

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS AND THE
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE
SAN BERNARDINO COUNTY SUPERINTENDENT OF SCHOOLS
STATE OF CALIFORNIA**

In the Matter of the Dismissal of:

CHJENE CHHOR,

A Permanent Certificated Employee,

Respondent.

OAH No. 2022100588

DECISION

A Commission on Professional Competence (commission) heard this matter on March 6 through 10, May 9 through 12, and May 22, 2023, by videoconference. The Commission consisted of the following members Dena Slocum, Shelby Zimmerman, and Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, who served as chair.

Attorney Mark W. Thompson represented complainant, William F. Roberts, IV, Assistant Superintendent, Human Resources, San Bernardino County Superintendent of Schools (SBCSS).

Attorney Tamra M. Smith represented respondent Chjene Chhor, who was present throughout the hearing.

The record was held open until May 26, 2023, for the submission of written closing briefs. The briefs were received, the record was closed, and the matter was submitted for decision on May 26, 2023.

SUMMARY

Respondent is an Orientation and Mobility (OM) specialist for the Desert Mountain Region of SBCSS. SBCSS seeks to dismiss respondent Chjene Chhor from employment based on the following: During the 2020-2021 and 2021-2022 school years, respondent engaged in conduct including making inappropriate comments to parents during distance learning sessions, failing to provide direct services to students, failing to write a goal for a student for his Individual Education Plan (IEP), failing to attend an IEP meeting for a student without communicating with the administrator or the student's case manager/teacher, failing to provide her OM service schedule to her supervisor, failing to complete assessment plans and failing to conduct OM assessments in a timely manner, modifying services to students without authority, and failed to communicate with parents as directed.

SBCSS alleged respondent's conduct constituted cause for dismissal for unprofessional conduct, dishonesty, unsatisfactory performance, and persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or the governing board of SBCSS.

SBCSS's allegations against respondent were established by the consistent, credible, and persuasive testimony of multiple parents, and SBCSS administrators and staff. Respondent admitted some, but not all, of the allegations, and minimized her culpability. Respondent's explanations and justifications for her conduct were inconsistent throughout the hearing, which undermined her credibility, and suggested a lack of candor. Overall, respondent's testimony evidenced a complete failure to acknowledge that her behavior was inappropriate. Accordingly, complainant established cause to dismiss respondent from her employment.

FACTUAL FINDINGS

Background and Procedural History

1. Respondent is a permanent certificated employee of SBCSS. She holds a clinical or rehabilitative services credential; OM. Respondent has been an OM specialist for approximately 20 years. She was employed at the San Diego Center for the Blind for two years, then with a school district in Santee for two years.

2. Respondent received a bachelor's degree in biology from University of the Pacific. She has a master's degree in special education with an emphasis in OM. Respondent has been employed by SBCSS for almost 17 years. She was hired in 2004, then laid off in June 2008. Respondent was rehired on August 26, 2010, and has remained as an OM specialist with SBCSS since that date.

3. Respondent has received multiple letters of warning and reprimand, as detailed below. She has been placed on a performance improvement plan (PIP) twice. Respondent's most recent performance evaluation, on January 3, 2022, rated her as "Unsatisfactory/Needs Improvement" and noted that allowing respondent to continue

as an OM specialist does a “disservice to all students/families our organization proudly serves.”

4. On January 3, 2022, respondent was placed on paid administrative leave, pending SBCSS’s investigation of allegations regarding her conduct.

5. On June 6, 2022, William F. Roberts, Assistant Superintendent, Human Resources for SBCSS, prepared a Statement of Charges and Causes for Dismissal, alleging the following: unprofessional conduct, dishonesty, unsatisfactory performance, and persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district. (Ed. Code, § 44932, subds. (a)(2), (4), (5), & (8).)¹

6. On August 4, 2022, respondent was served with the Statement of Charges and a notice of her right to an informal conference also known as a *Skelly* hearing. The *Skelly* hearing was conducted on August 17, 2022, and the recommendation for dismissal was upheld.

7. On August 22, 2022, Roberts served respondent with a 30-day notice of dismissal. Respondent timely requested a hearing, and this hearing before the Commission followed.

¹ All subsequent statutory references are to the Education Code, unless otherwise noted.

History of Progressive Discipline

8. On September 23, 2019, respondent was given a letter of warning by her supervisor, Terri L. Williams, Principal, Desert Mountain Operations. The letter referenced respondent's failure to follow a directive to create a clearly defined schedule on her Outlook calendar. The letter directed respondent to adhere to all administrative directives, create a clearly defined schedule on her outlook calendar, and read and adhere to SBCSS policies.

In a written response to the letter, respondent asserted that the request to add information to her calendar was "not only not realistic it is also not practical." She also alleged that she was being targeted by Williams and that the rest of the Visually Impaired (VI) department was not required to provide the information on their calendar for the 2018-2019 school year.

9. On October 3, 2019, respondent received a letter of warning from Williams regarding a parent complaint. The parent complained that respondent's conduct during an IEP meeting was unprofessional, and that respondent made offensive comments regarding the child. The letter directed respondent to adhere to all administrative directives, prohibited respondent from speaking to parents outside of a formal meeting, and required her to read and adhere to SBCSS policies.

10. On October 22, 2019, respondent received a letter of reprimand from Williams regarding respondent's failure to document her location during her contracted day. Respondent was unable to account for three hours and 55 minutes of contracted time on October 7, 2019. When asked to account for the time, respondent replied "I plead the fifth." When told by her union representative that her refusal to answer would be insubordination, respondent stated that she would not tell Williams

her answer because “she will not like the answer.” The letter directed respondent to adhere to all administrative directives, provide access to an accurate and detailed calendar accounting for her instructional day, keep documentation of instruction provided to students, meet district/county reporting deadlines, report her absences, keep consistent work hours, document start and end times of each workday, directed respondent to complete all paperwork, planning, calendaring and preparation in her office, and read and adhere to SBCSS policies.

In a written response to the letter addressed to Suzanne Hernandez, Ed.D., Human Resources Director, respondent admitted that she attempted to “plead the 5th.” She stated that she had told Williams that she had the right to “face my accuser as those were serious, vicious, and malicious allegations.” Respondent was informed that the complaint was made anonymously. Respondent stated that she had accounted for all of her time while in the meeting with Williams. Respondent spent a large part of the letter explaining why she needed to move offices. Respondent stated she was “fearful for my life because I do not know what the anonymous caller is capable of doing next.” She requested reassignment to a new supervisor and office.

11. On December 6, 2019, respondent was given a Notice of Unprofessional Conduct and Unsatisfactory Performance and was placed on a PIP. The PIP addressed respondent’s accounting for her work day using the Outlook calendar, working collaboratively with all members of the VI team, the expectation that respondent would be in the VI office during designated report writing/office time, and professional conduct with regard to students, parents, colleagues, and administrators.

12. On April 7, 2020, respondent received a letter of reprimand from Williams regarding her interaction with Carlos Soto, a VI instructor. Respondent was demeaning, condescending, and raised her voice while speaking with Soto. The letter

directed respondent to act in a spirit of collaboration with fellow colleagues, treat all staff equitably, adhere to all administrative directives, refrain from making false or malicious statements about a colleague, and read and adhere to SBCSS policies.

