

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

**In the Matter of the Dismissal of:**

**YOLANDA SERRATO, Respondent**

**OAH No. 2020020401**

**DECISION**

This matter was heard via video conference before a Commission on Professional Competence (Commission) of the Fresno Unified School District on August 3 through 7, 18 through 21, and 25 through 26, 2020. The Commission members were Patricia Sandoval, Larry Sturm, and Administrative Law Judge Heather M. Rowan, Office of Administrative Hearings, State of California.

Attorneys David Moreno and Katy McCully Merrill from the law firm Fagen, Friedman & Fulfrost, LLP, represented complainant Fresno Unified School District (District).

Attorney Joshua F. Richtel from the law firm Tuttle & McCloskey represented respondent Yolanda Serrato, who was present throughout the hearing.

Evidence was received and the Commission met in executive session on August 26, 2020, after which the record was closed and the matter submitted for decision.

## **ISSUES**

Whether the District established by a preponderance of the evidence that respondent's dismissal should be sustained.

## **SUMMARY OF DECISION**

Respondent is a special education teacher in the District. The District seeks to terminate her employment due to unsatisfactory performance. The District established that, after evaluating respondent and giving her adequate assistance and opportunity to improve and address identified areas of unsatisfactory performance, she failed to bring her performance up to a satisfactory level. The District's dismissal of respondent is therefore sustained.

## **FINDINGS OF FACT**

1. Respondent is a permanent certificated employee of the District and is assigned to teach a Special Education (SPED) special day class (SDC) at Birney Elementary School (Birney). Respondent's most recent assignment was in a combined fourth through sixth grade mild/moderate<sup>1</sup> SDC. She started her teaching career at Birney in 2013.

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<sup>1</sup> SDCs are generally either mild/moderate or moderate/severe, referring to the range of students' disabilities. Mild/moderate can include students with intellectual disabilities, autism, or specific learning disabilities.

2. The District seeks to terminate respondent's employment for unsatisfactory performance, based upon allegations that she failed to: (1) adequately communicate with her general education peers including attending required staff "Accountability Community" (AC) meetings; (2) allow adequate wait time to meet student needs; (3) ensure all students were engaged and had access to the curriculum, including appropriate manipulatives<sup>2</sup> or other materials; (4) employ the Direct Instructional Model of "I do, we do, you do" and the Four Foundations of a lesson (discussed below); (5) differentiate work for students in different grade or skill levels or for students with special needs or English Learners; (6) consistently give clear learning expectations or criteria for success for learning; (7) submit lesson plans to the evaluator as requested; (8) organize instruction to meet required learning time; (9) implement CHAMPS Classroom Management (CHAMPS) as needed through the day; (10) hold, affirm, and attest annual IEP<sup>3</sup> meetings to meet SPED/District timelines; (12) implement the Guaranteed Viable Curriculum (GVC) the District provided and expected; (13) set high expectations for SPED students; (14) adequately redirect student responses to re-engage in the learning goals; (15) check for student understanding throughout each lesson and adapt her teaching to reflect the assessed academic and behavioral needs of all students; (16) assign students to work with partners or in groups to ensure that students were actively

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<sup>2</sup> Manipulatives in this sense are tangible aids to assist students in understanding concepts.

<sup>3</sup> IEP is an Individual Education Program, which is an educational and behavioral plan developed for students to support their diverse learning needs. They are governed by both state and federal law.

listening and participating; (17) implement or utilize a standards-based learning objective; and (18) develop as a professional.

## Evaluation Standards

3. The law requires school districts to conduct regular performance evaluations of its certificated employees. The District's governing board adopted the FUSD Continuum of Standards for the Teaching Profession (Continuum), which provides guidelines for evaluating certificated employees' performance. The revised Continuum that took effect during the 2010/2011 school year provides the following regarding its purpose:

The purpose of this handbook is to remove the guesswork from knowing what makes an effective, inspiring teacher. In 1997 the State of California first published the California Standards for the Teaching Profession (CSTP). Revisions to the CSTP (2009), [sic] have been developed to respond to the changes in teaching and learning over the past decade. Most importantly, the California Department of Education, in conjunction with the Commission on Teacher Credentialing and California State Board of Education, revised the CSTP to address the following needs: an increasingly diverse student population, substantial innovations in technology and its effects on instructional practices, updates in K-12 curriculum frameworks, the implementation of the academic content standards, and the effect that globalization of our world has had on teaching in the 22nd century classroom. The intended purpose of the

CSTP is to provide a "common language" for all teachers in California. The CSTPs are organized around six interrelated domains of teaching practice. The following are the identified standards by which California teachers are to be measured:

STANDARD 1: Engaging and Supporting ALL Students in Learning

STANDARD 2: Creating and Maintaining Effective Environments for Student Learning

STANDARD 3: Understanding and Organizing Subject Matter for Student Learning

STANDARD 4: Planning Instruction and Designing Learning Experiences for ALL Students

STANDARD 5: Assessing Students for Learning

STANDARD 6: Developing as a Professional Educator

4. For each of these six CSTPs, the District has developed a continuum of professional standards upon which teachers are evaluated, which include multiple elements and examples for each of the CSTPs. The District used the following ratings: Not Observed, Meets Standards – Demonstrates Expertise, Meets Standards – Growth Expected, and Does Not Meet Standards.

5. As set forth in the District's Continuum of Standards for the Teaching Profession, the District has Four Classroom Foundations (four foundations) that must be

present in each lesson a certificated employee teaches: (1) objective (what students should know, understand, and be able to do); (2) instruction aligned to the objective (how the instructional activities line up with the objective); (3) assessment (how the teacher determines if the students are “getting it” and monitors and adjusts the lesson accordingly); and (4) closure (how the teacher sums up and closes the lesson).

## **Teacher Evaluations**

6. Kristina Montez has been the principal at Birney since 2014. Prior to that, she was a vice principal at another District school. She taught for nine years in different elementary levels including kindergarten, first and second grades, and as a Teacher on Special Assignment doing intervention for fourth and fifth graders. She has not taught SPED. Ms. Montez has training in administration as well as training for evaluations. She was part of the administrative cohort in the District to provide on-going training for evaluators.

7. Ms. Montez explained that teachers are evaluated every other year. If a teacher is consistently not meeting standards, the evaluations may be more frequent. There are two evaluations per year: a formative evaluation in the fall, and a summative evaluation in the spring. The summative pulls information from the formative to provide a complete picture of the teacher’s performance for that school year.

8. The Birney administration divides equally the teachers whose evaluations are due. Generally, the assignments are made randomly. The administrators meet weekly throughout the year to discuss patterns and trends they see in the classrooms and to discuss the on-going evaluations. Evaluations include informal “walk-throughs,” a teacher’s general performance outside the classroom (such as communication with others and AC meetings), and formal, scheduled, observations.

9. The CSTPs apply to all teachers regardless of the grade level, subject matter, or department, such as SPED. Each CSTP is broken down into specific elements that allow the evaluator to look for certain indicators to determine if the teacher is meeting the standard. The elements take some of the "subjectivity" out of the evaluation and ensure all evaluations are equal.

10. Ms. Montez explained that if a teacher is "not meeting standards" consistently over a one-and-a-half-year period, the teacher will receive a "90-day Notice," which is a process in which the District offers support and provides weekly evaluations and feedback. The process aims to ensure the students are in the best physical, emotional, and educational environment they can be. The goal is that with feedback and support, the teacher's performance will improve and obviate the need for dismissal.

## **Guaranteed Viable Curriculum**

11. Julie Wheelock is a SPED Program Manager III at the District. She is familiar with the District's education program. The District has adopted a Guaranteed Viable Curriculum (GVC), which is the core curriculum all students receive. By adopting a GVC, the District can ensure each student within the District has the same opportunities. Since the 2015/2016 school year, the GVC for English Language Arts is "Wonders," and for math it is "GoMath." The curriculum is the same in both SPED and general education, and there are supplemental curricula and interventions provided for SPED. While SPED students are not expected to "master" the GVC, they should be provided access to their grade-level curriculum.

12. Initially, the SPED teachers had difficulty implementing the GVC, and students were struggling. In January 2019, the District SPED department rolled out

Wonderworks, which is a “partner” to the Wonders curriculum. Ms. Wheelock and her colleagues instructed SPED teachers to replace Wonders with Wonderworks and turn in their Wonders curriculum, but almost immediately “pressed pause” on that instruction. Teachers were then instructed to keep both. Later that spring semester, the District provided support and training to implement Wonders for all classrooms, with Wonderworks as a supplement. The District focused on providing all students with access to their grade level’s curriculum.

13. In August of 2019, Ms. Wheelock believed the directive was clear that Wonders was the GVC and SPED had Wonderworks as a supplement. The District provided a sample calendar with a “seven-day week” to aid SPED teachers in lesson planning. While some SPED teachers taught the GVC in 20-minute lessons, that timing was not a requirement. The District’s requirement was that SPED students were provided access to grade-level GVC pursuant to the students’ IEPs.

## **Lesson Observations and Evaluations 2017/2018**

14. Vice Principal Gonzalez performed respondent’s Fall 2017 observation. Mr. Gonzalez has been a Vice Principal at Birney since the 2016/2017 school year. He was a fifth-grade teacher for 15 years and taught fourth and sixth grades for one to two years each. He left classroom teaching to be a language coach for English Learners in the District. He does not have experience in a SPED SDC.

