

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

In the Matter of the Dismissal of:

BONNIE BAYHAM,

Respondent.

OAH No. 2013051042

DECISION

The Commission on Professional Competence of the Oceanside Unified School District heard this matter in Oceanside, California, on August 6, 8, 9, 12, 13, September 17, 18, and October 9, 2013, and in San Diego, California on October 10, 2013. The Commission on Professional Competence included Heather Bice, Haywood Finder and Vallera J. Johnson, Administrative Law Judge, State of California, Office of Administrative Hearings, who served as chairperson.

Daniel R. Shinoff, Esq. and Kaley A. Lichtman, Esq., Stutz Artiano Shinoff & Holtz, represented Complainant Shelly Morr, Ed.D., Associate Superintendent of Human Resources, Oceanside Unified School District.

Fern M. Steiner, Esq., Smith, Steiner, Vanderpool, & Wax, represented Respondent Bonnie Bayham.

The matter was submitted on October 15, 2013.¹

FACTUAL FINDINGS

1. Shelly Morr, Ed.D. is the Associate Superintendent of Human Resources of the Oceanside Unified School District (OUSD).

¹ The hearing concluded on October 10, 2013. The record remained open for receipt of a Stipulation to Admit Exhibits and a Proposed Sealing Order. The Administrative Law Judge executed the Sealing Order. The foregoing documents were received on October 14, 2013. The Stipulation to Admit Exhibits is marked Exhibit 385.

2. Bonnie Bayham (Respondent) is a permanent certificated employee of the OUSD. She possesses a Clear Single Subject Teaching Credential in English and Supplementary Authorizations in Mathematics and Art. Prior to her suspension, Respondent had been employed by OUSD for 12 years, assigned to El Camino High School (ECHS). During her tenure at ECHS, Respondent taught courses that she was qualified to teach. During 2012/13 school year, she taught three periods of Art 1, one period of English 9 – advanced placement, and one period of English 9 – college prep.

3. While at ECHS, Respondent had two principals and different vice-principals. Robert Rowe (Rowe) has been principal at ECHS since the 2011/12 school year. Dan Daris was principal at ECHS for eight years prior; the last year was the 2010/11 school year. At one time or another, the vice-principals were Freddie Chavarria (Chavarria)², Oscar Felix (Felix), Chris Hurst (Hurst), Stephanie LoCasio (LoCasio), Julie Johnson (Johnson), Barbara Perez (Perez) and Barry Tyler (Tyler)³. The teacher on special assignment was Kevin Thompson (Thompson).

Discipline System

4. Complainant alleged that Respondent did not follow OUSD or ECHS student discipline protocols, that this conduct led to chaos in the administrative office and a lack of notice to parents of student discipline; in one case Respondent did not tell the parent that the student was having problems until after 11 incidents occurred.

5. During Respondent's tenure at OUSD, the district had policies relevant to student discipline. The OUSD Board policies and regulations refer to other relevant policies, regulations and California statutes.

- OUSD/BP 5144 Students states, in pertinent part:

The Board of Education desires to prepare students for responsible citizenship by fostering self-discipline and personal responsibility. The Board believes that high expectations for student behavior, effective classroom management and student involvement can minimize the need for discipline. Staff shall use preventative measures and positive conflict resolution techniques whenever possible.

Board policies and regulations shall delineate acceptable student conduct and provide the basis for sound disciplinary practices.

² Chavarria served as vice-principal at ECHS between fall 2010 until the end of 2012/13 school year.

³ Tyler was vice-principal at ECHS between fall 2010 and January 1, 2013.

Each school shall develop disciplinary rules to meet the school's individual needs.

When misconduct occurs, staff shall implement appropriate discipline and attempt to identify and address the causes of the student's behavior. Continually disruptive students may be assigned to alternative programs or removed from school in accordance with law, Board policy and administrative regulation. At all times, the safety of students and staff and the maintenance of an orderly school environment shall be priorities in determining appropriate discipline.

The Superintendent or designee shall provide professional development as necessary to assist staff in developing classroom management skills and implementing effective disciplinary techniques.

- OUSD AR 5144 Students sets forth the OUSD's list of appropriate disciplinary consequence. It states, in pertinent part:

The classroom teacher under California law is given the authority to act in the place of the parent during the time the student is under the teacher's direction. To ensure suitable control the teacher in this school district may use the following means of control:

1. Confer with student and explain the district's school behavior policy.
2. Take away privileges enjoyed by other students.
3. Lower a student's citizenship rating.
4. Assign special tasks that must be completed at a specified time.
5. Contact the parents so that mutual action can be taken to correct the abnormal behavior patterns of the student.
6. Detention after school....
7. Recess restriction.
8. Except when suspension or expulsion is required by law, the Board of Education, the Superintendent, principal's designee, at his/her discretion, may require a student to perform community service on school grounds during nonschool hours instead of imposing other disciplinary action....
9. Refer student to school administration for correction and control.