Respondent wrote a response to the letter to Dr. Hernandez. Respondent spent the majority of her response alleging that she had been told by several teachers that Soto was not doing his job. She also stated allegations about one of the teachers who allegedly complained about Soto. Respondent closed the letter by asking that HR address several questions she posed including whether or not another itinerant VI teacher was necessary to help with the caseload.

13. On September 21, 2020, respondent received two letters of reprimand. The first letter, from Stephanie Hedberg, Principal, Desert Mountain Operations, was regarding respondent's attempt to change the direct services to be provided to a student during that student's IEP meeting, which took place via Zoom. When asked by Hedberg to develop a specific goal for the student during the meeting, respondent became argumentative. Williams asked respondent to stay on the Zoom session after the meeting to discuss respondent's behavior during the meeting. Williams told respondent that her behavior was insubordinate. Respondent argued with Williams and then raised her voice. The letter directed respondent to adhere to all administrative directives and read and adhere to the SBCSS Code of Ethics.

Respondent wrote a response to this letter to Dr. Hernandez. Respondent denied the allegations. Respondent claimed that Hedberg had undermined her in front of the IEP team. Respondent further alleged that prior to the parent showing up for the IEP meeting, Hedberg had made disparaging remarks about the parent and had tried to conduct the meeting without the parent present. Respondent concluded by

stating that Hedberg's letter of reprimand was in retaliation because respondent had "called her out on her unprofessionalism."

The second letter, from Williams, was regarding respondent's attempt to change her service times for students without an IEP meeting and/or addendum, refusal to comply with directives from her PIP, and failure to provide services to several students. The letter directed respondent to adhere to all administrative directives; meet all service times per students' IEPs; meet all reporting measures and compliance deadlines; provide an accurate detailed calendar for her workday; maintain consistent work hours; conduct herself in a professional manner with students, parents, colleagues, and administrators; and read and adhere to SBCSS policies. After the letter of reprimand was reviewed, respondent asked her union representative if she has to follow the directive of an administrator if she did not agree with the directive. Williams answered the question affirmatively.

Respondent's written response, addressed to Dr. Hernandez, stated that she denied the allegations. Respondent then wrote about an incident in Fall of 2018 where she alleged that Williams had been "furious" because she had gone to someone else for her orientation. Respondent claimed this was the catalyst for the multiple write-ups she had received from Williams. She reiterated her desire for reassignment to another supervisor. Respondent alleged that there was a high turnover in the VI department since Williams became the supervisor. She further alleged that a VI instructor who was deceased, had complained about Williams.

Respondent stated that not all of the students who were coming from the closed, dedicated VI class would qualify for or benefit from OM services. She stated that none of the transfer students from the closed VI class had OM services on their annual IEPs. Respondent stated that OM services cannot be added or deleted without

an assessment and that assessments had been halted in March 2020 due to the COVID-10 pandemic. She stated that giving them OM services was not warranted and is "in essence depriving them of the services that are warranted." Respondent stated that OM services should be provided by the teacher of the closed VI class, Katherine Polston.

Respondent claimed that she was "held hostage" on September 11, 2020, by Williams. She stated that she was told she could not leave until she had finished her individual distance learning plans (IDL). Respondent accused Williams of being unprofessional and inconsistent with her directives.

14. On September 28, 2020, respondent received a letter of reprimand from Williams. The letter concerns an attempt to change the service provided to a student without an IEP meeting or addendum. This change occurred within three hours of the letters of reprimand given to respondent on September 21, 2020. The letter directed respondent to adhere to all administrative directives; meet all service times per students' IEPs; refrain from making changes to services or service times during distance learning to a student's IEP; provide all required service minutes to students on her caseload; exercise "great care and good professional judgment" to avoid situations that might compromise the reputation of SBCSS; conduct herself in a professional manner with students, parents, colleagues, and administrators; and read and adhere to SBCSS policies.

Respondent's written response, addressed to Dr. Hernandez, denied the allegations in the letter of reprimand. Respondent reiterated her stance that the students from the closed VI class had their OM services on the wrong page of the IEP and that the addendums from June 2020, were done without a "proper assessment" and "without the presence of an O&M specialist." Respondent stated she conducted a

“professional informal assessment” of the student and that is why she recommended the change in direct services during his IEP meeting on August 17, 2020. Respondent also stated that the student’s mother was in complete agreement with her recommendation to change the service times.

15. On September 28, 2020, respondent was placed on paid administrative leave to allow SBCSS to investigate allegations of unprofessional conduct.

16. On October 20, 2020, respondent received a letter of reprimand from Williams. The letter concerned a video that respondent was to provide to a student with respondent modeling the correct use of a cane and an email sent by respondent after an IEP meeting. The video was to be sent to Hedberg by September 21, 2020, for review prior to being sent to the student’s parents. The video was not sent to Hedberg for review and therefore was not available when the student was receiving instruction from respondent. The email was sent to a student’s case carrier and essentially stated that respondent was not required to provide services to the student. The email stated the student’s IEP from January 2020 listed the OM services on the wrong page of the IEP and the IEP addendum from June 2020, which added OM services on the proper page, was not valid because no OM specialist was present and there had been no OM assessment. The letter directed respondent to adhere to all administrative directives; meet all service times per student’s IEPs; refrain from making changes to services or service times during distance learning to a student’s IEP; provide all required service minutes to students on her caseload; exercise “great care and good professional judgment” to avoid situations that might compromise the reputation of SBCSS; conduct herself in a professional manner with students, parents, colleagues, and administrators; and read and adhere to SBCSS policies.

17. On October 20, 2020, respondent was given a Notice of Unprofessional Conduct and Unsatisfactory Performance and was placed on a PIP by Dr. Hernandez. The PIP contained directives to respondent including, adhering to all rules and regulations of SBCSS; adhering to the expectations of the VI department, providing services to the students according to their IEPs; responding to email from administrators; working collaboratively with parents, students, staff, and colleagues; complying with administrative directives; refraining from retaliation on any staff member, parent, or student; adhering to the SBCSS Code of Ethics; working with Williams to complete IDLPs in a satisfactory manner; and refraining from making any change to IEP notes after they have been approved and agreed upon.

18. On November 9, 2020, Richard Frederick, the Area Director for SBCSS Desert Mountain Operations, wrote a conference summary of the final meeting regarding progress with respondent's 2019 PIP. During the meeting, the goals were reviewed with respondent. Respondent stated that she had made progress and met her goal of providing an accurate, detailed calendar accounting for her instructional day. Frederick pointed out that respondent's calendar was not detailed or accurate. The calendar did not reflect where respondent was at any given time and did not accurately reflect the duration and frequency of OM services she was providing.

Respondent stated she had met her goal of working collaboratively with members of the VI department. Frederick noted that respondent had repeatedly requested to move her office so that she would share space with physical therapists and adaptive physical education specialists and not with the VI department. Frederick noted that her unwillingness to even share an office with the members of the VI department gave the impression that she did not want to work or collaborate with the members of the VI department.

