

**BEFORE THE  
COMMISSION ON TEACHER CREDENTIALING  
STATE OF CALIFORNIA**

**In the Matter of the First Amended Accusation Against:**

**ELIZABETH FLORES, Respondent.**

**Agency Case No. 1-63616308**

**OAH No. 2021010005**

**PROPOSED DECISION**

Eileen Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 8, October 4, 5, and 11, and November 19, 2021 by video and telephonic conference.

Complainant Mary Vixie Sandy, Ed.D., Executive Director (Complainant) of the California Commission on Teacher Credentialing (CTC) was represented by Stephanie J. Lee, Deputy Attorney General.

Respondent Elizabeth Flores appeared and was represented by Elliott N. Tiomkin, Attorney at Law.

The parties submitted briefs which addressed pertinent legal and evidentiary issues. For the convenience of the parties, their briefs were marked and lodged as follows: ALJ-1, Respondent's Hearing Brief and Evidentiary Motions. ALJ-2, Complainant's Brief re: Unavailability of Declarant and Hearsay Exception per Evidence

Code section 1231; ALJ-3, Complainant's Opening Brief; ALJ-4, Complainant's Motions in Limine to Exclude and Strike Waiting Room Evidence, and Attorney Witnesses; ALJ-5, Complainant's meet and confer re: evidence dated October 12, 2021 and Respondent's meet and confer dated November 2, 2021; ALJ-6, Complainant's Closing Brief; ALJ-7, Respondent's Amended Closing Brief; and ALJ-8, Complainant's Reply Closing Brief.

As more fully set forth in the record, the parties Motions in Limine were decided as follows. Respondent's motion to exclude the transcript of the preliminary hearing testimony of DC in the criminal proceeding of Respondent's son was granted, but after a review of the hearing testimony, a small portion of the preliminary hearing testimony was admitted as administrative hearsay. Complainant's motion to exclude and strike waiting room evidence and attorney witnesses was granted. In addition, Respondent's motion to exclude Complainant's expert witness, Dr. Vince Carbino, was denied.

Oral and documentary evidence was received.<sup>1</sup> At the conclusion of the hearing, the record remained open for the submission of written closing briefs which were

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<sup>1</sup> As set forth in the record and in response to the parties' meet and confer letters, Exhibit ALJ-5, rulings were made on the admission of evidence. All exhibits were marked. The exhibit package with the exhibit lists constitutes the final evidentiary record and take precedence over the following list. All admitted and relevant exhibits were considered in developing the factual findings, whether or not cited. The following Complainant exhibits were admitted: Exhibit 1 (affidavit withdrawn by stipulation and Findings of Committee of Credentials removed) through Exhibit 3, Exhibit 4 (pages 100-101 only, under *Lake V. Reed* (1997) 16 Cal. 4th 445 (*Lake*), the remaining pages withdrawn), Exhibit 5 and Exhibits 7-9. Complainant's Exhibit 6 was not admitted as

timely submitted. The record was closed, and the matter was submitted for decision on January 7, 2022.

## **SUMMARY**

Complainant seeks to discipline Respondent's teaching credential as a special education/paraprofessional, currently employed with the Los Angeles County Unified School District (District), on the basis of (1) unprofessional conduct, (2) immoral conduct, (3) acts of moral turpitude; and (4) evident unfitness for service.

Complainant's basis for discipline are two alleged incidents which occurred on the same day in April 2017 outside a courtroom of Los Angeles Superior Court where a preliminary hearing was being conducted on felony charges against Respondent's son.

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direct evidence, but after a review of the entirety of the record, particularly the hearing testimony, a limited portion of the record of DC's testimony was admitted as administrative hearsay (Ex. 6, pp. 60-67, line 4.) The following Respondents exhibits were admitted: Exhibit A1, A3-A4 (administrative hearsay); Exhibit A5-A10; Exhibit A21-22 (jurisdictional and duplicative of Exhibit 1 AGO 12-13); Exhibit B1-B2; Exhibit D1-D2; Exhibit E, pp. 6-15-line 7, p. 17-line 21 (stipulation as to administrative hearsay, prior consistent statements); and Exhibit G, pp. G1-G7, G10-G15, and from supplements, pages, 55, 70, 72-74, 82-84, 89-90, 113-114 (administrative hearsay, prior inconsistent statements). The following Respondent Exhibits were not admitted: Exhibits A2, A11-20, A23-27, C, F and H.

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Respondent was accused of intimidating and attempting to influence a witness and assaulting a police officer.

Respondent maintained the events as described did not occur and further her conduct did not support discipline under the criteria for determining whether Respondent is unfit to teach, set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 224-5 (*Morrison*).

Complainant failed to prove by clear and convincing evidence Respondent committed the acts alleged. Without a sufficient foundation to establish cause, the matter is dismissed. Further, absent cause an adverse action is not otherwise warranted. Under the guidance of *Morrison* the evidence established Respondent is a respected, competent and caring classroom paraprofessional and as such, fit to teach.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. On December 3, 2015, the CTC issued a Certificate of Clearance (credential) to Respondent. (Ex. 3.) With this credential, Respondent was authorized to work as a paraprofessional/special education assistant by the District. The Certificate was in full force and effect at all times relevant and was set to expire on January 1, 2021, unless renewed. There was no evidence submitted establishing Respondent renewed the credential. During the hearing, Respondent stated she was unaware it expired.

2. The CTC's Committee of Credentials (Committee) is responsible for investigating all alleged misconduct that may be cause for the CTC to take adverse

action and the circumstances in mitigation and aggravation. (Ed. Code, § 44242.5, subd. (c).)

3. On August 15-17, 2018, the Committee found probable cause to recommend revocation of Respondent's certificate and all credentials,

4. On September 23, 2018, Respondent requested reconsideration of the Committee's decision and an administrative hearing. (Ex. 1, pp 12-13.)

5. On October 17-19, 2018, the Committee reconsidered and sustained its decision to revoke her Certificate and all credentials.