15. Mr. Gonzalez underwent 18 months of training to be a vice principal. One of his primary duties as a vice principal is teacher evaluations. As a vice principal, he has monthly meetings for administration where his learning continues. His formal and informal training included conducting teacher evaluations.

## FALL 2017 FORMATIVE

16. On November 29, 2017, Mr. Gonzalez conducted a formal observation of respondent's SPED classroom. Respondent was notified before the formal observations. She provided lesson plans for Mr. Gonzalez in advance. As per his training and practice, Mr. Gonzalez took literal notes during his observation. After the lessons, he typed his notes into a format that addressed each of the CSTPs and included data points regarding his findings and his conclusions regarding respondent's rating. After the lesson, he met with respondent to discuss his findings.

17. Mr. Gonzalez did not use the elements that comprise each CSTP standard in this evaluation. Respondent was meeting standards in Standards 1, 2, 3, and 5. Generally, respondent was performing well in the classroom. Specifically, Mr. Gonzalez noted respondent engaged all students, promoted a "rigorous learning environment," and "review[ed] rules and expectations with her students on a daily basis." She also differentiated instruction based on continual assessments, and she "organize[d] her curriculum to meet the foundational skills that students are missing but also [gave] additional support in grade-level work."

18. Mr. Gonzalez rated respondent as Meets Standards – Growth Expected in Standard 4 and Does Not Meet Standards in Standard 6. Under Standard 4, he noted respondent "minimally interacts with mainstream colleagues to communicate long-term instructional plans/goals to support all her students;" as a result, "students' learning experiences are not aligned with IEP goals and objectives." Under Standard 6, Mr. Gonzalez found respondent "does not foster a culture with a high degree of professional integrity and professional conduct." Specifically, respondent did not inform a mainstream teacher of a student's objectives for several months, "claimed" parents of a SPED student did not want him mainstreamed due to a hurt foot, and did not

consistently attend AC meetings. As a result, Mr. Gonzalez found respondent's students' learning was "negatively impacted from [respondent's] limited collaboration with colleagues to support student learning."

19. Mr. Gonzalez explained at hearing that respondent did not communicate one student's IEP goals to the student's general education teacher. The general education teacher questioned why the student was not in her classroom, and respondent stated his parent<sup>4</sup> had requested he stay in his SDC because he hurt his foot and could not walk back and forth between classrooms. Mr. Gonzalez called one of the child's parents and learned the parent had not given such a directive.

## **SPRING 2018 SUMMATIVE**

20. Vice Principal Celia Dominguez retired from the District in 2018 after over 30 years of experience. Ms. Dominguez was a Vice Principal at Birney from 2010 to 2018. Prior to that she was a Teacher on Special Assignment (TSA) at Jackson Elementary, a kindergarten, first, second, fourth, and sixth grade teacher, and a reading coach for fourth through sixth graders. She did not teach in a SPED SDC. Her training as an administrator and for teacher evaluations was similar to Mr. Gonzalez's.

21. Ms. Dominquez was assigned to complete respondent's summative evaluation in Spring 2018. Typically, one evaluator is assigned to a teacher for an entire year. Respondent requested a new evaluator after the 2017/2018 formative, however,

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<sup>4</sup> This "parent" may have been the student's father's girlfriend. It was also unclear whether Mr. Gonzalez and respondent spoke to the same person.

and Ms. Dominguez was assigned in March or April of the spring semester. The summative was completed on April 29, 2018.

22. At hearing, Ms. Dominguez explained the importance of using the four foundations in each lesson. They orient the students to what the teacher's intent is, provide a model of how and what they learn, and provide for real-time assessments so that a teacher can gather data and use different techniques if necessary. At the end of each lesson, closure gives both teacher and student data regarding what was learned and what they will learn next. These foundations are applied equally whether in a general education or SPED classroom.

23. Ms. Dominguez believes 2018 was the first time the District's directive for SPED was to teach to students' grade levels, rather than an SDC teacher teaching to the lowest of her grade levels. For example, respondent taught the fourth-grade curriculum to her fourth through sixth graders. Ms. Dominguez testified she heard from respondent that she was not aware she should have been teaching to her students' grade levels. Respondent told Ms. Dominguez her students "cannot" do the lessons when taught to their grade levels. Ms. Dominguez tried to provide feedback and encouragement so that respondent could address her students' ability levels. Ms. Dominguez also encouraged respondent to use the supports available to her, including her general education colleagues who teach students at grade level, though their students operate at different levels. Ms. Dominguez believes respondent's teaching is based on what she thinks her students can do, which sets a low expectation.

24. During one of her observations, Ms. Dominguez noted respondent used "nonacademic language." Respondent used the term "nice number," which is a term of art in GoMath, but nonacademic. Ms. Dominguez believes she should have used academic language to explain "a nice number is the same as certain right numbers."

Teachers should use academic language to explain the term. Ms. Dominguez admitted respondent might have provided the explanation at a different time, but she did not see it. The students need the academic language.

25. Like Mr. Gonzalez, Ms. Dominguez did not specify the elements in each Standard. She rated respondent "Growth Expected" in all six Standards. Ms. Dominguez explained at hearing that if an evaluator does not complete three formal observations, which she did not, she cannot give a rating below "growth expected." Examples of Ms. Dominguez's evidence for the ratings include:

- Standard 1: inconsistently used instructional resources to meet student needs, did not allow sufficient wait time for student response, reviewed the acronym STAR<sup>5</sup> but did not use it during instruction, and did not check for understanding or re-engage students.
- Standard 2: minimally provided students with clear expectations, did not provide direction at transitions, did not use small groups to optimize learning, and did not use time effectively.
- Standard 3: allowed student to sit idly, used "non-academic language," did not employ the "I do, We do, You Do" Direct Instructional Model effectively, did not consistently differentiate work; did not provide clear instruction when students had difficulty, and did not reassess for understanding throughout a lesson.

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<sup>5</sup> STAR is a classroom management technique. It stands for: Sit Up; Track Speaking, Answer Questions; Respect Others.

- Standard 4: did not hold timely IEP meetings; did not communicate effectively with general education colleagues, did not consistently give clear learning expectations or criteria for success; minimally adjusted curriculum and instruction based on assessments of students, did not re-engage students in learning, and did not differentiate work.
- Standard 5: minimally checked for understanding, provided minimal feedback or an “exit ticket” to assess understanding, did not provide time for student responses or adjust instruction when there was a lack of understanding.
- Standard 6: generally failed to respond to email in a timely manner, failed to submit a lesson plan, provide teaching materials and assessment materials to evaluator when requested, minimally planned or organized efficiently to meet timelines and expectations; poorly planned and executed lesson plans, failed to attend AC meetings as required.

## **Lesson Observations and Evaluations 2018/2019**

### **FALL 2018 FORMATIVE**

26. Mr. Gonzalez was assigned to complete respondent's evaluations in the 2018/2019 school year. He found respondent was not meeting standards in Standards 1, 4, and 5, and was growth expected in Standards 2, 3 and 6. Examples of Mr. Gonzalez's observations are as follows:

- Standard 1: respondent released students to independent practice despite their level of understanding and students sit idly; she did not consistently provide students with resources such as manipulatives or graphic

organizers; and she did not check for understanding or ensure student engagement.

- Standard 2: respondent did not consistently provide students access to district adopted resources and did not consistently implement CHAMPS throughout the day.
- Standard 3: respondent did not consistently use GVC Wonders in ELA<sup>6</sup> and did not provide students access to grade-level content; she did not consistently differentiate for English Learner students.
- Standard 4: respondent did not adjust curriculum for all students or address students who struggled, did not incorporate appropriate strategies based on student strengths, and did not provide students opportunities to work and learn together.
- Standard 5: respondent did not check for understanding or provide students an opportunity to self-assess.
- Standard 6: respondent did not conduct timely IEP meetings or attest on time, she did not provide a complete lesson plan prior to evaluation as requested, and she “refused” to implement GVC.

27. Mr. Gonzalez found the result of these observations was that respondent's students were not adequately supported, did not receive grade level curriculum or immediate feedback, and did not have strategies to meet their individual needs.

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<sup>6</sup> English Language Arts.

## **SPRING 2019 SUMMATIVE**

28. Mr. Gonzalez completed respondent's spring 2019 Summative Evaluation. His evaluation referred to five occasions on which he observed her classroom, but he did not indicate which observations were informal or formal. He rated respondent as not meeting standards in Standards 1, 2, 4, and 5, and growth expected in Standards 3 and 6. Unlike in prior evaluations, Mr. Gonzalez gave the rating, data points to support it, and suggestions of how respondent could improve. Mr. Gonzalez's observations noted some improvements, but overall noted many similarities to the observations in the prior evaluations. Examples of Mr. Gonzalez's observations are as follows:

- Standard 1: respondent improved in transitioning to independent practice, but was not requiring students to use manipulatives, checking for understanding, or allowing wait time for student responses. Mr. Gonzalez suggested respondent allow students time to discuss and process their responses and make connections between past and present learning and rely on her veteran coach to find ways to utilize scaffolding.<sup>7</sup>
- Standard 2: respondent continued to fail to use the four foundations of a lesson, provide connections between what students have learned and are learning, review CHAMPS or behavior expectations, differentiate for student ability. Mr. Gonzalez suggested respondent review behavior expectations (CHAMPS) prior to and during lessons, use positive reinforcements, and continue to seek support.

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<sup>7</sup> Scaffolding refers to techniques teachers can use to aid understanding.