Site-Level Rules

It shall be the duty of each employee of the school to enforce the school rules on student discipline. (Education Code 35291)

6. Implementing the OUSD Board policy and regulation, OUSD developed Form 5144.1-2 (Notice of Suspension By a Teacher [In-School-Suspension]) (Form 5144.1-2). This form is completed by the teacher and provides information to administrators regarding actions taken by the teacher prior to requesting an in-school suspension.

7. ECHS had procedures that teachers were expected to follow regarding student discipline. Between 2008 and 2012, administrators sent emails to certificated staff at ECHS and to Respondent individually regarding the school's student discipline protocols.

The school's administrators expected teachers to implement progressive student discipline. When teachers sent students to the vice-principals' office for referrals, administrators at ECHS expected teachers to complete the school's referral form; when teachers imposed in-school suspension, ECHS administrators expected teachers to complete Form 5144.1-2.

8. Respondent had classroom expectations and policies. She included them in her syllabus⁴ and posted them on the board in her classroom. In her syllabus for 2012/13, Respondent stated, in pertinent part:

- Students are expected to follow all school rules. ... Know the rules. Follow them.
- Students are expected to follow all school attendance and tardy policies. ...
- Students are expected to be respectful of all persons, all property and all beliefs of others. ...
- Students must be in their assigned seats, supplies on the desk [*sic*], backpacks under the desk, electronic devices off and out of sight when the bell rings or the student will be marked tardy. ...
- Cell phones and other electronic equipment are to be off and out of sight from bell to bell. ...

Respondent testified that she imposed in-classroom progressive discipline for student misbehavior that included changing the student's seat or calling the student's parent.

9. At least since the 2009/10 school year, Respondent's administrators had concerns about her method of student discipline, consistency of discipline and the number of referrals and/or in-school suspensions that she made without complying with the school's protocol for doing so.

⁴ Exhibit 165

10. An email from Daris to ECHS-Certificated, dated November 3, 2008, regarding behavioral referrals states, in pertinent part:

This is just a reminder of the referral procedures that the staff club and administration developed a number of years ago. After a teacher has completed in class room [sic] progressive discipline steps with a student to affect behavior change, they [sic] will then take the next steps [sic]. The next step is parent contact by email or phone correspondence with an agreed upon plan of support from home. (Teleparent [sic] calls do not meet this step.) This correspondence by teacher and parent is essential to support possible future disciplinary action by the administration. Once a teacher has taken that correspondence step and have [sic] agreed upon support from home, hopefully the behavior will change. If at that point the behavior has not changed, then it becomes appropriate for a behavior referral to be written to the assistant principal's [sic] office. **(Please make sure you write the date that you corresponded with the parents about the behavior issues on the referral.)** If a referral does not have that information on it, it will be returned to the teacher to make sure those steps have happened. Remember a behavior referral is to be related to disruptive behavior in class that affects teaching or learning environment. Items such as: no homework, no supplies, not doing class work, non-suits are not items to refer a student to the assistant principal's [sic] office for a behavior issue. Lack of engagement in the learning process is not a behavior issue. If a student is engaged in serious behavior conduct [sic] (defiance, violence, gang activity, or other very serious behavior) a teacher can sent [sic] them [sic] to the assistant principal's [sic] office. When you do this you **MUST** direct the student to go directly to the assistant principal's [sic] office and sign in. *At your earliest convenience please send up a referral with the details* [Emphasis Added].... Teachers have the authority to assign after school detention directly to a student. They do not have the authority to assign Saturday School or suspension from school. Only an administrator can make these assignments. If the entire faculty follows these procedures, it will be a great support to all teachers, administration, security, office staff, students and parents....⁵

11. Ten days later, Respondent sent three students to the office; she told the students to check-in with the vice-principals' secretary; she "alerted" the vice-principals' secretary "to the issue" and told her "paperwork would follow as I am engaged in teaching the students." Four hours later, Respondent wrote an email to Hurst, explained the foregoing as well as the reason it would have been disruptive to write the referrals during class time. At the conclusion of the email, she asked "Do you still want me to write the referrals so the APs can talk to the students?" Hurst responded yes.⁶