Respondent had indicated that she was uncomfortable with the placement and location of her desk in the VI department and stated that she would not work there. Frederick noted this is in direct contradiction of her goal to be present in the VI program office during designated office time/report writing on her detailed calendar.

Respondent stated she believed she had gone "above and beyond" meeting her goal of acting and speaking to students and parents in a manner that exemplifies personal and professional integrity, dignity, and mutual respect. Frederick noted that she had received letters of reprimand on April 7, 2020, and September 21, 2020, regarding her interactions with students and parents.

Overall, Frederick stated respondent had not met the goals of her PIP and that it would remain in place. He stated that they would meet in January 2021 to review respondent's progress toward meeting the goals of her PIP.

On November 17, 2020, respondent sent a written response to Dr. Hernandez. In the written response, respondent denied the allegations and claimed that Frederick and Williams had fabricated this to divert attention from the closure of the VI class. Respondent stated that her calendar contained the date, time, name of the student, and site as directed. Respondent blamed her refusal to be housed with the members of the VI department on the fact that there was "lots of drama in the VI department." Respondent stated goal three (being present in the VI program office) was "offensive, outrageous and far from the truth." She then went on to list grievances regarding her desk and allegations that other specialists complained about VI teachers. Respondent claimed she always accommodated her students. She defended her change of service times by stating they were made with parent consent. She specifically mentioned a student from the closed VI class as an example of her being forced to provide services to a student who she believed did not warrant her services.

19. On December 7, 2020, respondent received two letters of reprimand from Williams. The first letter concerned respondent's failure to provide services to a child, attempt to change/manipulate a child's service times, the lack of communication and resources from respondent to the parent, and respondent's violation of the directives contained in her October 2020 PIP. Respondent stated that the transitional IEP was not legally binding. The letter directed respondent to adhere to all administrative directives; meet all service times per student's IEPs; provide access to her supervisor to an accurate, detailed calendar for respondent's instructional day; refrain from making changes to services or service times during distance learning to a student's IEP; provide all required service minutes to students on her caseload; exercise "great care and good professional judgment" to avoid situations that might compromise the reputation of SBCSS; conduct herself in a professional manner with students, parents, colleagues, and administrators; attend a virtual training on levels of performance, goals and education benefit; and read and adhere to SBCSS policies.

The second letter concerned respondent's interactions with a second student and parent. The parent complained that respondent was dismissive, did not provide her resources or tools to help staff prepare her child for OM services, had a negative attitude toward her child, had a short tone of voice, and was rude during the IEP meeting. The parent requested a different OM provider. The student's case carrier stated that respondent had a lack of patience with the parent and student. During the meeting, respondent stated that the student did not qualify for her services and that she should not have to serve him. Respondent further stated that it was not her job to teach foundational skills. The letter directed respondent to adhere to all administrative directives; meet all service times per student's IEPs; provide access to her supervisor to an accurate, detailed calendar for respondent's instructional day; refrain from making changes to services or service times during distance learning to a student's IEP;

provide all required service minutes to students on her caseload; exercise "great care and good professional judgment" to avoid situations that might compromise the reputation of SBCSS; conduct herself in a professional manner with students, parents, colleagues, and administrators; attend a virtual training on levels of performance, goals and education benefit; and read and adhere to SBCSS policies.

On December 17, 2020, respondent sent a written response to Dr. Hernandez. Respondent claimed that she was not given directions prior to the school year beginning and that the OM services were listed on the wrong page of the IEP. She stated that N.Y. was one of the students that had come from the closed VI class and reiterated that not all of the students from the class would qualify for OM services. Respondent sent a second written response to Dr. Hernandez on the same day regarding student M.E. He was also a student that had come from the closed VI class. Respondent outlined what OM services M.E. had qualified for prior to his inclusion in the VI class. Quite conspicuously, respondent failed to mention, in her response, the IEP addendum for M.E. from June 2020 that listed direct OM services.

20. On December 7, 2020, respondent received her 45-day PIP status report from Dr. Hernandez. Dr. Hernandez noted that respondent had failed to send email invitations to Zoom sessions to several students per her directive to respondent. As a result, the students did not show up and respondent was unable to provide services to the students. When Dr. Hernandez asked respondent to forward the email invitations, respondent replied that she had texted the parents the day before the scheduled session. Williams observed several sessions conducted by respondent. Williams noted that respondent failed to connect with the student and/or parent, causing them to become visibly frustrated with respondent. Dr. Hernandez observed several of respondent's sessions and her observations were consistent with those of Williams.

Respondent ignored or dismissed parents' concerns, failed to connect with students, and failed to provide direct services to students. Dr. Hernandez stated that respondent had failed to demonstrate that respondent had "overcome your conduct and performance deficiencies."

21. On February 9, 2021, respondent received her 90-day PIP status report from Dr. Hernandez. Respondent had been provided with teacher support from Cynthia Hayes on December 18, 2020. Respondent was observed during Zoom sessions by Williams and Dr. Hernandez. Both found respondent deficient in the provision of services to students. Dr. Hernandez noted that respondent was still deficient in her conduct and performance.

Respondent's Actions During 2020-2021 and 2021-2022 School Years

22. The mothers of A.A. and M.E.², Dr. Hernandez, Tanya Benitez, Carlos Soto, Richard Frederick, Stephanie Hedberg, Shannon Hansen, Serena Madril-Acosta, Carlos Franco, and Terri Williams provided testimony. There is no evidence that the parents harbored underlying ill will toward respondent or had a motive that could be perceived to bias their statements or testimony.

2020-2021 SCHOOL YEAR

23. At the end of the 2019-2020 school year, a dedicated VI class taught by Katherine Polston closed. Polston holds both a VI and OM credential. Amended IEPs

² The names of students are confidential to protect their privacy and are referenced here by their initials. Parental names will also be referenced by initials if disclosing their names would breach the confidentiality/privacy rights of the students.

were written for the seven students in that class that included direct OM services. Respondent was to provide those services beginning in Fall 2020.

A.A.

24. A.A. was one of the students transferred from the dedicated VI class. Respondent was informed that direct service time was to be provided to all seven incoming students.

25. On June 12, 2020, an IEP meeting was held. OM services were documented on the ensuing addendum as two times per week for 30 minutes.

26. On June 29, 2020, Williams sent an email to respondent informing her of the incoming students and that they were to be provided direct service time as documented on their incoming IEPs. Williams further stated that assessments would be done once school physically reopened.

27. On August 17, 2020, a staff meeting was held where Williams reiterated that the seven students would have services on their IEP that needed to be provided and that the assessment process would begin once schools physically opened.

28. On August 17, 2020, an IEP meeting was held for A.A. Respondent changed the IEP document to reflect that OM services would be provided two times per month for 15 minutes. Shannon Hansen, Principal, was present at that IEP meeting. Hansen stated that the team had agreed that A.A. was to receive OM services two times per week for 30 minutes. Respondent disagreed and refused to sign the IEP until the services were changed to her recommendation of two times per month for 15 minutes.