- Standard 3: respondent began implementing GVC Wonders curriculum midway through the school year, but did not consistently plan lessons that included all three grade levels, provided instruction for 15 to 20 minutes in math and insisted the length could not be changed. Mr. Gonzalez suggested respondent check for understanding and provide scaffolds in real-time.
- Standard 4: respondent did not adjust curriculum for all students, did not ensure student understanding or engagement, did not give students “multiple and diverse opportunities” to work, share, and learn together, did not consistently incorporate strategies to use student strengths, and did not provide students with clear expectations. Mr. Gonzalez suggested respondent state the learning objective, ask the students to repeat it back, and differentiate lessons for grade levels and IEP goals.
- Standard 5: respondent did not provide closure or check for understanding, did not use exit tickets to aid understanding, and did not provide students adequate feedback. Mr. Gonzalez suggested she provide opportunities for self-assessment and model how to do so.
- Standard 6: respondent improved in holding timely IEPs, but she did not provide adequate or timely lesson plans to the evaluator and did not respond to emails timely; but she was working with a veteran coach and was attending trainings.

## **90-Day Notice**

29. Pursuant to Education Code sections 44938 and 44932, on September 10, 2019, the District served respondent with a 90-Day Notice of Unsatisfactory

Performance (90-Day Notice). The 90-Day Notice stated it was "designed to provide [respondent] with sufficient information to understand the nature of [her] unsatisfactory performance and to illustrate specific instances of such behavior with such particularity as to provide [her] with an opportunity to correct these faults and overcome the grounds for potential dismissal charges." Attached to the 90-Day Notice were all the Evaluations noted above. To assist respondent in overcoming her performance deficiencies, the 90-Day Notice stated that respondent was expected to comply with the following directives:

1. Ensure continuous student engagement and participation. Use knowledge of students to engage them in learning and always hold students accountable for their answers. Make sure students are paying attention (not talking or playing) while you give directions, so they are clear as to expectations, procedures and expected outcomes.
2. Employ classroom routines, procedures, norms and supports for positive behaviors to ensure a climate in which all students can learn. Provide students with behavior expectations prior to and throughout each lesson, as well as before transitions, utilizing the CHAMPS poster or other visual behavior expectations, when providing redirects to students always connect the behavior back to CHAMPS. Always ensure the behavior expectations provided to students align with the lesson and/or activity you intend to present.

3. Create and maintain effective environments for student learning, including a rigorous learning environment with high expectations and appropriate support for all students, and one which fosters consistent participation and good behavior. Use a variety of instructional strategies, resources and technologies to meet students' diverse learning needs. Connect learning to students' prior knowledge and provide students with meaningful examples to prior learning and real-life contexts.
4. Give students time for critical thinking.
5. Effectively utilize direct instruction. Do not omit modeling, practice and checking for understanding before releasing students to independent practice.
6. Plan lessons with multiple opportunities to check for understanding and make sure you are ready to respond to student needs with adjustments to instruction. This should include planning both long- and short-term goals that are attainable within an instructional period.
7. Incorporate the four foundations into each lesson. Every lesson must have a clearly stated/written objective and a closure. Be sure to verbalize the learning target for students throughout each lesson and at the end. Students should be aware of how to meet the objective, and each closure should include a way to check for

student understanding. Plan instruction and design learning experiences with appropriate strategies to meet the learning needs of all students. For instance, provide objectives that include a criteria (*sic*) for success so students can ascertain whether the objectives have been met.

8. Ensure that instruction is differentiated to address grade level and IEP student needs.
9. Hold, complete, attest and affirm IEPs in a timely manner.
10. Submit lesson plans in a timely manner.

## **Observations and Evaluations During 90-Day Notice Period**

30. During the 90-Day Notice period, respondent had weekly observations, a formal observation, and a formative evaluation. Mr. Gonzalez observed respondent's lessons on September 20 and 27, October 11, and November 6, 2019. Ms. Montez observed respondent's classroom on October 18, and November 22, 2019. Following each observation, respondent met with the observer to discuss the evaluation and directives. Mr. Gonzalez completed the formal and formative evaluations. Respondent was given the opportunity to respond in writing to the formal evaluations.

31. In each weekly observation, Mr. Gonzalez and Ms. Montez provided ratings, observations, and directives. Each also included a rating (without comment) for each of the six elements of each Standard. Generally, respondent was rated as growth expected or not meeting expectations throughout the 90-Day Notice period.

32. In Mr. Gonzalez's week-two observation, however, he rated respondent as "meets standards" in Standards 1 through 5. He commented she: engaged students, set expectations, created an effective learning environment (though she did not use CHAMPS during the observation), incorporated the four foundations into the lesson plan, and conducted assessments throughout lessons and checked for understanding at the end. Mr. Gonzalez rated respondent growth expected in Standard 6 because he did not observe her using CHAMPS and was therefore not implementing all directives in the 90-Day Notice.

33. The remaining weekly observations generally found respondent was not meeting standards or growth was expected. The comments throughout were similar. Examples from the weekly observations (save week two) included:

#### **WEEK ONE (MR. GONZALEZ)**

- Respondent did not complete a new daily schedule on time as evaluator requested; she wanted to consult with her veteran support coach first.
- Respondent did not review CHAMPS throughout the lesson.
- Respondent did not assess students or use the four foundations.
- Respondent did not use transitions between lessons or activities.
- Respondent did not provide access to grade-level curriculum.
- Direct instruction was limited to three of seven students.

## **WEEK FOUR (MR. GONZALEZ)<sup>8</sup>**

- Respondent did not incorporate the four foundations.
- Respondent used visuals to support transition, but did not refer to the visuals.
- Respondent's instruction was limited to three of seven students.
- Respondent did not refer to CHAMPS.
- Respondent did not provide closure or clear transitions. She did not incorporate the four foundations into her lesson plans.
- Respondent was "meeting standards" in Standard 4. She developed a lesson plan for her direct instruction and her paraprofessional provided instruction in the supplemental curriculum.
- Respondent did not assess students' new learning.
- Evaluator requested a lesson plan and respondent did not comply. She stated she wanted her veteran support coach to review.

## **WEEK FIVE (Ms. MONTEZ)**

- Respondent read a story and then asked "what did Ron's little sister do with the socks?" Student J2 responded: "the shells." Rather than create an expectation for answers to be in complete sentences, respondent answered: "Yes, he puts the shells in her sock."

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<sup>8</sup> No Week Three evaluation was submitted.

- Not all students were engaged.

## **WEEK SEVEN (MR. GONZALEZ)<sup>9</sup>**

- Respondent reminded students of STAR behavioral expectations.
- Respondent was not planning and designing instruction to grade levels.
- Not all students were engaged. For example, student J1's head was down and he "[appeared] to fall asleep for the majority of the lesson;" student N sat at a nonworking tablet for 15 minutes.
- Respondent was not using CHAMPS on a consistent basis. Mr. Gonzalez suggested respondent refer to the CHAMPS book and establish the expectations for the students, especially at transitions and during independent study.
- Respondent was not using the four foundations, especially providing objectives and closure.
- Respondent was not using the GVC and was not differentiating among grade levels. Respondent should teach core curriculum and her paraprofessional should teach the supplemental curriculum.
- Respondent was not adhering to the directives including attending all AC meetings.

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<sup>9</sup> No Week Six evaluation was submitted.

## **WEEK EIGHT (Ms. MONTEZ)**

- Not all students were engaged. For example, one student was playing and talking during independent study and another was not doing the lesson on the laptop or tablet.
- Respondent was not using the four foundations, especially regarding objectives and closure, and was not consistently using CHAMPS or another behavioral expectation.
- Respondent did not respond when a student asked if it was time for lunch.
- Respondent was not differentiating for grade levels or providing different manipulatives for different students.
- Respondent did not manage the classroom by checking on students in independent study. She continued not to allow time for student responses.
- Respondent mainstreamed several students to math but did not bring data regarding these students to a meeting with the administration and SPED Regional Instructional Manager as requested.
- Respondent allowed her student with behavioral issues to attend a field trip without appropriate behavioral support.

## **FORMATIVE (MR. GONZALEZ)**

34. Mr. Gonzalez completed respondent's formative evaluation on December 6, 2019. Much of this evaluation was pulled from the weekly and formal evaluations. Some data points included:

- Respondent did not provide opportunities for her students to engage in discourse;
- She allowed students to sit idly;
- Students were not provided clear expectations;
- Respondent was directed to use CHAMPS, but chose to use STAR, though did not use STAR consistently, especially in group instruction;
- Respondent “does not maximize her understanding of differentiated instruction to support the individual needs of her students;” and
- She does not use the four foundations.

Mr. Gonzalez also noted that respondent had mainstreamed five of nine students for math. There were no updated IEPs. Respondent had parent approval for mainstreaming, but she did not consult with site administration or the SPED department. By November 13, 2019, respondent only held two IEPs. Additionally, student CC’s mother reported to Mr. Gonzalez that CC was stressed, nervous, and did not want to go to class. She believed respondent was not “welcoming.” CC’s mother filed a complaint.

## **Teacher Supports**

35. To support respondent in the 90-Day Notice period, respondent had access to a veteran support coach, a SPED Regional Instructional Manager, a Teacher on Special Assignment from either the SPED Department or Birney, the school administration, and her colleagues.

## **REGIONAL INSTRUCTIONAL MANAGER**

36. Deanna Hoffman has been a Regional Instructional Manager for the District’s SPED Department for three years. She taught SPED for 15 years prior to this

assignment. As the Regional Instructional Manager, she monitors IEP compliance within the eight-school region to which she is assigned, works with teachers and parents regarding the IEPs, and provides instructional support in SPED SDCs. She tries to walk through SPED classrooms in her region on a weekly basis.