12. In October 2009, Chavarria had a conversation with Respondent about sending students to the office for class suspension without completing Form 5144.1-2. By email, dated October 27, 2009, Chavarria provided Respondent with a copy of this two-sided form.⁷

13. In the email to ECHS-Certificated, dated October 29, 2009, Daris explained that having students stand outside a classroom for behavior or attendance reasons is a proper classroom management strategy, but it should not last more than a few minutes because these students become a disruption for other classrooms; if a teacher needs to get a student out of class for more than a few minutes, "please send the student to the assistant principals' office with a referral stating the reason why."⁸

14. In September 2010, Respondent was not using the OUSD required form to assign class suspensions. Tyler requested that Respondent use Form 5144.1-2 to assign class suspensions and provided her a copy of the form. He asked that she submit the form completed and signed to her site administrator.⁹

In an email to Tyler, dated September 28, 2010, Respondent stated, in pertinent part,

The form 5144 1-2, an electronic copy of which you forwarded by email, is not a form we have used at ECHS. It is a four part *[sic]* form and is not a form we have had *[sic]* nor currently have available to teachers. If and when those forms are available and use of those forms become *[sic]* an expectation of all teachers, I will of course meet the expectation.

⁶ Exhibit 113

⁷ Exhibit 104

⁸ Exhibit 107

⁹ Exhibit 95

15. In a memorandum from Perez, dated December 9, 2010, to ECHS-Certificated, she stated:

Just a reminder that when you send a student to the office, we need the paperwork *as soon as possible* [emphasis added] in order to deal with the student appropriately.¹⁰

Rowe testified that “as soon as possible” meant with the student or within 15 minutes.

16. Rowe described the procedures for student discipline in a memorandum to ECHS, dated September 1, 2011.¹¹ This memorandum stated, in pertinent part:

....

Assigning Detention Process:

1. Teacher proceeds through establish [sic] classroom progressive discipline system.
2. Teacher contacts parents (e.g., School Loop, Tele-parent or personal call).
3. Teacher submits After School Detention Form to Administration.
4. Teachers [sic] keep [sic] a record and are done.
5. Students [sic] report to detention the next day. (24 hour notice must be given)
6. Administration will monitor and follow up on any no shows.

Progressive Administrative Discipline if a student fails to show to a teacher assigned after school detention

1. Security follows up the next day-pulls the student/s out of class for a minute. Parents are contacted and student is assigned detention for that day until 4:00 p.m.
2. If student fails to show, he/she is assigned to Saturday School from 8:00 a.m. to 11:00 a.m.
3. If students [sic] fails [sic] to show to Saturday school, he/she is assigned ON Campus Suspension and/or suspension.

Student Behaviors continue and warrant a “Referral” when progressive discipline and detentions failed

1. Teacher makes personal phone call or contact with parent.
2. Teacher submits referral to administration.

¹⁰ Exhibit 92

¹¹ Exhibit 86

3. Administration will follow up with discipline that is deemed appropriate (e.g. student removed from class for a day or two, lunch detentions, OCS, Saturday School and/or home suspension).

***Note: Progressive discipline may be by-passed for severe violations (e.g. Zero Tolerance Offenses).**

17. In September 2012, a meeting was held to discuss procedures that Respondent was required to follow for sending students to the office, timelines to complete the referral and suspension protocol versus sending emails and Respondent's failure to follow the foregoing procedure. Present at the meeting were Tyler, Johnson, Perez and Terry Hart, the Oceanside Teachers' Association (OTA) [union] representative. Hart agreed to pass on the concerns to Respondent. After the meeting, Respondent continued to send students to the office (six in one day) without referral forms.

By email, dated October 18, 2012, Chavarria asked Respondent to write referrals for the six students that she sent to the office and to follow the protocol of calling parents when giving detentions. Rather than send the referrals, on the same date, Respondent replied with an email; in this email, she stated that it was not her intention to class suspend and explained what happened.¹² Chavarria responded to her email the following day. He stated, in pertinent part:

....

The emails are helpful but not necessary as additional information to **supplement** referrals...

Please follow the following protocol that all teachers follow and that we addressed last year with you and Terry Hart. Following this protocol will help us properly document referrals and consequences and also ensures that students are seen by the administrator by alpha case load.

