

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS AND A
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE
LOS ANGELES UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Dismissal of:

LOURDES PRIETO (EN 668202), Respondent

A Permanent Certificated Employee

OAH No. 2019020481

DECISION

This matter was heard by the Commission on Professional Competence (Commission) in Los Angeles on September 3, 5, 6, 9, 10, 11, 12, 13, and 17, 2019. The Commission consisted of Peter Somberg, Anne Gordon, and Carmen D. Snuggs, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, who presided.

Michael Voigt and Lee T. Patajo, Assistant General Counsels, Los Angeles Unified School District, Office of the General Counsel, represented complainant Los Angeles Unified School District (District).

Ilissa B. Gold, Attorney at Law, Reich, Adell & Cvitan, represented Respondent Lourdes Prieto (Respondent), who was present each day of the hearing.

Oral and documentary evidence was received. As stated on the record, the ALJ ordered that student names would not appear in the hearing transcript in order to protect their privacy. Rather, the transcript would reference each student's first initial only.

The case was deemed submitted for decision at the conclusion of the hearing on September 17, 2019. The Commission thereafter deliberated in executive session.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Respondent is a permanent certificated employee of the District.
2. On August 23, 2017, Respondent was issued a Notice of Unsatisfactory Service and Notice of Suspension related to her performance on December 7, 2016, January 12, 2017, March 2, 2017, and April 27, 2017, discussed in Factual Findings 38 through 83, and 90 through 93, below. On May 24, 2018, Respondent was issued a Notice of Unsatisfactory Service and Notice of Suspension related to her performance on May 18, 2017, September 22, 2017, October 26, 2017, November 7, 2017, January 28, 2018, and February 22, 2018, discussed in Factual Findings 84 through 89, and 94 through 138, below.

3. By letter dated August 22, 2018,¹ Respondent was notified that a meeting was scheduled for September 4, 2018, before the District's governing board to discuss her possible dismissal and immediate suspension from her employment with the District. The letter stated that Respondent could present statements and documents at the meeting in response to the Notices of Unsatisfactory Service and Suspension issued to her on August 23, 2017, and May 24, 2018. The letter stated that, at the conclusion of the August 22, 2018 meeting, the District's governing board would decide whether or not to move forward with her possible dismissal and immediate suspension.

4. Pursuant to Respondent's request, the meeting was rescheduled to September 4, 2018. By letter dated September 6, 2018, Respondent was notified that Frances Baez, the Administrator of Instruction for Local District East, recommended sustaining the discipline of dismissal and immediate suspension. Respondent was further notified that the recommendation of dismissal was forwarded to the Board of Education for adoption.

5. On February 6, 2019, the District served Respondent with a Notice of Intention to Dismiss and Placement on Immediate Suspension (Notice of Intent), which notified Respondent of the District's intent to dismiss her within 30 days unless she made a written request for a hearing. The Notice of Intent also informed Respondent

¹ The meeting was originally scheduled for August 22, 2018, but was rescheduled pursuant to Respondent's request.

of her immediate suspension without pay.² Additionally, the Notice of Intent included a Statement of Charges with exhibits, a Request for Hearing form, and copies of relevant Education Code sections.

6. On February 11, 2019, Respondent requested a hearing pursuant to Education Code section 44941, in response to the February 6, 2019 Notice of Intent.

7. On March 18, 2019, the District filed and served the Accusation³ dated March 15, 2019, which is the operative pleading in this case.

8. The Accusation recommended Respondent's dismissal from the District for the following legal causes under Education Code sections 44932 and 44939: (1) unprofessional conduct; (2) unsatisfactory performance; (3) persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school employing Respondent; and (4) willful refusal to perform regular assignments without reasonable cause, as described by reasonable rules and regulations of the employing district.

² Respondent filed a motion for immediate reversal of suspension which was granted. On April 19, 2019, in the matter entitled *In the Matter of the Motion for Immediate Reversal of Suspension Filed by Lourdes Prieto, a Certificated Employee*, OAH No. 2019030319, the District was ordered to pay all of Respondent's wages, benefits, and compensation since the execution of her suspension.

³ The charges contained in the Accusation are identical to the written charges contained in the Statement of Charges.

9. All jurisdictional requirements have been met.

Respondent's Background

10. Respondent earned her bachelor's degrees in sociology, liberal arts, and early childhood education from an institution not established by the record. She holds multi-subject and cross-cultural language and academic development (CLAD) credentials.

11. Respondent has been employed by the District for 23 years, and has taught adult school, first and second grades, and kindergarten. More recently, Respondent worked at Middleton Primary Center (MPC) and Middleton Elementary School (MES).

12. The charges in this matter relate to Respondent's assignment at MPC during the 2016-2017, and 2017-2018 school years, where she taught kindergarten.

MPC

13. MPC is an elementary school located in Huntington Park, California. Its 300 students are aged three through seven years old, and enrolled in preschool, extended kindergarten, transitional kindergarten, kindergarten, and first grade classes.

District Policies

EVALUATION REQUIREMENTS

14. The applicable evaluation requirements for District certificated employees are contained in Article X of the 2014-2017 Collective Bargaining Agreement (Agreement) between the District and United Teachers Los Angeles (UTLA).

15. According to the Agreement, evaluations shall be made at least once every other year for permanent employees, and the employee to be evaluated during a given academic year must be given notice by the end of the previous academic year, or by the "Fall norm day of the evaluation year or the last work day of the 5th week of school, whichever is later." (Ex. B, p. 83.) Pursuant to section 5.0, paragraph (a), of the Agreement, employees being evaluated shall receive one formal observation during the academic year. The observation must be followed by a post-observation conference, to be held no later than 10 workdays after the formal evaluation, between the evaluator and the employee, to discuss the employee's performance toward meeting the employee's individual objectives.⁴ The ratings for the formal observation are termed "effective practice," "developing practice," and "ineffective practice." If problems are observed during a formal observation or any other type of observation, "the evaluator must meet with the employee, make specific written recommendations for improvement, and offer appropriate counseling and guidance." (Ex. B, p. 85.) In addition, where problems are identified as a result of a formal observation or any other observation, within four work days "a copy of the records relating to observations, conferences and assistance offered or given, shall be provided to the employee for the employee's information, guidance, and as a warning to improve performance." (*Ibid.*)

⁴ Pursuant to Article X, section 4.0 of the Agreement, the employee is required to establish performance objectives and performance expectations no later than the last workday of eighth week of the academic year. The objectives may include instructional objectives, methods of assessing student progress and achievement, use of effective teaching techniques.

CALIFORNIA STANDARDS FOR THE TEACHING PROFESSION

16. The District has adopted the California Standards for the Teaching Profession (CSTP or Standards) to measure teacher performance. The CSTP were developed by the Department of Education, the Commission on Teacher Credentialing, and the New Teacher Center, and are composed of six specific standards: Engaging and Supporting all Students in Learning (Standard 1), Creating and Maintaining Effective Environments for Student Learning (Standard 2), Understanding and Organizing Subject Matter for Student Learning (Standard 3), Planning Instruction and Designing Learning Experiences for All Students (Standard 4), Assessing Students for Learning (Standard 5), and Developing as a Professional Educator (Standard 6). Each standard includes a recitation of pertinent factors or elements unique to that standard.

THE DISTRICT'S CLASS DESCRIPTION – ELEMENTARY TEACHER

17. According to the District's job description for an elementary teacher, effective December 2011, an elementary teacher's essential functions include: 1) teaching self-contained classes in kindergarten through grade six using adopted textbooks and other authorized instructional material; 2) using information about individual students' academic strengths, needs, and progress in planning; 3) designing activities to engage students in cognitively challenging work that is aligned to standards; 4) using resources that promote high levels of learning and student engagement in the classroom environment; 5) closely monitoring student learning in order to understand how students are progressing toward the learning objectives, and timely providing students with instructive and timely feedback to move their learning forward; 6) establishing a classroom environment that is safe and supportive where students feel free to contribute their ideas, and student interactions are respectful and polite to promote a positive learning environment for all students; 7) providing clear

behavior expectations for students and monitoring student behavior throughout the class; and 8) reflecting on practice and student work to determine what went well and what changes could improve instruction, and using that reflection to inform future instruction.

MPC's Policies

18. MPC's policies concerning master plan curriculum implementation require MPC teachers to teach all English Language Development (ELD)⁵ lessons daily in alignment with master ELD and ELA standards adopted by the District. With respect to discipline, MPC teachers are expected to post classroom standards, rewards, and consequences, and to apply the discipline consistently and fairly. In addition, teachers should use Common Core State Standards (CCSS) for lesson planning. Lesson plans should be left on a teacher's desk or teaching station for review, each lesson should have an objective,⁶ and teachers should prepare lesson materials beforehand and have their supplies readily available before class. MPC's policy on instructional time states that teachers should maximize instructional time by keeping classroom interruptions to a minimum in order to improve student achievement. (Ex. 28.)

⁵ ELD instruction is a specialized one-hour block of instruction provided to students whose first language is not English, to improve their reading and writing skills.

⁶ The learning objective specifies what the teacher expects the students to learn by the end of the lesson and is used to focus the lesson.

Respondent's Performance History: 2014-2015 School Year

19. Diane Sanchez has been employed by the District for 35 years and was the principal at MPC during the 2014-2015 and 2015-2016 school years. She earned a Bachelor's degree and Master of Science in teaching, and earned reading specialist and administrative credentials. Ms. Sanchez has been employed as a principal for nine years. Before becoming a principal, she was an assistant principal, and she has taught kindergarten and first, second, and third grades.

20. Ms. Sanchez explained that the teaching and learning framework utilized by the District while she was a principal at MPC is based upon the CSTP. She provided training on both the CSTP and the teaching and learning framework to all teachers at MPC, including Respondent. Ms. Sanchez further explained that the District's job description sets forth the functions that result in effective teaching.

21. During the 2014-2015 and 2015-2016 school years, Ms. Sanchez supervised 13 teachers, including Respondent. As a part of her duties as the principal at MPC, Ms. Sanchez conducted informal observations three to four times per week in order to ensure student safety and that teachers were successfully teaching in alignment with the CSTP. She explained that these observations were not disciplinary in nature and were conducted for the purpose of ensuring teachers continued to grow professionally. Ms. Sanchez also conducted informal observations to determine whether teachers were implementing previously issued suggestions or directives. Directives were to be implemented immediately after they are issued.

22. A. Ms. Sanchez conducted formal observations of Respondent's teaching on October 31, 2014, and April 22, 2015. Ms. Sanchez explained that formal observations were pre-planned with teachers, and teachers were evaluated according

to initial planning sheets submitted by teachers at the beginning of the school year. The initial planning sheets contained data-based objectives, as well as other criteria.

B. Following the first formal observation, Respondent was rated as developing in most areas, including management of routines, procedures, and transitions, communicating the purpose of lessons, conducting standards-based projects, activities, and assignments, and providing standards-based learning activities. During the second observation, Ms. Sanchez noted that Respondent demonstrated growth in some of the areas, including monitoring student performance so that they could reach their goals, and designing lessons that provided differentiated instruction. However, Ms. Sanchez found that Respondent was ineffective in providing feedback to students. She commented that Respondent needed to develop plans on how to establish classroom routines and procedures, and monitor and respond to student behavior.

C. Under the category "Engages in ethical conduct and complies with school, District and State rules, policies, and standards," Ms. Sanchez rated Respondent as "Developing." She gave Respondent a Final Evaluation Rating of "Meets Standard Performance," and testified that she believed Respondent was an "ok" teacher but she was not as effective as she could have been if she employed classroom management techniques. Ms. Sanchez asserted that it was her goal to get Respondent to focus on classroom management and that she expected Respondent's performance to improve, but it did not.

Respondent's Performance History: 2015-2016 School Year

23. Ms. Sanchez observed Respondent's teaching on October 13, 15, and 28, 2015, December 16, 2015, and January 29, 2016. On March 14, 2016, she prepared and

mailed to Respondent a letter⁷ regarding her observations. Ms. Sanchez testified in accordance with her March 14, 2016 letter, which noted the following deficiencies:

A. On October 13, 2015, Ms. Sanchez entered Respondent's classroom at 9:07 a.m. and observed Respondent for approximately 20 minutes. She noted eight classroom management issues including: seven separate student interruptions to a lesson; when Respondent asked the students to clean up, a student ran around the room and Respondent did not stop the student; a student continued working when she was supposed to be cleaning up; when Respondent asked students to go to their tables and look at their books, five students continued to walk or run in the classroom; when Respondent attempted to get the students to "freeze," the students continued walking around the classroom; and one student played with items and another wrote on a small dry erase board when they were supposed to be reciting a poem led by Respondent.

B. On October 15, 2015, Ms. Sanchez entered Respondent's classroom at 11:47 a.m. She observed one student spinning around on his knee in a circle and not listening to the lesson, and two other students sitting under a table playing with blocks. Respondent did not say or do anything to re-direct these students. Respondent told all the students that she needed them to be in their seats by the time she counted to ten, but ten students continued to walk around the room and one student ran with a pointer in her hand. Respondent did not say anything to

⁷ Ms. Sanchez attempted to meet with Respondent on March 9, 2016 and again on March 11, 2016, but Respondent was absent from school on those dates.

the student who was running with the pointer. Based upon her observations, Ms. Sanchez determined that Respondent did not effectively manage classroom behavior.

In addition, Ms. Sanchez found that Respondent did not monitor student learning effectively. Specifically, when Respondent delivered a math lesson, she discussed a page in the math book that some students had already completed and other students worked on a different page altogether.

C. On October 28, 2015, Ms. Sanchez entered Respondent's classroom at 9:05 a.m. and observed Respondent sitting at a table while the students were sitting at their desks. After one student finished his work, he sat doing nothing. Two other students had also finished their work but did not know what to do next. Respondent then told the class that they needed to raise their hands if they were finished with their work. Respondent's teacher's assistant then gave additional work to the students who raised their hands. Ms. Sanchez determined that Respondent had failed to establish routines or procedures for the students to follow when they completed assignments.

D. On December 16, 2015, Ms. Sanchez entered Respondent's classroom at 9:30 a.m. and observed Respondent giving a directed lesson⁸ to the class while the students sat on the carpet. During the lesson, a student was opening cabinet doors in the front of the classroom but Respondent did not re-direct the student.

⁸ Directed lessons involve stating clear objectives, modeling and explaining the concept, practicing the concept with the students, instructing the students to practice the concept independently, and assessing for evidence the students mastered the objective.

When the same student crawled under a table at 9:48 a.m., Respondent asked the student to join the class but the student remained where he was and began throwing objects. After Respondent told the student he should not be throwing things, the student came out from under the table, went to another table, and began to draw a picture. Respondent did not re-direct the student. Ms. Sanchez determined that Respondent failed to effectively monitor or respond to the student's behavior.

E. On January 29, 2016, Ms. Sanchez entered Respondent's classroom at 10:40 a.m. When Respondent directed the students to clean-up and go sit on the carpet, students V., J., and D.⁹ remained at their tables but Respondent did not say anything to the students. Respondent changed those students' name cards to another color as a consequence of their behavior. V. and D., however, remained at the table. Respondent did not say anything or issue additional consequences to either student in response. When Respondent asked J. where she belonged, J. did not respond and did not go to the carpet. Student M.G. then began screaming, but Respondent did not say or do anything in response. Students J. and M. played tug of war with an item. Respondent told the students to let go of it, but they continued playing with the item for approximately one minute and then put the item away. Respondent directed the students to give their attention to her, but 15 of the 25 students in the class continued to talk.

Respondent asked Ms. Sanchez to model how to manage the students' behavior. Ms. Sanchez had the students sit on the carpet and remain quiet so that Respondent could teach a math lesson. After starting the lesson, Respondent again asked Ms. Sanchez for assistance, and Ms. Sanchez suggested that the students sit in a

⁹ Students are identified by their initial or first name to protect their privacy.

circle on the carpet so that they could see the colored chips Respondent used during the lesson.