37. Ms. Hoffman explained that most elementary school SDC classes are combined grade levels and it is common to combine fourth, fifth, and sixth grade classes. In her opinion, while it is challenging to teach to three grade levels and provide appropriate instruction, with planning and support, it is possible. There is no reason mild/moderate students should not be exposed to the GVC at their grade-levels.

38. She explained she supports the SPED teachers in teaching the GVC of Wonders, supplemented by Wonderworks and a supplemental corrective reading program, and GoMath, supplemented by NumberWorld. The District adopted this curriculum that, "if used to fidelity," will teach to all the required educational standards. The GVC is used in SPED as well as general education, but in SPED, the program is tailored to the "strengths and struggles of each student." SPED teachers provide access to the same curriculum their grade-level peers receive. SDCs are smaller classrooms, which allow teachers more time with the students.

39. In the 2016/2017 school year, all teachers were trained in the new GVC, and the District considered the Wonders curriculum "experimental" for SPED to allow teachers to see what worked. The SPED teachers received the curriculum for all three grade levels they taught so their students would be provided access to their grade-level GVC. As an example, Ms. Hoffman suggested a teacher might read a story to all students, but then differentiate instruction in grade-level groups.

40. In talking with Ms. Hoffman, respondent repeatedly stated her "kids can't do the work." Respondent did not want to attempt to differentiate instruction because it was "too hard" for her students. Ms. Hoffman explained that many students have struggles, but the SPED teacher's "craft is looking at the gaps the kids have and finding strategies to meet the expectations."

41. Ms. Hoffman worked with respondent on the timeliness of her IEPs. She had email communications with respondent wherein respondent stated she could not hold a timely IEP meeting because a necessary party, such as a school administrator, parent, or general education teacher, did not attend. Ms. Hoffman works with 30 to 40 SPED teachers; of those, respondent had the most difficulty completing timely IEPs.

42. Ms. Hoffman explained the process to mainstream a student is generally to provide the data to show the student's progress to support the change. An IEP meeting is held to make adjustments and ensure all parties understand and agree with the change. Respondent did a "trial mainstreaming" in math for all her students for two weeks in the fall of 2019. Some remained in the general education math class after the trial, but their IEPs were not updated, which is contrary to the law.

### **VETERAN SUPPORT COACH**

43. Respondent was offered and accepted the assistance of a Veteran Support Coach in December 2018. Jodi Saldivar was respondent's coach. She did not testify at hearing, but the District provided a log of the time she spent as respondent's coach. Ms. Saldivar spent a total of 20 hours in the 2019 Spring semester. Her coaching time included:

collaborating with administrators and respondent,  
observing respondent's SDC, instructing and supporting

respondent's differentiation lessons and plans, assisting with behavior supports and whole class behavior management, implementing student assessments, planning for and debriefing after formal observations, and advising regarding transitions. Respondent was unavailable for two of their scheduled meetings.

44. In the fall semester, Ms. Saldivar spent 20 hours coaching respondent. Of those hours, more than five focused on differentiation. Her coaching included:

Email correspondence, meeting with Mr. Gonzalez and Ms. Montez, observing respondent's SDC, planning lessons, supporting respondent in differentiation, inclusion, and student behaviors, meeting with administration and respondent to determine the focus of support, and observing the classroom. Respondent was not present for at least one scheduled meeting, which occurred by telephone.

## **OTHER SUPPORTS**

45. Ms. Hoffman arranged for her peer, Alberto Landeros, to model a differentiated math lesson for respondent. Mr. Landeros has been a teacher on special assignment for the District for five years providing curriculum instruction. Prior to that, he was a mild to moderate SPED teacher in a fourth to sixth grade SDC. He testified regarding the District's GVC and support he provided respondent.

46. Mr. Landeros explained SPED teachers have access to curriculum and supplemental curriculum. If a teacher is teaching more than one grade level, she is provided material for all grade levels and is expected to provide students access to

grade level learning: "out of grade level is out of compliance." He believes the District's mandate has always been that students are taught to their grade level, rather than, for example, a fourth through sixth grade SPED teacher only teaching to the fourth-grade level. He also explained that differentiation occurs throughout a lesson and should be incorporated into lesson plans as well as instruction. Differentiation involves consistent checking for understanding and adapting the lesson or technique in real time. Differentiation does not mean that a teacher may teach out of grade level if a student is having difficulty with a lesson.

47. Mr. Landeros was asked to work with respondent in Fall 2019. He explained that sometimes veteran teachers expressed resistance to new curriculum or methods. When he began working with respondent, she told him her students could not do grade level work. He understood her concern and agreed to an extent. He explained that if the student could master grade-level work, the student would not be in SPED. A SPED teacher's job is to bridge the gaps the student may have and provide access to GVC.

48. Respondent told Mr. Landeros she wanted to focus on differentiated lessons in math. They scheduled a meeting, but respondent had also scheduled an IEP meeting at the same time, giving her only ten minutes with Mr. Landeros. They had no other in-person meetings. He invited her to a math department meeting regarding grade level lessons and scaffolding. Respondent signed up but did not attend.

### **RESPONDENT'S COLLEAGUES**

49. Corinna Rubio was a general education sixth-grade teacher at Birney from 2015 to 2018. She now teaches at Norseman Elementary in the District. She testified as to her communications and interactions with respondent.

50. In the 2017/2018 school year, Birney had three sixth-grade teachers. All were expected to attend AC meetings. Meeting schedules for each school year are distributed by email and hardcopy and posted on the Birney website. SPED teachers with sixth-grade students were also expected to attend the meetings. Ms. Rubio recollected respondent came to "a select few" meetings, though when she did attend, she was engaged.

51. Ms. Rubio is aware respondent complained she was not told of meetings or was not receiving the information from the meetings. Ms. Rubio noted, however, that the meeting schedule is set prior to the beginning of the school year and the agenda and minutes are available online. Whenever respondent requested hardcopies, they were provided.

52. In the 2017/2018 school year, respondent mainstreamed student S to Ms. Rubio's class. The two teachers had a conversation about it, but respondent did not provide materials that contained S's IEP goals. Respondent did not provide S's IEP goals until mid-October. S was absent from Ms. Rubio's classroom for a long period. She later learned S hurt his foot and was staying in his SDC until he could walk better.

53. Susanna Tzun-Tzin-Lopez is starting her seventh year as a fourth-grade teacher at Birney. She testified that the AC meetings are generally attended by the general education teachers, SPED teachers, sometimes administrators and teachers on special assignment, and teachers in the resource specialist program. The meetings are generally on Tuesdays. Materials were available at the meeting, online, and through the group's "TEAMS" program that allows document sharing. Ms. Tzin-Tzin-Lopez believes that if the AC group did not share materials with respondent, it was not intentional. Respondent did not attend the meetings regularly. Ms. Tzin-Tzin-Lopez recalls respondent saying the GVC was too hard for her students.

## **Respondent's Responses to Evaluations and Lesson Observations**

### **WRITTEN REBUTTAL TO NOVEMBER 2017 FORMATIVE EVALUATION**

54. In her written response to the November 2017 formative evaluation, respondent disputed that she did not collaborate with her general education colleagues. Respondent sent Ms. Rubio emails regarding her mainstreamed students and copied the school administration to keep them informed. Ms. Rubio "refused to meet" with respondent to discuss the mainstreamed student's goals.

55. Regarding student S, respondent presented Ms. Montez and Mr. Gonzalez with a note from her paraprofessional who witnessed the conversation with S's parent. Respondent stated she always had a witness when speaking to a parent so there is no ambiguity. The note confirmed the parent told respondent S was not to go to recess or walk back and forth between the SDC and Ms. Rubio's class until his foot was better. Respondent requested the note be attached to her evaluation; the request was denied.

56. Respondent admitted she missed two full AC meetings due to appointments with her workers' compensation doctor. She explained the AC meetings are broken down into half SPED meetings and half general education. She attended the SPED portion, but was not always able to attend the general education portion due to the doctor appointments. She also stated the general education AC groups did not send her meeting minutes if she did not attend an entire meeting.

### **WRITTEN REBUTTAL TO THE SPRING 2018 SUMMATIVE EVALUATION**

57. Respondent wrote that her students take time to calm down after recess and if there is a schedule change (such as an observation), she allows more time for them to calm down. Regarding the math lesson observed, respondent was teaching

three different models in the general education math curriculum. The lessons in her classes "always go longer than expected" during observations, which she noted in her lesson plan. Respondent breaks the class into small groups after whole group instruction. She wrote the administration wanted to see "open and close of lesson in one lesson and not two like we normally take." She explained she had not responded to emails in a timely manner because her laptop had been replaced and when it was returned, it had a virus. She responded to the emails when she was able.

### **WRITTEN REBUTTAL TO SPRING 2019 SUMMATIVE EVALUATION**

58. Respondent provided a written response to the data points in each Cstp Standard:

- Standard 1: Respondent used different behavior modification tools to encourage students to use their accommodations, however some students chose not to use them. She also showed students how to use their manipulatives, though did not make the students use them. She believed students were "making progress with their intervention curriculum" and she gave them time to discourse with their peers.
- Standard 2: respondent taped a CHAMPS mini-poster to each student's desk and on each table. She reviewed the rules when necessary. She explained that the students wanted their SDC to look like other classrooms that did not have the CHAMPS poster on the walls. Respondent held a weekly classroom meeting, a restorative counselor met with the class monthly, and respondent had "check-ins" when necessary.
- Standard 3: respondent provided students exposure to grade-level curriculum. The SPED Department's instruction was that GVC is 20 minutes,

and the intervention curriculum is 30 to 45 minutes long. The lessons take seven days or more to complete and they continue from day to day.

