

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

In the Matter of the Dismissal of:

PAMELA FINLEY,

A Permanent Certificated Employee,

Respondent.

OAH No. 2022010263

DECISION

This matter was heard on May 9 through 13 and May 16, 2022, by videoconference before the Commission on Professional Competence (Commission). The Commission consisted of Erika Herrera, Venneka Powell-Shannon, and Nana Chin, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), State of California, who presided.

Complainant Lynwood Unified School District (District or Complainant) was represented by Paul A. Aguilar, Olivarez Madruga Lemieux O'Neill, LLP.

Respondent Pamela Finley (Respondent) was self-represented. Jonathan Taylor assisted Respondent on May 9 through 12, and May 16, 2022, and Linda Woolen assisted Respondent on May 13, 2022.

Testimony and documents were received into evidence. The record closed and the matter was submitted for decision on May 16, 2022

The Commission considered the entire record in executive session on May 17, 2022. After due consideration of the entire record herein, the Commission makes the following Factual Findings, Legal Conclusions, and Order.

PRELIMINARY MATTERS

Pursuant to Education Code section 44939, subdivision (c), "An employee who has been placed on suspension pursuant to this section may serve and file with the [OAH] a motion for immediate reversal of suspension. . . . [¶] (2) The motion shall be served upon the governing board of the school district and filed with [OAH] within 30 days after service upon the employee of the initial pleading in the matter."

On April 25, 2022, Respondent filed a Motion for Immediate Reversal of Suspension (MIRS). ALJ Howard W. Cohen heard oral argument on the MIRS during a May 20, 2022 telephonic conference.

Noting that Respondent had been placed on suspension on April 20, 2016, and served with the Notice of Board Approval & Intent to Dismiss and Statement of Charges on November 1, 2021, ALJ Cohen determined that the "MIRS must be denied because it was not timely filed and served." ALJ Cohen further determined that, "[e]ven if the motion had been timely filed and served, the District has alleged facts in the

Statement of Charges which, if true, would be sufficient to constitute a basis for immediate suspension under section 44939, subdivision (c)." (*Ibid.*)

On June 1, 2022, ALJ Cohen issued an Order Denying Motion for Immediate Reversal of Suspension (Order).

On June 6, 2022, Respondent filed a letter in response to the Order and requested that "the motion be set for appeal and an investigation for reporting false information." In the letter, Respondent appeared to be asserting that: (1) the suspension should be reversed by default as the District failed to answer the MIRS; and (2) the District did not provide evidence of the allegations contained in the Statement of Issues.

Pursuant to Education Code section 44939, subdivision (c)(6), "The grant or denial of the motion is not subject to interlocutory judicial review." Therefore, OAH is without jurisdiction to consider Respondent's appeal.

Had jurisdiction been established, the District's failure to file an answer is not grounds upon which to grant a MIRS. Education Code section 44939, subdivision (c)(2), grants the District the right to serve and file a written response to the motion before or at the time of hearing; it does not require the District to respond to the MIRS.

Further, an ALJ, in determining whether to grant a MIRS, does not assess whether the District has evidence to support the allegations in the Statement of Charges. The review of a timely filed MIRS is limited "to a determination as to whether the facts as alleged in the statement of charges, *if true*, are sufficient to constitute a basis for immediate suspension under this section." (Emphasis added.) (Ed. Code, § 44939, subd. (c)(1).)

As OAH is without jurisdiction to consider an appeal of the Order, the relief requested in Respondent's June 6, 2022 letter is denied.

FACTUAL FINDINGS

Jurisdiction

1. The Board of Education (Board) is the duly elected, qualified and acting governing board of the District, organized, existing and operating pursuant to the provisions of the California Education Code and other laws of the State of California.

2. Respondent was, at all times relevant herein, a permanent certificated employee of the District assigned to Lincoln Elementary School (Lincoln Elementary) and employed as a Pre-School Teacher/Site Supervisor.