Ms. Sanchez noted that at 12:04 p.m., Respondent stated "we are not kicking our friends,"¹⁰ but she did not check on the student who was kicked and she did not issue a consequence to the student that did the kicking. Ms. Sanchez determined that Respondent did not effectively monitor and respond to student behavior.

24. At no time during the observation did Respondent use the behavior log or reinforcers for student Miguel, which were given to Respondent by Ms. Sanchez and the school psychologist in order to monitor and manage Miguel's behavior.

25. Ms. Sanchez described the quality of the instruction provided by Respondent during the observations as "disappointing." She offered her opinion that a teacher with five years or more of teaching experience should have classroom management strategies and routines in place to deal with the behavioral issues observed in Respondent's classroom. Ms. Sanchez explained that because Respondent did not effectively manage the students' off-task behavior and disruptions, Respondent's lessons were incomplete and ineffective. Also, as the students were not engaged in academics, there was a loss of instructional time, and as result, the standards Respondent was supposed to teach may not have been covered. Ms. Sanchez further explained that the students' level of writing, their recognition of high

¹⁰ The record is unclear as to whether Respondent observed the kicking incident, but Respondent's statement supports a finding that she was aware that a student had been kicked.

frequency words, and their guided reading level were most likely adversely impacted because of Respondent's inconsistent classroom management.

26. In the March 14, 2016 letter, Ms. Sanchez offered 19 items of assistance and guidance to Respondent following the observations listed in Factual Finding 22, for the purpose of helping Respondent improve her teaching. The assistance and guidance included:

A. A reminder to set goals for management of routines, procedures and transitions, and for expectations and learning achievement;

B. A reminder to implement Participation and Discussion protocols, which were provided to Respondent during Academic English Mastery Program (AEMP)¹¹ training in October 2015;

C. A reminder that on other previous occasions, when Ms. Sanchez had gone to Respondent's classroom when Respondent requested assistance, Ms. Sanchez modeled the provision of consequences for the students' behavior;

D. An Intervention Coordinator to work with a specific group of four students from October 30, 2015, through December 11, 2015;

E. The suggestion to develop one signal to use to have the students stop and listen to Respondent;

¹¹ Students that participate in the AEMP program do not speak English at their corresponding academic levels.

F. The suggestion to adhere to established classroom rules and consequences;

G. The suggestion for daily review of class expectations with students and use of a visual chart that will assist students to know what is expected of them;

H. The recommendation to model expected behavior;

I. The provision of the Peer Assistance Review (PAR)¹² Brochure and Agreement form on February 3, 2016, and the suggestion to request PAR services;

J. A District Behavior Specialist to come to Respondent's classroom on February 12, 2016, to provide support and provide suggestions on classroom management and behavior support;

K. Time in October 2015 for Respondent to observe her colleagues, Mrs. Aguilera and Mrs. De La Mora, who taught kindergarten and transitional kindergarten, respectively, and for them to observe Respondent and offer feedback;

L. Ms. Sanchez accompanied Respondent to Mrs. Aguilera's classroom and observed routines and procedures for transitions and classroom management;

¹² The PAR program is a confidential program provided by the District where a Consulting Teacher with at least eight years of full-time, satisfactory performance with the District, works jointly with the Participating Teacher to provide review, assistance and guidance to the Participating Teacher in order to improve their instructional skills.

M. The assistance of Selene Gonzalez, a Foster Care Youth Counselor, to provide support to one of Respondent's students who was also Mrs. Gonzalez's client, once per month for 30 minutes, beginning September 2015, for the purpose of assisting the student with focusing on the lessons; and

N. On October 9, 2015, the school psychologist met with Respondent and gave her a reinforcer menu, visual cue card, and a smiley face card to use with one of Respondent's students. On that same date, Ms. Sanchez gave Respondent a recording log to record and monitor that same student's behavior.

27. According to Ms. Sanchez, Respondent did not sign-up for PAR services. Though Respondent was receptive to the behavior specialist's ideas such as a student-teacher contract, goal setting, and the use of tokens, Respondent said they would require "too much work" to implement. After Respondent observed Mrs. Aguilera, she expressed that Ms. Aguilera's classroom environment was "too structured."

28. A. On March 14, 2016, Ms. Sanchez issued four directives to Respondent. She directed Respondent to develop one signal to give to the students when she wanted them to stop and listen to her, so that her classroom would be well managed. To ensure student safety, Ms. Sanchez also directed Respondent to prohibit students from running in the classroom. In addition, Ms. Sanchez directed Respondent to review class expectations with the students daily while using a visual chart to assist the students in knowing what they were expected to do. She also directed Respondent to implement the AMEP discussion and participation protocol.

B. The March 14, 2016 letter contained a notification that Respondent's failure to comply with the directives, or to demonstrate immediate and sustained improvement, could lead to disciplinary action including the issuance of a

Below Standard Evaluation, Notices of Unsatisfactory Acts or Service, suspension without pay, and dismissal from the District. Ms. Sanchez further informed Respondent via the letter that if she were to evaluate Respondent at that time, she would issue an Overall Below Standard Performance Evaluation to Respondent, which could result in the discipline mentioned above.

C. Although Ms. Sanchez did not review the March 14, 2016 letter with Respondent in person, Ms. Sanchez stated that she expected Respondent to read it and if Respondent needed clarification, Ms. Sanchez would make herself available to provide that clarification.

29. A. On May 10, 2016, Ms. Sanchez prepared a Final Evaluation report for Respondent for the 2015-2016 school year based upon her formal observations of Respondent's performance on October 31, 2014, and April 22, 2015. For Standard 1, Planning and Preparation, Ms. Sanchez rated Respondent as "Effective" in designing coherent instruction, but "Developing" in knowledge of content-related pedagogy and awareness of students' skills, knowledge, and language proficiency. Respondent was rated "Developing" in classroom climate, management of routines, procedures, and transitions, and monitoring and responding to student behavior, for Standard 2, The Classroom Environment. With respect to Standard 3, Delivery of Instruction, Ms. Sanchez rated Respondent as "Developing" in the areas of communicating the purpose of the lesson, use of academic language, quality and purpose of questions, discussion techniques and student participation, standards-based projects, activities and assignments, purposeful and productive instructional groups, and feedback to students.

B. Ms. Sanchez commented that Respondent's teaching was inconsistent and ranged from developing to effective, and that Respondent

demonstrated inconsistent growth from her Informal Growth Plan Visit earlier in the school year to the date of the formal observation, in the areas of planning, classroom environment, and delivery of instruction.

C. In the area of Contribution to Student Outcomes, Ms. Sanchez commented that Respondent made progress toward meeting her goals in math and that all of Respondent's students knew their letters and sounds.

D. In the area of Professional Responsibilities, Respondent was effective in arriving on time and starting class on schedule, regularly being in attendance, attending all school meetings and staff development programs, engaging families in the instructional program, and communicating and interacting professionally with students, parents, colleagues, administrators and staff, engaging in ethical conduct and complying with school, District and State rules, policies, and standards, reviewing and evaluating the work of pupils, maintaining accurate and timely records, and assuming the reasonable responsibility for the proper use and control of District property, equipment, material and supplies.

E. Respondent's Final Evaluation Rating was Below Standard Performance. Ms. Sanchez explained that she issued the rating because Respondent failed to develop a classroom management plan even though she had been provided support during the school year; Respondent did not demonstrate the expected sustained improvement in delivering instruction to the students although she attempted to do so; she was ineffective in delivering instruction to the students; and Respondent's ineffective instruction resulted in harm to her students. Based on the evaluation, Ms. Sanchez commented that Respondent would be evaluated during the 2016-2017 school year.

30. Ms. Sanchez included a one-page attachment to Respondent's evaluation, which listed specific deficiencies, recommendations, and assistance to be provided. In the area of specific deficiencies, Mr. Sanchez stated that Respondent: (1) failed to consistently implement routines and procedures for transitions and daily classroom activities, which resulted in a significant loss of instructional time; and (2) failed to consistently implement a positive system of classroom behavior management.

31. Ms. Sanchez recommended that Respondent (1) implement and consistently use routines for transitions and other daily activities; (2) implement and consistently use a system of positive behavior management that appeals to various modalities; and (3) ensure that students who are off-task are re-directed via Respondent's consistent use of a system of positive behavior management in order to ensure student engagement in the lessons and activities.

32. Ms. Sanchez advised Respondent that she would provide her with the following assistance: (1) another copy of the PAR Brochure and Agreement form and advice to sign up for support; (2) an arrangement for a District Behavior Specialist to again come to Respondent's class; (3) an arrangement for a Intervention Coordinator to work with a group of Respondent's students using Second-Step Lessons; and (4) an opportunity for Respondent to follow the assistance and guidance listed in the March 14, 2016 letter described in Factual Finding 26.

33. Upon questioning, Ms. Sanchez acknowledged that she taught kindergarten for one year only, and did so 25 years ago. However, she contended that she reviews, and is familiar with, instructional standards for kindergarten, that classroom management is applicable to all grades, and that she has used classroom management strategies over the years to control her classroom environment, including Respondent's classes. She further acknowledged that Respondent notified

her that she felt dejected and frustrated because she felt her colleagues did not support her, and she was experiencing personal issues. Ms. Sanchez acknowledged that Respondent was willing to accept strategies and improve, and she attempted to apply new strategies for classroom management. However, Respondent's attempt at classroom management was insufficient because she was unable to demonstrate improvement in that area.

Facts Underlying Charges: Performance (December 7, 2016 – February 22, 2018)

34. Lorena Avalos has been the principal of MPC since 2016 and has been employed by the District for 27 years. She earned a Bachelor's degree in psychology and a Master of Arts degree in adult education. Ms. Avalos has been a principal at two different schools, taught kindergarten, first grade, and second and third grade combination classes for 10 years. She has been an assistant principal and bilingual coordinator. Ms. Avalos' duties as a principal at MPC included monitoring and supervising classroom instruction to ensure that teachers' lessons were aligned to the Standards and to ensure a high level of instruction.

35. Ms. Avalos' testimony established that the District provided professional development or lesson planning time for teachers every Tuesday. During the planning time, teachers who taught at the same grade level collaborated with each other to plan their lessons, and developed pacing plans for the Reader's and Writer's Workshop lessons and ELA. MPC also provided professional development and training at the beginning of the school year where the District's policies and procedures were provided and discussed. Teachers could also attend trainings outside of MPC after hours or on Saturdays, including participating in the PAR program as well as training in language arts and ELD.

36. Ms. Avalos explained that gaps in student learning (gaps) occur when students fail to learn a concept or skill during the allotted instructional time or at the expected pace. As a result of learning gaps, a student is unprepared, disadvantaged, and could face challenges when they advance to the next grade level.

37. Ms. Avalos' practice at MPC was to observe one teacher per day to ensure that teachers were delivering highly effective lessons and teaching to the Standards. Following the observation, she gave feedback during a conference meeting with the teacher, which included providing recommendations and suggestions for improvement. Ms. Avalos would also provide support to teachers who demonstrated deficiencies during the observation. She would read from a draft conference memorandum during the conference meeting and take notes of what the teacher stated in response. If Ms. Avalos recommended that the teacher review a particular document or resource as a part of the assistance and guidance, she would provide the teacher a hardcopy of the document during the conference. Her practice was to prepare a final draft of the conference memorandum following the conference, and place it in the teacher's mailbox, along with another hardcopy of the handout that was given to the teacher during the conference. Ms. Avalos followed this practice when observed Respondent during the 2016-2017 and 2017-2018 school years.

DECEMBER 7, 2016 OBSERVATION

38. On January 18, 2017, Ms. Avalos memorialized the substance of a conference she held with Respondent on January 12, 2017, regarding her observation of Respondent's classroom on December 7, 2016 from 10:54 a.m. to 11:54 a.m., during Respondent's writing/ELD lesson. In the area of planning and designing instruction, Ms. Avalos noted that Respondent failed to plan Standards-based learning activities for her class because she did not post or review the Common Core State Standard

(CCSS) with her students, and she did not review the learning objective for her ELD lesson at the start of the lesson. Also, Respondent failed to follow her lesson plan in that she started the ELD lesson at 11:10 a.m. instead of at 10:50 a.m. as stated in Respondent's schedule. As a result, the students lost one-third of the allotted instructional time.

39. In the area of delivery of instruction, Ms. Avalos expressed concern that Respondent did not provide effective instructional activities and did not follow protocol in teaching ELD lessons. Specifically, Respondent failed to model a writing sample or provide a list of suggested writing topics for students during Writer's Workshop.¹³ Instead, she wrote an isolated list of words on the board. As a result, students had difficulty with their writing. When Respondent attempted to ask students questions to guide them, she asked them in rapid succession and did not give the students an opportunity to respond. Students continuously talked to each other instead of working on the assignment. Respondent's attempts to re-direct the class were unsuccessful.

40. Ms. Avalos noted that Respondent was ineffective in transitioning students from their desks to the rug, in that students did not follow her directions to stand behind their chairs and wait for her to dismiss them. Instead of walking quietly to the rug, students began talking and ignored Respondent's directions. Respondent dismissed two students to the rug even though they were sitting down. Two students

¹³ Writer's Workshop lessons impart foundational skills and writing standards to students.

were asleep at their desks. Respondent woke the students up and dismissed them to the rug.

41. Ms. Avalos expressed concern that Respondent failed to demonstrate knowledge of the developmental characteristics of the age group of her class, evidenced by her having students work on activities in a Treasures¹⁴ book instead of delivering a Standards-based lesson as modeled in Start Smart¹⁵ sample lessons. Specifically, Respondent, who was delivering a lesson on how to clarify an idea, used a puppet to model the skill. Because she asked a series of unrelated questions and answered them herself in the course of a minute, the students became restless. For example, one student handed Respondent a backpack while Respondent was modeling the lesson. When another student began making "fart" noises with his mouth throughout the course of the 22-minute lesson, Respondent did not attempt to re-direct him until four minutes had passed. Although the student continued to make the noises, Respondent did not issue any consequences to the student. Another student got up from the rug several times to play with erasers on a whiteboard and Respondent did not redirect the student. When students were supposed to be working with their partners, students began hitting each other, playing with the whiteboard, and lying down on the rug. When Respondent reminded students several times that

¹⁴ Treasures is the District's English reading /language arts (ELA) program and was adopted by the District and has been in use for seven years.

¹⁵ Start Smart lessons are District-provided and serve as a foundation for the school year so that students learn how to hold a conversation. The lessons are aligned to ELD State standards. District teachers received training on how to deliver Start Smart lessons.

they were supposed to ask each other questions, the students continued with their off-task behavior. In addition, during the lesson, Respondent failed to review the skill of using the process to "Clarify" what their partner "Created." Instead, Respondent asked students to share the questions asked by their partners. She then gave a different set of directions, which confused the students. When Respondent realized that the students were confused, Respondent answered the questions shared by the students herself.

42. In the area of classroom environment, Ms. Avalos noted that Respondent failed to reinforce her Classroom Rules. Respondent spent 12 minutes monitoring student off-task behavior during Writer's Workshop without issuing any consequences to the students who were off-task. Specifically, students continually talked to each other instead of working on the assignment. Four students got out of their seats and approached Respondent. In addition, one student was under his desk and one student played on the rug. Another student wrote on himself with a marker, and two students stacked crayons, markers and pencils on top of each other. Respondent attempted to re-direct the students but was unable to do so. Respondent allowed eight students to use the restroom during class time although one of her Classroom Rules stated that students were to use the restroom and get a drink of water during recess and lunch.

43. Ms. Avalos also noted that Respondent failed to prepare instructional materials in advance of the lesson, in that she spent two minutes looking for the Treasures book, and resorted to asking her students where the book was. While Respondent was looking for the book, a student began playing with his sweater, two students were lying on the rug, several students were talking and laughing, and one student played with the whiteboard. Respondent also failed to establish protocol for

students to work in groups in that she did not model how the group was to take turns, and instead gave verbal instructions.