- Standard 4: Students performing three or more years behind grade level will and do struggle with grade level content. Students' IEP needs are addressed in the intervention curriculum.
- Standard 5: Per the SPED Department, the GVC groups are 20 minutes long and intervention curriculum is 30 to 45 minutes. The students pick up the lesson on one day where they ended the day before. The evaluator took the students' written exit tickets and did not return them. Respondent adjusted her lesson plan based on the exit tickets. She reiterated she used different behavior modification tools to encourage students to use their accommodations, but some students continued to choose not to.
- Standard 6: IEP meetings are scheduled a month in advance and are planned with administration and the Regional Instructional Manager. Respondent believes she should not be "penalized" if general education teachers or the parents do not attend. Respondent takes many steps to complete the IEP meetings and cannot control the outcome. Regarding the lesson plans, respondent wrote: "due to unforeseen events lesson plans have to be changed and resubmitted. Lesson plans are complete but did not always meet the [evaluator's] expectations and had to be redone with the correct format."

## **Testimony from Respondent and Respondent's Witnesses at Hearing**

### **RESPONDENT'S TESTIMONY**

59. Respondent began working at the District in 1994 in technology support and has been a classroom teacher since 2013. In the 2015/2016 school year, Ms. Montez began as Birney's principal. Ms. Montez evaluated respondent in 2015/2016 and found she was meeting standards.

60. Respondent believes that in the 2016/2017 school year, Ms. Montez's bias against respondent began after respondent started questioning administrative decisions and a "more outspoken teacher" retired. For example, respondent's position as "lead teacher" of SPED was reassigned and her classroom aide with whom the students were familiar was switched. Respondent was then assigned an aide with known issues.

61. When respondent complained about the new aide, she recalled being told "the other class deserves an education," and respondent "had ahold of [her] class" and would be fine. The aide caused class disruption, yelled at respondent during class, and students' negative behaviors returned. Respondent was "talked to" after the yelling incident because she did not let the aide apologize. Respondent believed, however, it was inappropriate to address the situation during class.

62. Respondent saw Ms. Montez's bias in different ways. Respondent believes that when training programs were available, Ms. Montez only offered attendance to new teachers. Some Birney teachers' requests for materials or resources were granted, but generally only if Ms. Montez liked them. Respondent was moved from her classroom to a smaller classroom that did not have a sink, which canceled the coffee-program respondent started with her students. The program allowed her students to make coffee and deliver it to teachers who ordered.

63. In April 2017, respondent injured her knee at work. In April 2018, she underwent surgery. Respondent believes Ms. Montez called her surgeon frequently and harassed his office staff and the surgeon was pressured into releasing respondent back to work earlier than expected. Once she returned to work, she had physical restrictions regarding elevating her foot and sitting frequently. Respondent recalled Ms. Montez calling her into Ms. Montez's office several times in the first day she was back, which forced her to walk from her classroom to the principal's office while on crutches.

64. In January 2019, Ms. Montez informed respondent she would not be able to attend sixth grade camp because of her physical restrictions due to her injury. If respondent did not attend camp, she believed some of her students' parents would not let their children attend. Respondent got a note from her surgeon to clear her for this event and Ms. Montez rejected it, saying it was not from her worker's compensation doctor. Respondent got a note from her worker's compensation doctor and Ms. Montez allowed her to go to camp.

65. Respondent felt the administration, especially Ms. Montez and teachers who were aligned with Ms. Montez, were "against" SPED classes and teachers. SPED students were left out of field trips and graduation ceremonies, respondent was left out of important information to the detriment of her students, and the administration did not support the SPED classes.

## **AC Meetings**

66. The AC meetings were set up for SPED teachers to have their AC meeting for the first hour of two hours, and then attend the general education grade levels for 20 minutes each. Consequently, SPED teachers were never able to attend a full AC meeting. Respondent believes when she attended AC meetings, general education teachers were

not welcoming and were "disgruntled" because she came in late and left early. When she did not attend a full AC meeting, the lead teachers would count her as absent and not provide her with meeting materials.

67. Respondent also disputed the number of meetings missed as noted in her evaluation because the total number of meetings was misrepresented. Ms. Dominguez found respondent did not attend all fifth grade AC meetings, but respondent did not have any fifth graders at that time and did not have to be at the meeting.

68. Respondent continues to be treated through worker's compensation for her knee injury. She explained that getting appointments with worker's compensation doctors is difficult and "you take what they give you." Consequently, when her doctor appointments were scheduled, she did not reschedule and missed some AC meetings.

69. Additionally, respondent prioritized IEPs over the AC meetings. On one occasion noted in an evaluation, respondent informed the fourth and sixth grade lead teachers that she had to complete IEP amendments and would be late to the meeting. Ms. Montez, Mr. Gonzalez, and Ms. Dominguez came to her classroom during the AC meeting and inquired as to why she was not at the meeting and whether she had informed the lead teachers. Respondent explained, but the data point in the evaluation stated she missed the meeting because she had "two back to back IEP meetings" and there were no IEP meetings scheduled that day.

## **Communication with Colleagues**

70. Regarding communicating and collaborating with other teachers, respondent provided Mr. Gonzalez with emails of her attempts to communicate with Ms. Rubio. Her efforts to communicate were not acknowledged in her evaluation and she was blamed for Ms. Rubio's unresponsiveness. Additionally, she provided Ms. Rubio

hardcopies of student IEP goals in her mailbox. She also provided each student with a binder that contained the student's IEP goals, accommodations, and manipulatives they needed. The students brought those binders when they mainstreamed to general education classrooms.

71. Respondent missed a pre-evaluation meeting because a doctor appointment was changed and conflicted and she had registered for a SPED training. She emailed Mr. Gonzalez that she would have to reschedule but she did not hear back from him. She did not attend the SPED training. She believes she missed one such meeting and it appeared on three different evaluations.

### **Guaranteed Viable Curriculum**

72. Prior to the 2018/2019 school year, respondent taught the fourth-grade curriculum to her fourth, fifth, and sixth graders. In August of that school year, the SPED Department provided training regarding the directive that all students should be taught at their grade level. In August of 2018, however, respondent did not have curriculum for all grade levels, so she continued to teach at the fourth-grade level. She provided some differentiation for the grade levels in her small groups.

73. In 2019, she received the Wonderworks curriculum and was told to return the Wonders curriculum. That directive was reversed and teachers held both Wonders and Wonderworks. Respondent understood Wonderworks was the GVC for the SDC rather than Wonders. She began using this scripted curriculum. She also used supplements for reading and vocabulary. She did not learn until hearing that Wonders is the GVC.

74. Respondent's understanding of the SPED Department's directive is that GVC is taught for 20 minutes as a group, and for one hour to grade levels. Respondent's

lesson plan provided for a 20-minute full-group lesson, and then one hour split into 20-minute intervals for each grade. For example, she would provide 20 minutes of instructions at a table for just fourth graders while the paraprofessional provided supplemental curriculum instruction to fifth graders, and sixth graders were doing a lesson on their tablets. Every 20 minutes, this would rotate.

75. Respondent understood Mr. Gonzalez's comments to mean her students were expected to "master grade level material." At one point, she recalls he said if her students did not master the material, she would not pass the evaluation. Respondent followed the SPED directive to spend 20 minutes providing students access to grade level material, whereas general education was spending 90 minutes on the same lesson. Mr. Gonzalez told her she was behind and should be "on pace" with general education. Respondent stated: "Mr. Gonzalez wanted me to make sure they knew the content before we moved on." But if she took too long and deviated from her lesson plan, she was found to not use her time wisely. She was told not to use modifications because modified lessons were not to grade level standards.

## **Student Engagement**

76. One of the data points in Mr. Gonzalez's weekly evaluation was that respondent was only engaging two of her 10 students during a lesson. Respondent stated this is misleading because her students are not all in the classroom at the same time. They leave for speech or occupational therapy, mainstreaming, or counseling.

77. Respondent explained there is a difference between cognitive and behavioral engagement. Behavioral engagement means a student appears engaged by his behavior. Cognitive engagement means the student's mind is engaged. Many of respondent's evaluations commented not all students were engaged, and in particular,

student J1 spent the better part of the lesson with his head down on his desk and appeared to fall asleep. J1 had many problematic behaviors that respondent, J1's parents, and a behavioral coach were addressing. The behavioral coach was gathering data and developing a plan. J1's IEP allowed him to put his head down on his desk when he was overwhelmed. Respondent recalled one instance where she asked a question and received several wrong answers. J1 picked up his head and gave the right answer. J1 was cognitively engaged.

78. J2 is a student whose IEP allows for up to five minutes of processing time. Lessons take her longer to complete. J2 also spoke in one-word sentences and had extreme anxiety. Respondent was aware of this in all her encounters with J2. Her IEP provided teachers would model complete sentences, which is why when J2 responded with the word "shells" to respondent's question: "What did Ron's little sister do with the socks?," respondent knew J2 comprehended the story and the question, so respondent modeled a complete sentence.