6. On November 25, 2020, Complainant filed the First Amended Accusation solely in her official capacity as the Executive Director of the CTC. The Complainant alleged Respondent attempted to intimidate and persuade a witness, DC, to change his testimony, in a criminal court action against her son, EFJ, and also assaulted a police officer.<sup>2</sup>

7. Respondent timely requested an administrative hearing to challenge the First Amended Accusation.

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<sup>2</sup> Initials are used to protect the privacy of the parties. EFJ are the initials used in the First Amended Accusation for Respondent's son, and DC and EL are witnesses called to testify at EFJ's preliminary hearing. EFS is Respondent's husband and father of EFJ, and CF is Respondent's son who testified at the hearing. A protective order and sealing order will be issued separately.

8. Before the two incidents alleged herein, Respondent had no disciplinary history with the CTC or the District. At all times relevant to the First Amended Accusation, Respondent was employed by the District as a certificated employee as a special education classroom aide.

## **Complainant's Evidence**

### **WITNESS INTIMIDATION AND ASSAULT OF A POLICE OFFICER**

9. On April 12, 2017, a preliminary hearing was held for Respondent's son EFJ, in Superior Court Case Number PA08664. EFJ was charged with several counts of violations of the Penal Code: carrying a loaded firearm in violation of Penal code section 2589, subdivision (a), a misdemeanor, assault with a firearm upon a peace officer, in violation of Penal Code section 245, subdivision (d)(10), a felony and an enhancement charge based upon active participant in a criminal street gang, within the meaning of Penal Code section 2580, subdivision (c)(3).<sup>3</sup> (Ex. 8.)

10. The criminal proceeding against EFJ began with the preliminary hearing at the Superior Court, which occurred about a year after the alleged criminal conduct. Respondent came to the courthouse with other members of her family to provide

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<sup>3</sup> The evidentiary basis of the criminal action against Respondent's son or the truth or veracity of witness or documentary evidence, including police statements, related to EFJ's underlying criminal charges are not relevant to this decision. As such, the factual findings contained herein should not be interpreted expressly or impliedly as statements implicating or exonerating EFJ or any witness or law enforcement officer from criminal or civil liability for their actions.

support to her son. She went through security with her spouse and two or three of his siblings. The assigned courtroom was on the fourth floor and when the elevator doors opened she saw a bench in front and to the side of the courtroom door with some empty spaces and about 10 people standing or sitting, including uniformed police officers and individuals in everyday clothing.

11. When Respondent first sat down, she noticed two older Latino men sitting on the bench next to each other. She did not recognize or know them. They were talking. Her son's attorney was expected to come out of the courtroom to meet with the family.

12. Respondent's spouse EFS sat closer to EL and DC than Respondent, but they both overheard EL and DC talking among themselves about the trial. EL and DC were at the scene of the incident which was the subject of EFJ's trial and were called by the District Attorney to testify at the preliminary hearing.

13. It was established that ELF's father EF spoke to the witnesses about the substance of their testimony and observations. However, it has not been established by clear and convincing evidence, what, if anything, Respondent said to the witnesses which would constitute an attempt to dissuade them from testifying against her son, particularly DC.

14. Detective Jose Chavez (Chavez) testified about his observations in the courthouse that day. He established a good-faith basis for his conclusion DC believed he was being intimidated by both EFS and Respondent. Chavez has been a detective for 31 years. He has conducted over 100 investigations of officer-involved shootings, had assisted in approximately 75 to 100 gang-related homicide investigations, and had extensive training in gang culture and lifestyle.

15. Chavez was not a direct witness to the criminal incident involving EFJ but had interviewed DC during the investigation of EFJ's criminal matter and was present at the courthouse to testify.

16. When Chavez arrived and left the elevator he saw DC and EL sitting at the left side of a long bench located in front of the courtroom and briefly greeted them. Chavez had met DC in person on at least one occasion prior the preliminary hearing including the day of the incident. DC was subpoenaed to testify by the District Attorney. Chavez never spoke with DC about his mental health or other stresses in his life and was unaware of any reason DC would hesitate to testify other than the usual concerns of testifying in a possible gang-related shooting which occurred in DC's neighborhood. Chavez also recognized EL. Chavez went in and out of the courtroom several times. As Chavez went into the courtroom, he did not recognize EFS or spend any time observing Respondent.

17. The bench was about 30 feet in length and could accommodate several individuals. Chavez observed a large group of female and male adults, who appeared to be family members, including the two people sitting next to the witnesses, who he later was advised were EFS and Respondent, and their three children. Chavez did not initially observe DC to be upset or agitated on his many trips in and out the courtroom over a 35 to 40 minute time period. However, after an interval of few minutes inside the courtroom when he came out into the hallway he observed a change in DC's demeanor. EL and DC were on the bench with EFS and Respondent. He observed DC to be visibly distressed and ashen in appearance as if he had "seen a ghost." Chavez asked DC if he was alright. DC left the bench and followed Chavez to the right side of the front of the courthouse where there were other officers, about 20 feet from where he was originally sitting.



18. DC provided information about his purported communications with EFS and Respondent: EFS and Respondent introduced themselves to him as EFJ's parents. Respondent was sitting next to DC and EFS was sitting at her side. Respondent purportedly had in her hands a transcript or typewritten document of DC's statement to the police of his observations of EFJ's interactions with the police which were the subject of criminal charges against EFJ and the preliminary hearing. DC reported to Chavez the statements he alleged EFS and Respondent made to him which he repeated in his preliminary hearing testimony. Chavez directed DC and EL to sit with the uniformed police officers on the other side of the hallway. (Ex. 6, pp. 60-67, line 3, 128-130, line 10.; Ex. G.) (DC's statement to Chavez was admitted as an excited utterance pursuant to Evidence Code section 1240.)

19. Chavez never memorialized his hallway interaction with DC by preparing his own written report. Respondent questioned Chavez's veracity and credibility based upon inconsistencies between his hearing testimony and his statements closer in time to his hallway interactions. Chavez was the officer who filed the charges against EFJ, but did not record his conversation with DC, although he carried a recorder with him, and by his own admission, was the only one who observed and interpreted DC's physical actions to be so extreme and his conversation as "babbling." Chavez's interactions were memorialized by another officer in an investigative report but although it supported and explained Chavez's observations of DC's reaction to meeting EFS and Chavez's testimony, the exact statements attributed to DC about Respondent constituted multiple levels of hearsay and were accorded limited weight under the authority of *Lake*. (Ex. 4, pp. 100-101; Ex. G. pp.72:22, 73:5, 83:28-84:1, 84:3-7.)