44. According to Ms. Avalos, during the conference meeting, Respondent stated that ELD was new to her and she had just finished all the skill lessons. She contended that the student making the "farting" noise had never done that before, and she did not recall seeing students hitting each other or under the table. Respondent asserted that she would not allow students to hit each other. She contended that she experienced a timing issue during the observation, and that she always has her lessons and lesson materials prepared and ready. Respondent stated to Ms. Avalos that because of her students' age, she only disciplines "big things," and has been consistent in enforcing her Classroom Rules. She agreed that she should use other techniques to redirect students. In addition, in her written response to the conference memorandum, Respondent contended that she was not on schedule because the class was going to rehearse for a Christmas performance, she was going to teach the ELD lesson after lunch, and she did not have her book ready because she was going to prepare her materials during lunch time. She asserted that she provided a modeled writing sample and that it was behind her easel. Respondent also asserted that if she quickly asked questions during the observation, she did so in order to get the class started on their assignment. She contended that she later moved student U.'s clip to yellow and told him his behavior was unacceptable. Respondent indicated that she did not recall student N. getting up or students continuing in off-task behavior.

45. On December 7, 2016, despite having received assistance, guidance, and directives in the March 14, 2016 letter prepared by Ms. Sanchez, Respondent: (1) failed to develop and consistently use one signal to get students to stop and listen to her; (2) allowed students to run in the classroom; (3) failed to review class expectations daily

by using a visual chart to assist students with knowing what they are expected to do; and (4) failed to implement the AEMP discussion and participation protocol with students.

46. Ms. Avalos offered Respondent the following guidance and assistance: (1) post and review the CCSS at the beginning of each lesson, share the learning objective with the students, and make the connection between the objective, the standard and the activity; (2) follow lesson plans on a daily basis to ensure coverage of the necessary content; (3) consider the age of the students, always provide a teacher-modeled writing example during Writer's Workshop, and create a list of topics for students to choose from; (4) establish a procedure for students to transition to the rug, model the procedure, have the students regularly practice the procedure. As a guide to implementing effective classroom procedures, Ms. Avalos provided Respondent with a handout entitled Protocol—How to Teach Procedures; (5) regularly plan standards-based lessons and refer to District ELD to properly implement all program skills; (6) consistently enforce classroom rules. Give students a warning for off-task behavior and if the behavior continues, ensure movement of their clip on the behavior chart.¹⁶ Ms. Avalos provided Respondent with a handout entitled Effective Behavioral Expectations to review; (7) prepare instructional material ahead of time to reduce the loss of instructional time and minimize off-task behavior; (8) consistently model, practice, and

¹⁶ Respondent's behavior chart consisted of the colors green for good behavior, yellow for moderate behavior, and red for worsening behavior. All of the students had clips, which were placed on green, which was at the top of the chart, at the beginning of the day. A student's clip was moved up or down, depending on the student's behavior.

regularly monitor students as they use partnering techniques; (9) continued access to Respondent's PAR teacher for assistance with developing and implementing rigorous lesson plans, using various instructional strategies and resources to Respondent to meet the students' needs, including lesson-pacing, using rich academic language, developing behavior management tools, monitoring student behavior, and creating a classroom that engages all students.

47. Ms. Avalos advised that if Respondent failed to make an immediate and sustained improvement in her performance, it could lead to an overall below standard performance evaluation, a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District.

JANUARY 12, 2017 OBSERVATION

48. On January 12, 2017, Ms. Avalos conducted an observation of Respondent's classroom during her Response to Intervention (RTI) lesson. Ms. Avalos conducted a conference with Respondent regarding the observation on February 3, 2017, which was memorialized in a conference memorandum dated February 6, 2017. In the area of planning and designing instruction, Ms. Avalos noted Respondent failed to effectively manage small groups in that she did not rotate the groups. As a result, she assigned the wrong group of students to work with her, another group to work with the teacher assistant and another group to work independently. She failed to state the objective of the small group lesson and failed to model how to make a Consonant Vowel Consonant (CVC) word for the students that were in her group. Instead Respondent gave verbal instructions and directed the group to start the work on their own.

49. In the area of classroom environment, Ms. Avalos noted that Respondent failed to refer to or enforce her Classroom Rules. Respondent interrupted her small group lesson on several occasions to address the following off-task behavior of students who were supposed to be working independently: Student C. walked around the room; Student B. threw a crayon at Student U. Respondent moved Student B to another table without any consequences. Student S. was talking to a student next to her. When Respondent asked Student S. whether she was helping the student or talking, Student S. did not respond, but she stopped talking for a moment then continued to talk to the other student. One student stood up. Student A walked over to show Respondent his work, and then subsequently got underneath a table.

50. Ms. Avalos determined that Respondent was unable to effectively teach the lesson because she was constantly re-directing. Ms. Avalos stated that by that time in the school year, Respondent should have had classroom procedures in place to effectively address off-task behavior.

51. Ms. Avalos noted that Respondent failed to ensure that students had materials available to do their independent work, in that Respondent had to leave the small group she was working with to provide worksheets to two students who did not have the assignment in their folders. Respondent then stood by the classroom door to wait for students to return from the restroom. The lesson was further delayed while Respondent retrieved word cards from another area of the classroom before she began working with her group of students. As a result, the group of students lost four minutes of instruction.

52. According to Ms. Avalos, during the conference meeting, Respondent stated that she erred in assigning the small groups because of something that occurred during the week, and she taught her class CVC words because they already

knew the high frequency words. She did not recall the student walking around the room or the other student talking to her partner. Nor did she recall allowing students to leave the classroom in order to go to the restroom. Respondent contended that she reviewed her Classroom Rules with her students every morning, and that the student that did not have the worksheet in her folder was at fault for not giving Respondent the folder in advance.

53. Respondent submitted a written response to the February 6, 2017 conference memorandum. In her response she explained that Ms. Avalos met with her on January 12, 2017, to discuss the December 7, 2016 observation. She contended that she had no conference meetings with Ms. Avalos prior to January 12, 2017, and therefore did not know what Ms. Avalos' expectations of her were.

54. A. In the area of planning and preparation, Respondent asserted that she was not aware that she was required to post or review the learning objective because no other administrator had asked her to do that.

B. In the area of delivery of instruction, Respondent contended that she was prepared to deliver her standard-based lesson for her small RTI group, but decided the previous day to have her teacher assistant work with the same small group the next day because they needed additional help. She further contended that she needed to work with the same group again because some of the students were absent when she worked with the group the day before. Respondent stated that she should have told the teacher assistant to work with the same group but did not do so because she became nervous during the observation and changed her plans.

C. Respondent indicated that she told the students that they were learning CVC words because they knew the high frequency words (HFW). She asserted

that she showed them cards with CVC pictures and words, she asked them to separate vowels and consonants, and told them to use three letters to make a CVC word.

D. In the area of classroom environment, Respondent stated that student C was walking around the classroom because he went to Respondent to ask her a question. She stated that moving Student B was his consequences as opposed to moving his clip, because student B does not like when Respondent moves him. Respondent asserted that Student S was helping Student J. Respondent asked what behavior is realistic for a kindergarten class during RTI with respect to interruptions and off-task behavior. She further asked for Ms. Avalos to convey her expectations as to the correct procedure to monitor behavior and issue consequences.

E. Also in the area of classroom environment, Respondent indicated that students are supposed to place their folders on her table when they run out of work so that she can fill it the day before the lesson will be taught. She further indicated that some of the students did not give her their folders the day before and that is why she had to leave her group. Respondent stated that her teacher assistant allowed the two students to go the restroom, and she left her group to see why the two students were gone so long. She contended that she would continue to follow her lesson plans, plan standard-based activities, and to write or state the objective. She asserted that she would make every effort to improve in the areas noted by Ms. Avalos.

55. On January 12, 2017, despite having received assistance, guidance, and directives in the March 14, 2016 letter prepared by Ms. Sanchez, Respondent: (1) failed to develop one signal to always use for students to stop and listen to her; (2) she failed to review class expectations daily by using a visual chart to assist them with knowing

what they are expected to do; and (3) failed to implement the AEMP discussion and participation protocol with students.

56. Ms. Avalos offered Respondent the following guidance and assistance: (1) state the objective and/or standard at the beginning of each lesson, and repeat it during, and at the end of each lesson; (2) adhere to the posted Classroom Schedule daily; (3) give specific instructions so that students know what is expected of them; (4) explain the purpose of the lesson, model the activity, and allow time for the students to practice the skills before they work independently; (5) stay focused on the lesson objective; (6) state clear expectations for student responses to questions such as a raised hand, and reinforce positive behavior; (7) implement routines and procedures that maximize teaching and learning time; (8) effectively monitor and respond to student behavior by developing and implementing an effective classroom management plan that includes clear expectations, rewards, and consequences; (9) provide, teach, model, and practice rules for small group instruction; (10) ensure that students' materials are ready before sending them to work independently to avoid the loss of instructional time; (11) observation and debriefing with Ms. Avalos of a colleague's classroom management procedure during the month of February; and (12) continued access to Respondent's PAR teacher for assistance with developing and implementing rigorous lesson plans, using various instructional strategies and resources to respond to the students' needs, including lesson pacing, using rich academic language, developing behavior management tools, monitoring student behavior, and creating a classroom that engages all students.

57. Ms. Avalos asserted that much of the assistance and guidance was similar to the assistance and guidance she provided on January 18, 2017. She contended that she offered the specific items of assistance and guidance because she saw no evidence

that Respondent implemented the previous assistance and guidance. Ms. Avalos also contended that she provided the assistance and guidance because she wanted Respondent to demonstrate sustained improvement in her performance.

58. Ms. Avalos advised that if Respondent failed to make an immediate and sustained improvement in her performance, it could lead to an overall below standard performance evaluation, a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District.

MARCH 2, 2017 OBSERVATION

59. On March 23, 2017, Ms. Avalos memorialized the substance of a conference she held with Respondent on March 20, 2017, regarding her observation of Respondent's classroom on March 2, 2017 from 10:24 a.m. to 11:24 a.m., during Respondent's Writer's Workshop/ELD lesson. In the area of planning and preparation, Ms. Avalos noted that Respondent failed to have her lesson plans out and available for reference, in violation of MPC's policies.

60. In the area of delivery of instruction, Ms. Avalos noted that Respondent failed to align the Writer's Workshop activity to the learning objective. Specifically, Respondent instructed the class to read out loud the learning objective, write high frequency words correctly, out loud. She then asked the students to provide a sample sentence. When they provided the sample sentence, Ms. Avalos noted that Respondent focused on spelling all of the words in the sentence instead of focusing the students on the high frequency words. She repeated the process with another sentence, and then sent the students to work in their writing folders.

61. Respondent failed to plan for students finishing the assignment early. When she began to work with a small group of students, one student immediately

stated that he had completed the assignment. When Respondent directed the student to complete an additional task, the student replied that he had already completed it. Respondent then directed the student to get a new piece of paper. However, after the student walked over to get more paper, five other students followed. Respondent failed to re-direct the five additional students to return to their seats. In addition, Ms. Avalos noted that Respondent failed to closely monitor the students as they worked independently in their writing folder, resulting in student off-task behavior. At least 15 students did not write anything at all and Respondent failed to check their work. Five students drew pictures instead of completing the writing assignment, and three students stacked pencil boxes. Respondent failed to bring closure to the lesson in that she did not review the learning objective with the students or ask the students to share what they learned.

62. Ms. Avalos noted that Respondent delivered her ELD lesson in way that was difficult for five-year-old students to understand. Specifically, when Respondent used a puppet to demonstrate conversational English, she spoke rapidly for two minutes using the same tone of voice, which made it difficult to follow the conversational exchanges. When Respondent asked for student feedback, students provided information from a poster in the classroom regarding conversational norms. She then provided examples of model and non-model English language conversation herself instead of having the students provide specific examples. As a result, students were unable to properly practice conversation skills when they worked with their partners. Respondent then asked individual students to share sentences with the class, instead of asking two students to model having a conversation. Ms. Avalos also noted that Respondent failed to use discussion techniques to encourage student participation and effectively monitor and assess student understanding.

63. In the area of classroom environment, Ms. Avalos expressed concern that Respondent did not achieve the purpose of the lesson because Respondent failed to provide the students with expectations for when they worked independently. As a result, students freely got up from their seats to get paper while others drew on their papers when they were supposed to be writing. Ms. Avalos noted that Respondent failed to consistently apply her class rules and issue consequences for non-compliance of the rules. Specifically, Respondent's class rules stated that warnings would be issued for non-compliance before students' clips are moved on the behavior chart. When three students propped their writing folders up on their desks, Respondent moved their clips without issuing a warning. However, when eight other students propped folders up on their desk, Respondent did not issue a warning to them or move their clips. In addition, Respondent issued six warnings to a student before moving his clip. Also, because Respondent failed to explain and manage the procedures for when students work with a partner, only a few students were able to work with their partner and achieve the learning objective.

64. On March 2, 2017, despite having received assistance, guidance, and directives in the March 14, 2016 letter prepared by Ms. Sanchez, Respondent: (1) failed to develop one signal to always use for students to stop and listen to her; (2) failed to review class expectations with students daily by using a visual chart to assist them with knowing what they are expected to do; and (3) failed to implement the AEMP discussion and participation protocol with students.

65. According to Ms. Avalos, during the conference meeting, Respondent stated that her lesson plans were on the table but she forgot to look at them, and she did not recall changing her voice for the puppet. Respondent expressed belief that she spoke more slowly than Ms. Avalos reported. In addition, Respondent defended

students' use of the poster to write a sentence, and contended that students have to know the difference between sounding out words and high frequency words.

Respondent also stated that when students work on a new skill independently, they typically prop their folders up on their desks to look for high frequency words. She also asserted that when students first receive a piece of paper, they typically draw a picture before they begin writing.

66. On March 28, 2017, Respondent submitted a written response to the conference memoranda. In the area of planning and preparation, she stated that she had referred to her lesson plans during recess, and that she wrote the objectives for both the Writer's Workshop and ELD lessons on the board. She denied stating that she forgot to look at her lesson plans, but instead said that she looks at them when she forgets what she is working on.

67. In area of delivery of instruction, Respondent contended that she followed all pacing plans pursuant to grade-level planning with the other kindergarten teachers. She further contended that she picked the lesson on HFWs because she noticed that the students were not spelling HFWs correctly. Respondent stated that students are allowed to get out of their seats to get additional pieces of paper but most likely did not during the observation because Ms. Avalos was in the room. She acknowledged that students propped their folders up because their HFWs were inside of them. She asserted that she changed to practice to give students a HFW list to use so that they did not have to prop their folders up and block her view of their work. Respondent contended that she did not bring the lesson to a close because she was out of time, and Ms. Avalos had previously instructed her to keep to her schedule.

68. Respondent indicated that she did not feel as though she was speaking too quickly, and if she was it was because she was nervous. She contended that she

does not speak quickly when she is not observed. Respondent further contended that she typically changed her voice when using the puppet but not when she was observed because she believed her voice sounds silly. With respect to the ELD lesson, Respondent wrote that she did know what Ms. Avalos' expectations were on how the lesson should be delivered, her training was insufficient, and she need additional training.

69. In the area of classroom environment, Respondent stated that she reviewed the procedures with students for working with partners on ELD, but she suspected they needed more practice. She further stated that students move their behavior clips down without a verbal warning because she gives them a visual warning first. Respondent expressed a desire that the informal observation process to be more positive because she was only told what she was doing wrong, and she felt her hard work went unnoticed. She also stated that she did not know what Ms. Avalos' expectations were "for how to teach in all areas." (Ex. 21.)

70. Ms. Avalos offered Respondent the following guidance and assistance: (1) submit lesson plans to Ms. Avalos by 8:00 a.m. at the start of each week, and ensure that the lessons plans are out and available for reference during the instructional day; (2) follow the Grade Level Writer's Workshop pacing plan by building on previously learned writing skills; (3) refer to the Hunter's Lesson Plan Format¹⁷ handout Ms. Avalos provided Respondent to use when planning activities aligned to the learning objective; (4) closely monitor students as they work independently and give her small group work to complete independently while Respondent circulates the classroom and

¹⁷ Respondent was not required to use the handout; it was given as a support only.

ensure that the other students complete independent work; (5) when providing students a model/non-model of conversational English using the puppet, keep the conversation short and concise and change her voice so that students can understand and follow the conversation; (6) have clearly defined expectations for students as they work independently during Writer's Workshop; (7) consistently enforce class rules and consequences by giving warnings, followed by moving students' clips on the behavior chart for continued failure to follow the rules, and provide positive praise for students who follow the rules; and (8) establish procedures for students when working with a partner. Ms. Avalos provided Respondent with examples of procedures Respondent could use when students worked with a partner, and examples of expectations when students work independently during Writer's Workshop.