3. On October 7, 2021, Assistant Superintendent of Human Resources Brian Lucas, Ed.D., signed the Notice of Proposed Dismissal and Statement of Charges (Statement of Charges) in his official capacity. The charges contained in the Statement of Charges are for (1) evident unfitness for service pursuant to Education Code section 44932, subdivision (a)(6); and (2) physical or mental condition unfitting the employee to instruct or associate with children pursuant to Education Code section 44932, subdivision (a)(7).

4. On November 1, 2021, the District served Respondent with a written Notice of Board Approval & Intent to Dismiss and Statement of Charges.

Background

5. Between the 2013-2014 to 2015-2016 school years, Respondent was reported to have engaged in concerning behavior and conduct, including, but not limited to: (1) submitting sign-in sheets that represented students who had been present but late as absent; (2) refusing to correct the incorrect sign-in sheets (Exhs. R1, p. B1, R5, p. B14-15); (3) sending emails during instructional time instead of providing students supervision and instruction (Exh. 9, pp. A364, 365, 367); (4) threatening to record District staff and administration without their consent (Exh. R14); (5) failing to participate in observations and quality reviews (Exh. 9, pp. A366, 369); (6) attributing untrue statements and actions to District employees; (7) acting in a hostile manner to District administrators and staff; and (8) refusing to comply with supervisor directives.

6. On February 9, 2016, the Board, believing Respondent's conduct showed she was suffering from a mental illness that rendered her incompetent to teach, voted to suspend Respondent.

7. On February 12, 2016, the Board issued Respondent a Notice of Suspension Pursuant to Education Code section 44942 (Notice of Suspension), notifying Respondent of the Board's determination to suspend her from service and providing her the opportunity to appear before the Board to explain or refute the charges that gave rise to her proposed suspension in closed session. (Exh. 1, p. A80.) Respondent was also offered, in writing, the opportunity to be examined by a panel consisting of three psychiatrists or psychologists. Respondent was provided with a list of psychiatrists and psychologists from which she could select her panel. (Exh. 1, p. A85.)

8. On February 19, 2016, the Board met with Respondent and her representative. During Respondent's presentation, she requested an extension of time, which the Board denied. Following her appearance, the Board elected to proceed with suspending Respondent. On February 22, 2016, Respondent was issued a Notice of Board Action, which referred to the February 12, 2016 notice and reiterated that Respondent had the option of participating in a fitness examination and was given a list of professionals from which she could select her three-person panel.

2016 Panel Evaluation

9. Respondent decided to participate in the fitness examination. The day before the February 24, 2016 examination, Respondent notified the District of her selection. Respondent selected Laura Dorin, Ph.D., Paul Lane, Ph.D., and Lawrence Warick, M.D. (Exh. R45.) Because Dr. Lane was not available to participate in the February 24, 2016 panel, the District arranged for Brian P. Jacks, M.D., to serve as the third panel member.

10. Pursuant to Education Code section 44942, subdivision (c), the panel must be provided with a list of duties from which the employee was suspended or transferred. As there is nothing within that provision that prevents the Board from supplying panel members with more information, Respondent's panel members were provided the following documents: (1) a report from John Ayvazian, Ph.D, dated November 18, 2014; (2) a certificate of Job Description of Preschool Teacher/Supervisor; (3) the Notice of Suspension; (4) a Notice of Board Action; and (5) a copy of Education Code section 44942.

11. Before the panel began their evaluation of Respondent, the panel met to discuss how they would conduct the evaluation in a manner so as not to overwhelm

Respondent. It was decided that Dr. Jacks would take the lead in questioning and that Dr. Dorin and Dr. Warwick would ask additional questions as they saw fit.

12. The February 24, 2016 evaluation took place from approximately 1:00 p.m. until 3:00 p.m. and included: (1) an interview and (2) two tests – the Minnesota Multiphasic Personality Inventory (MMPI-2) and the Millon Clinical Multiaxial Inventory-IV (MCCMI-IV). Because it was late in the day, Respondent was allowed to take both the MMPI-2 and MCCMI-IV home to complete. However, neither test could be scored as Respondent stated she was confused by the questions and returned them with many of the answers left blank.