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20. Nevertheless, despite inconsistencies between Chavez's testimony and earlier characterizations of DC's behavior and exact statements to him during the preliminary hearing, Chavez's testimony about his general perception of DC's demeanor was credible. Statements Chavez attributed to DC in the hallway were consistent with DC's preliminary hearing testimony, discussed below (Ex. 6.)

21. It is clear from the record, including the testimony of Respondent and the evidence of EFS's criminal conviction, further discussed below, DC had informed the District Attorney of his concerns and provided preliminary hearing testimony about his purported communication with EFS and Respondent. The preliminary hearing transcript was not admitted during the hearing as direct evidence of the truth of DC's statements. DC's preliminary hearing testimony qualified as direct evidence from an unavailable witness in a criminal proceeding where gang-activity is alleged pursuant to Evidence Code 1231. DC's preliminary hearing testimony was admitted in EFJ's criminal trial, consistent with that statute. However, that statute does not elevate the preliminary hearing transcript to direct evidence in an administrative hearing, Unlike the situation where a transcript or deposition may be admitted as direct evidence for an unavailable witness in an action between the same parties pursuant to Evidence Code section 1291, Respondent was not a party to the criminal proceeding and did not have an opportunity to cross-examine the witness about DC's observations which were unrelated to charges in EFJ's criminal indictment. Nevertheless, upon a comprehensive review of the record, particularly witness testimony addressing the accusations of Respondent's witness tampering, a portion of DC's preliminary hearing testimony was determined to be admissible as administrative hearsay pursuant to Government Code section 11513, (Exhibit 6, pp. 60-61, line 3 and 128-130, line 20.)

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22. Chavez informed the District Attorney what DC reported to him. (Ex. 4, p. 101.) After EFJ's counsel was informed EFS and Respondent were speaking with the witnesses, he left the courtroom to tell them not to engage in any conversation with witnesses. DC was sworn in to testify that day and his cross-examination was completed the next morning, April 13, 2017, at which time he was excused.

23. DC reported to Chavez his interaction with EFS and Respondent. He maintained Respondent read from a transcript she held in her hand of his interview with the police and believed he was being pressured to lie. (Ex. 6, pp. 60-61 and 128-129.) However, during Chavez's preliminary hearing testimony in a criminal action brought against EFS and Respondent, discussed below, Chavez confirmed DC never expressly attributed to Respondent any statements pressuring DC to lie and did not threaten him. (Ex. G, p.3-4, ll.1)

24. Within a short time after Respondent and EFS were admonished not to speak with the witnesses, Laureno Alvarez (Alvarez), a detective in plainclothes, was directed to photograph EFS. Alvarez attempted to take a "covert photograph" (Exhibit 4, p. 100). He approached EFS with his cell phone camera raised and pointed in his direction to take a "covert photograph." Alvarez maintained he identified himself and asked EFS if he was the father. (*Ibid*, p. 101.) Alvarez did not testify during the hearing and any disputed statements or observations attributed to him were not persuasive because they could not be independently corroborated by any eyewitness. Respondent and family members were standing close to EFS.

25. Chavez was in the hallway in front of the elevator doors, about 10-15 feet away from Alvarez. From that position, he joined with other officers to assist Alvarez who had asked them for backup. Alvarez was standing within one foot of the family

facing the family. Chavez was in a position to observe EFS's and Respondent's expressions of anger and a general atmosphere of chaos and yelling. However, Chavez admitted he was not in a position to observe any touching, and although he heard a female yelling, he could not confirm it was Respondent's voice.

26. Chavez ran to Alvarez's position near EFS and the family and then notified the courtroom bailiff there was a confrontation in the hallway. Another bailiff was summoned to assist in calming the situation. The court noted the disturbance on the record during the preliminary hearing. (Ex. 8, p. 184.)

27. EFS, Respondent and family members were escorted out of the courthouse and there were no other incidents that day or afterward during any related proceedings for her son's criminal matter at the courthouse. As a result of the controversy created by the incidents in the hallway, Respondent, by court order, was prohibited from attending EFJ's trial. (Ex. 7, p. 174; Ex. 8, p. 186.)

28. Chavez acknowledged Respondent had no history of gang membership.

29. On July 10, 2017, Respondent's son made a court appearance and rejected the District Attorney's plea offer.

30. On July 10, 2017, DC was found dead. The coroner listed suicide as the cause of death, (Exhibit 5), but the circumstances of DC's death, however disturbing, were not considered relevant to Respondent, the subject of this hearing. There was no evidence Respondent was involved with DC's death or aware of DC's death until after the District Attorney's initiation of the criminal action against her.

31. On July 17, 2017, the District Attorney filed charges against Respondent and EFS (Los Angeles Superior Court, Case No. PA089190) for "knowingly and

maliciously attempt[ing] to prevent and dissuade DC, a witness and victim, from attending and giving testimony at a trial, proceeding, and inquiry authorized by law,” (Count one, Penal Code section 136.1(a)(2), a felony, and for “willfully and unlawfully use [of] force upon the person of Laureno Alvarez, when [they] knew or reasonably should have known that said person was a peace officer engaged in the performance of his or her official duties (Count two, Penal Code section 243, subdivision (b)). The District Attorney also added a serious felony enhancement to the charges for criminal gang activity pursuant to Penal Code section 186.22, subdivision (b)(4). For EFS, an additional felony sentencing enhancement charge was requested due to a prior 1996 serious or violent felony. Warrants for the arrests of Respondent and EFS were issued and executed. (Ex. 7.)