29. On August 31, 2020, Williams sent an email to respondent stating that no IEP addendums would be completed that changed OM service times during distance learning.

30. On September 2, 2020, Williams sent an email to respondent reiterating that no changes were to be made to OM services by IEP addendum during distance learning and that respondent would complete full assessments once the students were physically in school. The email further directed respondent to contact any parents that she had advised of a change in their child's services and let them know that she was amiss as no changes were to take place during distance learning.

31. On September 18, 2020, Hansen sent an email to respondent stating that he had been advised that respondent was given a directive not to change service times. As such, services for A.A. would be reverting to the times listed on his June 2020 addendum of two times per week for 30 minutes.

32. On September 21, 2020, respondent called K.A. (A.A.'s mother) and suggested that OM services be paused. Respondent then sent an email to Dr. Hernandez stating that it was K.A. who wanted to pause services until an assessment could be done.

33. K.A. testified regarding her interactions with respondent. She stated that her son has a degenerative genetic condition that affects his vision and that it had gotten progressively worse since he first exhibited symptoms. K.A. felt respondent was questioning her son's disability and need for OM services. She stated that respondent told her that respondent's services were for completely blind individuals not just visually impaired. Because respondent pushed back on providing services to her son, K.A. began to question whether her son needed OM services. K.A. recalled becoming

emotional at one of the IEP meetings because her son's condition was deteriorating, and respondent kept insisting on cutting services to her son at a time when his need was increasing. Eventually, K.A. requested a different provider for her son. After that request, respondent's communication with her was intermittent and ineffective. K.A. testified that the complaint email she sent to Hansen was an accurate representation of her continuing issues with respondent. Her son is currently receiving OM services from a different provider, and she is very happy with his progress.

34. Hansen testified that he was present at three IEP meetings with respondent for A.A. Respondent was not very forthcoming with her services to A.A. and tried to convince K.A. to drop services because A.A. was not completely blind. K.A. communicated her dissatisfaction with respondent in IEP meetings and via email to Hansen directly. Hansen had never had a service provider disagree so vehemently with the IEP team. In particular, the IEP meeting for A.A. on September 25, 2020, was the most uncomfortable he has ever been in an IEP meeting, and he has participated in close to a thousand IEP meetings. Hansen documented his concerns in an email to Williams on September 26, 2020.

35. On September 25, 2020, after A.A.'s IEP meeting, respondent sent an email to his special education teacher stating that since the OM services were not listed on his January 2020 IEP, she was not obligated to provide OM services to him. She declared that the June 2020 addendum added OM services without an assessment and without an OM specialist present. As a result, she asked that the IEP not be sent to her for her signature.

36. On December 16, 2020, Tanya Benitez, Assistant Superintendent, Pupil Services, emailed Williams with a complaint regarding respondent. The email stated respondent continued to "harass the family about receiving Zoom services."

Respondent also stated that if she could assess A.A., he would not qualify for services. The email further stated that the family did not want to work with respondent anymore due to the "level of animosity she has toward them" but they did not want to lose the service because they were not using it.

37. On December 17, 2020, respondent along with her union representative met with Williams to discuss the complaint by Benitez. During the meeting, respondent stated that she does not have animosity and that she did not say the things that were alleged. Respondent clearly stated that A.A. does not need her service. Respondent's union representative informed her that the student is entitled to her services whether she thought he needed it or not.

38. On January 4, 2021, K.A. sent an email to Hansen detailing her issues with respondent. She stated respondent would send last minute texts for the Zoom sessions with A.A., would consistently state that A.A. did not qualify for her services, and that she was wasting A.A.'s time. K.A. further stated that she believed respondent did not want to provide services to A.A. and that she did not want to cooperate with her husband or her. Respondent made K.A. feel as if she was "doing as [sic] a favor." Ultimately, K.A. asked to stop services until a different OM provider became available.

39. On January 7, 2021, respondent received a letter of reprimand from Williams. The letter concerned the complaints from Benitez and K.A. The letter directed respondent to adhere to all administrative directives; meet all service times per student's IEPs; refrain from making changes to services or service times during distance learning to a student's IEP; provide all required service minutes to students on her caseload; provide open, detailed, and transparent communication to students, parents, administrators, and colleagues; exercise "great care and good professional judgment" to avoid situations that might compromise the reputation of SBCSS;

conduct herself in a professional manner with students, parents, colleagues, and administrators; and read and adhere to SBCSS policies.

40. On October 18, 2021, respondent received a letter of reprimand from Frederick³ regarding her failure to provide assessments for A.A and N.K. On August 12, 2021, Frederick directed respondent to review her updated assessment report with him prior to presenting it at the IEP meeting. At the IEP meeting on September 1, 2021, respondent indicated that an assessment would be completed in the near future.

41. On December 20, 2021, respondent received a letter of reprimand from Frederick regarding A.A. Respondent had been directed not to change service times without a current assessment. However, at A.A.'s triennial IEP in May 2021, respondent had attempted to modify the service from two times per week for 30 minutes to one time per month for 20 minutes. After discussion, it was decided not to modify the service. At the November 19, 2021, IEP meeting respondent reduced the services to one time per month for 20 minutes per her assessment. When other IEP team members questioned the reduction in service, respondent was unable to defend the assessment.

42. Respondent failed to provide OM services to A.A. consistent with his IEP and failed to work collaboratively with the student, his parents, or her supervisors.

³ Frederick became respondent's immediate supervisor in February 2021. The exact date was not established by the record.

J.F.

43. On November 2, 2020, Williams observed respondent in a Zoom session with J.F. Williams observed that respondent repeatedly asked the same question about the student's dominant hand. When the parent replied that he was ambidextrous, respondent pressed the parent to make a choice. When the parent questioned respondent's choice to provide a video for J.F. to watch, respondent replied that she would find a "little boy video" for him to watch. Williams observed that respondent was unresponsive to what the parent was saying and was not receptive to her concerns or her growing frustration. Respondent attempted to change the service times for J.F., which further frustrated his mother. Ultimately, Williams stated that respondent failed to deliver adequate OM services to J.F. that "were specially designed to meet the unique needs of that student."

44. On December 7, 2020, Williams observed respondent in a Zoom session with J.F., again deciding that respondent had failed to meet the unique needs of that student. During this session, respondent showed another video to J.F. She then asked him repeatedly what he remembered about the video and continued asking after he stated that he did not remember. Respondent's repeated questioning frustrated J.F.'s mother. Williams observed that respondent "appeared to brush her comment off," which indicated that she was not receptive to feedback from parents. Her repeated questioning of J.F. indicated that she did not understand the "level of the student's ability nor his level of comprehension." After the session, Williams spoke with respondent about the session and respondent stated that Williams should have observed that J.F. was not ready for OM services and that she was not suited to teach him.