13. The panel members unanimously concluded Respondent was suffering from mental illness of such a degree as to render her incompetent to perform her duties and issued reports containing their conclusions on March 1 and 14, 2016, and April 12, 2016.

14. Two of the panel members, Dr. Dorin and Dr. Jacks, testified at the hearing.

LAURA DORIN, PH.D.

15. Dr. Dorin is a Clinical Psychologist at the Center for Professional Recovery and has been licensed as a psychologist in California since 1990. Dr. Dorin specializes in performing forensic fitness-for-duty evaluations requested by licensing boards, regulatory agencies, and professional organizations. Respondent's fitness evaluation was the first she has performed for the District; however, over her career, she has conducted 500 to 700 psychological evaluations and 50 to 100 fitness-for-duty evaluations.

16. During the interview, Respondent was asked about her perceptions of her interactions and each of the allegations. During questioning, Respondent manifested an "adaptive inflexibility" and an "inclination of misinterpreting the actions of others as being malevolent."

17. On March 1, 2016, Dr. Dorin issued a report of her findings, concluding Respondent was not fit for duty. Dr. Dorin explained the interview data and as well as her review of Dr. Ayvazian's report suggested that Respondent had certain characterological issues that prevented Respondent from taking responsibility for her actions, consider the perspective from another's viewpoint, and/or take direction from authority figures.

BRIAN P. JACKS, M.D.

18. Dr. Jacks is a clinical professor of psychiatry at the University of Southern California. Dr. Jacks has performed 70 to 80 fitness evaluations for school districts. In addition, he has performed fitness for duty evaluations for various state agencies including the medical board, pharmacy board, and the Workers' Compensation Appeals Board.

19. During the interview, Dr. Jacks noted that Respondent refused to answer questions and discuss certain parts of her history as she felt these were "too personal" and would only talk about her concerns about what was happening at the school.

20. On March 14, 2016, Dr. Jacks issued a report of his findings, concluding Respondent was not fit for duty. Dr. Jacks noted that, due to Respondent's "psychological problems, she would have difficulties performing as a teacher for preschool students, to properly use instructional materials, to be able to evaluate academic and social growth of pupils, to create an effective environment for learning

with various means such as displays, bulletin boards, and interest centers, to perform basic attendance and accounting and business services, to evaluate new materials, to select and requisition books, to supervise pupils out of classroom, to participate in curriculum and other developmental programs, to plan and coordinate the work of aides. She would also have difficulties being supervised." (Exh. 10, p. A646.)

LAWRENCE H. WARWICK, M.D., PH.D.

21. Dr. Warwick did not testify at the hearing. Dr. Warkwick's report, issued on April 12, 2016, also found that Respondent "is not fit to return to her duties as a preschool teacher." (Exh. 10, p. A643.) Dr. Warwick noted that Respondent did not take responsibility for any of the charges against her and became quite defensive and was "on the attack" during the interview. (*Ibid.*) In addition, the records reviewed by Dr. Warwick indicated that Respondent had serious personality issues, as well as interpersonal problems, while employed as a preschool teacher.

Court Rulings

TRIAL COURT JUDGEMENT

22. On April 15, 2016, the District provided Respondent with notice that the panel conclusively determined she was not fit for duty and recommended she not return to her duties as a preschool teacher. In accordance with Education Code section 44942, the District continued her suspension and placed her on mandatory sick leave, effective April 15, 2016.

23. Respondent demanded a hearing under Education Code section 44942, subdivision (g). Subsequently, on May 11, 2016, the District filed a complaint in the Superior Court, in the matter entitled *Lynwood Unified School District v. Pamela Finley*

(Super. Ct. L.A. County, Case No BC 620026), asking the court for a judgment in its favor finding: (1) the charges against Respondent are true; (2) the charges against Respondent constitute sufficient grounds to place Respondent on mandatory sick leave of absence; and (3) for such other and further relief as the court may deem just and proper. (Exh. 1, p. A106.)