32. On October 25, 2017 Respondent’s son, EFJ, after a trial by jury, was found guilty of one count of carrying a loaded firearm in violation of Penal code section 2580, subdivision (a), a misdemeanor, not the felony enhancement alleged related to gang membership pursuant to Penal Code section 186.22, subdivision (b). EFJ was found not guilty of assault with a firearm upon a peace officer, in violation of Penal Code section 245, subdivision (d)(1), a felony, and was found not to be an active participant in a criminal street gang, within the meaning of Penal Code section 2580, subdivision (c)(3) (Ex. 8, p. 198.) DC’s preliminary hearing transcript was read into the record due to DC’s unavailability. (*Ibid*, p. 195.)

33. On December 21, 2017, EFS pleaded nolo contendere to count one, knowingly and maliciously attempting to dissuade a witness, DC, and the court found him guilty. Count two, assault upon a police officer, was dismissed as part of the plea negotiation. The court suspended EFS’s sentence and placed him on formal probation for a period of three years under terms and conditions that included 316 days in

custody with 158 days credit for actual custody and 158 days for good time/work time, and ordered payment of assessments, restitution, submission to blood samples and property searches with or without a warrant. (Ex. 7, pp. 178-179.)

34. On December 21, 2017, at the time EFS was convicted, the District Attorney moved to dismiss Respondent's criminal charges. The court granted the District Attorney's motion and dismissed the criminal charges against Respondent in the furtherance of justice pursuant to Penal Code section 1385. (Ex. 7, p. 212.)

### **COMPLAINANT'S EXPERT TESTIMONY: FITNESS TO TEACH**

35. Complainant provided the testimony of expert witness Dr. Vince Carbino, who possessed a Doctor of Education, Educational Leadership and Administration for Urban K-12 Programs, a Master of Science in Educational Leadership and Counseling, a Bachelor of Arts in Public Administration, and Associate of Science in Law Enforcement. (Ex. 9.) Dr. Carbino has decades of professional experience as an educational administrator, and as a special education teacher and mentor for the District. He is currently the Principal of Independent Study at a District school, City Independent Study School and Virtual Academy. He also has had experience with disciplinary cases involving certificated employees.

36. On cross-examination, Dr. Carbino admitted he faced his own professional crises as an embattled principal of a District school where he was removed after there was public pressure for his removal from a troubled school. Dr. Carbino's lack of recollection of key events regarding his history at that school was noteworthy. Nevertheless, his testimony was not adversely affected by his admission or incomplete recollection of his own history. Rather, Dr. Carbino's opinion was discredited by his assumptions regarding Respondent's courthouse conduct, which

were not supported by the evidence, and his admitted lack of information about Respondent's school record, on-campus behavior and reputation. His incomplete foundation for his opinion negatively affected his analysis of the *Morrison* factors, and his conclusion Respondent was unfit to teach.

37. Dr. Carbino provided testimony about the relationship between out-of-school conduct and the educational factors under the *Morrison factors*. Dr. Carbino had no personal knowledge of the dispute and did not know Respondent or her family.

38. Dr. Carbino reviewed documents provided by Complainant which included her license history, the First Amended Accusation, the Committee findings and supportive documents, and the criminal charges against EFS and Respondent.

39. Dr. Carbino's opinion did not consider a wide-range of other information. Dr. Carbino did not review any statements by EL. He did not review any of Respondent's school records including performance evaluations. Dr. Carbino did not consider the absence of any reports during Respondent's decades-long professional career at the District of threats, bullying or physical assault, aggression, or violence, or any conduct which evidenced actual or potential harm to children or the school environment. Dr. Carbino was unaware of any social or news media reports of the incident and did not consider the absence of such reports significant. He did not consider the remoteness in time from the incidents.

40. Dr. Carbino's conclusion was based on the presumption one or both incidents occurred and Respondent, as a certificated teacher, threatened a witness or assaulted a police officer in a public setting, notably in front of children. Respondent was blameworthy for an "extreme level" of conduct and her public conduct alone was

justified revoking her licensure because it presented a potential if not actual threat to the children and the school setting. Acts of violence or bullying in the presence of children, can lead to negative outcomes for them as adults. Teachers hold public positions and as such, are expected to comport themselves in front of children appropriately. In addition, according to Dr. Carbino, Respondent, as a certificated employee, should be expected to de-escalate a situation. Dr. Carbino expressed concern about the potential notoriety if students or parents became aware of the situation, and the possible recurrence if Respondent failed to acknowledge her conduct. He also maintained her purported public conduct created a possible “chilling effect” on school personnel if no action was taken against Respondent, a conclusion which did not make sense.

41. Dr. Carbino surprisingly and unconvincingly stated his opinion would not change if the allegations proved to be untrue. Dr. Carbino’s opinion did not follow his insistence Respondent was unfit to teach due to an “extreme level” of public misconduct unrelated to her behavior in an educational setting.

## **Respondent’s Evidence**

### **THE INCIDENTS**

42. Respondent has been married for 26 years to EFS. They have four children. At the time of the incidents at the courthouse in 2017, Respondent’s children were aged 21, 19, 14 and 7. Her oldest son, EFJ was the subject of the preliminary hearing and criminal trial. Her three other children accompanied her to the courthouse. Respondent learned of the circumstances of EFJ’s felony criminal action from a neighbor during a visit with her mother. She heard the officers shot at her son



and later learned her son was charged with possession of a firearm related to gang membership, and assault of a police officer with a deadly weapon.

43. Respondent became aware DC and another individual EL were present as witnesses and sitting on the bench in the courtroom hallway when together with her spouse they overheard them speaking about the case.

44. Respondent insisted during the hearing she did not recall any conversation with either EL or DC. She was seated next to them and EFS was seated next to her. She observed her spouse speaking with EL, who shared his first name. Witness EL made a statement to her about his observations of her son and the police officers and asked her if her son was alright. Respondent did not know DC's name beforehand and in what seemed like "seconds" police officer Chavez came out and called for witnesses DC and EL. EFS also answered because of his shared first name with EL. Chavez accompanied both witnesses to the other side of the hallway where they were joined by other police officers.

45. Respondent insisted she never had any conversation with DC and did not have possession of a police interview with DC or police report in the courthouse or at home, or at any time, and did not show DC any documents. She insisted she had no information to reach a conclusion DC's testimony would be unfavorable to her son at that time.

