not, and the other student showed R.A. her Twitter profile picture. Later R.A. looked up respondent's Twitter account himself and "was just, like, whoa." While sexual content is everywhere online now and is "not really a big deal," he was surprised to see it coming from a teacher. R.A. told Ms. Bolling about respondent's Twitter account and showed Ms. Bolling his phone. He did not talk to any other students about the account.

18. R.A. cannot recall noticing anything in particular about respondent's clothing in the classroom. He also does not recall respondent using profanity in class or raising her voice.

Fredricka Brown, Ed.D.

19. Dr. Brown is currently a principal on special assignment in the District's special education program. During the 2019-20 school year, she was the principal of the Chavez satellite campuses and Marshall, which is the independent study part of the District's continuation school.

20. Dr. Brown first met respondent formally at the beginning of the 2019-20 school year. Before that, Dr. Brown made some rounds of classrooms and observed respondent in "gym attire," which was inappropriate for a classroom teacher. Dr. Brown and Principal Watson later spoke about respondent's classroom attire, and Dr. Brown suggested it would be a good idea to pass out the District dress code to all staff. Dr. Brown personally gave a copy of the dress code to respondent, who stated she did not have the money to buy clothes or something to that effect. Dr. Brown asked respondent to do her best to follow the dress code.

21. When Dr. Brown received Ms. Valle's text and the screenshots from respondent's Twitter account, she forwarded them to Principal Watson because he was the person who would investigate or take disciplinary action as the site principal. Principal Watson asked her to come to Dominguez to assist with the investigation. They interviewed several students as part of the investigation, and Principal Watson also spoke to respondent.

Blain Watson

22. Principal Watson was the principal of Dominguez for three years. He is currently the principal of Locke High School in the City of Watts. He first met respondent in the summer at the beginning of the 2019-20 school year.

23. Principal Watson testified that when Dr. Brown alerted him to respondent's Twitter posts, he notified his superiors immediately and reviewed respondent's Twitter account from his own account. One of the posts was a video of two silhouetted figures where it was clear a woman was straddling a man and the couple was having sex. The video did not show the couple's faces, just the silhouettes of two bodies having sex. There were also other graphic posts about "suck[ing] . . . dick," "get[ting] this pussy murdered," and "blow[ing] dank" (i.e., smoking marijuana). The posts were concerning to Principal Watson because respondent was not modeling appropriate adult behavior as an educator with a lot of influence over the children that she served.

24. The same day or thereafter, Principal Watson met with respondent to express his concerns. He asked respondent if she had indeed posted the sexually explicit messages and the message about "blow[ing] dank," to which she responded, "yes." Principal Watson also asked if she posted a pornographic video of two people having sex on a couch. Respondent replied she gets all types of sex-related videos and messages and video on her feed and she did indeed retweet it. She went on to explain that she was confused as to why students are "being nosy" and looking on her personal page. She also asked for the students' names who reported the issue, and Principal Watson declined to disclose that information. Respondent continued by stating that she has a right to post whatever she likes on her personal page and that she enjoys talking about such topics. Principal Watson was concerned by respondent's

lack of concern for the social emotional health of her students or for her responsibilities as a District employee.

25. Earlier in the same school year, Principal Watson had a concern about respondent's classroom attire. Students had expressed some concern to Principal Watson about revealing clothing, and Principal Watson had noticed some unprofessional clothing. Principal Watson did not feel comfortable addressing respondent directly as a male supervisor, so he asked Dr. Brown to do so.

26. Principal Watson made notes of his interviews with students, some of which were admitted into evidence. The admitted notes include responses from eight students about respondent's attire and classroom behavior. One student reported that respondent once wore a "see through tank top" showing her undergarments, and another reported she dressed unprofessionally like a physical education teacher. Another student reported that she dressed like students in "sweat pants, baggy T-shirts, and [Air] Jordans." R.A. also expressed concern about respondent's revealing attire, although he did not repeat those concerns in his testimony. Other students did not report any concerns about respondent's attire.

27. With respect to respondent's classroom behavior, one student reported that respondent said "heck" or "Like, what the hell" to students; the others reported she did not use profanity. Two students reported hearing respondent raise her voice at students and embarrass them; the rest reported she did not yell or embarrass students.