79. When respondent teaches her small group lessons, other students are working with the paraprofessional or independently. The students know to ask "Three Before Me." (See below.) If a student's tablet is not working or he cannot log on, the student should ask another student for help rather than just sit idly. Respondent could not see the students' screens from her small group table and expressed it was an unreasonable expectation in the data point. One of the data points regarding a student sitting at a blank tablet referred to J2 who was staring at the tablet and occasionally touching the keyboard. Respondent could not see the screen and assumed the tablet was on during the two 20-minute lessons.

## **Behavior Management**

80. Respondent explained she had behavioral expectations in place and all her students were aware of them. One was "Ask Three Before Me." If students had a question, they knew to ask a classmate, then the paraprofessional, and then the teacher. Occasionally, she put three fingers up to the student as a reminder. She also reviewed STAR with her students in individual grade-level groups, not in the full group lessons, as was the expectation in several evaluations. Her students were familiar with CHAMPS and the poster reminders were available in the classroom. Respondent reviewed the points at the end of the small group lessons without saying the word "CHAMPS" because J1 felt it was condescending and caused him to have outbursts.

81. Respondent was told at the 90-Day Notice meeting that she could use any behavior management method, including STAR. She was told to remind the students in some way throughout the lesson and the day.

## **Four Foundations**

82. Respondent explained she was following the Wonderworks curriculum in January of 2019. Wonderworks was a scripted plan that did not use the term "objective" at the beginning of the lesson and instead used the term "essential question." Mr. Gonzalez told respondent he expected to hear her read out the objective verbatim. For example, respondent would start the lesson with: "We are learning standard 4.2. At the end of this lesson, you will be able to [\_\_\_\_]." Respondent countered that the essential question provided in the curriculum is synonymous with the objective.

83. Respondent explained that some lessons included exit-tickets that check for understanding. It was built into the interactive texts. An observer may not have noticed a student was completing an exit ticket in these instances.

84. At one point, respondent stated she did not provide closure daily because some lessons span five to seven days. She provided closure “in [her] way” and Mr. Gonzalez did not recognize she was doing closure. At another time in hearing, respondent testified her students “always get closure,” but if a student is called away from the classroom to go to speech therapy, for example, he leaves right away. Respondent takes time later in the day to address lesson closure.

85. Respondent explained that many of Ms. Montez’s criticisms meant she did not understand the lesson or did not recognize the scaffolding respondent was putting into place. Ms. Montez also found respondent did not say or post a lesson objective, which meant she did not appreciate respondent was stating the essential question as scripted in Wonderworks. The scripted lesson did not contain an objective and respondent began the lesson with the essential question.

## **Mainstreaming**

86. In the Spring 2019 semester, respondent began working with Ms. Saldivar. Respondent found Ms. Saldivar to be helpful and enjoyed working with her. Ms. Saldivar reviewed respondent’s lesson plans and was surprised to learn Mr. Gonzalez did not approve of them. Ms. Saldivar was known as the “inclusion guru,” and helped respondent mainstream some of her students for math. Inclusion would allow respondent’s students to discuss content with their peers and foster relationships among grade level students. Respondent arranged a trial period for early in the fall of 2019 wherein her students would go to the general education classroom for the first 30 minutes of the math lesson and then return to the SDC. After the trial, respondent would hold IEP amendment meetings. Mr. Gonzalez agreed to this plan but had concerns about the IEPs. Respondent stated she had parental consent and intended to amend the IEPs. She was told she could not “do an amendment, she had to have an IEP.”

87. After the students mainstreamed, respondent attended a meeting with Mr. Gonzalez, Ms. Montez, and Ms. Hoffman. The purpose was to discuss the students in the mainstreaming trial. Respondent felt attacked at the meeting. She was asked to provide data for students who were not the subject of the meeting, questioned regarding the general education teacher's grading practice, and asked why the IEPs had not been updated and what permission she had from parents. She began to get anxious. Her blood pressure and heart rate elevated, and she went to the school nurse.

88. While respondent was with the nurse, Mr. Gonzalez walked into the nurse's office and "questioned whether [respondent's] heart rate was really that high." Respondent felt intimidated. The nurse instructed Mr. Gonzalez to leave as she was providing medical care. Respondent left for the day and took the following day off.

### **Other Issues**

89. Respondent disputed the data point in her evaluation regarding S, who hurt his foot. The student had been scheduled to mainstream for part of the day, which would require him to walk back and forth between his SDC and the general education classroom. His father's girlfriend told respondent in person that the student should not go to recess and stay in his SDC until his foot healed. Respondent's aide, Ortencia Banuelos, was present for the conversation and submitted a note regarding what she heard. Additionally, respondent received a note from S's doctor, which she turned in to the administration office. Mr. Gonzalez informed respondent he spoke with S's father's girlfriend who said she never spoke with respondent. Respondent provided Mr. Gonzalez with her aide's note about the interaction the day after she received the formative evaluation.

90. Respondent believed some of the remarks in Ms. Dominguez's evaluation were unfair. For example, Ms. Dominguez stated respondent was unprepared during an IEP meeting and left the room to print documents, which should not occur during a meeting. Respondent explained the parents had signed the IEP in black ink and respondent left the room to re-print the IEP so the parents could sign in blue ink.

91. After the 2018 summative, respondent and Ms. Dominguez met. Respondent believes Ms. Dominguez marked respondent as "growth expected" because respondent "wasn't teaching the way [Ms. Dominguez] understood for [respondent] to teach." Respondent explained new teachers had a meeting with Ms. Dominguez and were instructed to teach students to their grade level, but respondent was not a new teacher and was not given this directive. The first time she learned of this expectation was in her Spring 2018 summative.

92. Manipulatives: Respondent provided her students with manipulatives and demonstrated how to use them. Some students used them, some modified them or made their own, and some did not use the manipulatives. She did not, however, "make" them use a particular tool because that would result in a power-struggle.

93. Scaffolding: Respondent told one student that it would be helpful for him to number the lines of the story in the margin. She did not prevent the other students from hearing or using the same scaffolding. Mr. Gonzalez concluded respondent was not differentiating because all students were given the same scaffolding. Respondent found this data point unreasonable.

94. Field Trip. Some of respondent's students require support to attend field trips due to behavioral issues. When she is aware of field trips, respondent ensures either she or a parent attends. The trip identified in her evaluation was one about which

she was not aware. She was not copied on the email with the information and did not see a parent permission slip.

95. Parent complaint: Student C's mother accused respondent of not being welcoming, causing her daughter anxiety, and making it so C did not want to go to school. The school psychologist, Mr. Gonzalez, Ms. Montez, and Ms. Hoffman all observed C in respondent's classroom and did not see evidence of anxiety, crying, or C not wanting to be at school. Respondent, Mr. Gonzalez, and C's mother had a meeting that turned heated and aggressive. Rather than engage with C's mother, respondent excused herself back to her classroom where her students waited. Mr. Gonzalez's evaluation included that respondent failed to address a parent complaint.

96. When respondent received her 90-Day Notice, she was called to a meeting with Ms. Difilippo from Human Resources, Ms. Montez, and Mr. Gonzalez, and her union representative. Ms. Difilippo provided respondent with information regarding counseling and told her this can be a stressful process. Respondent felt Ms. Difilippo was accusing respondent of "having mental problems," though she admitted at hearing Ms. Difilippo may have been trying to help. At the meeting, respondent requested the new vice principal, Ms. Kusch, be her evaluator because she has SPED experience; she was told she could not choose her evaluator.

97. Respondent always attempted to comply with District and administration directives. She does not recall refusing to implement any directives, even those with which she did not agree.

## **General Responses**

98. Respondent's overall view of the evaluations was that they were "unfair critiques" of her teaching. The data points did not give a full and accurate view and

skewed the information. For example, Mr. Gonzalez noted respondent was teaching to two of 10 students, but not all 10 students were in the classroom, or respondent was addressing a grade-level group while her paraprofessional addressed another grade level, and the last was doing a lesson on their tablets.

99. She believes the evaluators did not understand the manipulatives or scaffolding she used, and therefore found the lessons confusing. The evaluators were looking at her SDC through a "general education lens." She does not believe the evaluations were accurate because they expected her students to behave like a general education class would.

100. Regarding Ms. Dominguez's summative evaluation, respondent believed the agreement with the administration and the union in reassigning an evaluator was that Ms. Dominguez would not include Mr. Gonzalez's formative evaluation in her data points. Ms. Dominguez's summative, however, included data from the entire year. Respondent believed she followed the given directives, but Ms. Dominguez did not include the positive aspects of respondent's instruction in her evaluation. Respondent opined that Ms. Dominguez did not want her to succeed.

101. Overall, respondent agreed with the positive points in her evaluations, and found the negatives to be "unfair critiques." She admitted the evaluations were accurate observations, but they did not consider her students' needs and behaviors. She does not believe Ms. Montez, Mr. Gonzalez, Ms. Dominguez, Ms. Rubio, or Ms. Tzin-Tzun-Lopez were completely truthful in their testimony.

102. When asked what her weaknesses are as a teacher, respondent stated her weakness in GoMath is "getting [her] students the concepts in 20 minutes and being

expected to move on the next day." When asked if she bears any responsibility for the "not meeting standards" ratings, she responded: "In my opinion, no."