46. Respondent's testimony was not contradicted by any direct evidence she spoke directly to DC or had in her possession DC's statement to the police. Based upon EL's interactions with Respondent and EFS, and the circumstances, it is likely she did introduce herself to both DC and EL as Respondent's mother and it is probably, based on EL's recollection memorialized in his recorded statement to Chavez in July

2017, she said something to the effect what was happening to her son was unfair. (Ex. E.)

47. Respondent reasonably and logically testified she was unaware of DC's mental status. She also did not observe anything by his expression or demeanor to suggest DC was afraid. Respondent's testimony was consistent with Chavez's concession that his perception of DC's demeanor was based only upon his observations and not those of other police officers. Respondent's testimony was also consistent with EL's statement. (Ex. E)

48. Respondent called EL as a witness and he appeared by telephone. EL was another individual witness to the underlying criminal matter against EFJ subpoenaed by the prosecution to testify at EFJ's preliminary hearing. He sat beside DC on the bench. EL was not initially aware EFJ's parents were sitting near them on the bench.

49. EL did not evidence the same concern or fear Chavez observed with DC. EL recalled sitting on a bench with the other witness and at some point becoming aware EFJ's parents were sitting on the bench.

50. EL only remembered asking EFS and Respondent how ELF was doing and before hearing the answer, being told by a police officer to sit in another place. He did not observe Respondent show any papers or testimony, or suggest they change their story, lie or say the police were lying. EL did not observe DC saying anything; he observed him staying quiet. Respondent did not scare or intimidate them.

51. EL conceded he would not have lied to the police and any statement he would have made would have been honest.

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52. During the course of his cross-examination and re-direct EL became more circumspect and clearly annoyed about being compelled to appear at Respondent's administrative proceeding. He suddenly professed not to remember asking how EFJ was doing at all or having a conversation. EL repeated what he had said during direct that the events moved quickly between seeing EFJ's parents, which he now claimed he did not converse with, to being asked to move by the police officer. He insisted no one - Respondent, EFS or the police - intimidated him.

53. EL did not recall being interviewed by the police about anything EFS or Respondent may have said to him and would not agree that anything would refresh his recollection.

54. EL's sudden change of behavior during his testimony affected his credibility as a witness and put in question the veracity of his testimony. By the change in his tone and voice he clearly became more guarded, agitated and suspicious of the purpose and consequences of his appearance. However, the essential and relevant part of his original recorded statement to the police remained materially unchanged.

55. During EL's recorded interview with Chavez on July 26, 2017, in response to Chavez's questions about DC's "attitude," EL stated he did not appear afraid or uncomfortable. (Ex. E, p.7.) He noticed EFJ's family arrive after he was seated with DC on the bench, confirmed EFS and Respondent identified themselves as EFJ's parents, "it was a quick thing." (*Ibid.*, pp.8-10.) After further questioning about whether EFS asked EL who he was, EL stated: "No, no, no, no. He just showed up and greeted us and that was it. He said he was the kid's dad, you know. And that was it. That was it. And we just- we waited, after we moved to another bench, you know? Because there were quite a few of them: his mom and dad and his uncles. I don't know who else was with

them, you know.” (Ex. E, p. 11.) EL stated in general he had no problems with any parents or the police officers, (Ex. E pp.5 and 12.) He denied EFJ’s parents told DC to change his story or Respondent showed him a piece of paper. (Ex. E, p. 13.) He stated Respondent only remarked it was unfair what was happening to her son and it did not happen the way the officer said it did; however, EL was emphatic, “they never tried anything with me.” (Exhibit E, p. 16.)

56. Respondent’s other family members, including her sisters, arrived at about the same time counsel was admonishing her and EFS. As she was sitting with her spouse and family together on the bench, an individual, who did not identify himself as a police officer, but whom they later learned was Alvarez, wearing plain clothes and carrying a notebook in one hand, approached EFS at a rapid pace and pointed a camera at his face. Alvarez was no more than a foot in front of EFS and appeared agitated and aggressive to Respondent. Respondent reached up to block the camera but did not touch the officer.

57. Respondent’s sister, Lorena Lopez, was present when Alvarez approached EFS and took pictures of the exchange, and nothing in the pictures showed Respondent hit his hand or made any physical contact. Respondent was not facing the camera, but Ms. Lopez testified and provided straightforward testimony consistent with her observations and photographs. (Exs. D-1 and D-2.)

58. Respondent’s sister asked counsel for Respondent’s son to intervene, and he approached at the same time as the courtroom bailiff, who told everyone to calm down.

59. Ms. Lopez provided credible and straightforward testimony of her observations at the courthouse. She was candid when she could not clearly recollect

every detail of the incident from 2017. Ms. Lopez is a Certified Public Accountant (CPA) with a large accountancy firm. She came to the courthouse to support her nephew. When she arrived, she joined Respondent, EFS, her other sister and nieces and nephews. Respondent and EFS were seated at the bench, did not notice the two witnesses, or any conversation. At some point, she observed EFJ's attorney come out from the courtroom but was not present or did not hear him tell EFS or Respondent not to speak to the witnesses.

60. Ms. Lopez recalled clearly when Lorenzo, the plain clothes police officer, approached. She was standing in the busy hallway when she observed a man approach quickly and with an expression of anger. He extended his hand and was trying to take a picture of EFS. He was not wearing a uniform or badge. He was wearing a black jacket, tie and sunglasses and held a binder. She got very close to EFS.

61. Ms. Lopez was "shocked" by the aggressive behavior she observed and the manner in which the individual, was trying to close in on EFS's face. She became concerned for her safety.

62. Ms. Lopez observed Respondent attempt to get in the middle of the gentlemen and EFS to separate him from the unidentified man while holding onto EFS with one hand. Ms. Lopez never observed Respondent strike the unidentified man, make contact with him, or threaten him.

63. Ms. Lopez observed the situation end when one of the sheriff's deputies came out and separated everyone.

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64. The incident happened before the preliminary hearing. Ms. Lopez had an opportunity to be close to Respondent and never saw her with documents in her possession. She insisted her sister did not have a transcript.

65. Ms. Lopez is close to Respondent. As her sister, she naturally has a bias; however, she testified plainly and directly without hesitation or contrivance, and her observations were supported by her photographs. Ms. Lopez insisted she would not compromise her integrity or risk her profession by lying. She knows her sister to be a caring, compassionate individual, and a good mother and Aunt.

66. Respondent's son, CF testified about his observations at the courthouse. CF is currently 19, attends Mission College where he is working toward an associate of arts degree, and works at a clothing store. At the time of the incidents, CF was 14 years of age, living with his parents, two brothers, including EFJ, and one sister. He accompanied his parents, brother and younger sister to court on April 12, 2017. When they approached the bench in front of the courtroom, he observed two older Latino men seated next to each other. CF was not aware the two men were witnesses.

67. CF overheard the men speaking to each other about how they ran when they heard the police shooting. He heard his parents being asked if his brother was alive and okay. CF heard his father respond that his son was safe and alive. CF did not hear Respondent say anything substantive to the men, to lie or change their story. CF did not observe Respondent show the men any documents or point to transcripts or police reports, threaten or intimidate anyone.

68. CF only heard Respondent say, "oh yeah, that is my son," in response to a question.

69. CF was firm about his observations of the men: He observed the older of the two men, who he did not know by name, but was later identified as EL, "doing all the talking" and the other man (DC) just listening.

70. After about two minutes CF observed EFJ's lawyer come out of the courtroom and tell them the two men were witnesses and not to talk to them. He saw the witnesses get up and leave after they were called by a "bald guy."

71. CF observed the second incident. His observations were consistent with the observations of other family members: An unidentified male approached, who he later learned was a police officer (Alvarez). Alvarez started putting his hands up to take pictures. CF did not know why he was taking pictures. He appeared to be right up against EFS's nose. He saw his mother try to cover his father's face. When she did that an argument ensued

72. Soon afterward, EFJ's lawyer came out and accompanied his parents down the elevator. His parents left. Respondent was not allowed inside the courtroom. CF did not leave and remained at the courthouse all day. No one interviewed him.

73. CF's testimony was believable regardless of a natural bias to support Respondent who he considered a hard-working, caring, friendly and loving parent. His testimony was not identical to his mother's. He did remember her speaking briefly to the witnesses.

74. On July 19, 2017, Respondent was in her kitchen when a group of officers arrived at her home in special gear and with automatic weapons to enforce the arrest warrant for the felony complaint against her, described above. (Ex. 7.)

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## **RESPONDENT'S EVIDENCE: FITNESS TO TEACH**

75. Respondent has been an employee of the District for over two decades, from 1998 to the present. She was raised in Van Nuys, California and graduated from the local high school, obtained an Associate of Arts degree from Los Angeles Mission College and a Bachelor of Arts degree in sociology from California State University, Northridge. Respondent completed her Bachelor of Arts degree in two years while working and taking care of her three children.

76. Respondent has enjoyed a successful career at the District. She began her career as a substitute teacher at Reseda High School and after a year began working at a District special education campus. After approximately two years as a substitute teacher, Respondent became a one-on-one special education aide and transitioned to a full-time position. She worked with one student for two years and then she worked with another student from the student's elementary school through high school years. As a one-on-one aide she accompanied special education students to class, on the bus to and from school and extracurricular activities. Since 2007, Respondent has been assigned by the District to Grover Cleveland Charter High School. During her tenure at the high school, she advanced from a special education trainee to her current position of special education assistant which she has held for approximately eight years.

77. Respondent's goal is to become a full-time certificated teacher. Her certificate of clearance was the first step for her in this process; however, it is not a prerequisite for her current position. She is awaiting the outcome of this matter before she can proceed to the next step.

78. After the District was notified of the criminal complaint filed against her at the start of the school year in August 2017, Respondent was immediately removed



from the classroom. She continued to work at the District and was not terminated or suspended.

79. The District did not initiate its own investigation or any administrative proceedings. The District returned Respondent to the classroom after the criminal action against her was dismissed. Respondent returned to the classroom in January 2018, after the conclusion of the District's winter holiday break.

80. Respondent has received positive performance reviews as a special education assistant at Cleveland Charter High School. (Ex. A, pp A-5 – A-10.) In May 2017, she was rated as exceeding standards in all areas rated, including work product, work habits, relationships with others, additional job-related factors. Of the five evaluations submitted, for years 2017, 2016, 2015, 2011, and 2008, there is only one instance in the May 2016 evaluation, where she received a below average ranking under work habits, which Respondent attributes to missing work due to one of her children's illness. (Ex. A, p. A-3.)

81. Respondent has been commended for her work as a special education aide, as an "amazing employee" and volunteer for activities which were not part of her work responsibilities. She is noted to be "tough as nails but with a heart of gold," and collegial with a passion for her job. (Ex. B.)

82. Scott Schmerelson, a member of the District Board, representing District 3, testified on behalf of Respondent. He wrote and awarded the commendation referenced above during the 2014-2015 school year. He knew Respondent as a teacher who everyone liked. Schmerelson never worked directly with Respondent as a teacher. He interacted directly and daily with Respondent for six months when he was an administrator and on morning a.m. front-desk duty during the 2014-2015 school year

when Respondent was at the same District school. Schmerelson has over 50 years of experience as an educator, as a classroom teacher and administrator.

83. Schmerelson was unaware of the allegations in the First Amended Accusation before his testimony. He does not have a social relationship with Respondent and has not been in contact with her since he worked with her in the 2014-2015 school year. On cross-examination, Schmerelson stated he would be surprised if she lost her temper or made negative comments about the police, because there was a regular police presence at the school, and he never heard her make negative comments about them. Schmerelson never saw Respondent interact with the police and was unaware of the criminal action against her. Schmerelson provided candid, straightforward and credible testimony and was careful to be clear about his recollection and knowledge.