K.B.

28. K.B. is a student at Dominguez. Respondent was her ninth-grade math teacher. K.B. testified that respondent used the words "hell" or "heck" in the classroom.

Respondent also dressed casually while teaching in jeans (sometimes ripped), a shirt, and Air Jordans. Respondent would occasionally raise her voice to students when they ignored respondent's first warning to change their behavior. K.B. never heard anything about respondent's social media postings.

L.M.

29. L.M. is a student at Dominguez/Chavez. Respondent used to be his math teacher or substitute. L.M. testified that in late 2019, L.M. heard that respondent was posting "inappropriate stuff." The one thing he heard she posted was "It's Friday, let's get this pussy popping." L.M. thought that was inappropriate because respondent was a teacher at school. He did not discuss the post with anyone else.

30. L.M. also testified respondent also dressed inappropriately for a teacher. She would wear leggings, crop tops, tank tops, and sports bras, revealing her cleavage. She would also use words like "shit" and "fuck."

31. Principal Watson interviewed L.M. during the investigation of respondent and made notes of the interview. The notes state that Principal Watson asked L.M. if respondent used profanity, and L.M. stated "No."

Deposition Excerpts

32. The District deposed respondent on September 9, 2020, shortly before the hearing. In her deposition, respondent testified she became active on Twitter around 2018. By September 2019, she had 288 followers and was following 176 other users. She estimated that fewer than 100 people that she was following or that were following her were personal friends. When respondent posted on Twitter, she thought she was saying things to female friends or followers, all of whom were adults. Her

posts were not meant for children and the language she used was inappropriate for children. She would never post or use this type of language in the presence of children or if she knew children would see it. It was not appropriate for a teacher.

33. Respondent never posted, "It's Friday. Let's get this pussy popping," but she posted the other tweets and retweets, some of which contained vulgar and obscene language. She testified she should not have posted tweets or retweets containing the word "nigga," which can be viewed as derogatory by outsiders. Respondent is African American and Latina, and the term is used for camaraderie in the black community. She stated she would no longer use that term in print. Respondent posted "Fuck #commoncore" out of frustration with the school curriculum. The video she posted of two persons having sex on a couch was "like a romantic love scene type of video," not "raw pornography."

34. When Principal Watson confronted respondent about her Twitter account, she was shocked and embarrassed. Her emotional response at first was that her students were being nosy, and she felt betrayed. At the time, respondent felt she was "off the clock" at a certain hour and could do what she wanted in her personal life.

35. Respondent testified she did not use profanity in the classroom. She also stated she did not yell at students or embarrass them. She dressed "a little bit on the casual side" but not provocatively, and she would not call that a concern.

RESPONDENT'S CASE

Testimony of Respondent

36. Respondent testified she is 33 years old, divorced, and has two young children. She is both African American and Latina but was raised only by her mother

on the African American side of her family. Respondent opened her Twitter account in 2009 and has had the same account settings since then. However, she did not become active on Twitter until around 2018. She used what she considered an alias as her username ("Meliaina1013"), which was a combination of her first and middle names and date of birth. She never gave out her information about her username. She described herself as not very sophisticated on how to use Twitter.

37. Before September 2019, respondent never received any warnings about the use of her Twitter account or social media. To her knowledge, the District did not have any rules, regulations, or policies about the use of social media. In addition, respondent was never warned about using improper language at school, referring to students in a derogatory manner, or having improper attire or dress. She admitted she dressed casually but denied dressing provocatively. She also denied calling students "stupid," using profanity in class, yelling at students, or embarrassing students. With respect to the charge that she told students she was not qualified to teach their level of math, she has said words to the effect of "I don't get this. This isn't adding up" during instruction.

38. Regarding her Twitter account, respondent testified she feels remorse that the bad language in her posts made her look unprofessional. She also testified, "The part I feel the most remorse for is if people felt bad about the things that I was posting . . ." She did not want to hurt anyone's feelings. It was "just immature silly behavior between friends and I didn't realize that I had it on display." Respondent did not intend to harm anyone or for her posts to be viewed by people other than her friends. Her posts were written in the way that she and the friends she grew up with talked to each other.