45. On January 7, 2021, respondent received a letter of reprimand from Williams regarding a complaint received from J.F.'s mother. The complaint stated that both mother and student were frustrated with respondent, that respondent was not helping J.F., that respondent was not showing patience with her son, respondent repeatedly attempted to change service times, respondent did not provide OM services prior to November 2, 2020, and respondent repeatedly stated that he did not qualify for OM services. During the meeting for the reprimand letter, respondent stated that J.F. was one of the students that came from the VI class and that she could not support him during distance learning. Respondent stated the "goal written was not correct." The parties discussed respondent formulating a foundational goal supporting identifying objects and their relation to his body, which was agreeable to the parent. Respondent stated, "It's not up to mom what I write as a goal." Respondent made several excuses as to why she could not write that goal and then attempted to change his service time. Respondent stated that she did not have a teaching credential but instead had an OM rehabilitation certificate. Respondent spent most of the meeting with Williams attempting to justify why she should not have to serve the student.

46. Respondent failed to provide OM services to J.F. consistent with his IEP and failed to work collaboratively with the student, his parents, or her supervisors.

M.E.

47. M.E. is a student with multiple disabilities who had been in the dedicated VI class. His mother, V.P., wrote a letter regarding her concerns with respondent. In the letter, V.P. stated that at an IEP meeting respondent had been adamant that M.E. was not ready to start services with her. V.P. disagreed with respondent's evaluation of her son. V.P. stated respondent seemed "very rude about it." After much discussion, it was agreed that respondent would provide consult services.

When distance learning began, V.P. stated she spoke with respondent three times and each time she felt rushed and did not feel comfortable asking questions. V.P. had issues with respondent's tone of voice and stated that respondent seemed rude. V.P. described a session with respondent that involved someone playing a guitar and a video of a girl using a cane. Respondent did not give any direction to M.E. or comment on the video. V.P. stated that sometime later respondent called while M.E. was in a Zoom class with another teacher. She told respondent that she would call her back but when she finished it was late in the day. Respondent did not call her again. V.P. testified consistent with the letter she authored and affirmed that it accurately depicted her interactions with respondent.

48. On December 3, 2021, an IEP team meeting was held for M.E. During the meeting, respondent refused to consider team input on cane use and tried to reduce services for M.E. Respondent had not completed the assessment and stated that she needed the full 60 days to complete her assessment which would then have been due on December 26, 2021, during winter break. Another IEP meeting was scheduled for December 17, 2021, and respondent was directed to complete and present her assessment at that meeting. Respondent continued to state that she would not be ready. Frederick directed respondent to share her assessment in advance of the meeting. Respondent was uncooperative during the meeting and abruptly left without explanation.

49. On December 6, 2021, respondent emailed Frederick to request that she be removed from assessing students M.E., J.S., and N.Y. Frederick directed respondent to complete the assessments. Frederick sent emails to respondent on December 9 and 14, 2021, asking for status on the assessment for M.E. Respondent failed to reply. On

December 15, 2021, respondent emailed Frederick to let him know that she checks her email daily. She did not share the status of M.E.'s assessment.

50. On December 16, 2021, respondent emailed Frederick to confirm that she would have the completed assessment. However, respondent stated that she would need to miss providing direct services to other students so that she could complete the assessment on time. Frederick did not approve respondent missing time to complete the assessment. Frederick expressed concern that respondent was again attempting to change OM services and requested an opportunity to review the assessment prior to her presenting it at the scheduled IEP meeting. Respondent did not share her report with Frederick prior to the meeting.

51. On December 20, 2021, respondent received four letters of reprimand from Frederick, one of which concerned respondent's failure to adequately communicate with her supervisor and follow the directives provided by her supervisor regarding the assessment for M.E.

52. Respondent failed to work collaboratively with the IEP team, parent, and M.E. She failed to communicate with her supervisor as directed by her PIP and several letters of reprimand.

N.Y.

53. N.Y. is a student with multiple disabilities who had been in the dedicated VI class. He was eligible for VI and OM services based on previous assessments.

54. On November 17, 2021, the triennial IEP meeting was held for N.Y. The current ophthalmologist report was not provided and therefore neither respondent nor his VI teacher could complete their respective assessments prior to the meeting.

Despite having been repeatedly told that no changes to OM services could be made without an assessment, respondent recommended that N.Y.'s service be modified from two times per week for 30 minutes to two times per month for 20 minutes. After discussion, no changes were made to OM service times. Respondent proposed a goal that was not measurable and did not have a measurable baseline. His mother requested that the goal include pre-cane skills. She stated that N.Y. had been learning pre-cane skills in the VI class and that she did not want him to fall further behind. She appeared visibly frustrated with respondent. Ultimately it was agreed that respondent and N.Y.'s mother would communicate at a later time to create a mutually agreed upon goal.

55. Frederick directed respondent on November 18, 28, 29, and 30, 2021, to communicate with N.Y.'s mother. Respondent contacted N.Y.'s mother on November 30, 2021. After the conversation with respondent, N.Y.'s mother informed Frederick that respondent refused to listen to her or consider her input. Respondent told Frederick that N.Y.'s mother was pleased, and that the IEP could be finalized. N.Y.'s mother refused to sign the IEP. Her refusal to sign was based solely on her disagreement with the OM services and goal.

56. On December 20, 2021, respondent received a letter of reprimand for failing to adequately provide OM services to students and in particular to N.Y. The letter also concerned respondent's attempt to modify services and her failure to communicate with N.Y.'s mother despite being directed to do so.

TESTIMONY OF TERRI WILLIAMS

57. Williams was the Principal for the Desert Mountain region of SBCSS. She retired in September 2022. Williams was respondent's immediate supervisor from 2018

to 2021. Williams stated that she used the SBCSS Code of Ethics and the collective bargaining agreement when imposing discipline upon respondent. She stated respondent's conduct was unprofessional and at times unacceptable. Williams observed respondent raise her voice while speaking with Williams and other colleagues. Williams stated that respondent was not receptive to input from her or respondent's colleagues. Williams had concerns about respondent's interactions with parents, especially those of the seven students from the dedicated VI class. Williams observed that respondent seemed reluctant to serve those students and would attempt to modify their OM service times without an IEP addendum. Respondent would attempt to modify the service times even after being directed by Williams that no modifications were to be made during distance learning. Respondent frequently stated that the OM services were not listed on the correct page of the IEP and therefore they were not required to be provided. Williams stated that if OM services are listed anywhere in the IEP, they must be provided. Respondent also repeatedly stated that the IEP addendums for those seven students were legally invalid because no OM specialist was present at the meeting and no assessment had been done.

58. Williams described her observations of respondent during Zoom sessions with students and parents. Williams stated that respondent was often dismissive of the parent's input and was argumentative with them. She stated several times that respondent was not collaborative with parents, colleagues, or administrators. Williams's testimony was consistent with the multiple letters of warning and reprimand and the PIP she provided to respondent.

TESTIMONY OF DR. SUZANNE HERNANDEZ

59. Dr. Hernandez is the director of Human Resources for SBCSS. Her testimony is summarized as follows. She outlined the steps of progressive discipline,

from verbal warning to termination. Those steps were followed in this case. Her interactions with respondent were both virtual and face to face. Respondent was unwilling to see other sides or perspectives. She asked respondent to reflect on her teaching. Respondent was adamant that she did not need to make any changes. Fellow teachers, parents, and principals all complained about respondent's behavior. Respondent told her that she was not able to assess respondent's teaching because she did not understand respondent's job and was not trained in OM. She personally prepared a Notice of Unprofessional Conduct and Unsatisfactory Performance. Respondent was unwilling to accept any kind of feedback or criticism.