84. Respondent enjoyed a positive relationship with school law enforcement personnel. Police Sergeant Jesus Arana testified on behalf of Respondent. He was familiar with the allegations against her. He met Respondent at a District school about a dozen years ago and became social friends with her about a decade ago. He has seen Respondent socially on about 10-15 occasions over the last decade. He has never seen Respondent upset or heard her say anything derogatory about law enforcement including accusing them of lying. She has participated in toy drive initiatives of law enforcement. He has observed her positive relationships and friendships with dozens of police officers in the area of her District campus. Respondent is considered the "go-to person" when volunteers are needed for law enforcement's Christmas functions. Sergeant Arana has been part of internal affairs investigations of police officers and noted, like everyone else, they are human and are capable of lying.

85. Ana Fonseca, a colleague of Respondent's and special education resource teacher at the same District school, testified about Respondent's duties and reputation. Ms. Fonseca has known Respondent for 13 years. They first met as paraprofessionals in special education special day classes where they implemented alternative curriculum. Ms. Fonseca reported Respondent was helpful with students teachers, and administrators and "loved" by all who worked with her. Respondent was considered a positive, friendly person who is known to stop and talk with everyone at work, including the children who know and love her. Ms. Fonseca considers Respondent "a ray of sunshine." Respondent was known to be a resource for colleagues needing assistance with behaviorally-impaired students. Respondent was not known to be threatening, violent or aggressive. It would shock Ms. Fonseca if Respondent threatened a witness or assaulted a police officer. She has always been positive and shown support for the school police. Ms. Fonseca also developed a social relationship with Respondent. Prior to the Covid-19 Pandemic, they socialized a few times a year at birthday parties for their children.

## **LEGAL CONCLUSIONS**

### **Burden of Proof and Jurisdiction**

1. The burden of proof for the First Amended Accusation in this case is on Complainant to establish cause for adverse action by clear and convincing evidence to a reasonable certainty. (Gardner v. Commission on Professional Competence (1985) 164 Cal.App.3d 1035, 1039-1040.) Clear and convincing evidence has been defined as "[e]vidence of such convincing force that it demonstrates, in contrast to the opposing

evidence, a high probability of the truth of the fact[s] for which it is offered as proof.” (Mattco Forge v. Arthur Young (1997) 52 Cal.App.4th 820, 847.)

2. An administrative hearing is a trial de novo. (Cal. Code Regs, tit. 5, (Regulations) §80317.)

3. Pursuant to the Education Code (Code), commencing with section 44000, California Code of Regulations, title 5 (Regulations), commencing with Regulations section 80000, the CTC is responsible for credentialing teachers in public schools in California, including issuing credentials and taking adverse action against applicants and credential holders.

4. The CTC has broad authority over all “credentials,” defined under Code section 44002 as “a credential, certificate, life document, life diploma, permit, certificate of clearance, or waiver issued by the commission.” The CTC’s authority to institute or continue a disciplinary proceeding, suspend or revoke a credential or issue a public reproof or private admonition to a credential holder extends to all active, expired or surrendered credentials under Code section 4440, subdivision (b).

5. “Adverse action” is defined in Regulations section 80300, subdivision (a), as “a denial, a private admonition, public reproof, suspension or a revocation of one or more credentials.”

6. Code Section 44421 authorizes the CTC to take adverse action against an individual’s teaching credential for, among many specified causes, immoral or unprofessional conduct, evident unfitness for service, or for any cause which would warrant denial of an application for a credential. Code Section 44345, subdivision (e),

allows the CTC to deny an application of one who has committed an act involving moral turpitude.

7. "Aggravating factor" is defined by Regulations, section 80300, subdivision (b), as "an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession." Subdivisions (b)(4)-(5) further provide, in pertinent part, that aggravating factors may include, "misconduct" which "significantly harmed... the public or educational system," and "demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders."

## **Credibility**

8. The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) The testimony of "one credible witness may constitute substantial evidence," including a single expert witness. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052.) A fact finder may disbelieve any or all testimony of an impeached witness. (*Wallace v. Pacific Electric Ry. Co.* (1930) 105 Cal.App. 664, 671.)

9. As further delineated in the factual findings, not every statement of every witness, including Respondent, was considered credible. It was not credible, for example, to believe Respondent did not make any remarks to DC or EL. Respondent's son and EL contradicted her on this point. Similarly, EL's more recent prevarication about his recollection does not entirely negate his previous observations. Notably, Chavez could not attribute the same statements made by EFS to Respondent and EFS pleaded guilty to criminal charges for the conduct attributed also to Respondent which were dismissed. Overall, when the entire record is considered, there is insufficient evidence to support a conclusion Respondent intimidated or threatened DC or assaulted Alvarez.

## **The Charges**

10. Complainant has alleged several bases for discipline including unprofessional conduct (Code section 44421), immoral conduct (Code section 44421), moral turpitude (Code section 44345, subdivision (b)) and evident unfitness for service. (Code section 44421).

11. Unprofessional conduct is "conduct that violates the rules or ethical code of a profession or is unbecoming a member of the profession in good standing." (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553, internal quotation marks omitted, overruled in part, on another ground in *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575, 588, fn. 7.)

12. Immoral conduct and moral turpitude are more loosely defined. In *Board of Ed. of San Francisco Unified Sch. Dist v. Weiland* (1960), 179 Cal.App. 2d 808, 811 (*Weiland*), conduct which is "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 willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare." The Supreme Court *in Morrison*, *supra*, pp. 223-224, quoted from *Jarvella v. Willoughby-Eastlake City School Dist.* (1967) 12 Ohio Misc. 288: "[Immoral conduct] must be considered in the context in which the Legislature considered it, as conduct which is hostile to the welfare of the general public; more specifically in this case, conduct which is hostile to the welfare of the school community. In providing standards to guide school boards in placing restraints on conduct of teachers, the Legislature is concerned with the welfare of the school community. Its objective is the protection of students from corruption."

13. Moral turpitude has been defined generally as an act contrary to honesty and good morals. *In re Scott* (1991) 52 Cal.3d 968, 978). It has been further referred to as an "elusive concept incapable of precise general definition, but inclusive of "baseness, vileness or depravity" to other people or society in general, or as "any crime or misconduct committed without excuse." (*Golde v. Fox* (1979 98 Cal.App.3d 167 (citing, e.g., (*In re Craig* (1938) 12 Cal.2d 93, 97; *In re Boyd* (1957) 48 Cal.2d 69, 70; *In re Hallinan* (1954) 43 Cal.2d 243,251).