71. Ms. Avalos directed Respondent to post and review a clear set of expectations for students when working with a partner. The directive was effective immediately. Ms. Avalos explained that she issued the directive to Respondent because she failed to demonstrate consistency in her classroom management system, her classroom was not well-managed, and she failed to have classroom management and Writer's Workshop procedures in place so that the students would know how to conduct themselves. Ms. Avalos noted that the expectations and procedures should have already been in place since it was near the end of the school year. In addition, Ms. Avalos saw no evidence that Respondent implemented the assistance and guidance she had previously provided to her. She asserted that when she asked Respondent why she did not implement it, Respondent indicated that it was "too much."

72. Ms. Avalos advised that if Respondent failed to make an immediate and sustained improvement in her performance, it could lead to an overall below standard

performance evaluation, a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District. Ms. Avalos further advised Respondent that she would issue Respondent a Below Standard Evaluation, which would lead to the discipline set forth above, if she had to evaluate Respondent at that time.

MARCH 16, 2017 OBSERVATION

73. On March 16, 2017, Ms. Avalos observed Respondent in her classroom from 12:40 p.m. to 1:40 p.m. during her mathematics lesson.¹⁸ Following the observation, she held a conference with Respondent on March 30, 2017. Ms. Avalos memorialized the conference in a conference memorandum dated April 3, 2017.

74. Ms. Avalos offered Respondent the following guidance and assistance: (1) continue to submit lesson plans to Ms. Avalos by 8:00 a.m. at the start of each week, and ensure that the lesson plans are out and available for reference during the instructional day; (2) ensure that graphic organizers align to the Math content and the opportunity to observe a colleague deliver a lesson on decomposing¹⁹ numbers; (3) ask questions at various depth of knowledge (DOK) levels to facilitate a deeper discussion of the math content. Ms. Avalos provided a handout entitled DOK Question Stems to Respondent for her use when lesson planning; (4) deliver lessons that include

¹⁸ Respondent's performance during this observation is not the subject of the charges contained in the Accusation.

¹⁹ Decomposing numbers, a state content standard for kindergarten, is the precursor to subtraction, a first grade standard. Ms. Avalos explained that if students do not master the skill of decomposing numbers, they will most likely experience difficulty with subtraction.

explicit direct instructions, followed by opportunities for student guided and independent practice; (5) when teaching small group instruction, teach the skill to all students in the small group together at the same time, and refrain from teaching students individually, to reduce the amount of time wasted while students wait for their turn; (6) monitor student learning, check for understanding, and review the independent work in order to assess what students learned during their Math Centers; (7) for math centers, have the procedures written on each of the math center pop-up tents, a pocket chart, and cards with student names assigned to the math center; and (8) continued access to Respondent's PAR teacher for assistance with developing and implementing rigorous lessons plans, using various instructional strategies and resources to respond to the students' needs, including lesson pacing, using rich academic language, developing behavior management tools, monitoring student behavior, and creating a classroom that engages all students.

75. Ms. Avalos directed Respondent to do the following: (1) state the objective and/or standard of the lesson at the beginning of the lesson and repeat it during and at the end of each lesson. Explain the lesson objective and ask the students to explain it; (2) model what is expected of the students, and give them time to practice the skill before expecting them to complete it independently; (3) stay focused on the lesson objective because interruptions to key objectives during the lesson make it difficult for student learners to stay focused; and (4) be consistent with class rules and consequences by giving warnings to students for not following the rules, having them move their clip on the behavior chart after the warning, and providing positive praise for students that consistently follow the rules.

APRIL 27, 2017 OBSERVATION

76. On May 15, 2017, Ms. Avalos memorialized the substance of a conference she held with Respondent on May 11, 2017, regarding her observation of Respondent's classroom on April 27, 2017 during Respondent's language math lesson.

77. A. In the area of delivery of instruction, Ms. Avalos expressed concern that Respondent demonstrated little knowledge of the developmental characteristics of five-year-old students or how they learn best. Specifically, Respondent failed to explain the process of decomposing numbers for the lesson entitled "I can decompose numbers to 19." She filled in the number sentence "19= ___ + ___," and did not encourage students to practice using graphic organizers/ten frames. As a result, students were unable to perform the skill on their own. When Respondent asked students to find another way to decompose the number 19 using the graphic organizer, nine students copied Respondent's model and two others filled in the wrong information. In addition, Respondent failed to monitor student learning in that she did not offer feedback to the students or correct their errors.

B. Respondent failed to provide clear directions to students so that they could work independently. Specifically, she wrote two sets of number sentences on the white board, one with the number 19 and one with the number 18, without using the graphic organizer. She did not specify what sentence the students should use. Before sending the students to their seats to work, Respondent did not give them the same graphic organizers to use. Instead, she told them to go to their tables, gave them a blank piece of paper, and told them to write number sentences for 19.

C. Respondent failed to provide adequate wait time for students after repeatedly asking questions, so that students were unable to understand the questions or formulate an answer.

78. A. In the area of classroom environment, Respondent failed to establish or manage classroom routines, transitions, and procedures, in that she failed to use the timer throughout the lesson. When she sent students back to their seats to work independently, several students stood around talking, and another student walked to the classroom door and opened it.

B. Respondent also failed to enforce her class rules and issue consequences to students who failed to follow the rules. Student S. rolled on the floor for 10 minutes but Respondent only re-directed him once. He briefly stopped, but continued rolling on the floor. Students did not respond to Respondent's requests for them to stop talking and listen to two students who were sharing how they decomposed the number 19. Respondent re-directed Student A. when he was not sitting in his assigned spot on the rug, however, after a short time, he got up and started touching a book in the front of the room. Respondent threatened to move his clip from yellow to red, but never did.

79. Ms. Avalos explained that the students' off-task behavior adversely impacted the learning environment. She expressed concern that it was near the end of the school year and Respondent's students did not appear to be mastering the kindergarten standards.

80. On April 27, 2017, despite having been provided assistance, guidance and directives during conferences with Ms. Avalos on March 20, 2017, and March 30, 2017, and as memorialized in Conference Memoranda dated March 23, 2017, and April

3, 2017, and with the directives in the March 14, 2016, letter, Respondent: (1) failed to model for students what she expected them to do, and give them time to practice the learned skills before independently completing the task; (2) failed to stay focused on the lessons objective; (3) failed to be consistent with class rules and consequences by giving students warnings for not following the rules, moving their behavior chart clips after warnings, and providing positive praise for those who consistently followed the rules; (4) failed to post and review a set of clear expectations for students when working with a partner; (5) failed to develop one signal to always use for students to stop and listen to her; (6) failed to review class expectations with students daily by using a visual chart to assist them with knowing what they are expected to do; and (7) failed to implement the AEMP discussion and participation protocols with students.

81. According to Ms. Avalos, during the conference meeting Respondent stated that she taught the lesson on decomposing the number 19 the following day and it was effective. She asserted that she used the number 18 for the lesson because she used that number the day before and was successful. Respondent did not recall the student opening the classroom door and stated that she would never allow the student to exit the room. Respondent agreed that the students were confused during the lesson, she disputed that Student S. rolled on the floor for 10 minutes, and she asked for suggestions on how to work with students who behaved like Student S.

82. Ms. Avalos offered Respondent the following guidance and assistance: (1) follow the posted schedule on a daily basis to ensure that all content areas are covered; (2) clearly deliver the math content. Rather than just explain the directions to students, engage them in a discussion in order to check for understanding before asking them to work independently to complete a task; as a reminder, younger students need more repetition, and more frequent checks for comprehension, before

and during an activity. If Respondent expected them to decompose the number 19, then model using that number only, and do not confuse them by using additional numbers; (3) provide wait time for students after asking a question, and do not restate the same question over and over – review and implement suggested strategies in the Art of Questioning of in Math Class (handout provided); (4) establish, model, and use only one method to get students' attention, such as "Eyes on me," and wait for all students to respond before moving on with the lesson so that all students get access to lesson content; (5) young students learn best when structure and expectations for behavior have been established. Establish or manage classroom routines, transitions and procedures for sending students back to their seats in order to avoid the loss of instructional time as the students who do not comply with requests are redirected. Use the timer consistently throughout the lesson to help enforce these routines, transitions and procedures. Ms. Avalos provided detailed instructions and examples on how to establish expectations for student behavior and enforce class rules; (6) continued access to Respondent's PAR teacher for assistance with developing and implementing rigorous lesson plans, using various instructional strategies and resources to respond to the students' needs, including lesson-pacing, using rich academic language, developing behavior management tools, monitoring student behavior, and creating a classroom that engages all students.

83. Ms. Avalos directed Respondent to establish procedures for students, including but not limited to, consistently enforcing her class rules, using the timer consistently throughout her lesson, and transitioning students from the rug to their seats. Ms. Avalos advised that if Respondent failed to make an immediate and sustained improvement in her performance or follow the directive, it could lead to an overall below standard performance evaluation, a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District.

MAY 18, 2017 OBSERVATION

84. Ms. Avalos conducted an observation of Respondent's classroom on May 18, 2017 from 1:34 p.m. to 2:15 p.m., during her Reading Activity lesson. On June 5, 2017, Ms. Avalos conducted a conference meeting with Respondent regarding her observation. One June 6, 2017, Ms. Avalos memorialized the substance of the conference meeting in a memorandum.

85. Ms. Avalos noted that Respondent failed to establish instructional outcomes for the planned activities in her lesson plans when she wrote only the lesson subject and activity to be conducted next to the timeframe for the lesson. She failed to adhere to her lesson plans or follow her posted schedule, and she failed to prepare a science or writing lesson even though she listed them in her lesson plans. Instead, Respondent began a reading activity that she had prepared for the next day.

86. In the area of delivery of instruction, Respondent failed to use subject matter content standards to establish rigorous learning goals, in that she did not review the subject of lesson, she did not remind students of previous activities they completed when they learned the subject, and she did not ask them to rephrase the learning goals. During the lesson, which was about identifying the main idea, Respondent failed to follow a logical progression so that students could identify the main idea. Instead she asked students questions focused on finding details in a story. As a result, students were unable to understand the concept of a main idea and gave erroneous answers when working with their partners. In addition, when Respondent asked students to draw a picture about the main idea, which was about snakes, five students drew pictures of houses or people. Respondent failed to pace the lesson, which resulted in off-task behavior that she had to re-direct. Ms. Avalos also noted that Respondent failed to provide clear directions to students on how to work with a

partner, in that she gave verbal directions and did not model for the students what she expected them to do.

87. In the area of classroom environment, Ms. Avalos noted that Respondent failed to provide a safe and supportive classroom environment, in that she mainly focused her attention on several female students. Specifically, she gave positive praise to five female students for using their "think time," but did not praise any of the male students who were thinking quietly. Respondent failed to consistently issue appropriate consequences for off-task behavior when she moved some students' clips without giving them prior warnings, but gave other students multiple warnings before moving their clips. For example, she gave another student nine warnings before she moved his clip. Five instructional minutes were lost because Respondent failed to establish procedures for students to line up at the end of the day. Specifically, Respondent gave a series of verbal instructions that she had to repeat because instead of lining up, some students walked around the room while others gathered around the front door and began talking to each other.

88. Ms. Avalos offered Respondent the following guidance and assistance: (1) submit complete lesson plans that include the learning objectives, content standards and activities in which students will be engaged; (2) follow lesson plans and posted schedule on a daily basis to make sure all necessary content areas are covered; (3) design lessons aligned to the expected outcomes; (4) establish rigorous learning goals for the students by communicating the purpose of the lesson, asking students to repeat the objective, and reviewing it with them at the end of the lesson; (5) deliver a teacher-directed lesson that follows a logical progression in order to support student learning. Plan, prepare, and ask questions aligned to the skill/concept to be taught; (6) pace lessons so that excess time is not spent on one activity, and review the behavior

expectations with the class before the lesson to avoid having to redirect excessive off-task behavior; (7) provide clear directions to students before asking them to share with their partner by writing directions on the board as a model for visual learners, and provide a model for students to follow as they share; (8) provide opportunities for all students to share by using tools such as equity sticks – review suggestions in the handout provided (How to Protocol—Increasing Student Engagement); (9) consistently enforce the class rules by instilling consequences for students after one warning, and when students comply with the rules, consider moving their behavior clips in a positive direction, rather than only focusing on the negative behavior and consequences; and (10) establish procedures for having students line up at the end of the day to avoid the loss of instructional time. Teach the procedures, model them, and hold students accountable.

89. Ms. Avalos directed Respondent to: (1) follow her lesson plans on a daily basis to ensure she covered the necessary academic content on a daily basis; (2) enforce classroom rules, give students one warning for off-task behavior, and move students' clips if they continued off-task behavior; and (3) align the instructional activities to the objective. Ms. Avalos advised that if Respondent failed to make an immediate and sustained improvement in her performance or follow the directives, it could lead to an overall below standard performance evaluation, a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District.

2016-2017 STULL EVALUATION

90. On May 4, 2017, Ms. Avalos prepared a Stull evaluation of Respondent's performance for the 2016-2017 school year based on her formal and informal observations. Ms. Avalos commented that Respondent demonstrated a mix of developing an effective practice during the formal observation, but during the

informal observations, Respondent demonstrated minimal growth. She rated Respondent ineffective in the areas of providing supervision and controlling students and regularly preparing appropriate lesson plans. Ms. Avalos commented that Respondent's performance during the year ranged from ineffective to effective levels of performance, and that Respondent needed to improve on preparing lesson plans in advance and having them available during instructional time. She also noted that Respondent needed to demonstrate improvement in providing supervision and controlling students. Ms. Avalos gave Respondent a Final Evaluation Rating of "Below Standard Performance."

91. Ms. Avalos provided an attachment to the Evaluation that contained 22 specific deficiencies consistent with the deficiencies noted during the conference meetings. The attachment also contained 22 recommendations consistent with the assistance, guidance, and directives contained in the conference memoranda provided to Respondent during the school year. Ms. Avalos offered Respondent continued assistance in the following areas: (1) development of effective classroom management and student discipline procedures; (2) lesson planning and differentiation of instruction; (3) observation of Respondent's classroom instruction on a periodic basis, providing actionable feedback, and specific assistance and guidance; (4) review of relevant district policies; and (4) the continuation of all other assistance noted in the attachment.

92. Ms. Avalos indicated Respondent would be evaluated during the 2017-2018 school year. Respondent signed the evaluation but did not agree with it.

93. On August 23, 2017, Ms. Avalos issued to Respondent a Notice of Suspension of Certificated Employee without pay for a period of eight days, and a Notice of Unsatisfactory Service or Acts of Certificated Employee for the period of

December 7, 2016, to April 27, 2017, for: (1) unsatisfactory performance; and (2) persistent violation of and refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public school by the state board of education or by the governing board of school district employing her. Specifically, Respondent failed to follow the District's Master Plan and teaching and learning framework, the CSTP, the District's Mathematics Instructional Guide, and the CCCS for ELA and mathematics. For reasons not made clear by the record, Respondent did not serve the suspension.

SEPTEMBER 22, 2017 OBSERVATION

94. On October 18, 2017, Ms. Avalos memorialized the substance of a conference she held with Respondent on October 16, 2017, regarding Ms. Avalos' observation of Respondent's classroom on September 22, 2017, during Respondent's Language Arts activities. In the area of planning and preparation, Respondent failed to submit a lesson plan with clearly defined instructional outcomes. Instead, she included a list of loosely-related activities in the plan.