1. Write a referral and submit to Sue.
2. If the violation is chronic or severe contact security, give brief explanation to security regarding the removal and submit a referral as soon as possible so that the administrator can address and determine the appropriate consequence warranted.
3. If you are class suspending a student, please ensure you contact the parent to explain the class suspension and to schedule a parent conference and notify administrator regarding the meeting.¹³

¹² Exhibit 57

¹³ Exhibits 55 and 189

18. Chavarria coordinated student conferences because he believed that Respondent would not do so.

19. Tyler was concerned about Bayham's parent conferences and advised her of his concern. Respondent was concerned about Tyler's handling of parent conferences because, in her opinion, he treated her inappropriately in the presence of a parent and student. She insisted on having a union representative present during parent conferences but held parent conferences without a union representative present.

No evidence was offered to establish that Tyler or any other administrator informed Respondent that having the union representative present was improper. In fact, the evidence was the contrary; Tyler testified that he authorized Respondent to have a union representative present during a parent conference.

20. Respondent objected to parent conferences being scheduled during her prep period. It was not established that Respondent did not schedule and/or attend parent conferences as required by the District and ECHS.

21. Administrators expected Respondent to follow the protocol for student discipline and send students to the office with referral forms and/or the Form 5144.1-2, when appropriate. Administrators repeatedly requested that Respondent follow the protocols. In addition, Sue DeGraft (DeGraft), the secretary for vice-principals, complained to administrators about problems associated with Respondent's failure to follow ECHS's procedure for student discipline.

Rather than send students to the office with the completed referral form or the completed Form 5144.1-2, typically Respondent emailed the administrative secretary or assistant principal regarding the reason for sending the student to the office; if she did not send the referral or Form 5144.1-2 with the student, at times, she sent the appropriate referral within 24 hours. She testified that she did not understand until the hearing that administrators wanted the students to bring the referral forms with them or within 15 minutes.

ECHS administrators had a progressive discipline policy (written) that they expected teachers to follow; this included a procedure that the teachers were to follow when issuing referrals and/or in-school suspension.

Respondent's implementation of progressive discipline and the referral process was inconsistent. Because of the number of referrals that she made and the type of behavior exhibited by the students, it was impractical for her to follow the school's policy on every occasion.

22. For at least three years, ECHS administrators informed teachers and Respondent individually about the school's procedures for imposing progressive discipline, issuing referrals and teacher suspension. On a regular basis, Respondent did not comply.
Classroom Management

23. Complainant alleged that Respondent regularly failed to provide required educational instruction and supervision of her students, as demonstrated by her classroom management problems and that Respondent failed to use ECHS's mandatory procedure for discipline.

24. Respondent is an experienced teacher. There is no question about her instructional skills or ability or willingness to volunteer to help students improve basic skills and grades. However, there is some question about whether Respondent respects the right of all students to an education.

25. During 2012/13 school year, at ECHS, 700 students were enrolled in English 9. Respondent was one of six teachers of this class. Respondent requested and OUSD provided the names of students who had School Safety Act (SSA) violations.¹⁴ Respondent did not have the facts and circumstances underlying the violations. There was no evidence that she had a greater percentage of SSA violators than any other teacher. However, 80% of the referrals for discipline came from Respondent, who had 78 students.

26. Chavarria and Felix worked with the OTA representative and Respondent to conduct observations and to provide suggestions on how to improve classroom supervision and educational instruction. Chavarria advised that the incident in February 2013 was part of a "pattern of poor classroom management" and that her class was out of control.

27. Respondent became upset when administrators observed her class. In September 2012, Chavarria observed Respondent's class; the following day, Respondent emailed him and expressed concern that he was there to evaluate her teaching. Chavarria explained that he was there to observe her classroom dynamics on an informal basis to assist in determining her need for support.

28. Frequently, Chavarria advised Respondent on ways to engage students, gave her proper forms to use, provided general suggestions and met with the OTA representative. Chavarria stated: "we went out of our way, more than for any other teacher, to support." He had a student moved from her class [unusually early in the semester] because Respondent thought the student was causing problems.

¹⁴ As a teacher, Respondent had a right to request and be provided with this information. She testified that she requested the information because, in her experience, there is a correlation between SSA violations and upcoming behavioral issues, so she "wanted to get a handle on that"; in addition, she hoped to enlist a partnership with the assistant principals to help students be successful. There is no evidence that Respondent participated as part of a team (with any administrator) to improve student disruptive behavior.

29. When he came to ECHS, Felix tried to visit as many classes as he could to learn about the school, students and teachers. In his opinion, Respondent lacked class management skills; there was no direction in her class.