24. On April 12, 2017, the Superior Court matter was called for hearing, The District's unopposed motion for summary judgement was granted and an Order Granting Lynwood Unified School District's Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of the Issues (Trial Court's Order) was issued. (Exh. 1, p. A108-112.) The trial court found the charges that Respondent "suffers from mental illness of such a degree as to render her incompetent to perform her duties as a preschool teacher have been established and constitute sufficient grounds for placing her on mandatory sick leave." (Exh. 1, p. A112.) On May 2, 2017, the trial court entered judgment against Respondent.

COURT OF APPEAL

25. Respondent filed a Notice of Appeal on July 12, 2017, with the Court of Appeal, Second Appellate District (Court of Appeal), appealing the trial court's judgement.

26. The Court of Appeal found that by failing to oppose the District's motion for summary judgment, Respondent forfeited any contention that the trial court erred in granting judgment to [the District]." (Exh. 1, A123.) Noting that Respondent's brief "fails to provide any coherent argument, other than vague, unsupported references to having been denied due process," the Court of Appeal affirmed the trial court's judgment on August 1, 2019.

Second Panel Evaluation

27. Respondent had two years from the date she had been placed on mandatory sick leave of absence, to request a new panel to review the previous panel's conclusion. After the two-year period, the Board could either reinstate Respondent or serve Respondent with a notice of intention to dismiss her and proceed according to Education Code section 44943.

28. On April 18, 2018, and May 9, 2018, Tom Pinkava, Respondent's union representative from the Lynwood Teachers Association (LTA), corresponded with the District inquiring as to Respondent's employment status. On June 21, 2018, the District responded by offering to convene a new panel (Second Evaluation) to review the original conclusion reached by the first panel. Respondent was to remain on an unpaid leave of absence while the review was being completed.

29. Mr. Pinkava replied on June 25, 2018, stating that he disagreed with the District's decision to keep Respondent on unpaid status, asserting that as the two years had elapsed with the Board failing to either serve Respondent with a notice of intention to dismiss or reinstate Respondent as a teacher, she should be placed back on paid status and immediately reinstated as an early childhood education teacher. Mr. Pinkava further notified that District that a Level 2 grievance had been filed to resolve the issue. (Exh. 1, p. A132)

30. The District sent letters on August 28, 2018, April 5, 2019, and June 11, 2019, attempting to schedule the second evaluation. (Exh. 1, pp. A136, A140, A142.)

31. Respondent did not select a second panel and, on October 9, 2019, the District served Respondent with a Notice of Intent to Discipline – Dismissal. The

District advised Respondent that, before the action was finalized, Respondent was entitled to a *Skelly* hearing. (Exh. 1, p. A149.)

32. The District and Respondent ultimately agreed to a *Skelly* hearing on November 6, 2019, to provide Respondent the opportunity to respond to the Notice of Intent to Dismiss. Respondent was represented at the *Skelly* hearing by Lawrence Trygstad, Attorney at Law, her legal counsel at the time. Mr. Trygstad alleged during the *Skelly* hearing that dismissing Respondent amounted to disability discrimination and that Respondent believed she was qualified to return to her position as a Pre-School Teacher/Site Supervisor. The District notified Mr. Trygstad on January 23, 2020, that the District contacted Rachel Shaw from Shaw HR Consulting (Shaw Consulting) to coordinate and facilitate the FEHA/ADA disability interactive process (interactive process). There is no evidence that Respondent objected to the District's retention of Shaw Consulting to facilitate the process. On May 12, 2020, the District notified Mr. Trygstad that the District would proceed with the interactive process with Shaw Consulting.

33. An interactive process meeting was scheduled to proceed with Shaw Consulting on May 18, 2020. Respondent contacted Shaw Consulting on May 8, 2020, requesting the meeting be rescheduled to June 8, 2020. The District agreed to the rescheduled meeting and on June 1, 2020, Shaw Consulting sent Respondent notice that her telephonic interactive process meeting was scheduled for June 8, 2020. On June 5, 2020, Mr. Taylor, Respondent's representative, contacted the District to request that the meeting be rescheduled. Shaw Consulting sent notice on June 5, 2020, confirming the cancellation of the June 8 meeting.