## **RESPONDENT'S WITNESSES' TESTIMONY**

### **Parent Testimony**

103. Letisha Juarez's son A has autism and was moved to respondent's class when he was in third grade because of behavioral problems, including running out of his classroom. Ms. Juarez was called to the school almost daily. Respondent built a rapport with A and established boundaries. He began staying in the class and engaging. He completed third grade with respondent. In fourth grade, Ms. Juarez never received a call from Birney. Her son was learning math and reading above his grade level. He graduated successfully from sixth grade in 2018. In Ms. Juarez's opinion, respondent is the best person to address her son's educational and behavioral needs. Respondent "opened the world of education" for A.

104. Ms. Juarez believes the Birney administration "ignored" the SDCs. For example, they did not attend classroom events, as past administration had. In 2018, the SDC was left out of the graduation. Ms. Montez concluded the ceremony and did not notice respondent's class was missing. The SDC was eventually called to the ceremony.

105. Sonia Johnson's daughter E graduated from respondent's sixth grade class in 2018. E was failing her classes prior to transferring to respondent's class. Respondent worked with E and she began learning, getting A's in her classes, and enjoying school. Ms. Johnson credits respondent with providing her daughter an educational foundation.

106. In Ms. Johnson's opinion, the Birney administration left the SDCs out of "a lot of things." Respondent's SDC was left out of the 2018 graduation ceremony, and

when they did eventually arrive, the graduates did not get the leis that were given to the other sixth graders. She also recalled the SDC was left out of a field trip and a school "water day," which Ms. Montez thought would be "too much" for the SDC students.

107. Crystal Silva's son J1 was in respondent's SDC. He has a learning disability, severe mood disorder, anxiety, depression, and a "speech/learning problem." He has recently been referred for testing related to bipolar and schizophrenia. Prior to being in respondent's class, J1's school called Ms. Silva daily to pick him up. Occasionally he was so aggressive and violent the school called the police.

108. After he was moved to Birney and into respondent's SDC, J1's learning improved, he mainstreamed in math, and the only calls Ms. Silva received from Birney were respondent telling her J1 had a good day. J1's behavioral coach worked to improve J1's behaviors in the classroom. They found that if J1 were permitted to put his head down and have "quiet time," he could control and prevent his outbursts.

109. Ms. Silva does not believe respondent would have sent J1 on a field trip without support. Respondent always coordinated with Ms. Silva for field trips or other activities. She believes respondent was not aware of the field trip. Though Ms. Silva admitted there "must have been" a permission slip, she did not initiate a conversation with respondent about the trip.

110. The day after respondent was placed on administrative leave, J got into a fight, was physical with a teacher, and went through an expulsion hearing. Because in-person school was cancelled due to the pandemic, J was not expelled.

111. Bereniz Martinez's son F has autism and was in respondent's SDC until he graduated in 2018. Prior to being in respondent's SDC, F could not read sentences, did not like school, and ran from his classroom. With respondent, F started reading, doing

math, counting, and enjoying science lessons. F was unable to tolerate loud noises and elevators. Respondent worked with him and F rode the elevator on a field trip and chose to play the trombone in the school band.

112. In Ms. Martinez's opinion, Birney's administration tried to exclude respondent from F's IEP meeting. They did not tell respondent about the meeting, sent a physical education teacher in her place, and when she did arrive, Ms. Martinez felt she was prevented from participating. Ms. Martinez also believed respondent identified an autism program that would have benefitted F, but the administration resisted the transfer.

113. Patricia Carter's son W was in respondent's class in 2019/2020 and was one of the students who mainstreamed for math. While in respondent's SDC, W was more engaged, willing to go to school, and was "Student of the Month" one month.

114. Ms. Carter gave respondent written consent to mainstream because she heard the Birney administration did not support mainstreaming. She understands there needs to be an IEP meeting for changes to the IEP to take effect, but believes she has the final say, and once the administration received her written consent to mainstream, they could have held an IEP. Ms. Carter recalled learning after respondent was placed on leave that W was removed from mainstreaming. Mr. Gonzalez told her respondent had mainstreamed too many students and "had too much free time."

115. About one week after respondent was placed on leave, W began acting out in school. Ms. Carter asked the Phoenix School, an elementary school that focuses on behavioral issues, to intervene. She observed W's SDC with the principal and vice principal of Phoenix and described it as "chaos." The principal and vice principal worked to speed up the transfer process to remove W from that SDC.

116. Tony Rodriguez was on the Birney Parent/Teacher Association (PTA). In that role, he ordered leis for graduation. Mr. Rodriguez heard a rumor respondent's class would be left out of the graduation ceremony; he went to the principal's office three times to ensure he had the right number of students for whom to order leis. He ordered the leis based on the principal's numbers. At graduation, however, there were not enough leis for respondent's sixth graders.

## **Colleagues**

117. Sandy Green was a Resource Librarian at Birney until 2019. In the 2017/2018 school year, Ms. Green was tasked with making photocopies of materials for the AC meetings. When she was given the documents and the list of teachers who should receive them, she made the copies and placed them in the listed teachers' boxes. She recalled Ms. Rubio and Ms. Tzin-Tzun-Lopez never included respondent. Respondent asked Ms. Green to provide her with the fourth-grade materials even if her name was not on the list. In the 2018/2019 school year, Ms. Green started seeing respondent's name listed more often. Ms. Green also recalled respondent was the "go-to" teacher if students had difficult behaviors.

118. Ortencia Banuelos was respondent's paraprofessional for about five years. She is now retired. She was present when student S's stepmother told respondent S broke his toes and gave respondent a doctor's note. She heard S's stepmother say S should not go to the general education classroom because it was too much walking.

119. Ms. Banuelos accompanied students who were mainstreaming. Respondent consistently prepared her students with a notebook containing their work, goals, and accommodations. In the SDC, respondent provided students with

manipulatives and encouraged their use. Ms. Banuelos opined respondent is a “very good teacher” who cares about her students.

120. Sarena Lopez was a substitute aide in respondent’s classroom for “a few months” in the 2017/2018 and 2018/2019 school years. Prior to being a substitute aide, Ms. Lopez’s only classroom experience was from volunteering in a classroom when she was in high school. After high school, she had an attestation to work in the District and began substituting. She is currently a permanent certificated employee with the District.

121. Ms. Lopez witnessed respondent teaching grade level math and ELA. Ms. Lopez worked with students in small groups and addressed grade level lessons. Ms. Lopez believed she and respondent worked well together in the classroom, and she believed it would be a “long term” assignment. One morning she reported for work and there was another substitute in respondent’s classroom. She talked to Ms. Montez, who initially said Ms. Lopez should apply for reassignment and that respondent complained about her and did not want her back. Ms. Montez added that Ms. Lopez “wasn’t knowledgeable enough and the kids were not safe with [her].” Ms. Lopez was told she needed more training and certification.

122. Marilyn Baker worked in the first through third grade SDC at Birney in the 2017/2018 and 2018/2019 school years. In her first year at Birney, she recalled the expectation was that GoMath and Wonders would be taught at one grade level to all three grades. As the year went on, she learned in new-teacher trainings that she should be teaching to each grade level.

123. Because she was a new teacher, part of her training included observing other classrooms. She went to another elementary school in the District, and those classes were not teaching to individual grade levels.

124. In the Fall 2018 semester, Ms. Baker attended a training with both new and veteran teachers conducted by Ms. Hoffman, the Regional Instructional Manager. The direction at that meeting was that all SDC teachers should be teaching to each grade level using the GVC.

125. When Ms. Baker began working at Birney, she noted what she referred to as a “polarizing” environment. The SPED teachers were not supported by the administration and the SDCs were seemingly held to general education classroom standards. There were personality conflicts among teachers and between teachers and the administration. Additionally, Ms. Baker felt the expectations were not clear and kept changing.

126. Prior to her SPED position at Birney in 2017/2018, Ms. Baker was a general education teacher for five years. She had always “met standards” in her evaluations. When Ms. Montez evaluated her, she received a mixture of “growth expected” and “not meeting standards” ratings. Ms. Baker did not agree with Ms. Montez’s conclusions and found the evaluations “shocking.” Ms. Montez told her she would be more suited to a Resource Specialist Program (RSP). Ms. Baker now works in an RSP position at Thomas Elementary in the District.

## **PRINCIPLES OF LAW**

127. The District has the burden of proving respondent’s unsatisfactory performance by a preponderance of the evidence. (*Gardener v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1040.) Evidence that is deemed to preponderate must amount to “substantial evidence.” (*Weiser v. Board of Retirement* (1984) 152 Cal.App.3d 775, 783.) And to be “substantial,” evidence must be reasonable

in nature, credible, and of solid value. (*In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.)

128. Pursuant to Education Code section 44932, subdivision (a)(5), a school district may dismiss a permanent certificated employee for unsatisfactory performance. When reviewing a school district's dismissal action against a certificated employee based solely upon unsatisfactory performance under Education Code section 44932, subdivision (a)(5), there is no need to apply the standards of fitness to teach set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1175-1176.)

129. Education Code sections 44660 through 44665 set forth the requirements with which a school district must comply when evaluating certificated employees. Education Code section 44662, in relevant part provides:

[1] . . . [1]

(b) The governing board of each school district shall evaluate and assess certificated employee performance as it reasonably relates to:

(1) The progress of pupils toward the standards established pursuant to subdivision (a) and, if applicable, the state adopted academic content standards as measured by state adopted criterion referenced assessments.

(2) The instructional techniques and strategies used by the employee.

(3) The employee's adherence to curricular objectives.

(4) The establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities.