95. In the area of delivery of instruction, Ms. Avalos failed to provide two students with directions or procedures for a 10-minute Writer's Workshop sharing activity, in that she did not explain how students should call on classmates. As a result, when students raised their hands after student A. shared her paper, she did not know what to do. When Respondent told Student A. to "pick someone," Student A. walked over to a group of students as if she were playing a game. In addition, Respondent failed to explain how to ask questions, and she failed to communicate the purpose of the Language Arts activity, which was to learn the difference between fiction and non-

fiction. She did not use the District-approved materials from the Benchmark Advance²⁰ literacy program correctly when she pointed at pictures in the book instead of reading stories out loud with the students.

96. Ms. Avalos expressed concern that Respondent did not use academic language, such as "fiction," "non-fiction," and "photographs" but instead used the terms "fantasy," "reality," and "pictures." Respondent also failed to ensure that all students had an equal opportunity to participate in a question-answer session, in that she called on four students multiple times, but failed to call on the remaining 16 students at all. Also, Respondent announced to the class that she was going to use equity sticks to call on students who had not participated, but she only used the equity sticks twice.

97. In the area of classroom environment, Ms. Avalos noted that Respondent failed to effectively manage classroom routines, in that four students wandered from their seats to talk to other students when Respondent attempted to transition the class from their desks to the rug. Respondent did not redirect their behavior. Two students left the room without the restroom pass in violation of MPC policy, and Respondent did not remind them to use it. Respondent also failed to monitor or re-direct off-task behavior that took place at the students' work tables and on the rug as follows: three students stared at their papers for five minutes and did no work; two other students stopped working and looked around the room at other students for five minutes; six

²⁰ Benchmark Advance is a part of the ELA curriculum. The District trained Respondent on the curriculum the previous summer. Respondent was also allotted planning time for the Benchmark Advance curriculum during the school year during PLC and bank time.

other students looked around the room for five minutes instead of watching Respondent, and four other students put their heads on the table and closed their eyes for four minutes.

98. According to Ms. Avalos, during the conference, Respondent stated that she needed assistance with lesson plans, pacing, and the Benchmark Advance curriculum. Respondent also stated that she used popsicle sticks to facilitate student participation, but she could not get 16 students to participate. She did not recall students getting up from their table and going to another table, and she recalled all the students being on task.

99. Ms. Avalos offered Respondent the following guidance and assistance: (1) submit lesson plans with clearly defined instructional outcomes, use the District's "Lesson Design Template" (handout provided), and continue to submit lessons on a weekly basis; (2) provide students with clear directions and procedures for class activities so that students know how to interact with each other, and use the examples in "Open Ended Questions" (handout provided); (3) clearly communicate the purpose and objective at the start of each lesson instead of beginning with an activity; (4) use instructional materials correctly by referring to the Teachers Resource System and follow the suggested steps; (5) use academic language to deepen student understanding of key vocabulary, slow the speed of delivery of the lesson, explain key words, and provide examples; (6) use techniques to ensure students have an equal opportunity to participate in class discussions and activities, use equity sticks consistently throughout the lesson, and review the provided handout entitled "Reaching all Students"; (7) manage classroom routines by ensuring all students know how to efficiently transition from their work tables to the rug, enforce the MPC expectation regarding student use of bathroom passes, and review The Well Managed

Classroom that was provided during the conference; (8) monitor student behavior throughout the lesson, check for understanding, redirect off-task student behavior; (9) consistently enforce the class rules by instilling consequences for students after one warning, and when students comply with the rules, consider moving their behavior clips in a positive direction, rather than only focusing on the negative behavior and consequences; and (10) Ms. Avalos to assist with resources or training on lesson planning, pacing, and the curriculum. Ms. Avalos advised that if Respondent failed to make an immediate and sustained improvement in her performance, it could lead to an overall below standard performance evaluation, a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District.

OCTOBER 26, 2017 OBSERVATION

100. On November 8, 2017, Ms. Avalos memorialized the substance of a conference she held with Respondent on November 6, 2017, regarding Ms. Avalos' observation of Respondent's classroom on October 26, 2017, during Respondent's ELD/ELA lessons. In the area of planning and preparation, Ms. Avalos expressed concern that Respondent demonstrated little knowledge of how five-year-old ELA students learn. Specifically, Respondent failed to plan activities that included visuals to help students internalize the lesson content. Instead, she conducted the entire activity orally. Respondent also failed to frequently check for understanding and comprehension throughout the lesson, and moved quickly from one activity to another.

101. In the area of delivery of instruction, Ms. Avalos noted that Respondent failed to follow the ELD Start Smart lesson, in that she did not remind the students of the skill she was teaching, and she did not provide them with the prompt and response starters and conversation pattern game cards that were included in the

curriculum. In addition, Respondent's pace of the ELA Shared Reading activity did not allow time for students to process or independently practice the skill of identifying the initial and final sounds of words. As a result, 17 of 19 students struggled with producing the final sounds, and instead repeated the initial sound for three words. Instead of slowing the pace of the lesson, Respondent moved on to learning center activities.

102. Ms. Avalos asserted that there was no evidence that Respondent implemented the questioning techniques she was previously provided as assistance and guidance. She noted that Respondent failed to use effective questioning techniques to elicit student responses, in that she asked multiple questions in rapid succession, asked and answered questions herself, and provided answers before she asked questions. Respondent also failed to clearly communicate the purpose of a Shared Reading lesson, which was "I can find the setting in my story." She wrote the objective on the board, but then told the students that they would not be learning about the setting. Respondent then stated, "There is morning . . . afternoon . . . and night" as examples of settings, and then asked the students to repeat the objective.

103. In the area of classroom environment, Ms. Avalos noted that Respondent failed to establish a clear set of consequences for off-task behavior. Specifically, her behavior chart had two sets of consequences. In addition, Respondent did not review the rules with students who were off-task, but reprimanded them for not following them. Moreover, Ms. Avalos noted that Respondent sent a group of five students to work on iPad learning centers in order to use two applications. Two of the students used a different application than the ones mentioned by Respondent, and another student played music. Respondent did not re-direct those students.

104. Despite having been provided assistance, guidance and directives during the June 5, 2017 conference with Ms. Avalos, as memorialized in the June 6, 2017 Conference Memorandum, Respondent failed to enforce the classroom rules. She also failed to give students one warning for off-task behavior and to ensure that their clips are moved on the behavior chart if they continued the behavior.

105. Respondent did not prepare the iPads prior to student use. When one student struggled with the headphones, another student attempted to help her. Consequently, the student was unable to plug in the headphones and the sound of the iPad disturbed the other students who were working. Respondent never helped the student to make sure she successfully accessed the instructional activity.

106. Respondent failed to efficiently transition students from the independent centers to the rug, in that she gave seven commands in rapid succession and, as a result, 12 of 16 students did not walk to the rug and sit down. Six students walked to the rug and stood talking to each other, four other students walked out of the classroom to the restroom, one student hid, and another student walked over to a table and flipped over two water bottles repeatedly.

107. Respondent failed to establish a classroom environment where students showed mutual respect for one another. While two students gave a presentation at the front of the room, several students engaged in the following off-task behavior: five students looked around the room; another student played with his sweater and Respondent had to take it away from him; another student played with a piece of paper, but Respondent did not take it away; and two students yawned loudly twice, but Respondent did not redirect them. In addition, several students were talking and Respondent asked them to listen to the presentation with inconsistent results. Because

Respondent had to repeatedly address off-task behavior, Respondent was not able to focus on the students who were presenting.

108. According to Ms. Avalos, during the conference Respondent asserted that she used visual aids during a previous lesson and you did not believe she needed it for the observed lesson. She also asserted that there was not enough time to cover all components of the program, and she disagreed with Ms. Avalos' description of the lesson contents. Respondent indicated that she did not recall the students getting out of their seats and following directions, and she contended that her classroom environment was never chaotic. She also stated that she did not have enough headphones for the iPads.

109. Ms. Avalos offered Respondent the following assistance and guidance: (1) plan activities that include visuals for every lesson to make the learning comprehensible for students, and plan for frequent checks for understanding and comprehension and do not move quickly from one activity to another; (2) follow the ELD Start Smart lessons to help EL students understand the various activities, and take up to two days to teach ELD lessons to avoid feeling rushed to cover all of the content in one day; (3) pace your activities to allow the five-year-old students to internalize the skills taught, and provide independent activities for them to practice them; (4) use effective questioning techniques to illicit student responses, allow adequate wait time for students to process the questions and offer a response, refrain from providing answers before asking the question or Respondent answering the question herself. Read the article "Effective Classroom Discussions," which was provided to Respondent; (5) clearly communicate the purpose of the lesson and review the learning objective prior to the lesson to understand it. Ms. Avalos provided Respondent with a handout entitled "Know Your Learning Target," and suggested that she read and review it; (6)

remind the students of the class rules when they engage in off-task behavior, and align the consequences charts so that it is clear to the students; (7) prepare the iPads in the morning as students are eating their breakfast, and plug the headphones into each one so the students do not struggle with them; (8) establish effective transitions, and consider having a signal for each step like holding up one finger to signal "clean-up time," and two fingers to signal "stand behind your chair," etc.; (9) establish a classroom environment where students show mutual respect for one another, remind them of behavior expectations before asking student volunteers to share their work, and hold them accountable; (10) continued access to a PAR Consulting Teacher; and (11) Ms. Avalos to provide additional iPad headphones.

110. Ms. Avalos directed Respondent to: (1) communicate the purpose and objective of each lesson to the students, effective immediately; (2) establish classroom routines by ensuring that all students know how to efficiently transition from their work tables to the rug; and (3) monitor student behavior throughout each lesson, and redirect off-task behavior. Ms. Avalos advised that if Respondent failed to make an immediate and sustained improvement in her performance or follow the directives, it could lead to an overall below standard performance evaluation, a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District.

NOVEMBER 7, 2017 OBSERVATION

111. On December 4, 2017, Ms. Avalos memorialized the substance of a conference she held with Respondent on November 30, 2017, regarding her observation of Respondent's classroom on November 7, 2017, during Respondent's mathematics lesson. In the area of delivery of instruction, Ms. Avalos noted that Respondent failed to pace her lesson to allow time for the students to internalize or independently count objects by ones. Specifically, Respondent spent only four minutes

on modeling how to count out loud to the number 14, and spoke rapidly while doing so. She provided eight directions to the students in 30 seconds. Respondent failed to use effective questioning techniques to elicit student responses, in that she did not provide adequate wait time after asking questions. She asked 22 questions in rapid succession.

112. Ms. Avalos asserted that she saw no evidence that Respondent implemented the previous assistance and guidance regarding effective questioning. According to Ms. Avalos, during the conference, Respondent requested an audio recording of the lesson.

113. Ms. Avalos offered the following assistance and guidance to Respondent: (1) pace activities to allow five-year-old students to internalize the skills taught and provide independent activities from them to practice the skills; (2) use effective questioning techniques to illicit student responses, allow adequate wait time for the students to process the question and offer a response, and refrain from providing answers before asking the question or answering the questions. Ms. Avalos provided a handout entitled "The Art of Questioning in Math Class" and suggested that Respondent read and review it; (3) Ms. Avalos to arrange for Respondent to observe a colleague perform a lesson that demonstrates lesson-pacing and questioning techniques during the month of December, which Ms. Avalos would observe with Respondent and debrief with her; (4) continued access to Respondent's PAR teacher; and (5) Ms. Avalos to provide a copy of the recording.

114. Ms. Avalos asserted that she and Respondent observed Respondent's colleague deliver a lesson. Respondent contended that she did not receive a recording of the lesson.

115. Ms. Avalos directed Respondent to: (1) pace activities to allow five-year-old students to internalize the skills Respondent planned to teach; and (2) use effective questioning techniques to illicit student responses. Ms. Avalos advised that if Respondent failed to make an immediate and sustained improvement in her performance or follow the directives, it could lead to an overall below standard performance evaluation, a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District. Ms. Avalos also advised Respondent that if she were to evaluate Respondent at that time, she would issue a Below Standard Evaluation, which may lead to a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District.

JANUARY 22, 2018 OBSERVATION

116. Ms. Avalos conducted an observation of Respondent's classroom on January 22, 2018, from 12:42 p.m. to 1:44 p.m., during her Reader's and Writer's Workshop activities. Ms. Avalos conducted a conference with Respondent regarding her observation on January 31, 2018. On February 1, 2018, Ms. Avalos memorialized the substance of the conference and her observations.

117. In the area of planning and preparation, Ms. Avalos noted that Respondent submitted generic lesson plans that did not include the sequence of activities for the Reader's and Writer's Workshop activities that she planned to teach. In addition, Respondent failed to plan and design writing activities aligned to the "I can" objective, in that she wrote one objective in her plans ("I can use correct letter form, spaces, and my writing is neat"), but wrote on the whiteboard in class a different objective ("I can use a circle map to help me write").

118. Despite having been provided assistance, guidance, and directives during the June 5, 2017 conference with Ms. Avalos, as memorialized in the June 6, 2017 Conference Memorandum, Respondent failed to align instructional activities to the objective.

119. In the area of delivery of instruction, Respondent failed to state the learning objective at the beginning of both the Reader's and Writer's Workshop activities. She failed to properly bring the Reader's Workshop lesson to a close when she did not review the "I can" statement or ask the students what they learned. Instead, Respondent moved on to the Writer's Workshop activity.

120. Despite having been provided assistance, guidance, and directives during the November 6, 2017 conference with Ms. Avalos, as memorialized in the November 8, 2017 Conference Memorandum, Respondent failed to communicate the purpose and objective of each lesson to the students.

121. In addition, during the Writer's Workshop activity, Respondent incorrectly modeled how to find the main idea in the story when she asked the students to describe what they saw in the lesson book instead of asking them to look for details in the story, which would lead them to the main idea. Respondent then accepted and wrote several adjectives provided by the students that did not align to the story's main idea. Further, Respondent failed to provide a model for how to write an "All about story" that students could access when working independently. As a result, while the 15 students who worked independently were supposed to write about transportation, six students drew pictures for a story they previously wrote, and one student picked foxes as a topic.

122. In the area of delivery of instruction, Respondent asked questions in rapid-fire succession, answered several of her own questions, and failed to provide students with enough wait time to offer responses before she began asking additional questions.

123. Despite having been provided assistance, guidance, and directives during the November 20, 2017 conference meeting with Ms. Avalos, as memorialized in the December 4, 2017 Conference Memorandum, Respondent failed to use effective questioning techniques to elicit student responses.

124. Respondent failed to hold students accountable for the class rules when she inconsistently redirected students' off-task behaviors, and did not hold them accountable by enforcing consequences. Specifically, students continued to talk although she stopped several times to redirect students' attention by giving positive praise and awarding points to groups that were on task. In addition, Respondent failed to ask students to move their clips although they were off-task, as follows: (1) six of Respondent's 20 students engaged in off-topic conversation while sitting on the rug, and the noise from the conversation became progressively louder; (2) two male students made loud noises as they sat on the rug; and (3) Respondent redirected Student N. several times for touching the student next to her and for not properly sitting on the rug. Although Respondent gave Student N. several warnings, she never directed her to move her clip.

125. Despite having been provided assistance, guidance, and directives during the November 6, 2017 conference meeting with Ms. Avalos, as memorialized in the November 8, 2017 Conference Memorandum, Respondent failed to monitor student behavior throughout each lesson and redirect off-task behaviors.

126. During the Reader's Workshop, Respondent failed to establish procedures for the partner activity, in that she gave a series of confusing, contradicting verbal directions about how to discuss the main idea. As a result, of the 10 pairs of students, two chose a book from a backpack and read it independently without discussing the main idea; a female student in another group looked through a book, while her male partner applied lip balm; two male students in another group argued over who was going to hold the book and eventually got separate books and did not discuss the main idea together; and another student read through a book without discussing the main idea, put it away in a backpack, and read a second book.