39. Respondent identified some of the tweets and retweets listed in the statement of charges as song lyrics, including the tweet about "blow[ing] dank" and the tweets stating, "I gave you the top of the line, I know you miss it, baby," and "Damn [1] Beats [emoji] Brunch [emoji] Blunts [emoji] BBQ [emoji], & Booze [emoji] . . ." The tweet that began "Why her? She don't fit the type. Yup cuz ima WHOLE ASS VIBE" were words from a music video by the artist Cardi B., with respondent's first name included at the end. The retweet stating, "It's Friday the 13th and I'm tryna get this pussy murdered [skull emoji][knife emoji]" was a parody of the Friday the 13th horror movie series. Respondent testified that the retweet refers to trying to have "really good sex." The tweet asking, "Y'all ever get high and go eat up all the kids' snacks?" referred to a scene from a television show that respondent thought was funny.

40. Respondent also testified that the retweet of a video of two people having sex on a couch was shadowy, and a viewer could see two silhouettes of people but not genitalia, body parts, or faces. Respondent admitted her tweet stating, "I like continuation students cuz they don't hesitate to offer to beat somebody ass for you [crying laughter emojis]" was worded "very inappropriately," but testified it was meant to be a humorous post of appreciation about how continuation students seem to have more respect for their teachers than other students. Respondent's tweet stating, "Fuck #commoncore" was a tweet she posted out of frustration as a parent, not as a teacher. Respondent's own children were struggling with the common core curriculum.

41. When respondent first met with Principal Watson, she was initially upset because she felt betrayed that the students with whom she thought she was building a good rapport would want to invade her privacy. When respondent met with Dr. White, she also initially referred to the students as being nosy. But respondent also

acknowledged to Dr. White that what respondent did on Twitter was inappropriate for underaged children and inappropriate for a teacher.

42. Since those meetings, respondent has had time to self-reflect and talk to different mentors, including family members who are teachers (there are nine teachers in her family) and a counselor. Respondent testified she has gained insight and would have done things differently. Respondent learned that she needed to be able to accept responsibility for the part she played in accidentally allowing the posts to be accessed. She also learned that though she may not be "on the clock," she is still a teacher and is trusted to uphold certain standards even in her personal time.

43. Before, respondent never really thought that students would want to look her up on social media. Now, she understands that being a teacher is similar in some respects to being a celebrity in that all eyes are on a teacher all the time. Respondent also now understands that when a person speaks the way she did, there is a risk that other people will misinterpret what the person's message may be. She would never repeat the same mistake again.

44. If given the opportunity to meet in person with Dr. White again, the first thing respondent would do is apologize for the offensive and rude language that she used on Twitter, including respondent's use of the "N" word. In the beginning, respondent felt there was a difference between the "N" word ending in "a" and the word ending in "er." But after hearing and seeing Dr. White's testimony, respondent thought about it carefully and realized she does not want to be a part of any type of behavior that is going to perpetuate the oppression of respondent's African American ancestors. Therefore, respondent will not use the "N" word again.

45. Respondent testified she has not been contacted by parents, students, or the public about what was on her Twitter account. Respondent no longer has a Twitter account.

Other Evidence

46. Respondent presented her employment evaluations from 2009 through 2013 and 2019, all of which stated that respondent met or exceeded performance standards in every category. She also offered six certificates of appreciation or recognition that she had received from the District over the years.

Analysis of Evidence

47. The evidence proved that respondent sent the Twitter posts listed in the Statement of Charges, except for the tweet allegedly stating, "It's Friday, let's get this pussy popping." The District's evidence did not include that tweet, and respondent denied she sent it. The District also did not prove that the video of two persons having sex on a couch that is referenced in the Statement of Charges was explicit. Respondent admitted she posted the video, but the witness testimony indicated the video was of silhouetted figures.

48. Respondent testified that her Twitter posts were "just immature silly behavior between friends and I didn't realize that I had it on display." But in other testimony, respondent admitted that her followers on Twitter were not just personal friends. Nothing about respondent's posts suggests she thought her Twitter account was private. Respondent also was not a new user of Twitter. She created her Twitter account in 2009 and became an active user around 2018. Her claim that she was not very sophisticated on how to use Twitter was questionable, given her long history with

Twitter and the number of tweets and retweets between just late August and mid-September 2019.

