

**BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE**

**In the Matter of:**

**OAH NO. 2010031071**

**REBECCA RODRIGUEZ (EN 217730),**

**A PERMANENT CERTIFICATED  
EMPLOYEE**

**Respondent.**

**DECISION**

This matter was heard by a Commission on Professional Competence consisting of Administrative Law Judge Humberto Flores and Commission members Karen Eldridge and Jacqueline Levine. The matter was heard in Los Angeles, California, on August 23, 24, 25, 29, 30 and 31, 2010.

Donald Erwin, Attorney at Law, represented the Los Angeles Unified School District (LAUSD or District). Lawrence Trygstad, Attorney at Law, represented Rebecca Rodriguez (respondent).

Evidence was received and the matter was submitted for decision.

**STATEMENT OF THE CASE**

The District filed an Accusation and Statement of Charges pursuant to Education Code sections 44932 and 44939, alleging that respondent engaged in unprofessional conduct, immoral conduct, dishonest conduct, and persistently violated or refused to obey school laws or laws of the state or reasonable regulations prescribed for the government of public schools by the State Board of Education or the governing board of the school district employing her.

Respondent applied for and accepted a full-time LAUSD position as a teacher of Pre-School Mixed (PSM) Special Education classes at Montague Charter Academy while continuing to serve as the full-time Executive Director of Montague. Respondent engaged in dishonest and immoral conduct because she received full-time compensation for both positions from July through November 2009, even though she stopped teaching the PSM classes in mid-August and turned the classes over to a substitute teacher. Further, respondent certified payroll for herself as the PSM teacher and certified payroll for the substitute teachers who actually taught the PSM classes. The Commission determined that dismissal was appropriate in this case.

## **FACTUAL FINDINGS**

1. Respondent is a permanent certificated employee of the District.
2. On March 22, 2010, Vivian Ekhian, Chief of Human Resources, made and filed the Accusation and Statement of Charges in her official capacity.
3. Through the Accusation and Statement of Charges, the District is requesting that respondent be dismissed from service pursuant to Education Code sections 44932 and 44939.
4. In 2004, respondent applied for and was granted a leave of absence by the District for the 2004/2005 school year to take a position as Assistant Principal at an elementary charter school known as Montague Charter Academy (Montague). Respondent asked for and was granted leaves of absence for the succeeding four school years ending with the 2008/2009 school year.<sup>1</sup>
5. Respondent worked as assistant principal at Montague for three years. In July 2007, respondent was promoted to the position of Executive Director of Montague, a position similar to that of a principal in a public school. Her duties included oversight of the instructional program, supervision and evaluation of classroom teachers, and preparation and submission of state and federal reports in a timely manner.
6. Although Montague is an independent charter school, during the 2008/2009 school year, LAUSD authorized certain District classes to be taught at the Montague campus, including two Pre-School Mixed (PSM) classes, which began in February 2009. A PSM class is a pre-school special education class where the students have different disabilities, including autism, mental retardation and other learning disabilities that qualify them for Special Education services. At the Montague campus, there was a morning PSM class which had 15 students, and an afternoon PSM class, which had five students.
7. Respondent was aware that at the conclusion of the 2008/2009 school year, she would no longer be eligible to extend her leave of absence. By April 15, 2009, respondent would have to decide whether to return to the District or to resign.
8. In March of 2009, respondent approached Barry Blisten, a substitute teacher at Montague, and asked if he would be interested in teaching the PSM class. She informed Mr. Blisten that in order to teach the class, he would have to take and pass the CSET exam and enroll in classes. Respondent told Mr. Blisten that he would teach the class in the capacity of an intern. At the time he was told of this position, Mr. Blisten did not have the appropriate

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<sup>1</sup> LAUSD has a policy that allows a certificated employee to take a leave of absence on a year-to-year basis for as long as five years. After completion of a five year leave of absence, a certificated employee has the option to file a "Request to Return from Leave" or to resign from the District.

credential to teach the PSM class and had no experience teaching preschool children or children with developmental or learning disabilities. In July 2009, respondent informed Mr. Blisten that she would be the “co-teacher” of the PSM classes.

9(A). In April 2009, respondent filed a Request to Return from Leave with the District. Shortly thereafter, respondent spoke with Carolyn Wahlberg, an administrator with LAUSD Human Resources, about respondent’s return to the District after completion of her five year leave of absence, which was scheduled to expire on June 30, 2009. Respondent asked Ms. Wahlberg whether the District would allow respondent to teach the PSM classes at Montague. Respondent was not credentialed to teach a PSM special education class. In fact, prior to August 2009, respondent had no experience teaching preschool, special education, or teaching children with developmental disabilities.