She personally observed respondent in Zoom sessions with students and parents. In one session respondent spoke very quickly, and the child was confused. Respondent did not notice and/or address the student's confusion. In another session respondent talked over the parent leading to frustration and feelings of disrespect. Respondent was assigned to the Teacher Support Network (TSN) in an attempt to help her improve her teaching. Respondent was observed to be confrontational, argumentative, and unprofessional in communicating with parents, students, colleagues, and administrators.

TESTIMONY OF CARLOS SOTO

60. Carlos Soto is a VI teacher with SBCSS. His testimony is summarized as follows. He has approximately 38 students on his caseload. All of the students have IEPs. He works with OM providers frequently. He had eight students in common with respondent. He recalled respondent yelling at a student's parent during an IEP meeting. Respondent has told him and parents that she is the expert and that they should not question her or her goal. He was present at an IEP meeting for M.E. Respondent attempted to stop OM services and the parent objected. Respondent

raised her voice, and it was very uncomfortable. Respondent kept trying to change the time and frequency of services. If a service, VI or OM, is listed anywhere on the IEP it must be provided.

TESTIMONY OF SERENNA MADRIL-ACOSTA

61. Serenna Madril-Acosta a VI teacher for SBCSS. Her testimony is summarized as follows. She has worked for SBCSS for three years. She currently reports to Hedberg but prior to that she reported to Williams. She tries to work closely with OM providers. She was present in IEP meetings for J.F., N.Y., and A.A. Respondent “bickered” with the parent of J.F. regarding respondent’s recommendation for minutes of services. The parents of all three of the students were upset with respondent during the IEP meetings. She witnessed an incident involving the removal of a file cabinet. Respondent stated in a loud tone that her “stuff was thrown away.” Respondent did not behave disrespectfully towards her.

TESTIMONY OF CARLOS FRANCO-GIRON

62. Carlos Franco-Giron is a teacher who holds both VI and OM credentials. His testimony is summarized as follows. He worked for SBCSS as an OM specialist between February and June 2022. He succeeded respondent as OM provider for SBCSS. He documented issues he had with respondent’s tenure in an email to Frederick on April 1, 2022. He was able to locate six assessments of the 22 students on his caseload. At the time he sent the email, he had completed nine of the assessments and was planning to complete assessments for all 22 students by June 17, 2022, because the six assessments completed by respondent had “little to no information related to O&M.” He had received complaints from parents that respondent had denied service to students on the basis that they were not totally

blind, or their cognitive level was too low. Respondent had not put in a cane order and parents were buying them for their children. His testimony was consistent with his email.

TESTIMONY OF TANYA BENITEZ

63. Tanya Benitez, Ed.D. is an Assistant Superintendent, Pupil Services at Victor Elementary School District. Her testimony is summarized as follows. She oversees all special education students' IEPs. They contract with SBCSS for VI services. She had no direct contact with respondent. She was contacted by Hansen regarding respondent's interactions with A.A. and his parents. She was concerned about the fact that respondent was not working collaboratively with A.A.'s parents to the point that the parents were claiming respondent was harassing them and A.A.'s father was recording their Zoom sessions. She felt the matter warranted elevation and reported it to Frederick and Williams.

TESTIMONY OF STEPHANIE HEDBERG

64. Stephanie Hedberg has been a principal since July 2018. She has been involved in special education for over 20 years. Her testimony is summarized as follows. Respondent was an OM provider for students on her caseload as a principal. She supervised respondent for students on her caseload for approximately two years. During that time, she observed respondent providing services directly to students. She felt respondent's provision of services was "questionable." It was not clear to her that respondent wanted to be with the students or whether respondent wanted to provide services to the students. Respondent often wanted to change service from direct (providing to the student) to consult (collaborate and consult with the student's teachers). She specifically remembers being in an IEP meeting for student J.W. where

respondent kept stating that J.W. was too low cognitively to receive her services. The team disagreed with respondent's statement. She confirmed that she authored a letter of reprimand for respondent on September 21, 2020. She verified that respondent was argumentative during the IEP meeting and that when she asked respondent to stay after the IEP meeting, respondent was still argumentative, and raised her voice inappropriately.

TESTIMONY OF RICHARD FREDERICK

65. Richard Frederick is the Area Director for Desert Mountain Operations, SBCSS. He became respondent's direct supervisor in February 2021. His testimony is summarized as follows. He firmly believed that the role of educators was to meet the students where they are and "take them as far as we can in building their skills and abilities." He was present at the IEP meeting held for M.E. in December 2021. Respondent had not completed her assessment forcing the meeting to be held in two parts. Respondent did not recommend direct OM services, saying M.E. lacked foundational skills. When questioned about this, respondent refused to answer. Respondent would not participate in the reconciliation of services for M.E. The meeting was very intense. Respondent left before the meeting was over without saying anything.

He had received complaints about respondent's delivery of services to N.Y. from his parents. He observed a Zoom session with respondent and N.Y. During that session, respondent was not receptive to questions from the parents and did not provide adequate OM services to N.Y. He issued several letters of reprimand to respondent.

66. On April 28, 2021, respondent received two letters of reprimand from Frederick. One letter of reprimand concerned an incident involving a filing cabinet. The decision had been made to remove the filing cabinet. Respondent disagreed with the decision because that cabinet housed many of her OM supplies. Nevertheless, the cabinet was removed. When respondent came into the VI office and noticed that it was gone, she raised her voice and complained loudly about her "stuff" had been moved. A coworker reported that she felt respondent's behavior was directed at her and it caused so much anxiety that the coworker left the building for the rest of the day.

The second letter concerned respondent failing to attend an IEP meeting. Respondent failed to attend an IEP meeting on April 15, 2021. She stated that she had had technical issues and was unable to log into the Zoom meeting. Respondent stated that she had attempted to contact the VI teacher prior to the IEP meeting rather than the student's case carrier or the administrator. Both the case carrier and administrator expressed frustration to Frederick with respondent's lack of communication and failure to attend the meeting. Respondent assured Frederick that everyone involved in the meeting was pleased with her services.

67. On May 19, 2021, respondent received a letter of reprimand from Frederick concerning her failure to provide OM services to students. Frederick reviewed her attendance logs for February, March, and April 2021. Respondent claimed that she had provided all OM services to the students on her caseloads during those months. However, respondent's supplemental class rosters for those months did not have all of the OM services for students documented.

68. On October 18, 2021, respondent received two letters of reprimand from Frederick. One letter concerned her failure to provide OM services during the months of August and September 2021, on a defined and regular schedule and her failure to

provide Frederick with her OM services schedule by September 22, 2021. Frederick received complaints from principals that respondent was not appearing for services at the designated times and that some case managers were unaware of her service delivery times. Respondent emailed Frederick stating that teachers and case managers were "flexible" on when OM services were to be provided. She acknowledged that she did not have a set schedule for some students. Respondent stated she was "juggling with assessments" for the students from the dedicated VI class. As of the date of the letter of reprimand, respondent had not provided Frederick with her schedule.