127. Ms. Avalos offered Respondent the following assistance and guidance: (1) submit comprehensive lesson plans that include the sequence of activities for each content area. In addition to the learning objective, Respondent to state what she planned to do during the model, guided and independent practice; (2) plan and design learning activities aligned to the "I Can" learning objectives identified in the plans; (3) prepare activities in advance, state the learning objective at the start of each activities, and review them at the end. Read and review the provided Knowing Your Learning Target handout; (4) deliver the activities in a clear and concise manner, and when teaching a skill such as main idea, focus on having the students find the details in the story; (5) provide a written model for the students that they can reference as they work independently, ask for clarification before they begin working, and if Respondent expected students to work on a particular topic, do not spend time asking them to share about other topics; (6) students need time to think about a question once Respondent asked it, therefore ask one question, pause and wait for an answer. Do not interrupt the students' thinking by restating the question several times; (7) hold students accountable to class rules, consistently redirect off-task behavior, and move students' chart clips after one verbal warning is given; (8) establish procedures for each

learning activity, consider the number of steps that students need to remember, and keep the directions simple so that five-year-old students understand; and (9) continued access to a PAR Consulting Teacher.

128. Ms. Avalos directed Respondent to: (1) use effective questioning techniques to elicit student responses, effective immediately; (2) communicate the purpose and objective of each lesson to the students, effective immediately; (3) monitor student behavior throughout each lesson, and redirect off-task behavior, effective immediately; (4) submit lesson plans with clearly defined instructional outcomes and activities, effective February 5, 2018; and (5) provide students with clear directions and procedures for all class activities, effective immediately. Ms. Avalos advised that if Respondent failed to make an immediate and sustained improvement in her performance or follow the directives, it could lead to an overall below standard performance evaluation, a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District. Ms. Avalos also advised Respondent that if she were to evaluate Respondent at that time, she would issue a Below Standard Evaluation, which may lead to a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District.

FEBRUARY 22, 2018 OBSERVATION

129. Ms. Avalos conducted an observation of Respondent's classroom on February 22, 2018, from 9:30 a.m. to 10:51 a.m., during her ELD activities lesson. Ms. Avalos conducted a conference with Respondent regarding her observation on March 12, 2018. On March 13, 2018, Ms. Avalos memorialized the substance of the conference and her observations.

130. Ms. Avalos saw no evidence that Respondent implemented the tools provided to her as assistance and guidance. Specifically, in the area of delivery of instruction, Respondent failed to state the learning objective at the beginning of the lesson, and she did not bring closure to the lesson by reviewing the learning objective.

131. Despite having been provided assistance, guidance, and directives during the November 6, 2017 conference with Ms. Avalos, and memorialized in the November 8, 2017 Conference Memorandum, Respondent failed to communicate the purpose and objective of each lesson to students.

132. Ms. Avalos noted that Respondent asked a series of questions in rapid-fire succession without providing wait time, and she answered several of the questions herself. Respondent also failed to model the language skills being taught, and as a result, the students did not use the skills when they worked with their partner.

133. Despite having been provided assistance, guidance, and directives during the November 6, 2017 conference with Principal Avalos, and memorialized in the November 8, 2017 Conference Memorandum, Respondent failed to use effective questioning techniques to elicit student responses.

134. In the area of classroom environment, Ms. Avalos noted that Respondent failed to monitor or redirect off-task behavior. Specifically, she did not ask students who were off-task to move their clips on the behavior chart in the following instances: Student N. walked around the classroom while all of the students sat on the rug, and when she finally did sit, she was on her knees touching items on a table. In addition, student N. left the rug to get tissue and stayed standing for three minutes. Ms. Avalos also noted that while students were supposed to be working with their partners, two sets of students did not talk to each other (one of the students had his head down).

Student D., who was on the rug in front of Respondent, jumped on his knees and then put his head in his hands instead of looking at Respondent. At another point during the lesson, Student D. shouted out, and turn around three times to look at the students behind him. Respondent only warned him to listen to the lesson once. Ms. Avalos asserted that she expected Respondent to be able to effectively manage her classroom because of her tenure.

135. Despite having been provided assistance, guidance and directives during the November 6, 2017 conference with Principal Avalos, and memorialized in the November 8, 2017 Conference Memorandum, Respondent failed to monitor student behavior throughout each lesson and redirect off-task behaviors, effectively immediately.

136. According to Ms. Avalos, during the conference Respondent stated that she created a checklist as a reminder to state the objective and review it at the end of the lesson. Respondent contended that she restated a question in order to provide scaffolding for the students. She stated she had not been trained how to provide all of the ELD lessons. However, Respondent had been trained in the curriculum, she practiced teaching the lessons, and the lesson had been planned during bank time. Respondent further contended that she tried not to discipline student N. because she could be very disruptive when disciplined.

137. Ms. Avalos offered Respondent the following assistance and guidance: (1) clearly state the learning objective at the beginning of each activity and review it with the students at the end; (2) ask a question, provide three to five seconds of wait time before Respondent called on a student to answer, and do not repeat the question several times so as not to confuse the students; (3) model in a clear and concise manner what she expects the students to do, go step-by-step by the process, and

ensure that the students understand what to do before asking them to complete the task independently; (4) consistently monitor and redirect student off-task behavior by providing one warning for a student who engages in off-task behavior and ask them to move their clip if they require redirection again, to demonstrate consistency with instilling consequences for their behavior; (5) Ms. Avalos reminded Respondent that they observed a colleague teach an English lesson on February 8, 2016 and the lesson was structured, the teacher reviewed the skill on a chart, both a model and non-model constructive conversation was modeled with a student, routines and procedures were in place, "think time" was provided for the students, and the lesson was appropriately paced; and (6) continued access to a PAR Consulting Teacher.

138. Ms. Avalos directed Respondent to: (1) communicate the purpose and objective of each lesson to the students, effective immediately; and (2) monitor student behavior throughout each lesson, and redirect off-task behavior, effective immediately. Ms. Avalos advised that if Respondent failed to make an immediate and sustained improvement in her performance or follow the directives, it could lead to an overall below standard performance evaluation, a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District. Ms. Avalos also advised Respondent that if she were to evaluate Respondent at that time, she would issue a Below Standard Evaluation, which could lead to a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District.

Subsequent Evaluation

139. Ms. Avalos observed Respondent in the classroom on April 12, 2018, from 1:07 p.m. to 2:03 p.m., during her Writer's Workshop phonics activities. Ms. Avalos noted that although Respondent submitted lesson plans for the week, she did not align activities to the learning objectives listed in the plans. Specifically,

Respondent stated in her plans that students would use a graphic organizer to write a persuasive piece. However, she only assigned the students to complete the organizer but did not address the persuasive piece. For the phonics activity, Respondent indicated in her plans that students would blend CVC words and manipulate the beginning and end of the words. However, during the lesson, Respondent only focused the students on changing the beginning letter. Ms. Avalos also noted that Respondent failed to prepare advanced phonics lessons to challenge the 17 out of 20 students who received benchmark scores on the DIBELS assessment.

140. In the area of delivery of instruction, Respondent did not clearly communicate the purpose of the learning objective (writing a persuasive piece), in that she asked the students to read out loud, "I can use a graphic organizer to help me write a persuasive piece" ("I can" Statement), but she did not explain what the terms "persuasive" or "graphic organizer meant." When it became clear that the students could not pronounce or define the terms "graphic organizer" and "persuasive," Respondent merely repeatedly read the terms out loud without explaining what they meant. She failed to ensure the students knew what they meant before proceeding with the lesson. When Respondent directed the students to talk to their partners about what they were learning, they simply repeated the "I can" Statement.

141. Ms. Avalos noted that Respondent failed to model for the students how to construct a writing piece and instead focused on filling out the graphic organizer. As a result, students merely copied what Respondent had written on the board, and nine out of 20 students did not complete the task.

142. Respondent failed to follow the District's curriculum to deliver the phonics activity, and she did not implement the components of the lesson as outlined in the teacher's edition. For example, she did not hold up letter cards and have the

students repeat the sounds, and she did not allow the students to manipulate words to make different sounds.

143. Respondent failed to use one consistent method for getting the students' attention. During the lesson, she counted backwards from five four times and she counted backwards from 10 once. As a result, Respondent received inconsistent results in getting the students to focus on her. She then stated, "Eyes one me when I count to three." However, after Respondent counted to three, students continued to talk, and two students stood by their desks instead of sitting on the rug as directed by Respondent.

144. Respondent failed to implement her class rules in that she did not consistently enforce the consequences for off-task behavior. As a result, students inconsistently responded to her redirection. For example, after she redirected student D. twice, she asked him to move his clip down on the behavior chart. He walked over to the chart, stood in front of it for five minutes waiving his clip in the air and touching the other students' clips without any redirection from Respondent. Respondent did not redirect student R. when he turned around while sitting on rug and looked at the other students instead of writing words on his individual whiteboard. She redirected another student four times before asking the student to move her clip on the behavior chart. Another student talked continuously while sitting on the rug. Respondent redirected him twice but did not ask him to move his clip.

145. Ms. Avalos offered Respondent the following assistance and guidance: (1) lesson plans serve as a guide for daily instruction; align activities to the learning objective listed in the lesson plan to ensure all necessary content is covered; (2) plan differentiated learning activities to meet the various academic needs of the students. Plan enrichment activities to challenge the students who scored Benchmark on DIBELS

and CORE Phonics assessments; (3) clearly communicate the purpose of the learning activities to help the students understand what they are learning. Clarify any language in the "I Can" statements that the students may have difficulty understanding and explain in kid-friendly terms what they mean; (4) deliver the learning activities in a clear and concise manner, and align the writing skills to the Kindergarten Common Core State Standards for writing. When reviewing a graphic organizer, do not focus solely on the procedure for completing the graphic organizer, and model for them how to transfer the information on it to write several sentences around the topic; (5) follow the District-adopted Benchmark Advance teachers' resources to plan and deliver ELA activities, and review the activities in advance to have a clear understanding of the content; (6) use a consistent method for getting the students' attention. Give the command, wait for the students to respond, and redirect any students who do not; (7) implement effective routines and procedures to allow for a smooth transition from one activity to another. When sending the students back to their seats, have a system in place, and consider dismissing them by rows to avoid having them talk and huddle around their desks; (8) implement class rules and enforce consequences for off-task behavior. Clearly explain the rewards system so the students understand exactly what behavior goals and rewards they are working toward; and (9) reflect on the support received from the PAR Consulting Teacher and implement what was learned.

146. Ms. Avalos directed Respondent to: (1) monitor student behavior throughout each lesson, and redirect off-task behavior, effective immediately; (2) submit lesson plans with clearly defined instructional outcomes and activities, effective immediately; (3) establish classroom routines by ensuring that all students know how to efficiently transition from their work tables to the rug; (4) clearly communicate the learning objective to the students and clarify any terms that may confuse them,

effectively immediately; (5) follow the District-adopted Benchmark Advance Teacher Resource System to plan and deliver ELA activities, effective immediately; and (6) provide a written model for the students that they can reference as they work independently, effective immediately. Ms. Avalos advised that if Respondent failed to make an immediate and sustained improvement in her performance or follow the directives, it could lead to an overall below standard performance evaluation, a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District. Ms. Avalos also advised Respondent that if she were to evaluate Respondent at that time, she would issue a Below Standard Evaluation, which could lead to a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District.

147. A. Respondent submitted a written response to the April 30, 2018 conference memo. In the area of planning and preparation, Respondent stated that it was the students' first time using the graphic organizer, teachers change their lesson plans at times to meet the needs of their students, and that the students were able to correctly use the graphic organizer the next day. Respondent asserted that although 17 of 20 students scored at the benchmark level, some students were still confused about beginning sounds. She further asserted that she was never told that students were required to explain the learning objective to each other; however, the class was working on trying to explain the learning objective in their own words and some students were better at it than others.

B. In the area of delivery of instruction, Respondent stated her explanation that she did not follow the Benchmark Advance Teachers Resource System to deliver the phonics lesson on the letter "k" because it was not a part of her lesson and it was not a part of her objective. She further stated that she did not teach all the lessons from the guide book because it was too much to cover, so she selected parts

of the guide in different areas to help her students with their learning needs. Respondent asserted that she asked Ms. Avalos on several occasions to clarify what part of the Benchmark program she was expected to use, but she never received clarification. She indicated that she planned to attend training in the summer on how to use the phonological awareness lessons. Respondent stated that she typically sent students back to their seats from the rug by row color, but on the day of the observation, she sent them to their seats all at once in order to save time. She further stated that after some reflection, she would continue to use her normal method of sending students to their seats. Respondent stated that she reviewed her rules with her class on a daily basis, and that she regularly enforced them with respect to the behavior chart and having students move their clips accordingly.

2017-2018 STULL EVALUATION

148. On April 25, 2018, Ms. Avalos prepared a Stull evaluation of Respondent's performance for the 2017-2018 school year based on her formal and informal observations. She scheduled a Final Evaluation conference meeting for April 23, 2018, and rescheduled it for April 25, 2018, pursuant to Respondent's request. Respondent did not attend either meeting. Ms. Avalos issued the Final Evaluation in absentia.

149. Ms. Avalos commented that while Respondent's practice during the formal planned observations was mostly developing, her observations and data from informal observations demonstrated that Respondent did not meet the "developing" standard. Ms. Avalos saw no evidence that Respondent made attempts to progress in meeting the data-based and growth objectives Respondent planned and discussed with Ms. Avalos at the beginning of the school year. Ms. Avalos commented that in area of professional responsibilities, Respondent's performance had mostly been at the effective level. However, she rated Respondent ineffective in the areas of providing

supervision and controlling students, and rated her as developing in the area of regularly preparing appropriate lesson plans. She advised Respondent to continue working on submitting comprehensive lesson plans and consistently implementing her classroom management plan. Ms. Avalos further commented that Respondent exhibited ineffective practice in several instructional elements, and she demonstrated minimal growth despite receiving multiple forms for feedback. She gave Respondent a Final Evaluation Rating of "Below Standard Performance."

150. Ms. Avalos provided an attachment to the Evaluation that contained 22 specific deficiencies consistent with the deficiencies noted during the conference meetings. The attachment also contained 22 recommendations consistent with the assistance, guidance, and directives contained in the conference memoranda provided to Respondent during the school year. Ms. Avalos explained that she made the recommendations so that Respondent could improve and become an effective teacher. She offered to continue to provide Respondent with the following assistance in the following areas: (1) lesson planning and implementing instructional strategies; (2) opportunities for professional development, both on and off-site; (3) the opportunity to observe other teachers to view implementation of instructional strategies and classroom management systems; (4) review of relevant district policies on interactions with students; and (5) continuance of all other assistance noted in the attachment. Ms. Avalos indicated Respondent would be evaluated during the 2018-2019 school year.

151. On May 24, 2018, Ms. Avalos issued to Respondent a Notice of Suspension of Certificated Employee, and a Notice of Unsatisfactory Service or Acts of Certificated Employee for the period of May 2017, to February 2018, for: (1) unsatisfactory performance; (2) unprofessional conduct; and (3) persistent violation of

and refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public school by the state board of education or by the governing board of school district employing her. Specifically, Respondent failed to follow the District's Master Plan and teaching and learning framework, the CSTP, the District's Mathematics Instructional Guide, and the CCCS for ELA and mathematics.

152. Ms. Avalos recommended in the notice of Unsatisfactory Service of Certificated Employee that Respondent be suspended for 15 days and dismissed from the District. She stated her explanation that she made the recommendations because despite being a teacher for more than 20 years and receiving three years of assistance and guidance, Respondent's teaching practice did not improve over the two years that Ms. Avalos observed her. Ms. Avalos noted that she offered assistance and guidance to Respondent, and then had to issue directives to her because the assistance and guidance was not implemented. Ms. Avalos contended that she continued to observe repeated deficiencies with Respondent's classroom management, delivery of instruction, and lesson planning and preparation. Consequently, Ms. Avalos stated that she did not believe Respondent's teaching would improve if she was allowed to continue in the classroom. Ms. Avalos contended that Respondent's teaching was ineffective and resulted in a delay of instruction to the students. Ms. Avalos expressed concern that Respondent's teaching practice cognitively harmed students in that they experienced gaps in learning and did not learn the necessary skills and concepts that would prepare them for first grade. She stated that the time she spent conducting numerous observations and conference meetings with Respondent took time away from her other duties and adversely impacted her performance as a principal. For reasons not made clear by the record, Respondent did not serve the suspension.