49. Respondent also testified that she now realizes her posts were inappropriate and is remorseful for them. The Commission did not find this testimony entirely believable. Respondent did not admit wrongdoing or express remorse when Principal Watson first questioned her about the Twitter posts. She also defended the posts when Dr. White questioned her before placing her on leave. Respondent accused students of being nosy and claimed she had the right to post whatever she wanted as an adult. She also did not admit wrongdoing or express remorse when given notice in late 2019 that the District was considering firing her. Her admission of wrongdoing and expression of remorse at the hearing are belated, which suggests they are motivated by the hearing itself, at least in part.

50. Respondent deleted her Twitter account and promised not to commit the same misconduct again, and it is believable that respondent will not post similar tweets or retweets in the future. But there is a high likelihood that respondent will continue to express herself in a similar manner in other settings. Respondent did not just post a single inappropriate message. Instead, she posted over a dozen in just over two weeks. The content of the messages was unremarkable to respondent, and she defended her right to post them to Principal Watson and Dr. White even after students discovered her account. Respondent's testimony that she now understands the inappropriateness of the messages is suspect. Furthermore, her testimony that she will never use the "N" word again after listening to Dr. White's testimony was not believable. Respondent's explanation that Dr. White's testimony had such a powerful impact on respondent lacked persuasive force. Considering these facts, there is a risk

that respondent will express herself in a similar manner in other settings accessible to students, teachers, or District administrators.

51. With respect to the other charges, the evidence proved that respondent dressed too casually for a classroom teacher, but it did not prove she dressed provocatively. The District's evidence that respondent dressed provocatively was limited to the testimony of L.M. and Principal Watson's notes of an interview of one other student. While both students reported that some of respondent's outfits were too revealing, other students (and Dr. White) reported only that she dressed too casually. Respondent denied dressing provocatively, and the evidence as a whole did not prove otherwise.

52. The District also did not prove that respondent called students "stupid," repeatedly used profanity in class, repeatedly yelled at and embarrassed students, or told students she was not qualified to teach their level of math. The District's evidence about those charges was too sparse to support them. L.M. testified respondent used profanity in class, but L.M. previously denied she did when asked by Principal Watson. The inconsistency casts doubt on his testimony at the hearing. None of the other student witnesses or interview notes proved respondent repeatedly used profanity or committed the other charged classroom misconduct. Respondent's admission that she told students, "I don't get this. This isn't adding up" during instruction is not proof of misconduct.

LEGAL CONCLUSIONS

Legal Standards

1. Education Code section 44932 provides several grounds for the dismissal of a permanent employee of a public school district, including “[i]mmoral conduct” and “[e]vident unfitness for service.” (Ed. Code, § 44932, subd. (a)(1), (6).)¹ When a public school district seeks to dismiss a permanent employee, such as respondent, for immoral conduct or evident unfitness for service, a Commission on Professional Competence must hold a hearing to determine whether the charged conduct occurred and, if it did, what the proper remedy should be. (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 220 (*Burman*)).

2. “The term “immoral” has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as wilful, 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 v. Weiland* (1960) 179 Cal.App.2d 808, 811.) “Moreover, the definition of immoral . . . must be considered in conjunction with the unique position of public school teachers, upon whom are imposed ‘responsibilities and limitations on freedom of action which do not exist in regard to other callings.’ [Citation.]” (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466 (*Lampedusa*)).

¹ Undesignated statutory references are to the Education Code.