On October 23, 2012, Felix was visiting the class to observe a student who had been suspended from the class two days prior. When he arrived, Respondent asked Felix to step outside. She told him that there were too many administrators visiting, and it was hard to teach with visitors in the room. Felix informed her that he was there to watch the student. He observed that Respondent did not follow a structured lesson plan; the class took too long to calm down; the assigned exercise was too elementary for English 9; and students were given 15 minutes to copy a rubric. Felix observed that class time, which should have been dedicated to teaching, was lost on administrative and mundane activities; these activities lost students' attention.

After this observation, Felix called a meeting with Hart and Respondent. Respondent did not attend the scheduled meetings but attended on December 20, 2012. Felix explained his concerns and provided some teaching suggestions. Respondent was visibly upset; she said that she had taught for years and knew what to do. Felix had information on content standards to give Respondent. Hart asked Respondent to step outside because she was so upset. During this meeting, Felix informed Hart about the disproportionate number of discipline referrals coming from Respondent.

30. Thompson supported Respondent in multiple areas. One incident occurred on September 27, 2012 when students were throwing packages of ketchup in class, and Respondent sent five students to the vice-principals' office. In October 2012, Thompson was meeting with a student who had been suspended for two days from Respondent's class. The student expressed concern about falling behind in the lessons. The student asked to speak to Respondent about the assignment, but Respondent elected not to give her time to the suspended student.

31. On January 28, 2012, Tyler coached Respondent and observed her class. He suggested that she attend a class management course in spring/summer 2012.

32. Rather than attempting to develop a rapport with her students, manage her classroom and impose progressive discipline in order to modify student behavior, Respondent used a method of managing her classroom/student discipline that was ineffective. In an email to Rowe, she stated that the class was disruptive and that she was doing all the right things, including calling parents, emailing coaches, emailing the ROTC instructor and emailing Eugenia with messages to call and relay to Spanish speaking parents.¹⁵ Students who engaged in disruptive behavior were sent to the office, typically with an email but not the required documentation. This caused problems for administrators.

¹⁵ Exhibit 382

33. At first glance, it appeared that Respondent's sixth period class (during the 2012/13 school year) was the only class that she had difficulty controlling. However, Respondent had difficulty controlling other classrooms for three years prior. Over this three-year period, various administrators attempted to coach, guide and partner with Respondent for the benefit of the students. They offered her additional training and opportunities to visit other teachers as well as a volunteer mentor to reduce the number of students in her sixth period class. She rejected these offers. In her opinion, the offers were not appropriate.

- In February 2011, Johnson scheduled a meeting with Respondent to discuss student disciplinary issues;¹⁶ Respondent asked Johnson for the names of students so that she could be prepared for the meeting; present at the meeting were Johnson, Hart and Respondent. During the meeting, they discussed disciplinary issues, including problems associated with two students; Johnson reviewed the disciplinary power point presented by ECHS administrative team with ECHS staff in August 2010 and January 2011 (Respondent was present at both presentations). Finally, Johnson offered to arrange for a release date for Respondent to visit classrooms with Johnson where teachers were very effective in using techniques to minimize discipline issues for their classrooms and maximize students remaining in the instructional program. Johnson also offered to arrange time for Respondent to collaborate with one or two teachers as well. Respondent testified that she rejected this offer for the release date to visit classrooms and collaborate with other teachers because the disciplinary issues had been resolved prior to the meeting. So, in her opinion, the bases for the offer no longer existed.
- In September 2012, Respondent informed Rowe that a large number of students had grades of D or F. They scheduled a meeting to discuss this issue and others but Rowe missed the meeting. By email, dated September 24, 2012, Rowe contacted her, apologized for missing the meeting and discussed issues that he hoped to discuss with her; Rowe stated that he wanted to visit her English 9 classes, particularly sixth period and that he had a retired teacher/principal who would be willing to mentor and tutor students in her sixth period class.¹⁷ This would allow her to reduce the class size by five to ten students. In her responsive email¹⁸, Respondent stated that she had 41 students in the sixth period class, and more than 50 percent had SSA violations. Respondent testified that, she considered the tutor/mentor as a

¹⁶ Exhibits 88 and 89

¹⁷ Exhibit 68

¹⁸ Exhibit 382

resource, but with the strategies she used, students' grades had improved without involving a tutor/mentor.

34. Respondent objected to administrators walking through her classroom. In her opinion, rather than working as a team to improve the disruption and education environment for students, the visits by administrators undermined her authority as a teacher.

35. Overall, Respondent had no insight into her deficiencies and poor judgment. She took no steps to modify her behavior. At no time did she take responsibility for her actions or take steps to improve her classroom management skills. Instead, she blamed students and administrators.