130. Education Code section 44664, in relevant part, provides:

[¶] . . . [¶]

(b) The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If an employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the employing authority shall notify the employee in writing of that fact and describe the unsatisfactory performance. The employing authority shall thereafter confer with the employee making specific recommendations as to areas of improvement in the employee's performance and endeavor to assist the employee in his or her performance. If any permanent certificated employee has received an unsatisfactory evaluation, the employing authority shall annually evaluate the employee until the employee achieves a positive evaluation or is separated from the district.

131. Before a school district may dismiss a permanent certificated employee for unsatisfactory performance, it must comply with Education Code section 44938, subdivision (b), which, in relevant part, provides:

(1) At least 90 calendar days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

## **ANALYSIS**

132. The District evaluated respondent in accordance with Education Code sections 44660 through 44665. Its evaluations included recommendations as to areas of improvement in respondent's performance. It notified respondent that she was not performing her teaching duties in a satisfactory manner according to the District's standards and described her unsatisfactory performance. The District thereafter conferred with respondent and made specific recommendations as to areas of improvement in her performance. It endeavored to assist respondent in her performance. (Ed. Code, § 44664, subd. (b). Findings 14 through 28.)

133. At least 90 days before it served a notice of intent to dismiss, the District gave respondent written notice of her unsatisfactory performance, specifying its nature with specific instances of behavior and particularity as to furnish her with an adequate opportunity to correct her faults and overcome the grounds for the charges. (Findings 29 through 34.)

134. Respondent had four evaluations prior to the 90-Day Notice wherein the same data points were continuously raised. The 90-Day notice was "designed to provide [respondent] with sufficient information to understand the nature of [her] unsatisfactory performance and to illustrate specific instances of such behavior with such particularity as to provide [her] with an opportunity to correct these faults and overcome the grounds for potential dismissal charges." In the 90-Day Notice, the District set out a list of 10 directives respondent was expected to implement. The list was clear and concise, and respondent had an opportunity to clarify if needed.

## **90-Day Notice Directives**

135. Despite the administration's efforts, respondent could not or would not comply with the directives. The first directed her to "ensure continuous student engagement and participation." Several evaluations noted students were left staring at blank tablets, respondent was not engaging and re-engaging students during lessons, and students were not given opportunity for discourse. Respondent explained she could not see their screens and faulted the students for not telling her their tablets did not work. Her explanation highlights a fundamental problem with respondent's classroom management. Rather than arrange desks during independent study to ensure she had eyes on the whole room, for example, she allowed students to sit idle for up to 20 minutes.

136. The next directive encompassed two points, the first of which respondent showed competence in. She was to employ classroom routines and supports for positive behaviors. Respondent knew her students' behaviors, they knew to "ask three before me," for example, and she supported their needs. Respondent provided ample evidence throughout hearing that she is intimately familiar with her students and their behavioral needs. She adjusted for J2 based on J2's body language, she did not say "CHAMPS" so

as not to set J1 off, she had class meetings so her students could be heard, and she adeptly observed whether students were cognitively if not behaviorally engaged. The administration recognized this in evaluations and even placed a third-grade student in respondent's class because they knew she would be the best behavioral fit.

The second part, however, directed respondent to "provide students with behavior expectations *prior to and throughout each lesson, as well as before transitions*, utilizing the CHAMPS poster or other visual behavior expectations." (Emphasis added.) In the 90-Day Notice meeting, she was told she could use STAR instead of CHAMPS, but she had to use *something*. Mr. Gonzalez consistently noted respondent did not use CHAMPS, which was a misleading critique. It was, however, confusing that respondent had CHAMPS taped to students' desks and on the white board, but stated her behavior management plan was STAR. Over and over, her evaluators noted they wanted to see the behavioral expectation specifically referred to throughout the day and at transitions. Respondent stated she addressed behaviors in her small groups. The directive was clear; respondent did not comply.

137. The third directive was to maintain an environment for student learning and set high expectations with appropriate support. Respondent was not exposing her students to the GVC and admitted she did not know Wonder was the District's GVC until hearing. She was teaching her students the supplemental material. Additionally, several witnesses testified respondent repeatedly said her students "could not" do the work in the GVC. Respondent's students were not required to "master" the curriculum, despite respondent's understanding of Mr. Gonzalez's directive. Rather, they needed access to the curriculum at their grade levels. If they could master the grade level curriculum, they would not be in an SDC.

138. Respondent was directed to give students time for critical thinking. At times, respondent did not give sufficient wait time. She knew her students well, however, and it is possible her timing was appropriate for her students.

139. Next, respondent was directed to use direct instruction, modeling, practice, and to consistently check for understanding. Regarding modeling and the specific point that respondent did expect more than a one-word answer from a student, respondent's testimony was persuasive. J2 spoke in one-word sentences, and her IEP stated her teachers should model complete sentences, which respondent did. Several witnesses testified that "checking for understanding" is an integral part of every lesson. Respondent was not observed assessing her students' understanding throughout the lesson or at the end.

140. Respondent was directed to "plan lessons with multiple opportunities to check for understanding and make sure you are ready to respond to student needs with adjustments to instruction. This should include planning both long- and short-term goals that are attainable within an instructional period." Respondent's lesson plans were not provided at hearing, and though there was testimony regarding checking for understanding during the lesson, there was not clear evidence whether she made progress on this point or not.

141. The next directive was addressed in many evaluations:

Incorporate the four foundations into each lesson. Every lesson must have a clearly stated/written objective and a closure. Be sure to verbalize the learning target for students throughout each lesson and at the end. Students should be aware of how to meet the objective, and each closure

should include a way to check for student understanding.

Plan instruction and design learning experiences with appropriate strategies to meet the learning needs of all students. For instance, provide objectives that include a criteria (*s/c*) for success so students can ascertain whether the objectives have been met.

Respondent did not seem to understand or appreciate the four foundations. Rather than state an objective, she gave the scripted "essential question." She did not seem to understand the difference. She did not continually assess and check for understanding. She was rarely observed providing closure, despite numerous reminders in evaluations. Respondent insisted she did provide closure and did it "her way." She also insisted she did not provide closure at the end of the day, but did so at the end of the lesson, which might be days later. Several witnesses testified that checking for understanding and closure should be integral and can be accomplished in seconds.

142. The next directive stated: "Ensure that instruction is differentiated to address grade level and IEP student needs." Week after week, respondent was directed in the evaluations to differentiate for grade levels and student needs. Initially, respondent understood that only new teachers were teaching to grade levels. Later she was instructed that this was the District's directive. She insisted she could not do that. At hearing, she said she was differentiating and the observers did not see or appreciate it. Respondent also provided the same scaffolding to all students, and did not offer them individual ways to use the techniques. She testified that if she gave one student a manipulative or aid, she did not withhold the instruction from the other students. While this is reasonable, respondent had multiple opportunities to demonstrate differentiation, and did not do so consistently.

143. Respondent was directed to: "Hold, complete, attest and affirm IEPs in a timely manner." All witnesses who spoke on this topic stated that holding IEP meetings can be difficult because of the amount of people who have to attend and the scheduling involved. But the IEPs are governed by legal standards. They must be held annually and when changes are made to the student's instruction. Respondent did not hold amendment IEP meetings when she mainstreamed her students, and instead spoke to the parents for consent. She also stated the late IEPs were because the parents did not show up for the meeting or there were other scheduling issues. There was no reliable direct evidence regarding how many IEPs were late and when. But the District established respondent's willingness to operate outside the IEP process.

144. Finally, respondent was to submit lesson plans in a timely manner. Several evaluations commented respondent turned in lesson plans late. Based on the wording and timing of the evaluations, however, this data point seemed to be repeated when it may not have applied. What was apparent through testimony is this was another situation in which respondent had excuses for not meeting an expectation. In this instance, it was a computer virus and deciding she wanted her coach to review the lesson before she submitted it. The 90-Day Notice period was a time for respondent to show the administration she could meet the District's expectations. She did not take the opportunity.

## **Conclusion**

145. Respondent presented some evidence to support her argument that the administrators made some unfair and unfounded findings. She did not establish Ms. Montez, Mr. Gonzalez, and Ms. Dominguez were biased against her, but she did show they had made mistakes in their evaluations, including duplicative data points, data points based on misunderstandings, and data points based on hearsay. Overall,

however, respondent demonstrated that she did not understand and therefore could not implement the District's directives.

146. When all the evidence is considered, the District established by a preponderance of the evidence that, notwithstanding the assistance and opportunity it provided to respondent to correct her faults and address the grounds for the unsatisfactory performance charges against her, respondent did not improve her performance to a satisfactory level. Respondent did not demonstrate at the hearing that she had adequate insight into the District's concerns about the quality of her teaching to provide sufficient assurances that, if she were returned to the classroom, her teaching would improve to a satisfactory level. Especially concerning is respondent's blanket statement that she bears no responsibility for her consistent sub-par evaluations or the 90-Day Notice. The District's dismissal must be upheld.

## **LEGAL CONCLUSION**

147. Based on the foregoing, the District established that respondent should be dismissed from her employment as a teacher with the District for unsatisfactory performance under Education Code section 44932, subdivision (a)(5).

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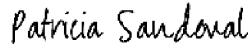
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## **ORDER**

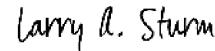
Respondent Yolanda Serrato is DISMISSED as a permanent certificated employee of the Fresno Unified School District.

DATE: September 24, 2020

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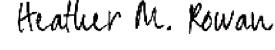
PATRICIA SANDOVAL, Member

Commission on Professional Competence

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LARRY STURM, Member

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HEATHER M. ROWAN, Chairperson

Commission on Professional Competence