The second letter of reprimand concerned respondent's failure to complete assessments in a timely and compliant manner. Respondent received a referral to complete an assessment for N.K. on May 13, 2021. Because it was close to the end of the school year, respondent was informed that the referral would be tolled and that an assessment permission (AP) would be generated within the first two weeks of the school year. On September 7, 2021, Williams emailed respondent following up on the referral. Respondent replied that she had not received a referral for the 2021-2022 school year. On October 7, 2021, Frederick emailed respondent and directed her to immediately generate the PA and to move forward with the assessment process. By failing to generate the PA for over two months, respondent delayed the assessment process for N.K.

On August 12, 2021, respondent sent an email to Frederick stating that during the May 2021 IEP meeting for student A.A., the team was advised that he would be getting a new OM specialist. Respondent went on to state that "until I hear back from you I will not be seeing" A.A. Frederick directed respondent to provide a "data-based assessment" of A.A. Frederick further directed respondent to send her assessment to

him prior to it being presented to the IEP team. As of the date of the letter of reprimand, respondent had not provided the assessment.

Respondent's Additional Evidence

69. Respondent's testimony was disjointed, and she often rambled. Twice when asked a question that required a yes or no response, respondent talked for over a full minute without answering the question. When asked if she remembered the question, she did not. Respondent's testimony is summarized as follows. She admits that she attempted to "plead the 5th" during the disciplinary meeting with Williams but denied refusing to answer questions or provide information about her whereabouts. She denied ever raising her voice in any IEP meeting and when the file cabinet was removed. She was not offered any training for distance learning. She denied telling Hedberg that student J.W. had cognitive issues. She had a good relationship with that student's family. She was unaware that Hedberg had asked her to develop a direct services goal for J.W. She admitted that J.W. had a cane goal prior to the COVID-19 pandemic and that she attempted to change the goal to a consult goal during an IEP meeting during distance learning. She acknowledged that Williams told her not to change the goals for students during distance learning but insisted that she had gotten permission to change the goal to consult for J.W. from Hedberg.

70. She was informed in the fall of 2020 that she would have students from the dedicated VI class. To prepare for these students, she reviewed their IEPs. None of the students had OM services on the correct page. Respondent claimed that the IEP addendums that were done after the VI class closed were not "legitimate" because there was no OM specialist present, and the OM services were not listed on the correct page.

71. Regarding student A.A., respondent stated that she asked his mother if he uses a cane and claimed that K.A. told her he did not but that he is able to navigate without it. As a result, respondent decided to change his service from direct to consult and indicated that at the August 17, 2020, IEP meeting. She claimed the team agreed to the change. She denied refusing to sign the IEP until the change was made to her recommendation.

A month later at another IEP meeting for A.A., the team wanted to revert to the service times listed in his June 2020 IEP addendum. She disagreed based on his vision acuity and the fact that she claimed she was told A.A. did not want to use a cane. She stated her informal assessment of A.A. was that he did not qualify for her services. She denied saying that A.A. was not blind enough for her services and she thought her behavior was professional at both IEP meetings. She denied that she had ever tried to convince his parents to reduce or cancel OM services.

72. She serviced all her students and denied that she failed to provide services during the fall of 2021. She has never been late with an assessment. The assessment for N.Y. was late because she did not receive the ophthalmology report.

73. She never received any negative feedback and believed she had good relationships with all the parents of her students.

74. Respondent's testimony has a theme, that she was doing her job, that Williams was picking on her, that she did not attempt to convince parents to change services, and that although she did not believe the June IEP addendums were "legitimate," she provided the OM services according to those IEPs. Overall, respondent's testimony evidenced an attempt to downplay and minimize her actions, and a failure to fully acknowledge or take any responsibility for her behavior.

RESPONDENT'S WITNESSES

75. Cynthia Hayes has been employed at SBCSS for 24 years. She holds a single subject and a severely handicapped credential. Her testimony is summarized as follows. She is involved in the TSN. Her primary role in the TSN is to help newer teachers clear their credentials. She also supports teachers who need help. She was assigned to respondent through the TSN. She provided support to respondent from January to May 2021. She observed respondent's lessons with students twice. She felt respondent did not give enough instruction to the parents and sensed some frustration on the part of the parents. She provided feedback to respondent and respondent was grateful for the feedback and suggestions.

76. Michele Wahl is a physical therapist at SBCSS. She has been employed there for 11 years. Her testimony is summarized as follows. She shared some students with respondent. She observed respondent with students approximately six times. She did not observe respondent to behave inappropriately or unprofessionally with student or other staff. She attended between 10 and 12 IEP meetings and never noticed respondent behaving unprofessionally. She was present at the September 2020 IEP meeting and agreed that there was a disagreement about respondent's service between respondent, the student's parent, and Hedberg. Hedberg's behavior at that IEP meeting was typical.

77. Stephen Fiss is retired and works as a consultant. He holds teaching, special education, and administrative credentials. He has worked in education for 44 years. He was employed as an adjunct professor for over 40 years at San Jose State University in the Department of Educational Leadership. He was a Superintendent for several districts for over 20 years. He served as the Chief School Officer in the Santa Clara County Office of Education. He testified as an expert in special education

administration. His testimony is summarized as follows. He explained the different responsibilities of the various members of the IEP team. Once services are established in an IEP, those services are binding and must be provided no matter where they are listed in the IEP. A specialist is not the sole arbiter of eligibility for services, it is a determination made by the whole team. A specialist cannot override the whole team. He acknowledged that the June 2020 IEP addendums did not follow best practices and that given the circumstances an exception to the IEP team makeup might be acceptable in order to keep students properly serviced. He opined that it is inappropriate for any member of the IEP team to leave during the meeting.

78. Kathryn Polston holds multiple subject general education, VI, and OM credentials. She was teaching a dedicated VI class that was closed in June 2020. She provided direct OM services to the students in her classroom. She was not involved in the transition IEP meetings. She was providing approximately 105 minutes of OM services on a weekly basis for each student in her class. She believed that all seven of the students should have received OM services after the closing of her class.

79. All of respondent's witnesses stated that OM services that are listed anywhere in an IEP are legally obligated to be provided.

LEGAL CONCLUSIONS

1. SBCSS has the burden of proof in this matter, and the standard of proof in a teacher dismissal hearing is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

2. A permanent employee may be dismissed for cause only after a dismissal hearing. (§§ 44932, 44934, and 44944.)

Statutory Grounds for Dismissal

3. Education Code section 44932, subdivision (a), provides that a permanent employee shall not be dismissed except for one or more of the causes set forth in that subdivision. The causes alleged in this matter are unprofessional conduct, dishonesty, unsatisfactory performance, and persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district. (Ed. Code, § 44932, subd. (a)(2), (4), (5), & (8).)