153. Rosalinda Guerrero Elmore is a Certificated Performance Evaluation Support (CPES) Coordinator with the District's Division of Human Resources. She obtained a Bachelor of Arts degree from California State University, Northridge in 1997 and a Master of Arts degree in Educational Leadership. She also earned MSTC, BCLAD, and administrative credentials. Ms. Elmore previously taught third, fourth, and fifth grades, she was an instructional coach in the subject of mathematics for pre-kindergarten through fifth grade students, an assistant principal, and an elementary school principal for six years. She is familiar with the CSTP and the District's teaching and learning framework.

154. As a CPES Coordinator, Ms. Elmore works with principals and assistant principals to co-observe teachers in the classroom. She explained that each year she, along with principals and assistant principals, undergo online training to calibrate their observations and ensure uniformity of performance critique. Ms. Elmore further explained that it is her practice to debrief with her co-observer following the observation to memorialize deficiencies, and the evidence aligned to them, by comparing notes. She also assists in drafting conference memoranda, and helps to develop a plan to address any deficiencies. Ms. Elmore stated that for every deficiency identified, assistance and guidance is offered that is aligned to help improve the teacher's practice. She asserted that if a deficiency is not observed by both co-observers, it is not included in the conference memorandum.

155. Ms. Elmore asserted that Respondent was assigned to her caseload because of her Below Standard evaluations. She co-observed Respondent in the classroom with Ms. Avalos on the following dates: December 7, 2016, March 2, 2017, April 27, 2017, May 18, 2017, September 27, 2017, October 26, 2017, January 22, 2018, and April 12, 2018. Ms. Elmore stated that on those dates, she and Ms. Avalos entered

the classroom at the same time and sat at opposite ends of the room. She further stated that she and Ms. Avalos met to debrief following the observations according to her typical practice. They discussed their observations and assistance and guidance to address the noted deficiencies. Either she prepared the draft conference memoranda using both sets of notes, or Ms. Avalos would prepare the draft conference memoranda. Although Ms. Elmore did not co-observe Respondent with Ms. Avalos January 12, 2017, March 16, 2017, November 7, 2017, or February 22, 2018, she assisted Ms. Avalos with drafting the conference memoranda.

156. Ms. Elmore stated that the conference memoranda accurately memorialized the jointly identified deficiencies, and that for the observations she did not attend, she accurately prepared the conference memoranda from Ms. Avalos' notes. She asserted that the assistance and guidance provided to Respondent, including the handouts, were typically issued by the District to assist underperforming teachers. Ms. Elmore also asserted that during the observations, she saw no evidence that Respondent implemented the assistance, guidance, or directives she previously received.

157. Frances Baez is the District's Administrator of Instruction. In that position she oversees 150 schools in Local District East. She earned a Ph.D. in Teacher Education from Claremont College, a Bachelor of Arts degree in Spanish Literature from the University of California, Los Angeles, and multi-subject and administrative services credentials from California State University, Los Angeles. She is familiar with the CCSS, and most recently provided training to teachers in common core standards and language arts in June 2019. Ms. Baez has conducted teacher performance evaluations for more than 10 years, and estimated that she performed hundreds of evaluations during that time. In addition, as a part of her duties, she has rendered

decisions on whether a teacher is teaching to standards. Also, Ms. Baez utilizes resources to calibrate her observations that describe strategies and techniques, including classroom management strategies, to improve student outcomes. Ms. Baez asserted that those resources allow her to determine whether a lesson is effective and of sufficient quality. Upon questioning, Ms. Baez acknowledged that she had never been a kindergarten teacher and she did not observe Respondent in the classroom. However, Ms. Baez's testimony was afforded weight based upon her training and experience.

158. On August 22, 2018, Ms. Baez sent Respondent a letter scheduling a meeting for September 4, 2018, to discuss her possible dismissal from the District. She explained in the letter that the purpose of the meeting was to allow Respondent to present any statements or documents in response to the Notice of Unsatisfactory Service with Recommendation for Dismissal and Notice of 15-Day Suspension, issued on May 24, 2018, and the Notices of Unsatisfactory Service and Notice of 8-Day Suspension, issued on August 23, 2017. Ms. Baez explained that thereafter, she would make a recommendation whether or not the District would move forward with Respondent's dismissal, which would be submitted to the Board of Education.

159. A. In a written response to the August 22, 2018 letter, Respondent stated that she attended elementary, middle school, and high school in the District, and was inspired by her elementary school teachers to become a teacher herself. While in middle school and high school, Respondent tutored elementary school students and worked as a tutor at the YMCA. While in college, she tutored at-risk high school students, and she assisted two-preschool teachers while she earned her credential. She also taught Adult School for one year.

B. Respondent asserted that she taught bilingual students because she is fully bilingual herself, as she speaks both English and Spanish. She further asserted that she enjoyed working with children and teachers and wished to continue. Respondent contended that she worked hard her entire teaching career and she tried her best to prepare her lessons and materials. She further contended that she consistently attended professional development during her career to improve her teaching, and that she tried her best to collaborate with other teachers to better serve her students. Respondent noted that in the summer of 2018, she attended professional development in Benchmark Advance, science, math, Social-Emotional Harmony, and phonemic awareness in order to improve her performance and better serve her students. She concluded by stating her desire to remain employed by the District and expressing her belief that she motivated her students to always do their best and not give up when challenged.

C. Although Respondent indicated in her response that she included attachments for Ms. Baez's review in lieu of attending the September 4, 2018 meeting in person, Ms. Baez contended that she did not receive any additional documents from Respondent.

160. Ms. Baez reviewed the conference memoranda prepared by Ms. Sanchez and Ms. Avalos, Respondent's responses to them, the charges contained in the Notices of Unsatisfactory Performance, and the assistance, guidance, and directives issued to Respondent. She noted the repeated deficiencies in the areas of lesson planning, classroom management, and the delivery of instruction. Ms. Baez determined that the evidence gathered during the observations supported a conclusion that Respondent failed to demonstrate any appreciable improvement despite being offered assistance and guidance, and despite having been issued directives aimed at improving her

teaching. She determined from her review of the documents that Respondent's performance was not likely to improve. Ms. Baez expressed concern that Respondent's teaching caused harm to students in the form of learning gaps and lack of foundational reading and writing skills. She further opined that Respondent should not return to the classroom. Ms. Baez stated that she did not find Respondent's response to the August 22, 2018 letter compelling, because Respondent did not address the noted deficiencies, she did not explain how she applied the assistance and guidance, and she did not demonstrate that her teaching practice had improved.

161. On September 6, 2018, Ms. Baez sent Respondent a letter stating that, based on the information available to her, including Respondent's position paper, she concluded that the proposed disciplinary action should be forwarded to the Board of Education for disposition, and that she would be recommending that the District move forward with Respondent's dismissal.

Respondent's Evidence

162. Respondent mostly testified in a general, global fashion, and did not address the 91 allegations set forth in the Accusation with much specificity. However, the recurring themes throughout Respondent's testimony were: (1) her belief that she did not receive the necessary assistance and guidance that would allow her to address the needs of her students who were in foster care or had Individual Education Programs (IEPs), and therefore she did receive the help she needed to be an effective teacher; (2) she always prepared her lesson plans and wrote the objective of the lesson on the board in her class; (3) she did not receive the bulk of the assistance and guidance listed in the conference memoranda either during the conference meetings or in her mailbox; (4) Ms. Avalos arbitrarily subjected her to criticism; (5) she complied

with all provided assistance and guidance; and (5) her requests to Ms. Avalos for help either went unanswered or Ms. Avalos told her that she did not have time to assist her.

163. Respondent offered one evaluation from each of the following school years 1995-1996, 1999-2000, 2002-2003, 2003-2004, 2005-2006, 2006-2007, and 2007-2008. All of the evaluators rated Respondent as "Meets Standard Performance." The evaluators commended Respondent for her teaching, and indicated that Respondent continued to grow professionally. They asserted that she sought assistance and accepted feedback and coaching, and her lessons were always organized. The evaluators noted that Respondent planned her lessons for effective delivery of instruction, and she provided an environment for effective learning. They further commented that Respondent demonstrated classroom management and that she used a variety of questions to facilitate student participation.

164. On the other hand, one of the evaluators noted that Respondent needed to "work on creating an appropriate climate for learning for her students. She needs to work on planning and implementing classroom procedures and routines that allow her to teach and not spend a lot of time with constant student disruption." (Ex. H, p. 3.) The evaluator recommended that Respondent observe other teachers for examples of how to maintain control of a classroom and minimize disruptions. (*Id.*, p. 2.) In addition, two evaluators from three different school years noted that Respondent needed to improve her classroom management skills, provide specific directions to the students, and check for student comprehension. They further suggested that she use proximity to improve student behavior, ask open-ended questions, model every lesson, and communicate learning goals for all students. (Exs. D, E, and F.) These noted deficiencies are similar to the deficiencies noted by Ms. Avalos.

Character Testimony

165. Deisy Sandoval, Elizabeth Amaral, and Mireya Jimenez, who are teachers at MPC, provided character testimony. Ms. Sandoval, Ms. Amaral, and Ms. Jimenez described Respondent as a hardworking teacher who came to work early to plan her lessons and remained at school long after the school day. They asserted that Respondent had good relationships with the teachers at MPC and they observed only positive interactions between Respondent and her students. Additionally, Respondent sought guidance on how to improve her teaching and accepted feedback.

166. Upon questioning, Ms. Sandoval, Ms. Amaral, and Ms. Jimenez, who have all been teachers with the District for more than 10 years, all acknowledged that kindergarten is a critical year for student learning and that if the students do not receive effective teaching, the student could experience learning gaps. They also agreed that it is important for teachers to comply with directives issued by the principals and align lessons with the CSTP. Ms. Amaral, Ms. Jimenez, and Ms. Sandoval further acknowledged that the District's teaching and learning framework is based on the standards, and that it is important to follow assistance and guidance provided by evaluators. Finally, they all testified that teachers at MPC are expected to check their mailboxes on campus daily.

167. Ms. Amaral and Ms. Jimenez served as Respondent's union representative and were present during conference meetings.²¹ They observed Ms.

²¹ Ms. Jimenez was present during the February 6, 2017, April 3, 2017, May 15, 2017, and June 6, 2017, conference meetings. Ms. Amaral was present during the

Avalos read from what they presumed was a draft conference memorandum and hand Respondent various documents, which they believed to be the handouts mentioned by Ms. Avalos during the meetings.²² Ms. Amaral and Ms. Jimenez asserted that Ms. Avalos issued directives to Respondent. They described Respondent as willing to accept the critiques and abide by the assistance, guidance, and directives given by Ms. Avalos. However, Ms. Amaral and Ms. Jimenez never observed Respondent's teaching, and therefore they lacked direct knowledge of whether Respondent implemented the assistance and guidance or complied with the directives.

Credibility Findings²³

The Commission found the testimony of Ms. Sanchez, Ms. Avalos, and Ms. Elmore to be credible, as they observed Respondent independently over a period of

March 23, 2017, October 18, 2017, November 18, 2017, December 4, 2017, February 1, 2018, March 13, 2018, and April 30, 2018 conference meetings.

²² Ms. Jimenez and Ms. Amaral did not receive copies of the documents.

²³ In this matter, the Commission evaluated the credibility of the witnesses pursuant to the factors set forth in Evidence Code section 780: the demeanor and manner of the witness while testifying, the character of the testimony, the capacity to perceive at the time the events occurred, the character of the witness for honesty, the existence of bias or other motive, other statements of the witness which are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified, and the attitude of the witness toward the proceeding in which the testimony has been given. The manner and demeanor of a witness while testifying are the two most important factors a trier of fact considers when judging credibility. The

time, and reached similar conclusions concerning Respondent's performance. Their perspectives were corroborated by the testimony of Ms. Baez, who reviewed documents submitted by Respondent and concluded that Respondent should be dismissed from District. Ms. Sanchez, Ms. Avalos, and Ms. Elmore testified in a clear, concise, unequivocal manner, and supported their perspectives with descriptive facts. The Commission afforded great weight to the testimony of Ms. Avalos and Ms. Elmore.

168. The testimony of Respondent was afforded less weight, as her testimony was disjointed, difficult to follow, and did not fully address the allegations set forth in the Accusation. Her contentions that Ms. Avalos' depiction of her teaching practice was inaccurate, she had never seen the CSTP, the District did not provide her with training on the curriculum, she did not receive the assistance and guidance offered by Ms. Avalos, and that she always prepared and taught from her lesson plans were unconvincing. Additionally, Respondent was slow in answering questions, and appeared to have great difficulty recalling facts. Consequently, the Commission gave more weight to the written memos penned by Respondent in response to Ms. Avalos' conference memos than to her testimony itself, as they better explained Respondent's perspective. However, the Commission did not find that Respondent's responsive memos discredited either the testimony of, or the conference memos penned by, Ms. Avalos, nor did the Commission consider them weightier than the testimony of Ms. Elmore.

mannerisms, tone of voice, eye contact, facial expressions and body language are all considered, but are difficult to describe in such a way that the reader truly understands what causes the trier of fact to believe or disbelieve a witness.

LEGAL CONCLUSIONS

1. Absent a statute to the contrary, the burden of proof in disciplinary administrative proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.) The "burden of proof" means the obligation of a party, if he or she is to prevail on a particular fact, to establish by evidence a requisite degree of belief or conviction concerning such fact. (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1128.) The burden of proof in this proceeding is thus on District to prove the charging allegations.

2. The standard of proof in this proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040; Evid. Code, § 115.) "The phrase 'preponderance of evidence' is usually defined in terms of probability of truth, e.g., 'such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.' (BAJI (8th ed.), No. 2.60.)" (1 Witkin, Evidence, Burden of Proof and Presumptions § 35 (4th ed. 2000).)

3. A permanent District employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44932, 44934, and 44944.)²⁴

4. Under section 44944, subdivision (b), the dismissal hearing must be conducted by a three-member Commission on Professional Competence. Two members of the Commission must be non-district teachers, one chosen by the

²⁴ Further references to statute are to the Education Code.

Respondent and one by the district, and the third member of the Commission must be an administrative law judge from the Office of Administrative Hearings.

5. When a school board recommends dismissal for cause, the Commission may only vote for or against it. Likewise, when suspension is recommended, the Commission may only vote for or against suspension. The Commission may not dispose of a charge of dismissal by imposing probation or an alternative sanction. (§ 44944, subd. (c)(1)(3).)

6. Section 44932 provides in part:

(a) No permanent employee shall be dismissed except for one or more of the following causes:

(1) Immoral or unprofessional conduct.

[¶] . . . [¶]

(4) Unsatisfactory performance.

[¶] . . . [¶]

(7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her.

7. Unprofessional conduct as used in § 44932, subd. (a)(1), may be defined as conduct that violates the rules or ethical code of a profession or is unbecoming a member of a profession in good standing. (*Board of Ed. v. Swan* (1953) 41 Cal.2d 546,

553, overruled in part, on another ground, in *Bekiaris v. Board of Ed.* (1972) 6 Cal.3d 575, 588, fn. 7.)

8. The term "unsatisfactory performance" is not specifically defined in the Education Code or case law. Inasmuch as there is separate cause for dismissal for unprofessional conduct in subdivision (a) of section 44932, and we are not to presume the Legislature intended to enact completely duplicative statutes (*In re Maes* (2010) 185 Cal.App.4th 1094, 1110), unsatisfactory performance must mean something different from unprofessional conduct. In fact, section 44938, subdivision (c), specifies that "unsatisfactory performance" does not include any other cause for dismissal specified in section 44932. While unprofessional conduct can be determined by analyzing a teacher's conduct relative to the broader educational community, unsatisfactory performance must be analyzed with an eye toward the teacher's performance as evaluated by his or her employing school district. Section 44938 supports this proposition. Section 44938 requires a charge of unsatisfactory performance to be preceded by a written notice of unsatisfactory performance, and refers to section 44660 et seq., which in turn establishes guidelines for how school districts should evaluate and assess the performance of their certificated employees. Thus, cause for discipline may be established if a certificated employee performs unsatisfactorily to his employing school district. However, the purpose of the statute giving tenure to teachers is to insure an efficient permanent staff of teachers whose members are not dependent on caprice for their positions as long as they conduct themselves properly and perform their duties efficiently and well. (*Bakersfield Elementary Teachers Ass'n v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1293, fn 20, citing 56 Cal.Jur.3d (2003) Schools, § 411, p. 757.) Therefore, a reasonable limitation is that an employing school district cannot be arbitrary or capricious in

making decisions regarding whether a certificated employee has performed unsatisfactorily.