34. On June 22, 2020, the first telephonic facilitated meeting took place. The meeting participants were Respondent and her representative Mr. Taylor, Assistant

Superintendent Brian Lucas, the District's Representative Chuong Nguyen, Esq., and Ms. Shaw. During the meeting, Mr. Taylor requested that he be allowed to audio record the meeting. The parties agreed to the recording.

35. An interactive process meeting is the process in which an employer and employee explore options to reasonably accommodate an employee's disability. During the June 22, 2020 meeting, Respondent, through Mr. Taylor, asserted that she had been removed from her position because she had refused to "perform what appeared to be an illegal alteration" and suggested that she was being discriminated against because of her race. (Exh. 1, p. A163.) Respondent further insisted that she did not agree with the first evaluation and did not believe she was medically restricted. Based on her representations, "it was unclear if [Respondent] believes she has a disability requiring reasonable accommodations or not." (Exh. 1, p. A169.) During the meeting, the District advised Respondent that, as there is "medical reporting, from 2016, that indicates she cannot medically work as a Pre-School Teacher," the District is unable to consider her return to work as a Pre-School Teacher, and offered to assemble a new panel "to obtain an updated set of opinions to support revisiting a return to work as a Pre-School Teacher." (Exh. 1, pp. 169, 171.)

36. On July 7, 2020, Respondent notified the District that she is "not a candidate for interactive process of accommodation," as she had "not requested any accommodation nor. . . expressed a disability." (Exh. 10, p. 728.)

37. On July 21, 2020, the District sent Respondent a letter stating that it understood that Respondent was not seeking an accommodation and was merely seeking to be reinstated. The District advised Respondent that the District could not reinstate her to her position unless the District received new medical findings

supporting a medical release. The District notified Respondent on July 21, 2020, that it would be convening a new panel to conduct a second mental health examination.

38. On September 2, 2020, the District provided Respondent a list of scheduled appointments for the examinations with Dr. John Stalberg, a psychiatrist on September 10; Kim Tangen, Ph.D., a psychologist on September 11; and Dr. Jack Schnel, a psychologist on September 17, 2020. The District also offered to coordinate transportation for Respondent, at no cost, to further assist her in this regard. The District reiterated that Respondent would remain on an unpaid leave of absence while the process continued.

39. On September 4, 2020, Respondent notified the District that she would not be responding to the District's September 2, 2020 correspondence until September 15, 2020. Based on her response, the District cancelled the scheduled evaluations.

40. On September 16, 2020, Respondent sent a response complaining about her treatment by the District and the manner in which the initial evaluation was conducted and stated that she was "going to allow the Equal Employment Opportunity Commission (EEOC) and other Government/State officials to take over this matter, the ensure a non-bias resolution." (Sic.) (Exh. 1, p. A218.)

41. On October 9, 2020, the District advised Respondent that it was unclear from her September 16, 2020 response if she would be rescheduling and/or attending the examination. The District provided Respondent with two (2) date options for each provider the District had selected, to allow Respondent the option to select her preferred date and time for the respective evaluations. Respondent was required to respond to the District by October 19, 2020, with her selections and request for

transportation. Respondent responded by e-mail on October 19, 2020, attaching her written response from September 16, 2020.

42. The second panel proceeded with the scheduled evaluations, and the panel members submitted their completed questionnaires on October 29, 2020, November 19, 2020, and November 20, 2020, respectively. Due to Respondent's refusal to attend the evaluations, the panel members deferred to the prior medical findings from the first evaluation, confirming Respondent remains unable to return to work as a Preschool Teacher/Site Supervisor.

43. The District scheduled a meeting with Respondent for December 17, 2020, to ascertain whether she would be interested in a vacant alternative position. Respondent failed to attend. The District nevertheless identified three vacant non-teaching positions as possibilities for Respondent and asked her to apply by December 29, 2020. She did not do so.