36. It was not established that Respondent regularly failed to provide required educational instruction. Despite the problems observed by administrators in her classroom in the sixth period class, despite the behavioral problems, Respondent's students improved their grades during fall 2012. In addition, the California High School Exit Examination (CAHSEE) scores were in line with the students of other teachers at ECHS.

37. Respondent regularly failed to provide supervision of her students, as demonstrated by her classroom management problems.

38. Despite the problems associated with student discipline and classroom management, ECHS administrators never ordered Respondent to take remedial action, and Respondent did not voluntarily do so. Neither ECHS administrators nor Respondent took her evaluations seriously. There is nothing in her 2011 evaluation that indicates that ECHS administrators or Respondent was concerned about Respondent's deficits.¹⁹

Lack of Supervision and Inaction Lead to Assault of Student

39. Complainant alleged that, on February 12, 2013, during Respondent's sixth period class, Respondent failed to prevent an assault perpetrated by one student on another.

40. On February 12, 2013, during her sixth period class, several students threw kiwis at each other during class. Respondent instructed J.A. and C.R. to go to the office. J.A. left the classroom, and C.R. refused. Respondent called security to have C.R. removed.

41. C.R. was sitting on a desk, talking on her cellular telephone when C.R. and V.T. began arguing and verbally attacking each other. V.T. proceeded to walk around the classroom and get in front of C.R. At this point, Respondent said several times, "V.T. sweetie". V.T. and C.R. screamed at each other, and V.T. acted even more aggressively.

¹⁹ In the opinion of Commission member Finder, OUSD had a responsibility to order Respondent to attend training and to indicate in her performance evaluation that her classroom management skills were deficient.

After almost 90 seconds of increasing tension and build up, V.T. threw off her jacket and began punching C.R. She punched C.R. six times over the next 10 seconds. She punched C.R. at the back of her head with closed fists. Then V.T. stepped away and five seconds later threw a seventh punch. Again, V.T. stepped away; 30 seconds later, Respondent said "V.T." again and "come back over here". V.T. punched C.R. with a closed fist in the back of the head an eighth time. After the eighth punch, a male voice is heard yelling, "calm down, calm down."

Students in the class videotaped the incident on their telephones.

42. Levi Casias (Casias) was teaching in a classroom approximately 100 feet across from Respondent's. The commotion was loud enough that his students alerted him to a fight in Respondent's classroom. From his classroom, Casias could see V.T. and C.R. but could not see Respondent. Casias immediately ran to Respondent's classroom. Respondent testified that he asked her the name of the aggressor; she told him V., and he yelled out her name.

43. Immediately after Casias entered Respondent's classroom, Greg Frazier (Frazier), a campus security assistant, entered the room. When he entered the room, Frazier noticed a student fumbling in her bag. Frazier realized the situation was a code blue (imminent danger), because the student could have been reaching for a weapon in the bag. Frazier tried to approach the student; however Respondent blocked his path and asked, "Where have you been? I called 10 minutes ago." She testified that she was "shocked, distressed". Frazier was upset that Respondent interfered with his task to diffuse a potentially dangerous situation. Frazier got around Respondent and removed V.T. from the classroom.

44. As the incident unfolded, Respondent called security on multiple occasions.

The first time that Respondent called security, Billy Isles (Isles), a campus security officer, answered the telephone. Respondent told Isles that students were throwing kiwis and requested that security remove C.R. from the classroom. No urgency was noted at that point. By mistake, security responded to the wrong location.

Respondent called for security a second time. This time, Sandra Villamar (Villamar), a campus security assistant, answered the telephone. Villamar testified that Respondent asked where security was and said that "these girls are going to fight and I'm not going to stop it; someone needs to come over now." Also, Respondent called the principal's secretary and vice-principal's secretary for assistance/to tell them about the situation. DeGraft testified that when Respondent called her, Respondent said that she "had called security two times, and no one is coming, you are the third call. They have been throwing kiwis. There is going to be a fight, and I'm not going to do anything about it." Respondent disputed the testimony of Villamar and DeGraft. She testified that she said: "I can't do anything about it."

45. During the incident during sixth period on February 12, 2013, Respondent did not call or wave down any teachers in nearby classrooms; she did not yell at the students to stop; she did not command V.T. or C.R. to leave the classroom.

46. Respondent testified that, during the incident, she did not speak to the girls or give them commands because she was at her desk trying to get help. Immediately prior to and during the incident, Respondent made a total of four calls for assistance. Each time, she looked up the telephone number. Each time that she was on the telephone, her back was to the students because of the location of the telephone. Her primary focus was to get help. When asked how many times V.T. punched C.R., Respondent testified that she saw V.T. punch C.R. twice but did not know because her back was to the students as she made the calls. She testified that she did not know the features of the telephone because she had not received training on the telephone.