9(B). Ms. Wahlberg informed respondent she needed to be properly credentialed to teach the PSM classes or she would have to obtain a waiver from the California Commission on Teacher Credentialing. Ms. Wahlberg did not recall whether respondent informed her that respondent intended to keep her position as Executive Director of Montague in addition to teaching the PSM classes. Respondent testified that she did in fact inform Ms. Wahlberg of her intention to continue working as Executive Director of Montague in addition to teaching the PSM classes.

10. On July 21, 2009, Ms. Wahlberg sent a letter to respondent advising respondent that she had been assigned to teach a special education class at Montague effective July 1, 2009. Respondent received from the District a salary of \$6,158.34 per month from July 1, 2009, through November 30, 2009. This salary was based on a 33 hour work week. The District’s decision to allow respondent to teach the PSM classes at Montague was made two months before respondent and the District applied for a waiver for respondent to teach the class with the Commission on Teacher Credentialing. Respondent signed the application for a waiver on September 23, 2009.

11. During the same period that respondent received her LAUSD salary to teach the PSM classes, respondent also received a monthly salary of \$14,689 to perform her duties as Executive Director of Montague.

12. On or about July 27, 2009, respondent spoke with Robert Bravo, Senior Coordinator for the Charter Division of LAUSD. Respondent informed Mr. Bravo that she intended to teach the PSM classes at Montague for four hours a day while maintaining her status as Executive Director of Montague. Mr. Bravo testified that respondent told him that she intended to work half-time or four hours in each position. Respondent also told Mr. Bravo that she would have a substitute teacher in the classroom every day in the event that her duties as Executive Director required her attention. During this conversation, respondent did not inform Mr. Bravo that she had already returned to the District and was being paid by LAUSD to teach the PSM class at Montague.

13. After discussing the matter with respondent, Mr. Bravo sought guidance from his supervisor, Jose Cole-Gutierrez. In his discussion with Mr. Cole-Gutierrez, Mr. Bravo explained that respondent would work half time (four hours) at the preschool and half-time (four hours) as Executive Director for Montague. Mr. Bravo testified that he was informed by Mr. Cole-Gutierrez that the proposed employment scenario would be okay as long as it was done in accordance with the charter school rules and authorized by the Montague governing body.

14. The PSM classes for the 2009/2010 school year began on August 3, 2009. Respondent was the assigned teacher for the classes, and Mr. Blisten was assigned by respondent to be a substitute teacher to ensure that the classes would be covered in the event of her absence. Christine Banales was the teaching assistant for the classes. Ms. Banales has 30 years experience as a special education teaching assistant.

15. Respondent tried to perform both jobs during the first two weeks of August. However, it soon became clear to respondent that she could not handle both jobs. She then made a conscious decision to essentially turn the PSM classes over to Mr. Blisten who had no prior experience teaching preschool children with learning and developmental disabilities. Then in late September she informed Mr. Blisten that he would no longer be teaching the PSM classes, and that Vanessa Valencia, another substitute teacher would take over the classes at the beginning of the next track in November 2009. Ms. Valencia had no previous experience or training in special education or in teaching preschool age children.

16. The Commission was presented with testimony of five different witnesses who gave differing estimates as to how much time respondent actually spent in the classroom as opposed to the Executive Director's office during the relevant time period. The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." *Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.

17. In this case, the Commission found that the testimony of Christine Banales to be the most credible on the issue of whether respondent attended and taught the PSM classes on a daily basis. Ms. Banales was a percipient witness who was in both PSM classes every school day for the entire period in question. Her demeanor was calm and she answered questions on direct and cross examination in a respectful, evenhanded way with no indication of bias one way or the other. Further, Ms. Banales' extensive experience as a teaching assistant in special education added credibility to her testimony.

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18. Ms. Banales testified that respondent was in the classroom on a daily basis for the morning PSM class during the first two weeks of the session and would stay for most of the morning class. According to Ms. Banales, respondent would be present at the beginning of the afternoon PSM class but at times she would receive a call from the office and would leave to take care of other matters. As time went by, respondent's time in class diminished. During the last two weeks in August and during the month of September, respondent would be present in the morning PSM class for only a few minutes and would leave after an activity called "circle time." The PSM classes were off track during the month of October.