Respondent's Evidence

44. At the hearing, Respondent did not refute the charges made by any of the District's witnesses. Instead, Respondent: (1) repeatedly asserted that the District's attempt to get her to submit accurate sign-in sheets constituted tampering of documents; (2) asserted that the Board, when determining whether to take disciplinary action, chose to illegally meet in closed session; (3) asserted that the District violated her Health Insurance Portability and Accountability Act (HIPAA) by initiating the interactive process that was requested by her attorney at the Skelly hearing; and (4) asserted that she is an effective teacher who has received positive work performance evaluations in the past and is supported by her coworkers and teachers.

SIGN-IN SHEETS

45. Pamela Kimball wrote a letter on Respondent's behalf dated January 28, 2018, which was admitted as Exhibit R4a. Ms. Kimball has been a teacher at Lincoln Elementary for 35 years. In her letter, Ms. Kimball explained that when the school used preprinted paper to take attendance, everything was marked with a pen. There was a small box for the attendance of each student that was divided with a diagonal. If the child was not present when the teacher first took attendance, the sign-in sheet was marked with an A above this diagonal. If the student was tardy, it was marked with a T below the diagonal. If a mistake was made, the mistake was crossed out and initialed.

46. Respondent did not follow this procedure. Instead, Respondent wrote "absent," covering the sign-in sheet's signature line, which prevented any changes to be made to show that students who were tardy were in fact present. Accordingly, Respondent submitted sign-in sheets that were false. The District provided Respondent with alternative ways to correct the erroneous sign-in sheets, but Respondent refused to correct the errors. Respondent had no alternative plan for correcting sign-in sheets that had been marked incorrectly.

CLOSED SESSION

47. On January 26, 2019, the Board was schedule to meet in closed session to discuss Respondent's employment status. Pursuant to Government Code section 54957, subdivision (b), the Board has the discretion to meet in closed session when considering "the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public

session.” There is no evidence that the Board did, in fact, meet on that day to consider Respondent’s employment or that Respondent requested a public session.

EVALUATIONS

48. On January 14, 2014, Los Angeles Universal Preschool (LAUP) conducted an evaluation of Respondent’s classroom. There were 22 children present that day. (Exh. R23.)

49. The evaluator noted that Respondent scored in the “MID” range for Positive Climate, Teacher Sensitivity Regard for Student Perspective, Behavior Management and Instructional Learning Formats. (Exh. R23, pp. B72-B77.) Respondent’s classroom scored “LOW” for Negative Climate and “HIGH” for Productivity, which were both considered areas of strength for Respondent’s classroom. (Exh. R23, pp. B72, B76.) Respondent’s classroom scored “LOW” in Concept Development, Quality Feedback, and Language Modeling, which were all considered areas of growth for Respondent’s classroom. (Exh. R23, pp. B78-B80.)

50. On February 12, 2013, LAUP conducted an Early Childhood Environment Rating Scale-Revised (ECERS-R) assessment of Respondent’s classroom. The assessment is designed to measure the quality of group programs and contains an observation component and an interview component.

51. The ECERS-R is constructed with 43 items organized into seven subscales, including Space and Furnishings (8 items), Personal Care Routines (6 items), Facilitation of Children’s Language-Reasoning (4 items), Learning Activities (10 items), Teacher Interactions (5 items), Program Structure (4 items), and Supports for Parents and Staff (6 items). An overall ECERS-R score is computed by averaging all the item scores to yield a score between 1.0 (inadequate) and 7.0 (excellent). The overall ECERS-R score

for Respondent's classroom was 5.10; the Class Dimension Score in Emotional Support was 5.94; the Classroom Organization Score was 5.50; and the Instructional Support Score was 2.42. (Exh. R25.)

CHARACTER REFERENCES

52. Respondent submitted character reference letters from former coworkers and student's parents.

Ms. Kimball wrote a letter of reference for Respondent on February 21, 2016. Ms. Kimball attributes the success of the Lincoln Elementary pre-school program to Respondent. (Exh. 55A.)