4. When a school board recommends dismissal for cause, a Commission on Professional Competence may only vote for or against the dismissal; the Commission may not dispose of a charge seeking dismissal by imposing probation or an alternative sanction. (§ 44944, subd. (d)(1) & (3).) The Commission's decision is deemed to be the final decision of the school district's governing board. (*Id.* at subd. (d)(4).) The Commission has broad discretion in determining what constitutes unfitness to teach, and whether dismissal is the appropriate sanction. (*California Teachers Ass'n v. State of California* (1999) 20 Cal.4th 327, 343-344; *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 220-222.)

UNPROFESSIONAL CONDUCT

5. SBCSS seeks to dismiss respondent for unprofessional conduct, pursuant to Education Code section 44932, subdivision (a)(2). Unprofessional conduct has been defined as "conduct such as to indicate unfitness to teach." (*V.P. v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

6. Respondent repeatedly failed to follow the directives of her supervisors, including failing to write a goal for A.A. related to foundational areas of OM, failing to

provide her contact log to her supervisor upon request, failing to provide her OM services schedule to her supervisor, failing to provide completed assessments for her supervisor to review prior to presenting them to the IEP team, attempting to change OM service times during distance learning, failing to work collaboratively with students' parents, and failing to work collaboratively with the IEP team to set OM goals and service times for students. She tried to change OM service times after being instructed not to change services during distance learning. She failed to communicate with parents of students. Respondent failed to provide OM services to students as required by their IEPs. She behaved inappropriately in multiple IEP meetings. She made denigrating comments to students and their parents. Respondent failed to complete assessments in a timely and compliant manner, and in some cases, she completely failed to complete the assessment. Respondent's overall conduct demonstrated a complete indifference to her supervisors' directives and an inconsiderate attitude toward the students and parents, by showing a complete unwillingness to provide OM services and assessments. Cause exists to dismiss respondent for unprofessional conduct under section 44932, subdivision (a)(2).

DISHONESTY

7. Section 44932, subdivision (a)(4), provides that SBCSS may dismiss a permanent employee for dishonesty. No evidence related to the charges established that respondent was dishonest. Cause does not exist to dismiss respondent for dishonesty under section 44932, subdivision (a)(4).

UNSATISFACTORY PERFORMANCE

8. Section 44932, subdivision (a)(5), provides that SBCSS may dismiss a permanent employee for unsatisfactory performance. Respondent failed to provide

services to students; was combative in IEP meetings; made denigrating remarks to students, colleagues, and supervisors; and repeatedly failed to change her conduct after multiple warnings. Respondent received multiple letters of reprimand for her conduct towards students A.A., N.K., and their families. Cause exists to dismiss respondent for unsatisfactory performance under section 44932, subdivision (a)(5).

PERSISTENT VIOLATION OF SCHOOL LAWS OR REGULATIONS

9. Section 44932, subdivision (a)(8), provides that SBCSS may dismiss a permanent employee for persistent violation of or refusal to obey school laws or regulations. Dismissal under this subdivision requires that the violation be persistent, that is, continuing or constantly repeated. (*Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 82.) A single violation of a school board's rules is not itself cause for dismissal under this subdivision, which pertains to unintentional as well as intentional transgressions; "it is the persistent disregard of school rules that the subdivision is designed to regulate." (*Id.* at 84 [citation omitted].)

10. The evidence established that respondent persistently violated school laws and regulations over the course of two school years. Respondent was aware of SBCSS policies and regulations, and had completed required training. Respondent repeatedly engaged in violating the SBCSS Code of Ethics which required her to:

- Adhere to the highest ethical standards and behavior in their relations with students, parents, community, and colleagues.
- Act and speak at all times in a manner which exemplifies personal and professional integrity, dignity, and mutual respect.
- Adhere to established professional standards.

- Exercise great care and good professional judgment in order to avoid situations that may compromise the reputation of SBCSS.

Respondent was rude and combative with parents of students, colleagues, and supervisors. She failed to provide services as required per students' IEPs. She made a derogatory comment to a student. Respondent was repeatedly unprofessional with A.A. and his parents. Cause exists to dismiss respondent for persistent violation of school laws and regulations under Education Code section 44932, subdivision (a)(8).

Analysis of the *Morrison* Factors

11. The ultimate question is whether respondent is unfit to teach under the factors established by the California Supreme Court in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230. The *Morrison* factors are: (1) the likelihood that the conduct in question may have adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of the conduct; (4) the type of teaching certificate held by the teacher; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the recurrence of the questioned conduct; and (8) 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. Only the pertinent factors must be addressed. (*West Valley-Mission Community College Dist. v. Concepcion* (1993) 16 Cal.App.4th 1766, 1777.) The factors may be applied to all of the proven conduct in the aggregate. (*Woodland Joint Unified School Dist., supra*, 2 Cal.App.4th at pp. 1456-1457.)

12. In this case, application of the pertinent *Morrison* factors demonstrates that respondent is unfit to teach.

Respondent's conduct adversely affected students, parents, and administrators. Students did not receive all of their mandated OM services. When they did receive service, respondent was dismissive of input from parents or combative with parents. Multiple parents sought to have respondent replaced as their child's OM provider. Supervisors and administrators were upset by witnessing students' distress and the knowledge that multiple students were experiencing a negative school environment due to respondent's behavior.

Respondent's conduct was recent.

Respondent has received training in providing OM services. She was given feedback for two years prior to the conduct described here. This is an aggravating circumstance. Part of the conduct occurred during distance learning due to the COVID-19 pandemic. This is a mitigating factor.

Respondent characterizes her motives as praiseworthy, claiming she was attempting to protect the students. But her motives for the conduct were blameworthy, especially in either refusing to provide services to the seven students from the closed VI class, or attempting to reduce the OM service times for those students.

The likelihood of recurrence is high. Respondent continued to engage in a pattern of inappropriate behaviors despite being counseled and reprimanded. She denied conduct that was credibly established by other witnesses, and consistently minimized her misconduct. Respondent has failed to accept any responsibility. She has demonstrated over time that she cannot or will not exercise good judgment.

Disposition

13. Respondent is a veteran teacher who should understand the high societal expectations for public school teachers. Respondent engaged in a pattern of unprofessional conduct and acts constituting insubordination over an extended period of time. She failed to change her behavior despite repeated warnings, and has failed to acknowledge her culpability. She has repeatedly shown an inability or unwillingness to use good judgment in her interactions with students, parents, supervisors, and administrators.

14. The Commission on Professional Competence concludes that cause exists to dismiss respondent based on unprofessional conduct, unsatisfactory performance, and persistent violation of or refusal to obey school laws or regulations. Each ground for dismissal provides a separate and independent basis for respondent's dismissal.

ORDER

Respondent Chjene Chhor is hereby dismissed from her position as a permanent certificated employee of the San Bernadino County Superintendent of Schools.

DATE: 09/05/2023

Dena C Slocum

[Dena C Slocum \(Sep 5, 2023 15:19 PDT\)](#)

DENA SLOCUM

Commission Member

DATE: 09/05/2023

Shelby Zimmerman

[Shelby Zimmerman \(Sep 5, 2023 15:29 PDT\)](#)

SHELBY ZIMMERMAN

Commission Member

DATE: 09/05/2023

Traci C. Belmore

TRACI C. BELMORE

Commission Chair

Administrative Law Judge

Office of Administrative Hearings