9. Cause for discipline against a teacher must relate to her fitness to teach within the meaning of factors enumerated in the case of *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230 (*Morrison*). The California Supreme Court set forth guidelines (eight factors) to aid in determining whether the conduct in question indicates such unfitness:

- (1) The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated.
- (2) The proximity or remoteness in time of the conduct.
- (3) The type of credential held by the person involved.
- (4) The extenuating or aggravating circumstances surrounding the conduct.
- (5) The praiseworthiness or blameworthiness of the motives resulting in the conduct.
- (6) The likelihood of the reoccurrence of the questioned conduct.
- (7) The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.
- (8) The publicity or notoriety given to the conduct.

10. Not all "Morrison factors" need be present for the Morrison test to be satisfied. (*Governing Board of ABC School District v. Haar* (1994) 28 Cal.App.4th 369.) Moreover, the Morrison analysis need not be conducted on each individual fact established, but rather can be applied to the accumulated facts established collectively. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1457.)

11. "Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing her," which concerns Education Code, section 44932, subdivision (a)(7), requires a "showing of intentional and continual refusal to cooperate." (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196.)

12. The term "willful" carries a volitional coloration which excludes the notion of accidental or even negligent conduct. (*Coomes v. State Personnel Bd.* (1963) 215 Cal.App.2d 770, 775.) A refusal needs to be "conscious, intentional and deliberate to be willful." (*Goodhew v. Industrial Acc. Commission* (1958) 157 Cal.App.2d 252, 257.) "Willful" is "voluntary and intentional, but not necessarily malicious." (Black's Law Dict. (9th ed. 2009) p. 1737, col. 2.)

13. Section 44939 provides in part:

Upon the filing of written charges, duly signed and verified by the person filing them with the governing board of a school district, or upon a written statement of charges formulated by the governing board, charging a permanent

employee of the district with immoral conduct, . . . with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, . . . the governing board may, if it deems such action necessary, immediately suspend the employee from his duties and give notice to him of his suspension, and that 30 days after service of the notice, he will be dismissed, unless he demands a hearing.

14. Section 44944, subdivision (a)(5), provides that no testimony shall be given or evidence introduced relating to matters that occurred more than four years prior to the date of the filing of the notice. As such, in the instant matter, the statute of limitations began running on February 6, 2015, based on Factual Finding 5.

15. The CSTP provides in part:

Effective teaching happens through thoughtful planning focused on defined outcomes for student learning and leveraging of teachable moments. . . . Effective teaching is a form of inquiry wherein teachers use evidence and analysis of students' strengths and struggles, and their own performance, to guide their practice in support of student learning.

The CSTP are organized around six interrelated domains of teaching practice. The following are the six standards:

- Engaging and Supporting All Students in Learning
- Creating and Maintaining Effective Environments for Student Learning
- Planning Instruction and Designing Learning Experiences for All Students
- Assessing Students for Learning
- Developing as a Professional Educator

[¶] . . . [¶]

[E]ach standard is organized into a set of big ideas or elements that identify key areas within that particular domain of teaching. Each element is further illustrated with reflective questions that encourage teachers to explore aspects of teaching practice throughout their careers.

[¶] . . . [¶]

Standard 2

Creating and Maintaining Effective Environments for Student Learning

Teachers promote social development and responsibility within a caring community where each student is treated fairly and respectfully. They create physical or virtual learning environments that promote student learning, reflect diversity, and encourage constructive and productive interactions among students. They establish and maintain learning environments that are physically, intellectually, and

emotionally safe. Teachers create a rigorous learning environment with high expectations and appropriate support for all students. Teachers develop, communicate, and maintain high standards for individual and group behavior. They employ classroom routines, procedures, norms, and supports for positive behavior to ensure a climate in which all students can learn. They use instructional time to optimize learning.

[¶] . . . [¶]

2.5 Developing, communicating, and maintaining high standards for individual and group behavior

As teachers develop, they may ask, "How do I . . ." or "Why do I . . ."

- *facilitate student participation in classroom decision-making?*
- *foster and support appropriate student behavior?*
- *collaborate with students . . . to establish, maintain, and communicate standards for student behavior?*
- *work proactively to present and respond quickly to minimize behavioral issues?*
- *understand and respond to appropriate behaviors in an efficient, fair, and equitable way?*

- *help all students learn to take responsibility for their own behavior and actions?*

[¶] . . . [¶]

2.7 Using instructional time to optimize learning

As teachers develop, they may ask, "How do I . . ." or "Why do I . . ."

- *organize instruction to optimize learning time?*
- *pace instruction to accomplish learning goals?*
- *re-direct students' off-task behavior to make the most of instructional time?*

[¶] . . . [¶]

Standard 6

Developing as a Professional Educator

Teachers reflect on their teaching practice to support student learning. They establish professional goals and engage in continuance and purposeful professional growth and development. They collaborate with colleagues and engage in the broader professional community to support teacher and student learning. . . .

[¶] . . . [¶]

6.3 Collaborating with colleagues and the broader professional community to support teacher and student learning

As teachers develop, they may ask, "How do I . . ." or "Why do I . . .?"

[¶] . . . [¶]

- *collaborate with teachers, administrators, . . . to ensure that all students' diverse learning needs, interests, and strengths are met?*
- *remain receptive to the feedback of colleagues, mentors, and supervisors in support of my teaching practice and student learning?*
- *benefit from and contribute to professional organizations to improve my teaching?*

16. As discussed in more detail below, District established, by a preponderance of the evidence, that Respondent demonstrated unprofessional conduct (§ 44932, subd. (a)(1)), unsatisfactory performance (§ 44932, subd. (a)(4)), persistent violation of or refusal to obey reasonable regulations (§ 44932, subd. (a) (7)), and willful refusal to perform regular assignments without reasonable cause (§ 44939). As such, cause exists to dismiss Respondent from her position as a permanent certificated employee of District.

Unsatisfactory Performance

17. As set forth in Legal Conclusion 8, unsatisfactory performance must be analyzed with an eye toward the teacher's performance as evaluated by Respondent's employing school district. The evidence showed District issued Notices of Unsatisfactory Service and Suspension on two occasions to Respondent, for her failure to perform her duties satisfactorily, despite numerous warnings, directives, and substantial assistance and guidance. Specifically, from January 18, 2017 through March 13, 2018, Respondent received nine conference memos outlining her repeated failures to state the learning objective or applicable standard at the beginning of a lesson, align activities to the learning objective, develop and consistently apply class rules and consequences, demonstrate classroom management, monitor student learning and check for understanding, utilize effective questioning strategies, provide written models for students to utilize while they work independently, develop lesson plans with clearly defined instructional outcomes, monitor student behavior throughout her lessons, follow lesson plans, and many other deficiencies. These failures, established by the credible testimony of Ms. Avalos and Ms. Elmore, who observed Respondent's poor work performance over the years, remained uncorrected, despite multiple and extended interventions provided by the administration and a PAR professional.

18. Despite the Notices of Unsatisfactory Services, potential suspensions, multiple below standard Stull evaluations, and the guidance and assistance, directives, and coaching resources provided by Ms. Sanchez and Ms. Avalos, Respondent continued to demonstrate an apparent inability or unwillingness to perform as required. Given these factors, District demonstrated by a preponderance of the evidence that Respondent performed unsatisfactorily for multiple consecutive years, in violation of Code section 44932, subd. (a)(4).

Persistent Violation of or Refusal to Obey School Laws / Willful Refusal to Perform Regular Assignments

19. As set forth in Legal Conclusions 11 and 12, cases interpreting whether a teacher has persistently and willfully violated or refused to obey school laws require a showing of intentional and continual refusal to cooperate. Here, the evidence showed that Respondent failed to follow multiple directives, and failed to show immediate and sustained improvement after the issuance of below standard Stull evaluations, multiple notices of unsatisfactory performance, and potential suspension. Specifically, Respondent failed to comply with directives, failed to use effective questioning techniques, failed to develop lesson plans with clearly defined instructional outcomes and activities, failed to state the learning objective at the beginning of the lesson, failed to ensure the proper and complete delivery of lessons to her students, and failed to follow pacing plans. As a result, during numerous observations, Respondent's students were confused, unable to correctly complete their work independently, and in some cases did not at all due to Respondent's failure to properly explain how to complete activities. In some instances, Respondent provided an incorrect model.

20. Additionally, Respondent failed to establish and implement a behavior system as required by MPC's policies. In particular, MPC's policy expressly directs teachers to establish routines and procedures to keep interruptions to a minimum in order to improve student achievement. Respondent repeatedly failed to develop and implement "an effective classroom management plan that [included] clear expectations, rewards, and consequences," and to post, teach, demonstrate, and consistently implement the class rules by praising student compliance or issuing appropriate consequences. The evidence showed that Ms. Avalos observed Respondent's class on a number of occasions where students were off-task, out of

their seats, talking, making noise, leaving the classroom without permission, and other inappropriate behaviors, often without Respondent addressing or redirecting the inappropriate behavior. Although Ms. Avalos directed Respondent repeatedly to adopt and implement an effective behavior support system for her students, Respondent failed, or was otherwise unable, to comply.

21. These same factors also demonstrated Respondent's refusal to perform regular assignments, particularly her failure to comply with multiple directives issued by Ms. Sanchez and Ms. Avalos. Given the above, District has demonstrated by a preponderance of the evidence that Respondent persistently violated or refused to obey school laws, including MPC's policies and the District's job description, and the Cstp, and willfully refused to perform regular assignments, in violation of Education Code §§ 44932, subd. (a)(7), and 44939.

22. Respondent contended that the granting of her Motion for Immediate Reversal of Suspension supports a legal conclusion that she did not willfully refuse to perform her regular assignments. The ALJ that heard the motion found that the allegations contained in the Statement of Charges did not demonstrate that Respondent's actions were willful. However, it is important to note that pursuant to section 4439, subdivision (c)(1), the ruling on the motion was based solely on the facts alleged in the Statement of Charges and not any of the evidence considered by the Commission.

Unprofessional Conduct

23. As set forth in Legal Conclusion 7, unprofessional conduct addresses whether a teacher is unfit or unsuitable for teaching, by reason of inadequacies, and whether a teacher's conduct is unbecoming of a member of a profession in good

standing, respectively. Here, the evidence demonstrated that Respondent failed to adhere to and/or carry out specific teaching duties, in direct violation of numerous warnings or directives issued by Ms. Sanchez and Ms. Avalos. Specifically, Respondent failed repeatedly to follow lesson and pacing plans, teach effective directed lessons, follow the teacher's edition in Treasures (reading/language arts program) and correctly deliver ELD/ELA lessons and the Reader's and Writer's Workshop activities, resulting in an overall failure to teach those core subjects with fidelity. Additionally, the evidence showed that Respondent's repeated failure to demonstrate effective classroom management, monitor and address student behavior, coupled with her repeated instances of unpreparedness, often resulted in a disorganized classroom, as well as an on-going loss of instructional time for her students. Respondent's failure to comply with numerous directives, most of them recurring, issued to her from March 14, 2016, through February 22, 2018, totaling 21, and correct her teaching inadequacies, represented a sustained inability to meet the expectations of the District, thereby demonstrating her unfitness for service.

24. Similarly, to the extent that Respondent's failure to comply with repeated directives related to a continual unwillingness to adhere to specific orders issued by those in authority over her, such as using effective questioning techniques, submitting lesson plans with clearly defined instructional outcomes and activities Respondent planned to teach, and communicating the purpose and objective of her lessons to her students, reasonably demonstrated a level of defiance, constituting conduct unbecoming of a member of a profession in good standing (i.e., unprofessional conduct).

Morrison Factors

25. As set forth in Legal Conclusion 9, after establishing unprofessional conduct, it must be established whether such evident conduct renders Respondent unfit to teach, pursuant to the *Morrison* factors:

A. The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated. This factor has maximum application, and weighs in favor of adverse action. As set forth in detail above, Respondent failed to follow numerous directives issued by Ms. Sanchez and Ms. Avalos, and correct a number of teaching deficiencies, despite an inordinate amount of assistance and guidance, including the assistance of the school psychologist, a behavior specialist, and a Foster Care Youth Counselor, modeling, and consulting provided by a PAR professional. Consequently, Respondent's students experienced a constant loss of instructional time, the delivery of ineffective directed lessons, instruction that lacked fidelity concerning the reading/language arts and math programs, a poorly managed classroom, and a number of other unacceptable practices, all obstructing their ability to access the curriculum.

B. The proximity or remoteness in time of the conduct. This factor has moderate application, and weighs in favor of adverse action, in that the events in question are not remote, as they occurred between one and two years ago.

C. The type of credential held or applied for by the person involved. This factor has minimal application, in that the type of credential held by Respondent did not serve as a relevant factor either explaining, defending, or excusing her failures to carry out her duties as a teacher.

D. The extenuating or aggravating circumstances surrounding the conduct. This factor has maximum application, and weighs in favor of adverse action. The evidence showed that Respondent was given extensive, intensive, and repeated assistance and guidance, including at least nine conferences with Ms. Avalos between January 8, 2017, and March 12, 2018, and the assistance of a PAR professional, but failed to make a marked and sustained improvement in her performance as a teacher. In addition to the assistance and guidance, Respondent received multiple Notices of Unsatisfactory Service and faced suspension, but none of those actions resulted in Respondent correcting her deficiencies.

E. The praiseworthiness or blameworthiness of the motives resulting in the conduct. While Respondent's performance was not praiseworthy, the "motives" underlying her conduct remain unclear. Therefore, this factor has minimal application.

F. The likelihood of the recurrence of the questioned conduct. This factor has maximum application and weighs in favor of adverse action. The evidence clearly established that Respondent was unsuccessful in remediating her deficiencies, despite substantial intervention. As such, if Respondent is permitted to return to the classroom, the likelihood is great that she would continue to perform with evident unfitness.

G. The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons. The parties raised no constitutional issues in this matter.

H. The publicity or notoriety given to the conduct. This factor has no application in this matter, as the record includes no evidence of publicity or notoriety stemming from Respondent's conduct.

26. In light of the above, the *Morrison* factors, on balance, indicate that Respondent is unfit to teach, as the number of factors with maximum application outweighs the number of factors with less. Specifically, District has met its burden of demonstrating that Respondent's retention in the profession poses a significant danger of harm to its students, school employees, or others who might be affected by her actions as a teacher.

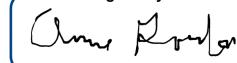
Conclusion

27. Based on the foregoing, the Commission has determined, by unanimous vote, that cause exists to dismiss Respondent from her employment with the District as a permanent certificated employee, for her unsatisfactory performance, persistent violation of or refusal to obey reasonable regulations, willful refusal to perform regular assignments without reasonable cause, and unprofessional conduct.

ORDER

The Accusation against Respondent Lourdes Prieto is sustained and Lourdes Prieto shall be dismissed as an employee of the Los Angeles Unified School District forthwith.

DATE: December 26, 2019

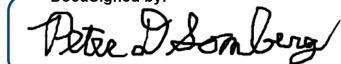
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ANNE GORDON

Commissioner

Commission on Professional Competence

DATE: December 26, 2019

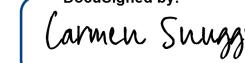
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PETER D. SOMBERG

Commissioner

Commission on Professional Competence

DATE: December 26, 2019

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CARMEN D. SNUGGS

Administrative Law Judge

Office of Administrative Hearings