14. The amorphous legal concepts of evident unfitness, unprofessional conduct, immoral conduct, and acts involving moral turpitude are so general that they must be given meaning in relation to the particular profession involved. (*Morrison*, *supra*, pp. 227–228. In *Morrison*, the California Supreme Court held that adverse action may not be imposed against a teacher in the absence of evidence showing his or her unfitness to teach. The *Morrison* court articulated a number of factors to be

considered in determining whether the misconduct in question relates to a teacher's fitness to teach.

15. For purposes of disciplining a teaching credential which, as defined includes Respondent's certificate, the factors discussed in *Morrison* have been codified at Regulations, section 80302. The factors address the relationship between the misconduct and the teacher's fitness to teach. and include: (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of credential held; (4) the extenuating or aggravating circumstances surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; (7) the extent the discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher or other certificated persons; and (8) the publicity or notoriety given to the conduct.

## **Disposition**

### **CAUSE FOR DISCIPLINE: UNPROFESSIONAL CONDUCT, IMMORAL CONDUCT, MORAL TURPITUDE**

16. Complainant failed to establish by clear and convincing evidence Respondent committed the acts alleged, i.e., intimidating and attempting to influence a witness, and assaulting a police officer by reason of the factual findings.

17. Cause was not established for adverse action against Respondent's credential pursuant to Code section 44421, for unprofessional conduct and immoral



conduct, on the grounds Complainant failed to provide clear and convincing evidence Respondent committed the acts alleged.

18. Cause was not established for adverse action against Respondent's credential pursuant to Code sections 44421, and 44345, subdivision (e), on the grounds Complainant failed to provide clear and convincing evidence Respondent committed acts of moral turpitude.

### **CAUSE FOR DISCIPLINE: EVIDENT UNFITNESS FOR SERVICE**

19. Cause was not established for adverse action against Respondent's credential pursuant to Code section 44421 on the ground Complainant failed to provide clear and convincing evidence Respondent was unfit for service.

20. Generally, an analysis of the pertinent factors set forth in *Morrison* are not required unless there is a finding of Cause. However, Complainant alleged Respondent was unfit for service and as such the *Morrison* factors are instructive as a measure of Respondent's fitness, competence and ability to effectively perform the duties authorized by her credential, and the absence of risk to the District or the public of her continued certification. It is unnecessary for the conduct to satisfy all the factors in *Morrison* to justify discipline. (*Governing Board of ABC Unified School District v. Haar* (1994) 28 Cal.App.4th 369, 384.)

21. Complainant's expert Dr. Carbino, was discounted because he based his testimony on the assumption Respondent's conduct occurred as alleged, and even if it did not, her failure to de-escalate the situation in a public setting, an act, not alleged, was sufficient to render her unfit to teach. Based upon the evidence of Respondent's

performance as a credentialed school employee and her character references, Respondent is fit to teach.

A. The likelihood that the conduct may have adversely effected students, fellow teachers, or the educational community, and the degree of such adversity anticipated.

There is no evidence the events at the courthouse resulted in any adverse impact at the District school where Respondent has been employed for many years. She was not disciplined by the District and Respondent's criminal charge related to her conduct in April 2017 was dismissed. In the interim, she was placed on administrative duties. The evidence established she was a competent and well-respected special education paraprofessional and had a strong and positive relationship with the school police.

B. The proximity or remoteness in time of the conduct.

The conduct alleged occurred in April 2017 and there have been no other allegations of wrongdoing prior to that conduct or afterward, on or off the school premises.

C. The type of credential held by the person involved.

Respondent is a paraprofessional working with a vulnerable special education population. Any criminal convictions or conduct short of convictions involving aggressive verbal and abusive conduct would appropriately subject her license to discipline. Here, there was an absence of clear and convincing evidence her conduct on that one day rose to the level of acts of moral turpitude, immoral or unprofessional conduct.

D. The extenuating or aggravating circumstances surrounding the conduct.

Respondent is the mother of EFJ and was present in the courthouse for his criminal felony preliminary hearing, an extenuating circumstance. In aggravation, she witnessed an unknown male approach her husband in an aggressive manner. By touching her husband's arm and coming between her husband and Alvarez, she attempted to intervene. Dr. Carbino's opinion as a credentialed teacher she should have done more to "de-escalate" the situation was not credible or realistic.

E. The praiseworthiness or blameworthiness of the motives resulting in the conduct.

Not applicable. Cause was not established.

F. The likelihood of the recurrence of the questioned conduct.

The alleged conduct was not proven. There is no evidence Respondent has a pattern of aggressive, abusive or assaultive conduct. On the contrary, the evidence of her conduct at the District demonstrates she is a caring, capable and compassionate paraprofessional who is respectful of law enforcement. Licensing disciplinary matters like this are not designed to punish an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, a licensing agency should be primarily concerned with protecting the public. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) There is no evidence Respondent's continued certification will endanger her students or the public.

G. Adverse impact or chilling effect on the constitutional rights or the person involved, or other certified person;

No constitutional issues are presented by this dispute.

H. The publicity or notoriety given to the conduct.

There was no publicity, no investigation by the District and overall no evidence Respondent's alleged conduct resulted in publicity or notoriety or negatively impacted the District or her pupils.

22. Regulations, section 80302, subdivision (b) provides the CTC shall close its investigation where it finds no relationship between the alleged misconduct and the certificated employee's fitness, competence or ability to effectively perform the duties authorized by the credential.

23. Cause has not been established that Respondent attempted to influence or intimidated a witness during a criminal proceeding or assaulted a police officer, and after a review of the testimony and evidence, her overall conduct that day failed to demonstrate Respondent is unfit to teach.

## **ORDER**

The First Amended Accusation against Respondent Elizabeth Flores is dismissed.

DATE: 05/26/2022

*Eileen Cohn*

EILEEN COHN

Administrative Law Judge

Office of Administrative Hearings