47. When asked if she considered other strategies, Respondent explained that she considered the makeup of the class; her decision was to keep everyone calm, not let other students get involved and to get security there.

Respondent testified that she had no training or protocols on how to respond to a fight; it was frightening, stressful and shocking.

Respondent testified that she had a lot of things to consider/to assess, to wit: SSA violators in the classroom, gang affiliations in the school, potential weapons in the classroom; there had been a shooting in Oceanside two years prior, and one of the girls shot and killed had been V.T.'s best friend; she was concerned that other students would get involved; she wanted the students to remain calm; she wanted to get security there.

48. When questioned regarding V.T.'s behavior on the video, Respondent testified that it was not appropriate for the classroom; V.T. was reacting to the situation; it might be appropriate on the street in V.T.'s neighborhood; it might be a survival skill in V.T.'s neighborhood, the way to act in a gang; she did not know what V.T.'s life was outside the classroom.

49. At no time did Respondent express or indicate concern about either student's wellbeing.

50. When asked if she would do anything different, Respondent testified that, with the benefit of hindsight, she would have waited until C.R. put the kiwis away, would have been more assertive about getting one of the girls out of the room, would have been more assertive about telling V.T. not to get involved, would have approached C.R. again to tell her to stop talking and to leave the room; perhaps in periods where there are student assistants she could train these students to contact security or to have a panic button.

51. The strategies invoked by Respondent to handle this fight were inadequate. It was reasonable for her to make the first call to security and to step between the students before the incident; her concerns were reasonable. If she was fearful of potential personal harm, there was no expectation that she would step between the students or otherwise put herself in harm's way. It is astonishing that she turned her back on the students in the midst of the assault, an incident that was loud enough to get the attention of students and a teacher (Casias) 100 feet away. Respondent's failure to invoke other strategies was unreasonable.

LEGAL CONCLUSIONS

1. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.)

2. Education Code section 44932, subdivision (a), provides:

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

(1) Immoral or unprofessional conduct.

(5) Evidence unfitness for service.

(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.

3. OUSD argued that, based on the facts and the law, Respondent engaged in acts that constitutes immoral conduct, evident unfitness for service and persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of public schools by the State Board of Education or by the governing board of the school district employing her (Ed. Code, § 44932, subd. (a)(1), (a)(5) and (a)(7)). Therefore she should be dismissed. OUSD suspended Respondent without pay or benefits based on the allegation that her acts constituted immoral conduct.

Respondent asserted that the facts of this case do not constitute violations of the Education Code and therefore do not justify dismissal or suspension without pay and benefits.

4. A particular act or omission may constitute more than one cause for removal under Education Code section 44932. (*Tarquin v. Commission on Professional Competence*

(1978) 84 Cal.App.3d 251.) It follows that the same acts or omissions may constitute grounds for dismissal for immoral conduct, evident unfitness for service and persistent violation of the OUSD's policies.

5. The applicable standard or determinative test in a teacher dismissal case is whether the person is fit to teach. (*Board of Education v. Commission on Professional Competence* (1980) 102 Cal.App.3d 555, 560.) Fitness to teach is probably a question of ultimate fact. (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 698, fn. 3.)

6. Pursuant to Education Code section 44932, subdivision (a)(5), "evident unfitness for service" means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." "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. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.)

Before a commission can decide whether Respondent's behavior constitutes "evident unfitness for service", it must decide if the identified conduct demonstrates that an unfitness to teach under the criteria established by the California Supreme Court in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. These factors are: 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 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. (*Morrison, Id.* at pp. 229-230.)

It is proper to consider the totality of circumstances surrounding Respondent's conduct to determine unfitness. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence, supra*, 2 Cal.App.4th 1429, at p. 457.) Not all *Morrison* factors need be examined, only the one's pertinent to Respondent's conduct. (*West Valley-Mission Community College Dist. v. Concepcion* (1992) 16 Cal.App.4th 1766, 1777.)

7. As the term is used in Education Code section 44932, "immoral conduct" is not an abstract category that may be applied by rote to discipline a teacher under Section 44932. (*Fontana Unified School District v. Bemran*, (1988) 45 Cal.3d 208, 219-220; *Morrison v. State Board of Education, supra*, 1 Cal.3d 214, at pp. 229-230). Under the rule adopted by the California Supreme Court in *Morrison* (and reaffirmed in *Fontana*), immoral conduct encompasses unfitness to teach which must be proven by the facts of the individual case, including the teacher's motive for the challenged behavior.

By the same token, behavior that may reflect poorly on an employee's fitness to teach is not automatically "immoral": "[n]ot every impropriety will constitute immoral or unprofessional conduct." (*Fontana Unified School District v. Bemran*, *supra*, 45 Cal.3d, 208, at p. 220 n.12; accord *Basset Unified School District v. Commission on Professional Competence* (1988) 201 Cal.App.3d 1444, 1454.) One can teach badly, break rules, and still not behave "immorally," as the Legislature recognized when it created separate grounds for dismissal for incompetency, evident unfitness for service, and refusal to obey school rules and regulations. See Ed. Code § 44932 subdivisions (a)(4), (5), and (7). See also *Board of Education v. Jack M.*, *supra*, 19 Cal.3d 691, at p. 704.

In general, California courts have found persons to have engaged in "immoral conduct" within the compass of their professions where there is evidence of either theft, fraud, or dishonesty (*In re Honoroff* (1975) 15 Cal.3d 755, and *Magee v. State Bar* (1975) 13 Cal.3d 700), or unacceptable sexual behavior (*Board of Trustees v. Stubblefield* (1970) 16 Cal.App.3d 820; *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.564 (1978).)

8. The word "persistent" is defined by lexicographers as "refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated." And in judicial decisions, the word has been interpreted to mean "continuing or constant." (*Governing Board of the Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 82.) A single violation of a school board's rules is not of itself cause for the dismissal of a permanent teacher. The subdivision pertains to unintentional as well as intentional transgressions, and hence the Legislature has decreed that a single violation is not sufficient to warrant dismissal, apparently to allow for correction; "it is the persistent disregard" of school rules that the subdivision is designed to regulate. (*Governing Board of the Oakdale Union School District v. Seaman*, *Id.* at p. 84.)

9. Under the California Constitution, students and employees "have the inalienable right to attend campuses which are safe, secure and peaceful. (Const. art. 1, §28.) It is an explicit duty of teachers to reasonably control the conduct of students to maintain a safe and healthy learning environment. (Ed. Code § 44807).

Respondent did not satisfy her professional responsibilities as a teacher. She lacks classroom management skills. She is inflexible and prejudices students. She has not demonstrated the ability to self-reflect and/or a desire to change her behavior. Respondent did not acknowledge and/or take responsibility for her deficits. Instead, she blames others. She exercised poor judgment during the assault that occurred in February 2013. There is no evidence of compassion for her students.

10. The facts and the law have been considered. When the factors in *Morrison* are analyzed, Respondent's conduct demonstrated that she is not fit to teach.

11. The facts of this case do not establish by a preponderance of evidence that Respondent committed acts that constitute "immoral conduct".

12. It was established by a preponderance of evidence that Respondent persistently violated the school procedures for imposing student discipline. Insufficient evidence was offered to establish that Respondent persistently violated or refused to obey the school laws of the state or reasonable regulations prescribed for the government of public schools by the State Board of Education or by the governing board of OUSD.

13. It was established by a preponderance of evidence that Respondent committed acts that constitute "evident unfitness for service"; Respondent's conduct was the result of temperamental defects and inadequacies; insufficient evidence was offered to establish that Respondent can be remediated.

14. While no single act was sufficient to authorize Respondent's dismissal, the cumulative effect of her behavior showed a pattern and course of misconduct that requires a conclusion that Respondent is unfit for service. Consequently, Respondent should be dismissed as a teacher in OUSD.

15. All arguments, not addressed herein, are determined to be unsupported by the evidence and therefore rejected.

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ORDER

1. The suspension without pay of Bonnie Bayham was not justified.
2. Bonnie Bayham is dismissed from her position as a permanent certified employee of the Oceanside Unified School District.²⁰

DATED: Jan. 20 2014



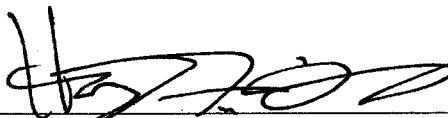
HEATHER BICE
Commission Member



VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings
Commission Member

DISSENT:

DATED: Jan. 20, 2014



HAYWOOD FINDER
Commission Member

²⁰ Commission member Finder does not agree that it is appropriate to dismiss Respondent because the District did not order her to attend training and did not reflect her deficiencies in her performance evaluation. As such, there is insufficient evidence to establish that she has a fixed character trait that renders her unfit to teach.