3. For purposes of teacher discipline, conduct cannot be characterized as immoral under section 44932, subdivision (a)(1) unless it indicates that a teacher is unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229 (*Morrison*); *Bassett Unified School Dist. v. Commission on Professional Competence* (1988) 201 Cal.App.3d 1444, 1453 [“[W]here charges of immorality . . . are raised in teacher discharge cases, the applicable standard is whether the person is fit to teach.”]; *Board of Education v. Commission on Professional Competence* (1980) 102 Cal.App.3d 555, 560 [the term “immoral conduct” must be “given context by reference to fitness for the performance of that occupation”].) In *Morrison*, the California Supreme Court outlined seven factors for consideration “to determine whether the unprofessional conduct demonstrated unfitness to teach: [1] the likelihood that the conduct may have adversely affected students or fellow teachers, [and] the degree of such adversity anticipated, [2] the proximity or remoteness in time of the conduct, [3] the type of teaching certificate held by the party involved, [4] the extenuating or aggravating circumstances, if any, surrounding the conduct, [5] the praiseworthiness or blameworthiness of the motives resulting in the conduct, [6] the likelihood of the recurrence of the questioned conduct, and [7] the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.”” (*Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 474, citing *Morrison, supra*, 1 Cal.3d at pp. 229-330.) “These factors are relevant to the extent that they assist the board in determining whether the teacher’s fitness to teach, i.e., in determining whether the teacher’s future classroom performance and overall impact on his [or her] students are likely to meet the [school district’s] standards.”” (*Morrison, supra*, 1 Cal.3d at pp. 229-230.)

4. "Evident unfitness for service" under section 44932, subdivision (a)(6) means "'clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies.' [Fn. omitted.]" (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 (*Woodland*).) This cause for discipline "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." (*Ibid.*) On this cause for discipline, the criteria for unfitness in *Morrison* "must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service. [Citation.] If the *Morrison* criteria are satisfied, the next step is to determine whether the 'unfitness' is 'evident'; i.e., whether the offensive conduct is caused by a defect in temperament." (*Woodland, supra*, 2 Cal.App.4th at p. 1445.)

5. The District has the burden of proving cause for dismissal by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1040.) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Analysis

Immoral Conduct

6. The District proved that respondent engaged in immoral conduct with respect to her posts on Twitter. Respondent's public posting of messages that were vulgar and sexually graphic, glorified drug use and violence, demeaned the District's curriculum, and used a racially offensive term was conduct indicative of "indecency" and "moral indifference." (*Board of Education v. Weiland, supra*, 179 Cal.App.2d at p.

811.) Analysis of the factors described in *Morrison* indicates that the postings demonstrate an unfitness to teach and thus constitute immoral conduct under section 44932, subdivision (a)(1):

(1) The likelihood that the conduct may have adversely affected students or fellow teachers, and the degree of such adversity anticipated. Respondent's misconduct had an adverse effect on students, teachers, and District administrators. At least two students (R.A. and L.M.) expressed surprise at the posts and thought they were inappropriate for a teacher. At least two teachers (Ms. Valle and Ms. Bolling) likely lost the attention of students who were viewing the posts during instructional time. A teacher's failure to model appropriate behavior is also harmful to students. In addition, District administrators lost trust in respondent's judgment and ability to teach students. Overall, the degree of adversity anticipated is moderate.

(2) The proximity or remoteness in time of the conduct. Respondent's misconduct occurred in August and September 2019, and the Board voted in December 2019 to dismiss respondent from employment.

(3) The type of credential held or applied for by the person involved. Respondent holds a foundational-level math credential with an English language authorization. She teaches high school students, including credit-deficient continuation students, who are at an impressionable stage related to sexual maturity and appropriate norms of communication.

(4) The extenuating or aggravating circumstances surrounding the conduct. The District's lack of a social media policy prior to respondent's misconduct is an extenuating circumstance. Respondent's lack of prior discipline and positive

employment evaluations are additional extenuating circumstances. Respondent also testified she grew up in an environment where she and her friends used the type of language in the posts, which is an extenuating circumstance to some degree.

Aggravating circumstances include the vulgar and offensive language in respondent's posts, her many posts over a several-week time period, and respondent's belated admission of wrongdoing. Respondent's apparent endorsement of violence by continuing education students is also an aggravating factor. Respondent tweeted, "I like continuation students cuz they don't hesitate to offer to beat somebody ass for you [crying laughter emojis]." While respondent described the post as an attempt to be humorous, the post sends the wrong message to students at risk.