Patricia Reveles and Mira Haley, Child Care Assistants in the Lincoln Elementary pre-school program, worked with Respondent for approximately six years. On February 28, 2016, they wrote a letter on Respondent's behalf. They believed she did a "great job in preparing the children for kindergarten." (Exh. R55B.) They described Respondent as someone who "made sure [the children] felt welcome and secure" while making "learning a fun experience." (*Ibid.*)

Larry Nezhni, a former coworker, described Respondent as "a competent teacher and good person." (Exh. R55C.) Mr. Nezhni believed the charges by the District administrators were "wrongful," had nothing to do with her ability to be a teacher, and accused the administrators of acting maliciously. (*Ibid.*)

Lenora Anson, a "Teacher Leader" at Lincoln Elementary, worked with Respondent for five years found Respondent to be a person of "commendable character and capability" who "demonstrated professionalism with staff and appeared even-toned, collective and confident with her students." (Exh. 55D.)

Angel and Rosa Elizondo are parent who has had two children in Respondent's class. He and his wife believe Respondent to be "a great teacher that [sic] handles kids well and is always working on getting the students and parents ready for their next step." (Exh. 55E.) Mr. Elizondo states that he has known Respondent for 10 years and he has never heard any complaints about her from any of the parents of the students in her class. (*Ibid.*)

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The District has the burden of proving the charges by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.) Preponderance of the evidence means "the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325.)

Cause for Termination

2. A certificated employee may be dismissed for evident unfitness for service or for having a mental condition unfitting the employee to instruct or associate with children. (Ed. Code, §§ 44932 subd. (a)(6) & (7), 44942.)

3. "Evident unfitness for service" means clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) "'Evident unfitness for service' connotes

a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Id.*)

4. A panel of three psychiatrists/psychologists found respondent unfit for duty as a teacher due to a mental condition. The panel's conclusion, reached in 2016, was subsequently confirmed by the Superior Court's entry of judgment on May 2, 2017, and affirmed on appeal by the Court of Appeal on August 1, 2019. A second panel was convened that confirmed the determination in 2020. Respondent presented no medical or expert evidence suggesting she is fit for duty as a teacher.

Analysis of Morrison Factors

5. In deciding whether cause for dismissal exists under the concept of evident unfitness for service, it also must be established that a teacher's misconduct relates to her fitness to teach, within the meaning of *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 227-230.

6. While it is unclear whether the *Morrison* analysis applies to the cause for dismissal of mental unfitness to instruct children, the Commission assumes it does for purposes of this case out of abundance of caution.

7. Not all "*Morrison* factors" need to be present for the *Morrison* test to be satisfied. (*Governing Board 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 Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1457.)

8. The *Morrison* factors include: (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the teacher; (4) the existence of extenuating or aggravating circumstances; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; (7) the extent that the discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher; and (8) the publicity or notoriety given to the conduct.

9. In this case, the Commission has analyzed the *Morrison* factors and concludes the District established by a preponderance of the evidence that Respondent's misconduct makes her unfit to teach pursuant to Education Code section 44932, subdivision (a)(6), and that Respondent suffers from a physical or mental condition unfitting her to instruct or associate with children, pursuant to Education Code section 44932, subdivision (a)(7). Specifically, Respondent is a Pre-School Teacher/Site Supervisor. Respondent was found to have a mental illness to such a degree that it rendered her incompetent to perform her duties. Respondent failed to present any evidence suggesting that her condition has resolved and therefore the conduct is current. If Respondent is returned to the classroom, it is highly likely that it will adversely affect the ability of students to obtain competent instruction.

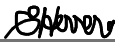
10. The District's decision to dismiss Respondent from employment is reasonable and supported by a preponderance of the evidence.

ORDER

The dismissal of respondent Pamela Finley from employment with the Lynwood Unified School District is sustained.

IT IS SO ORDERED.

DATE: 08/23/2022


Erika Herrera (Aug 23, 2022 14:07 PDT)

ERIKA HERRERA

Commission Member

DATE: 08/23/2022


Venneka Powell-Shannon (Aug 23, 2022 14:03 PDT)

VENNEKA POWELL-SHANNON

Commission Member

DATE: 08/23/2022


Nana Chin (Aug 23, 2022 14:28 PDT)

NANA CHIN

Administrative Law Judge

Office of Administrative Hearings