19. Ms. Banales testified that the PSM classes resumed in November. By this time, respondent had removed Mr. Blisten from the PSM classes and reassigned Vanessa Valencia, a substitute teacher, to help teach the PSM classes. For a short time in November respondent was present and helped teach the PSM classes, along with Ms. Valencia and Ms. Banales. However during the month of November, respondent turned the class over to Ms. Valencia. According to Ms. Banales, Ms. Valencia taught the PSM classes during the last two weeks of November, and respondent was not present at the PSM classes during this period.

20. Ms. Banales' testimony was corroborated by Deanna Escalante, an office assistant who worked at the administrative office at Montague. Ms. Escalante, who worked in the office every day from 8:00 a.m. to 4:30 p.m., testified that during August 2009, respondent was in and out of her office on some days, and on other days she would be in her office for hours at a time. During September, respondent was in her office most of the day.

21. Most of the other witnesses who testified on the question of whether respondent actually attended and taught the PSM class on a daily basis exhibited some form of bias or lack of credibility as follows:

- (a) Mr. Blisten's testimony that he essentially taught the PSM classes throughout August and September was not entirely accurate. He had absolutely no experience teaching a class that presented the enormous challenges associated with supervising and teaching preschool children with serious learning and developmental disabilities. Mr. Blisten worked hard but was overwhelmed by attempting to supervise and teach such a complex and difficult class. Further, despite Mr. Blisten's hard work, respondent replaced Mr. Blisten with another substitute. These factors affected his ability to accurately observe and/or remember details and established a reason for bias.
- (b) Mona Hernandez, who was employed at Montague as a teaching assistant in the mornings and a copy clerk in the afternoon, testified that she would visit the PSM class approximately three or four times a week to deliver documents that she thought would be useful for the PSM class. She testified that each time she visited the PSM class respondent was teaching the class. The Commission found that the testimony of Ms. Hernandez on the issue of respondent's attendance at the PSM classes lacked credibility.

First of all, Ms. Hernandez was terminated for cause from her employment at Montague. Further, her testimony that she visited the PSM class four times a week was not credible because she worked as a teaching assistant every day from 8:00 a.m. to 12:15 p.m. for a third grade class that was being taught on the other side of the Montague campus. Finally, her demeanor during cross-examination showed a clear bias against the District.

22. Respondent's testimony that she attended and taught every day during the months of August, September and November was not credible. The duties and responsibilities of an Executive Director of an elementary school are difficult under the best of circumstances. The job requires a significant amount of time and energy. The job of teaching two PSM classes of students with various learning and developmental disabilities is no less daunting, especially for a person with no previous experience or training for this special assignment. Each job is complex and challenging. Indeed, by the second week in August, respondent soon found that she could not perform the duties required of both positions. As a result, respondent chose to allow Mr. Blisten, and later Ms. Valencia, to supervise and teach the PSM classes.

23. In 2009, respondent was being paid a significant salary (\$14,689 per month) to discharge her duties as Executive Director. In April 2009, respondent had to choose between returning to the District as a full-time teacher or to resign from the District. By resigning, respondent would lose seniority rights and other benefits of a certificated employee of the District. By returning to the District, respondent faced a substantial cut in pay. By offering to teach the PSM classes at Montague, respondent found a way to continue receiving her Executive Director's salary and return to the District as a certificated employee thereby preserving her seniority and benefits. In addition, she received a District salary of \$6,158 per month to teach the PSM classes.

24. Respondent's testimony that she chose to take the PSM teacher position because of her concerns regarding the lack of continuity of the PSM program is rejected. The PSM program had been in existence for only one month when she approached Mr. Blisten and suggested that she and Mr. Blisten would be co-teachers of the PSM classes. Respondent had the idea to return to the District in the capacity of a PSM teacher long before she had any continuity concerns about the program. Further, respondent's decision to turn the PSM classes over to two inexperienced substitute teachers belie her stated concerns over the PSM program and its students.

## **DISCUSSION**

25. Respondent's conduct was motivated by greed. Her conduct of attempting to teach the PSM classes with no experience and training showed a serious lack of judgment. Her lack of judgment was compounded by assigning substitutes to teach the PSM classes despite their lack of training or experience teaching preschool age children with serious learning disabilities. Respondent's decision to allow inexperienced substitutes to teach the

PSM classes adversely affected these students and the educational process by impeding the progress that these students might have made during the session. These special education students needed teachers with the specialized training and experience necessary to understand and to implement complex Individualized Education Plans that are specifically developed for each student who suffers from a learning disability.

26. Based on the Factual Findings, the District proved the following charges of the Accusation:

Charge No. 1: Respondent applied for and accepted a full-time position as a teacher of the PSM Early Education classes at Montague Charter Academy while continuing to serve as the full-time Executive Director at Montague.

Charge No. 4: From July 1, 2009 through December 2, 2009, respondent received full-time compensation as a PSM Early Education teacher at Montague while continuing to receive full-time compensation as the Executive Director of Montague.

Charge No. 5: From mid-August 2009 through November 2009, respondent certified payroll for a substitute teacher who was actually teaching the PSM Early Education classes and certified payroll for herself for the same position.

27. The established charges and the underlying facts and circumstances set forth in the Factual Findings show that respondent engaged in dishonest conduct because she certified the payroll and continued to accept a full-time salary (through November 2009) for teaching the PSM classes even though she stopped teaching these classes in mid-August.

28. Based on the Factual Findings, the District did not prove the following charges set forth in the Accusation:

Charge No. 2: The District did not prove that respondent misinformed District when she applied for full-time employment as a PSM teacher. Respondent testified that she informed both Mr. Bravo and Ms. Wahlberg that she intended to keep working as the Executive Director of Montague while taking on the position of PSM teacher for the District. Mr. Bravo's email to Mr. Cole-Gutierrez states in part that [respondent] "would be taking a teaching position at Montague while retaining the Executive Director status." Further, Ms. Wahlberg could not remember whether respondent informed her that she (respondent) intended to continue working as Executive Director while also teaching the PSM classes.

Charge No. 3: The District did not prove that beginning July 1, 2009, respondent failed to inform the District that she had not vacated her position as full-time Executive Director of Montague. As noted in Factual Findings 9 and 12, respondent informed both Mr. Bravo and Ms. Wahlberg that she intended to continue working as Executive Director of Montague in addition to performing her duties as the PSM teacher.

Charge No. 7: The District did not prove that respondent falsified documents when she signed the official register for the PSM classes as the teacher of record even though Barry Blisten actually taught the classes during the last two weeks of August, and throughout September, while Vanessa Valencia actually taught the PSM classes in November. By signing the official register, respondent did not submit “falsified documents” to the District because respondent was technically the “teacher of record” for the PSM classes, while Mr. Blisten and Ms. Valencia were hired as substitutes who were paid by Montague.

Charge No. 6 alleges that “respondent failed to inform Mr. Blisten, a substitute teacher for the LAUSD, regarding the nature of his assignment to the PSM class when she told him “not to worry about it” after he had questioned apparent irregularities of his assignment to the class where she was the teacher of record.” This charge is vague and the Commission is unsure which “irregularities” the District is referencing in the charge or what evidence supports this charge.

#### UNPROFESSIONAL CONDUCT

29. Respondent’s conduct of applying for and accepting a full-time position as a PSM teacher while maintaining her position as Executive Director, receiving compensation for both positions even though she stopped teaching the PSM classes, and allowing inexperienced and untrained substitutes to teach the PSM classes, amounts to unprofessional conduct under Education Code section 44932, subdivision (a)(1). However, the District did not comply with Education Code section 44938, which sets forth specific notice requirements and provides that a certificated employee must be given opportunity to correct any deficiencies noted. Respondent was not offered the opportunity to correct noted deficiencies. Therefore, the charge of unprofessional conduct does not supply cause for dismissal in this case.

#### DISHONESTY

31. Respondent engaged in dishonest conduct by continuing to certify her payroll and to accept her monthly salary for teaching the PSM classes even after she stopped teaching the PSM classes and turned the classes over to Mr. Blisten and Ms. Valencia. When it became clear that her duties as Executive Director of Montague would preclude her from performing her duties as the PSM teacher, respondent should have informed the District of this fact, and at that point should have either resigned from the District or resigned her position as Executive Director of Montague.

#### IMMORAL CONDUCT

30. (A) Courts have defined immoral conduct as follows:

The term immoral conduct has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual



matters, but includes conduct consistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order in the public welfare. *Board of Education v. Weiland* 1960) 179 Cal.App2d 808, 811; citing *Orloff v. Los Angeles Turf Club* (1950) 36 Cal.2d 747.

(B) Respondent's dishonest conduct was immoral because she chose her financial self-interest over the interests of the most vulnerable students in the educational system.

#### PERSISTENT VIOLATION OR REFUSAL TO OBEY THE SCHOOL LAWS OF THE STATE

32. The evidence in this case was insufficient to establish a basis for dismissal on these grounds. The District, through its representatives, was aware that respondent would continue to serve as Executive Director of Montague while teaching the PSM classes. And other District representatives helped respondent obtain a waiver from the Commission on Teacher Credentialing on order for respondent to teach the PSM classes.

#### MORRISON FACTORS

33. A determination of whether respondent is fit to teach requires an analysis based on criteria set forth in *Morrison v. State Board of Education*, (1969) 1 Cal.3d 214. In *Morrison*, the Supreme Court of California held that the determination of whether a person is fit to teach must be based on an objective and analytical approach, consisting of a review of the teacher's conduct and an assessment of a variety of specific factors including: the likelihood that the conduct may have adversely affected students or fellow teachers; the degree of such adversity anticipated; the proximity or remoteness in time of the conduct; the type of teaching certificate held by the party involved; the extenuating or aggravating circumstances, if any, surrounding the conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood of the recurrence of the questioned conduct; and 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. The determination of fitness for service required by *Morrison* is a factual one.

34. The Morrison factors are applied to this case as follows:

(1) Respondent's conduct has adversely affected the students because she attempted to teach a class without the requisite training and experience; and when she realized that she could not perform her teaching duties, she assigned substitutes who did not have the credentials, experience and training to teach the PSM classes. The children in the PSM classes were vulnerable students not only because of their learning and developmental disabilities, but also because they were so young.

(2) The degree of adversity suffered by the students is substantial because these students were already suffering from developmental and learning disabilities. The learning difficulties confronting special education students are serious, and an inference can reasonably be drawn that assigning ill prepared substitute teachers to teach the PSM classes impeded their educational progress.

(3) Respondent's misconduct is recent.

(4) There were aggravating circumstances in this case because respondent should have given up either her Executive Director position or her teaching assignment once she realized that she was incapable of performing both jobs simultaneously.

(5) Respondent's motives in attempting to teach the PSM classes while performing the duties of Executive Director were to maintain her salary as Executive Director of Montague, gain an added salary for teaching the PSM classes, and to maintain her seniority and benefits as an LAUSD certificated employee. Respondent engaged in this misconduct for her personal and financial gain, and not for the benefit of the students.

(6) Respondent testified that she learned her lesson. However, respondent should have realized from the very beginning that she would not be able to handle two very difficult full-time jobs simultaneously; especially since she did not have the requisite credential, experience and training to teach special education classes, which consisted of student populations with a complex set of problems and learning disabilities. Respondent showed a complete lack of judgment. She compounded her lack of judgment by allowing substitute teachers with no credential, experience or training to essentially take over the teaching duties of the PSM classes. Finally, respondent continued to accept a salary despite the fact that she stopped teaching the PSM classes. This shows that respondent did not learn her lesson and demonstrates a likelihood of recurrence.

(7) The requested disciplinary action would not inflict an adverse impact on or have chilling effect on respondent's constitutional rights.

35. The Morrison factors as applied in this case establish that respondent is unfit to teach because she demonstrated a lack of judgment and engaged in a dishonest course of conduct that adversely affected a vulnerable student population. The Commission has considered the evidence in support of retention but concludes that dismissal is appropriate in this case.

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## LEGAL CONCLUSIONS

1. Cause exists to dismiss respondent under Education Code section 44932, subdivision (a)(3), for dishonest conduct as set forth in the Factual Findings and the Discussion section of this decision.

2. Cause exists to dismiss respondent under Education Code section 44932, subdivision (a)(1) of the Education Code for immoral conduct as set forth in the Factual Findings and the Discussion section of this decision.

3. Cause does not exist to dismiss respondent under Education Code section 44932, subdivision (a)(1), for unprofessional conduct based on Factual Finding 29 and the Discussion section of this decision.

4. Cause does not exist to dismiss respondent under Education Code section 44932, subdivision (a)(7), (persistent violation or refusal to obey school laws) based on the Factual Findings and the Discussion section of this decision.

## ORDER

The determination of the Governing Board of the Los Angeles Unified School District to dismiss respondent Rebecca Rodriguez as a permanent employee of the District is affirmed based on Legal Conclusions 1 and 2.

DATED: \_\_\_\_\_

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HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings

DATED: \_\_\_\_\_

\_\_\_\_\_  
KARYN ELDRIDGE  
Commission Member

DATED: \_\_\_\_\_

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JACQUELINE LEVINE  
Commission Member