(5) The praiseworthiness or blameworthiness of the motives resulting in the conduct. There was nothing praiseworthy about respondent's motives resulting in the conduct. Respondent testified she was just talking with friends, but her posts were not just to personal friends. Given the graphic and vulgar language in the posts, she appears to have been motivated by a desire to get attention and reaction from her followers, which is not praiseworthy. Her message "Fuck #commoncore" is a blameworthy attempt to criticize the curriculum she was required to teach. Nothing in the posts was uplifting or positive.

(6) The likelihood of the recurrence of the questioned conduct. Respondent deleted her Twitter account and promised not to commit the same misconduct again, and it is believable she will not post similar tweets or retweets in the future. But it is highly likely respondent will continue to express herself in a similar manner in other settings. Respondent posted over a dozen inappropriate messages in just over two weeks. The vulgar, sexually graphic, and racially offensive content of the messages was unremarkable to respondent, and she defended her right to post the

messages even after students discovered her account. Respondent's testimony that she now understands the messages were inappropriate is suspect. Furthermore, her testimony that she will never use the "N" word again after listening to Dr. White's testimony was not believable. Considering these facts, there is a risk that respondent will express herself in a similar manner in other settings accessible to students, teachers, or District administrators.

(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. Respondent did not raise this issue, and the Commission does not foresee that disciplinary action will inflict an adverse impact or chilling effect upon the constitutional rights of respondent or other teachers. Public school teachers have "responsibilities and limitations on freedom of action which do not exist in regard to other callings.' [Citation.]" (*Lampedusa, supra*, 194 Cal.App.4th at p. 1466.) The court in *Lampedusa* held that disciplinary action against a teacher for posting sexually explicit photos of himself with graphic text on a public website did not have an adverse impact or chilling effect on the teacher's constitutional rights. (*Id.* at p. 1465.) Similarly here, disciplinary action will not have an adverse impact or chilling effect upon respondent's constitutional rights.

Evident Unfitness for Service

7. The District also proved that respondent's conduct with respect to her post on Twitter is cause for dismissal on the grounds of evident unfitness for service. The *Morrison* criteria analyzed above indicate unfitness to teach, and the Commission concludes that the "unfitness" is "evident;" i.e., "the offensive conduct is caused by a defect in temperament." (*Woodland, supra*, 2 Cal.App.4th at p. 1445.) Respondent's posts demonstrated a serious lapse in good judgment. She posted offensive messages

repeatedly over several weeks, and no evidence suggests she would have stopped absent District intervention. She failed to recognize the seriousness of her misconduct when students discovered her account, and she attempted to shift the blame to the students who viewed it. District administrators have lost confidence in respondent's ability to serve as a role model for students based on the posts. Respondent's belated admission of wrongdoing and expression of remorse are not entirely believable. These considerations evidence a defect in temperament that demonstrates evident unfitness to teach.

8. The District also alleges that respondent dressed provocatively and inappropriately for class, called students "stupid" and repeatedly used profanity in class, repeatedly yelled at and embarrassed students, and told students she was not qualified to teach their level of math. The District's evidence about those allegations was sparse and did not establish cause for dismissal with respect to those charges.

Disposition

9. "The Commission has broad discretion in determining what constitutes unfitness to teach and immoral conduct, and whether dismissal or suspension is the appropriate sanction. [Citation.]" (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 343.) Thus, even where cause for dismissal has been established, the Commission still has discretion to determine whether to impose that discipline. (*Burman, supra*, 45 Cal.3d at p. 222.)

10. The Commission concludes that dismissal is the appropriate sanction. Respondent committed immoral conduct and displayed evident unfitness for service. Her behavior negatively affected her relationships with students and administrators. She has not modeled appropriate behavior for students, and the District rightfully has

lost confidence in her ability to serve as a role model for students. Given these considerations, respondent should not be allowed to return to the classroom.

ORDER

Respondent Melissa Rivera is dismissed as a permanent certificated employee of the District.

DATE: Dec 30, 2020


Davina M. Keiser (Dec 30, 2020 11:21 PST)

DAVINA KEISER

Commission Member

DATE: Dec 30, 2020


Mark Hill (Dec 30, 2020 11:58 PST)

MARK HILL, Ed.D.

Commissioner Member

DATE: Dec 30, 2020


Thomas Heller (Dec 30, 2020 13:31 PST)

THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings