BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
LINCOLN UNIFIED SCHOOL DISTRICT
COUNTY OF SAN JOAQUIN
STATE OF CALIFORNIA

In the Matter of the Dismissal of: HEIDI KAESLIN, a.k.a. HEIDI RENEE KAESLIN, a.k.a. HEIDI GATES, a.k.a. HEIDI LEE, a Permanent Certificated Employee Respondent.	OAH No. 2012050003

DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, and Chairperson of the Commission on Professional Competence (Commission) of the Lincoln Unified School District, and Commission members, Wendy Taylor and Jon Alota, Ph.D., on October 22, 23, 24, 25, 26, 29, 30 and 31, 2012, and February 4, 5, 6, 13, 14, 25, 26 and 27, 2013, in Stockton, California.

Marleen L. Sacks, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, represented complainant, Lincoln Unified School District (LUSD or district).

Thomas J. Driscoll, Jr., Attorney at Law, Driscoll Law Firm, represented respondent, Heidi Kaeslin, a.k.a. Heidi Renee Kaeslin, a.k.a. Heidi Gates, a.k.a. Heidi Lee, who was present throughout the proceedings.

Documentary and testimonial evidence was received, the record was closed, and after the Commission met in Executive Session, the matter was submitted for decision on February 27, 2013.

FACTUAL FINDINGS

1. Respondent is a permanent certificated employee of the LUSD, assigned to teach special education at Lincoln High School (LHS).

2. On February 14, 2012, Michele Tatum, in her official capacity as Associate Superintendent of Human Resources, notified respondent in writing of LUSD's intention to recommend to the Board of Trustees of the District (Board) that respondent be terminated from her employment. In the notice, Ms. Tatum wrote, in pertinent part: "[y]ou are advised that you may respond to these charges in a meeting with Tom Uslan, or in writing.[1] You may be represented by a union representative or counsel if you choose to meet with him. If you do not contact me to set up a meeting to take place no later than February 27, 2012, we will assume that you do not wish to respond to the Statement of Charges at this time .... If you wish to schedule a meeting and bring your attorney, please notify me by ... February 17, 2012 so that our attorney can be present as well."

3. In a letter to respondent dated February 22, 2012, Thomas W. Uslan, in his official capacity as Superintendent, confirmed that respondent "chose not to respond to the charges," and indicated that LUSD "will recommend your immediate suspension without pay and dismissal from employment at the upcoming Board meeting on ... February 29, 2012 ...."

4. On February 29, 2012, Mr. Uslan filed with the Board the Statement of Charges against respondent, alleging cause for the immediate suspension and dismissal of respondent. On March 2, 2012, the district notified respondent in writing of the Board's intention to immediately suspend respondent without pay and to dismiss her at the expiration of 30 days from the date of service of notice upon her of the charges presented to the Board, unless she demanded a hearing to determine if there is cause to dismiss her from employment with the district. On March 28, 2012, respondent demanded a hearing to determine if there is cause to dismiss her from the district. On April 2, 2012, the district filed and served the Accusation in this matter. Respondent timely filed a Notice of Defense.

Summary of Allegations

5. The district contends that during the 2010-2011 school year, respondent used her district-issued laptop, district work time and work resources for her personal pornography businesses; maintained inappropriate images of nude children on her district-issued laptop; maintained derogatory cartoons/drawings on her district-issued laptop; improperly used her district-issued mobile phone; conducted her personal pornography business during district time; and engaged in dishonesty and insubordination. The district alleges that such actions by a high school special education teacher constitute immoral conduct, pursuant to Education

[1] This meeting was referred to throughout this hearing as a "Skelly" hearing.

Code sections 44932, subdivision (a)(1), and 44939; evident unfitness to serve, pursuant to Education Code section 44932, subdivision (a)(5); persistent violation 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 district, pursuant to Education Code section 44932, subdivision (a)(7); and dishonesty, pursuant to Education Code section 44932, subdivision (a)(3). The district seeks respondent's dismissal from her position as a permanent and certificated employee in the district.

Respondent's Conduct

6. On January 25, 2010, the district issued to respondent a new MacBook Pro 15-inch laptop computer.

7. Prior to receiving the new MacBook Pro 15-inch laptop computer from the district, respondent received an email from LHS Principal, Debra Holmerud, advising that she could turn in her old laptop to the district's information technology personnel, and they would transfer the information from respondent's old laptop to her new laptop. Upon receipt of her new laptop, respondent recalled seeing old files from her old laptop.

8. In the fall of 2010, respondent began an extramarital affair with then-Stockton police officer Richard Frank Fields,[2] who had been assigned by the Stockton Police Department to serve as a School Resource Officer at LHS beginning in 2005.

9. In the fall of 2010, respondent accompanied Mr. Fields to three meetings with web developer Joel Estrellado (Estrellado) in Elk Grove, California, to discuss launching a website called "teachertitties.com." Using her district-issued laptop, respondent took notes during the meetings, and later translated those notes for Mr. Fields, who described himself as "the most computer illiterate person in the world." In late October/early November 2010, Estrellado agreed to build the website, and instructed Mr. Fields to obtain content for the website. Mr. Fields paid Estrellado $2,000 to build the website.

10. The idea for the teachertitties.com website originated during a happy hour occasion in or about 2009, in which respondent and other teachers in respondent's special education group were discussing how they could make extra money. Mr. Fields testified that respondent was the first one to mention a website for male students to view their teachers' breasts. Respondent denied that she was the first one to vocalize the idea. In 2009, respondent accompanied Mr. Fields to a meeting with a web developer who worked for Disney; however, according to Mr. Fields, the web developer was unable to build the website because it conflicted with his employment at Disney. In late 2009/early 2010, Mr. Fields purchased the domain name for teachertitties.com.

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[2] Mr. Fields retired from the Stockton Police Department in May 2011.

11. In or about November 2010, Estrellado launched a "teaser" webpage for teachertitties.com, which depicted the following four faceless women: "Ms. Jones" pushing her breasts out of her open top; "Mrs. WoosLey" pulling open her top and exposing her breasts; "Ms. Payne" with her shirt unbuttoned to her waist and her tie covering her cleavage; and "Ms. Wilson" with her cleavage exposed. The webpage included two captions reading:

> Remember that English teacher you had in high school who was sooo beautiful and smelled so good? This site will feature the most beautiful teachers in your area who love to show their best assets! ...
>
> Beautiful Breasts!
>
> WEB SITE COMING SOON!
>
> For extra Credit
> Please see any of the
> teachers after class!

The webpage also displayed an "I ♥ Teachers" logo which depicted a woman's breasts below the words "I ♥ Teachers".

The teachertitties.com webpage represents images and information that is inappropriate for a high school special education teacher. It is directly related to the teaching profession, and casts teachers in an unfavorable light and/or suggests that teachers are more interested in showing their breasts than teaching students. The Commission found the teaser webpage to be pornographic.

12. Subsequent to the launching of the teachertitties.com teaser webpage, Mr. Fields and respondent spoke every day about how to get content for the teachertitties.com website. Mr. Fields contacted a realtor friend to rent an empty building where he could throw a party and take pictures for the website. Respondent talked to her husband, Trent Kaeslin, about content for the website, and told Mr. Fields that her husband's friend offered to throw a party so that Mr. Fields could take pictures for the website. Neither of these suggestions worked out, however, so Mr. Fields contacted a photographer who quoted a price for taking pictures. The photographer also recommended that Mr. Fields obtain a Model Release form, and sent to Mr. Fields' email a link to a form that Mr. Fields could manipulate. Mr. Fields did so, and emailed a draft to respondent's work email for review.

13. In fall 2010, respondent and Mr. Fields came up with the idea to sell "I ♥ Teachers" t-shirts to pay for the development of the teachertitties.com website. Mr. Fields did not like the "I ♥ Teachers" logo displayed on the teachertitties.com teaser webpage, so respondent and Mr. Fields collaborated to create a new logo for the t-shirts. Respondent

sketched a logo which took the form of an outline of a woman's breasts, and suggested that the outline be faint so that it was not "too obvious." Mr. Fields took the sketch to Mudville Rags, a print shop in Stockton, California, where the sketch was modified to create the logo which was ultimately used on the "I ♥ Teachers" t-shirts. Respondent accompanied Mr. Fields to two meetings at Mudville Rags. Respondent also suggested to Mr. Fields that they could sell more t-shirts if they advertised that some of the proceeds from the sale of the t-shirts would be donated to breast cancer research. In her August 23, 2010 deposition, respondent confirmed in response to the question whether the idea was that she would receive money from the proceeds, that "[t]he idea was that eventually, at some point, if Rich was successful, I could leave teaching. Sure. That was a dream."

14. In late fall 2010, Mr. Fields and Estrellado discussed the profitability of a different website in which companies would automatically feed pornographic videos onto a website, and they could make money from the advertising on that website. The website was named "mysluttyteachers.com," and Mr. Fields purchased the domain name. Mr. Fields paid Estrellado $1,000 to build the website.

15. In order to create the keywords to get people to visit mysluttyteachers.com, Mr. Fields and Estrellado had to categorize the content of pornographic video clips. Respondent accompanied Mr. Fields to a meeting in which Estrellado discussed how to categorize the pornographic video clips. Using her district-issued laptop, respondent took notes, and later taught Mr. Fields how to categorize those video clips. At the request of Mr. Fields, respondent also categorized the video clips. They used labels such as "straight"; "female/female"; and "threesomes"; and categorized the type of sex, such as "oral" and "lesbian." Respondent also allowed her husband to categorize video clips on her district-issued laptop. After categorizing the videos for approximately four to five nights, however, respondent told Mr. Fields that she did not want to continue categorizing the videos because it made her feel uncomfortable. According to Mr. Fields, "it turned out to be a lot of work" to get the mysluttyteachers.com website up and running, so he and respondent abandoned the categorizing of the videos, and decided not to pursue the website idea.

16. During a subsequent meeting with the web developer, Estrellado suggested that Mr. Fields and respondent obtain a professional email address to link all the websites together. Mr. Fields and respondent discussed the same, and came up with the name R&H Entertainment, an acronym for "Rich & Heidi." On December 10, 2010, respondent went home during her fourth period prep class, and using her district-issued laptop, submitted an on-line application to the United States Patent and Trademark Office (USPTO) to register and trademark R&H Entertainment. Using her maiden name, Heidi Lee, respondent identified herself on the application as the owner of the trademark, doing business as R&H Entertainment, and used her debit card to purchase the trademark. The application was submitted at 10:51:58 PST, and completed and successfully validated at 11:14:12 PST.

17. On December 11, 2010, Mr. Fields, doing business as R&H Entertainment, registered the trademark for the "I ♥ Teachers" t-shirt with the USPTO. In his description of the mark, Mr. Fields wrote: "The mark consists of black lettering for I, Teachers, red heart, and a gray outline of breasts." At hearing, respondent asserted that there was nothing inappropriate about the "I ♥ Teachers" logo, and argued that the outline under the words "I ♥ Teachers" was a "cursive" or "lazy" "W." However, respondent's argument is belied by Mr. Fields's description of the logo on the trademark application as "a gray outline of breasts."

18. Thereafter, Mr. Fields obtained a copy of a Non-Disclosure Agreement from respondent's husband, and changed the wording to reflect, in pertinent part, that the Non-Disclosure Agreement was "by and between Rich Fields and Heidi Kaeslin (the **"Owners"**), of R&H Entertainment...." The Owner is engaged in the business of adult entertainment.... Information will be disclosed to the Recipient to determine whether the Recipient could assist Rich Fields and Heidi Kaeslin with the development of the business .... The Owner has requested that the Recipient will protect the confidential material and information which may be disclosed between the Owner and the Recipient...." [Bolding in original.]

19. In late December 2010/early January 2011, Mr. Fields and Estrellado discussed launching a website to sell adult sex toys and accessories. The website was named "360pig.com," and Mr. Fields purchased the domain name. Respondent drew a rough sketch of a pig for the logo, and referred Mr. Fields to an artist named Brandon. Respondent's rough sketch was modified to the pig drawing that ultimately became the logo for the website. In order to obtain the sex toys and accessories to sell on the website, Mr. Fields and respondent discussed attending the Adult Video News Expo in Las Vegas to find a "drop shipper" to supply them with the products.

20. Mr. Fields believed that the trip to the Adult Video News Expo would also be a good way to promote the teachertitties.com website, so he asked Mudville Rags to create a flyer advertising the website that they could distribute at the Adult Video News Expo. The original flyer included a chalk board with a picture of a woman's breasts, and the language: "Remember your favorite teacher? Ever dream about seeing her tits? NOW YOU CAN! Log on to teachertitties.com to view the titties you've dreamed about." In addition, the flyer included a notebook page with the language: "Support your teachers by purchasing your OWN super soft I ♥ Teachers t-shirt. Portions of the proceeds will go towards breast cancer research. See teachertitties.com for ordering info." Finally, the flyer included the "I ♥ Teachers" logo. However, Mr. Fields decided it was too much work to set up donations to a charity, so he asked Mudville Rags to delete the language regarding the donations for breast cancer research, and print 100 flyers for distribution at the Adult Video News Expo.

21. On January 7, 2011, respondent and Mr. Fields drove to Las Vegas to attend the Adult Video News Expo, and to meet a "drop shipper" who could supply the sex toys and accessories for sale on the 360pig.com website. They handed out two of the flyers advertising the teachertitties.com website, one of which was to drop shipper El Dorado

Trading Company (EDTC). Respondent subsequently emailed EDTC for a list of their top 1,000 selling items, and EDTC supplied the products for sale on 360pig.com. The "I ♥ Teachers" t-shirts were also sold on the 360pig.com website. The Commission found the 360pig.com website to be adult entertainment.

22. In early spring 2011, in the "back corner office behind closed doors" in the special education department, respondent showed the "I ♥ Teachers" t-shirt to special education teachers Shelly Moreira, Melissa Prettyman-Pope, Kristina Garcia, and Brock Kaiser, and offered one of the t-shirts to Ms. Prettyman-Pope. Respondent also told Dr. Moreira that she was helping Mr. Fields develop the teachertitties.com website, at which time Dr. Moreira cautioned her to be careful.

23. Melissa Prettyman-Pope worked as a Resource Specialist at LUSD with respondent. At hearing, she testified that when respondent first talked to her about the teachertitties.com website in the spring of 2011, she thought it was a joke. However, when it became apparent that respondent was serious, she was shocked, and did not want any part of it. Ms. Prettyman-Pope testified that respondent was often trying to come up with "get rich quick schemes," and she understood that respondent was working on the website to make extra money because she did not want to stay in teaching. Respondent identified to Ms. Prettyman-Pope that her business partner was Rich Fields. Ms. Prettyman-Pope confirmed that when respondent showed her the "I ♥ Teachers" t-shirt in the office, respondent had with her a box containing between 20 and 50 t-shirts. According to Ms. Prettyman-Pope, respondent was excited about showing the t-shirts to the staff because she thought it would catch on and drum up business for the website. Ms. Prettyman-Pope was a straight-forward and persuasive witness.

24. In late April/early May 2011, respondent and Mr. Fields decided to pursue a postcard business venture, so Mr. Fields purchased a toilet, and they took pictures of themselves with their pants down sitting on the toilet. The idea was to have the pictures of themselves on the toilet superimposed onto scenic shots from around the world, with the words, "Just shitting here thinking of you." They hired a photographer to photograph landmarks in San Francisco, and in the summer of 2011, met with one of Mr. Fields's friends in the Bay Area who had a connection to a postcard manufacturer. Respondent and Mr. Fields were advised to, and did, mail an envelope to themselves containing the postcard idea so that they had a record of it. At hearing, respondent admitted that the idea for the postcard came to her while she was in college, but she decided not pursue it at that time. Respondent also admitted that while the photographs of her and Mr. Fields, and of the postcard, were found on her district-issued laptop, she had deleted them after she sent the images to a photographer to photo shop them onto the background of scenic shots from around the world. In her deposition, respondent admitted that placing the postcard images on her district-issued laptop was not an appropriate use of the district's computer, and at hearing, admitted that "I should not have used the school computer" for the postcard business venture.

The Commission found the pictures of respondent and Mr. Fields sitting on a toilet with their pants down to be lewd and distasteful.

25. In the summer of 2011, Mr. Fields had a banner made to advertise the teachertitties.com website. The banner was designed and made by respondent's friend who worked at a print shop, and was given to Mr. Fields free of charge.

26. In May 2011, respondent asked her husband's friend, Peter Nicholas Schapiro, Jr., if he could put her in touch with a web designer for a project. At hearing, Mr. Schapiro testified that he asked respondent about the nature of the website, and she told him it was similar to "flashyourrack.com." Mr. Schapiro met with Brent Redford on May 30, 2011 to inquire of his interest, and on June 2, 2011, sent a text message to respondent with Mr. Redford's contact information. In an email dated June 3, 2011, respondent apologized for missing Mr. Redford's calls, but indicated that she had the flu and would give him a call once she was feeling better. At hearing, respondent denied discussing a "porn website" with Mr. Schapiro, and asserted that she had never heard of the website flashyourrack.com.

27. In or about June 2011, respondent, Mr. Fields and respondent's friend, April Scott, discussed how to obtain pictures for the teachertitties.com website. April Scott bragged about how she could obtain pictures of women's breasts by taking her boat out to Windmill Cove Resort & Marina (Windmill Cove) on the Delta, in Stockton, California, on Taco Tuesday. Mr. Fields offered the banner to April Scott, provided her with copies of the Model Release forms, and instructed her to make sure everyone was over 18 years old, and that they signed a Model Release form prior to having their picture taken. Mr. Fields also gave approximately 20 "I ♥ Teachers" t-shirts to April Scott to sell on the boat trip. On June 21, 2011, April Scott, respondent and respondent's friend, Samantha McGregor, donned their "I ♥ Teachers" t-shirts and took a boat ride to Windmill Cove. On arrival, respondent and April Scott hung the teachertitties.com banner, and April Scott asked approximately 20 women if they would be interested in having pictures of their breasts taken for a start-up Internet company. Approximately one dozen women agreed to lower their bikini tops and expose their breasts for the camera. Respondent held up towels behind the women in order to provide them with privacy from the other patrons in the bar and restaurant.

28. Following the boat trip, April Scott photo-shopped out all identifying marks, such as tattoos, from the photographs, and emailed them to Mr. Fields. The following weekend, in the presence of respondent, April Scott showed Mr. Fields how to edit the photographs. Mr. Fields then emailed a couple of the photographs to Estrellado; however, the photographs were not ultimately uploaded to the teachertitties.com website.

29. On August 21, 2011, respondent sent a text message to Mr. Schapiro requesting information about a lead for an iPhone application (app) developer. According to respondent, the app was an idea that respondent and April Scott came up with called "Sweet Nothings," in which "A guy can make his woman feel good (or vice versa) through

expressions via text that he can 'calendar' in to his day." At hearing, screen shots of respondent's text messages were admitted which establish that on August 21, 2011, respondent asked Peter Nicholas Schapiro, Jr., for the name of a "lead" for the iPhone app. At hearing, Mr. Schapiro testified that Mr. Schapiro responded that he would send her the information "[a]s soon as I get back...." On August 22, 2011, Mr. Schapiro sent the contact information to respondent's email address, and respondent asked if Mr. Schapiro could "... send a copy to randhentertainment@yahoo.com as well ...." Respondent's laptop contained an undated, unsigned letter from respondent and April Scott, to "Kent," regarding the app "Sweet Nothings," and requesting information as to how to create the app, and the cost.

30. On August 31, 2011, respondent spoke to her husband on her iPhone. She did not successfully hang up the iPhone, however, before using a flip phone, given to her by Mr. Fields, to talk to Mr. Fields and tell him that she loved him. Unbeknownst to respondent, her husband overheard the conversation. When she arrived home, Mr. Kaeslin was noticeably irate, so respondent asked him what was wrong. Respondent confirmed to her husband that she was having an affair with Mr. Fields, and Mr. Kaeslin grabbed respondent's purse, keys and iPhone, and told her to get out. During this confrontation, Mr. Kaeslin twisted respondent's arm. As respondent walked down the street, Mr. Kaeslin called her back into the house, and used respondent's iPhone to call Mr. Fields and tell him to come and pick up his girlfriend as she would need a place to stay. Mr. Kaeslin then emptied out respondent's purse, took her money, and took the flip phone and smashed it in half. At the request of respondent, however, Mr. Kaeslin left $800 in cash that respondent owed to her friend Joy. Mr. Kaeslin then went into their kitchen, took out a blank piece of computer paper and wrote out a Divorce Agreement. At that time, respondent reached for her iPhone and Mr. Kaeslin twisted her arm, took the iPhone and smashed it on the kitchen counter.

31. Between September 2 and 20, 2011, respondent charged $181.67 on her district-issued cell phone, and between September 21 and October 4, 2011, charged $115.14 on her district-issued cell phone. Between September 6 and October 3, 2011, respondent spoke to Mr. Fields for 198 minutes during her second and fourth period classes, and admitted during her interview with district administrators that the majority of the calls on her district-issued cell phone were personal calls to her father, sisters, and friends. As of the date of this hearing, respondent had not reimbursed the district for the cell phone charges. Respondent asserted at hearing that she had not reimbursed the district for the cell phone charges because the district had not provided her with a break-down of the personal and business calls. The Commission found respondent's use of the district-issued cell phone to be excessive.

32. Jeffrey L. Rinek is a licensed private investigator with Rinek and Associates. He is also the President and Co-Founder of Parental Options, Inc., organized to help parents protect their children from the dangers associated with the virtual world. Mr. Rinek also serves as a professor at Folsom Lake College teaching the legal aspects of evidence, report writing and criminal law. Prior to his current positions, he served as a Special Agent for the

Federal Bureau of Investigation (FBI) from 1978 through 2006. As a special agent, he conducted investigations into various matters including crimes against children, behavioral science, and violent sexual assault and exploitation.

33. In or about September 2011, Mr. Rinek received a call from a former colleague requesting that he contact respondent's husband regarding possible pornography on respondent's district-issued laptop. After speaking with respondent's husband, Mr. Rinek verified that the websites identified by Mr. Kaeslin publicly existed. Specifically, Mr. Rinek looked at the teachertitties.com, mysluttyteachers.com, and 360pig.com websites. He noted the numerous categories of products and accessories offered on the 360pig.com website; reviewed the "About Us" section on the R&H Entertainment Facebook page; printed out material from the websites, and recommended to Mr. Kaeslin that he notify LUSD, and obtain respondent's laptop for forensic analysis.

34. On October 6, 2011, Mr. Rinek met with LUSD administrators, and entered into a contract with the district to process and analyze the laptop. Mr. Rinek and his colleague, Harold Dorl,[3] made a mirror image of the laptop; processed it using the Forensic Took Kit (FTK) forensic computer analysis software program; reviewed all computer activity, graphic files, or material relating to pornography; classified the ten files they retained; created a Report of Investigation; and turned the mirror image of the laptop and the report over to the district. The forensic analysis began on or about October 18, 2011, and the Report of Investigation was completed on November 11, 2011.

35. Respondent's laptop contained 17 pictures of approximately five women's breasts that were produced from a digital camera on June 24, 2011. At hearing, respondent argued that these pictures were "clinical." However, they were not intended to be viewed by doctors or professors of anatomy. They were taken on a boat displaying a teachertitties.com banner, by April Scott, who claimed to work for a start-up Internet company, in order to create content for the teachertitties.com website, and were sent to Estrellado for uploading to that website. The Commission found these pictures to be pornographic. At hearing, respondent also argued that these pictures were taken on a private boat during the summer when she was not required to answer to the district for her behavior. However, respondent's argument misses the mark. The pictures of the women's breasts that were taken on the private boat during the summer were ultimately uploaded to respondent's laptop, and remained there from June through October 2011. Once those pictures were on the district-issued laptop, they became the district's business.

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[3] Mr. Dorl has been a self-employed Independent Consultant and Computer Forensics Examiner since 2006. Prior to his current position, he served as a Certified Forensic Examiner for the FBI from 1996 through 2006.

36. Respondent's laptop contained one picture of "a pillow defined by a three dimensional representation of a male penis and testicles." At hearing, respondent admitted that this picture was sent to her as an attachment to an email, but contends that it was subsequently deleted. The Commission found this picture to be obscene.

37. Respondent's laptop contained 305 images in the unallocated space depicting "nude adults in several different sexual acts"; "[s]everal depictions of multi partner sexual acts"; "possible simulated rape"; and "sexual sadism." The Commission found these images to be pornographic.

38. Respondent's laptop contained 75 images relating to teachertitties.com; mysluttyteachers.com; 360pig.com; "I ♥ Teachers"; and R&H Entertainment, including the "I ♥ Teachers" logo; "I ♥ Teachers" t-shirt; teachertitties.com banner; 360pig.com logo; and pictures of respondent and Mr. Fields sitting on a toilet with their pants down. In addition, respondent's laptop contained the trademark application filed with the USPTO; a Non-Disclosure Agreement for R&H Entertainment; respondent's letter applying for a job; a reference letter from Mr. Fields on behalf of respondent; respondent's resume; Rich Fields' resume; Samantha McGregor's resume; a Model Release form for R&H Entertainment; and a Business Investment Proposal listing the various costs associated with the marketing and sale of the "I ♥ Teachers" t-shirts. The Commission found these images and documents to be promotional materials for the websites, "I ♥ Teachers" t-shirt, and postcard business venture.

39. Respondent's laptop contained 341 images depicting "sexual act simulation," and "possible sexual intent." According to Mr. Rinek, the images included "an adult female in a school classroom, using a camera to take a picture of her breasts exposed by pulling out her blouse of shirt"; "another picture [which] shows a deliberate staging of a scene depicting a brown object on a desk with a person's rear end posed over it to provide the impression that it represented defecation by the person bent over onto the desk"; and a series of pictures of respondent and Mr. Fields "sitting on a toilet, with their pants pulled down, simulating the act of defecation." The Commission found many of these images to be obscene, and several to be offensive and vulgar.

40. Respondent's laptop contained a photograph of a "Lesson of the Day" drawing on a white board in a classroom depicting a "Smart & Pretty" teacher, a "Student in SP ED," and the student dumped upside down in a trashcan as "Worthless Trash." Respondent admitted drawing the picture, but asserted that she does not know who took a photograph of it, or how it got on her laptop. According to respondent, the drawing was a "joke," and was taken out of context. She also referred to the drawing as a "release" from the "pretty serious issues" they deal with. Respondent claims that her drawing of a special education student as worthless trash does not "hold a candle" to other material being shared in her department. The Commission found this drawing to be repugnant.

41. Respondent's laptop contained 104 images of nude children "in questioned sexual poses" which according to Mr. Rinek, "are similar in pose to erotic pictures of [respondent]." At hearing, Mr. Rinek specifically identified pictures focused on the genital areas of children, a picture with a child's hands resting between her legs; a picture of a girl with her legs spread apart displaying her genitalia; and a picture with a child with simulated breasts. The Commission found it inappropriate that respondent retained a large volume of images of nude children on her district-issued laptop, particularly as many of the images were focused on the buttocks or genital areas of the children.

42. Respondent's laptop contained a Daffy Duck/Bugs Bunny cartoon in which Daffy Duck states "Im [sic] African American," and Bugs Bunny responds "Your [sic] a Fuckin Nigger." Respondent admitted that the cartoon was emailed to her by Mr. Fields, but asserted that she had deleted it. The Commission found this cartoon to be highly offensive.

43. Respondent's laptop contained 10 images "depicting non pornographic pictures of a sexual nature and intent." The pictures "are predominantly those of adults ... without nudity." The Commission found these images to be pornographic.

44. Respondent's laptop contained 401 pictures of respondent "in sexual poses, minimally dressed ..." and respondent "posing nude simulating masturbation." Respondent claimed the photographs were taken in October 2010, for a "boudoir book" entitled "Heidi's Collection Photos and Fantasies," which respondent gave to her husband for his birthday. Respondent denied, however, that three of the pictures simulated masturbation, and argued that she was covering herself with her hand because she was lying down and the photographer was standing over her taking the pictures, and she wanted to make sure she was covered. At hearing, respondent asserted that she used her laptop to create the book because she wanted to learn how to use the program that was already on the laptop, and because the quality of the photos on the MacBook Pro "turned out pretty well" compared to the photos on Shutterfly, an on-line publishing service. The Commission found these pictures to be pornographic.

45. Respondent's laptop contained one image in the unallocated space depicting a young female on all fours, naked, with her mouth wide open, appearing to be screaming, and a person standing behind her. The Commission found this image to be pornographic.

46. On October 6, 2011, Assistant Superintendent Tatum received a call from Mr. Hancock regarding excessive calls on respondent's district-issued cell phone. Ms. Tatum met with respondent, who indicated that she used the district-issued cell phone to call her parents subsequent to the break-up of her marriage. According to Ms. Tatum, respondent never mentioned that she used the district-issued cell phone to call her boyfriend, Mr. Fields. Later that day, Ms. Tatum met with respondent again and asked her to identify the telephone numbers on the cell phone bill, during which time, Superintendent Uslan joined the meeting

to discuss a complaint he had received regarding respondent's use of her district-issued laptop.

47. During the meeting with Superintendent Uslan, respondent initially denied that she had accessed pornography on her district-issued laptop, but then admitted that she had looked at it a couple of times. Respondent also identified R&H Entertainment as an Internet site, but indicated that it was not a business, and that the name had been changed. Prior to any further questioning, respondent requested union representation, and the meeting was adjourned pending the arrival of union representative Janet Olmstead. Respondent identified R&H Entertainment as an on-line store, which was owned by Mr. Fields and Estrellado, and denied that she was in a business relationship with R&H Entertainment. Respondent also denied having any connection to teachertitties.com, mysluttyteachers.com, or 360pig.com. According to respondent, she just typed for them.

48. Effective October 7, 2011, respondent was placed on paid administrative leave. Among the items removed by district administrators from respondent's classroom, was a Trader Joe's shopping bag containing a stack of R&H Entertainment business cards with Mr. Fields' name and cell phone number, and copies of double-sided Model Release forms. At hearing, Ms. Tatum testified that the stack of Model Release forms measured approximately one quarter inch thick.

49. In a letter to respondent dated November 17, 2011, Ms. Tatum confirmed that respondent was placed on paid administrative leave, and that she would continue to receive her normal pay and benefits.

50. On January 9, 2012, Ms. Tatum reported to the Stockton Police Department that numerous nude and questionable photographs of respondent's children were found on respondent's district-issued laptop. The Stockton Police Department initiated an investigation to determine if the photographs were "possible child pornography." After reviewing the images, however, Detective Yates and District Attorney Reed determined that the nude photographs "did not meet the elements of child pornography." According to Detective Yates, the photographs "did not meet the elements for PC 311.1 as the minors were not engaged in or simulating sexual conduct. Despite the fact that most of the images displayed the minor's [sic] buttocks and genitals, it was not the main focus of the images."

51. Ms. Tatum interviewed respondent on January 19, 2012, during which time respondent admitted that she understood the district owned the laptop and could take it back, and that while it states that a teacher should not use the laptop for personal purposes, everyone was doing it. When confronted with a copy of the R&H Entertainment Facebook page, respondent told Ms. Tatum that she was the muse for the statement in the "About Us" section which read: "This company was created by a young teacher who was inspired, after her male students spent most of the period staring at her boobs, to create the "I Heart Teachers" shirt. Knowing this idea would probably not land her an early retirement, she

thought, "Why the hell not" and moved forward with her idea by finding a partner, a computer whiz, and a t-shirt designer. The rest is history." At hearing, respondent admitted that she mentioned to Mr. Fields that it would not look good if a male cop in retirement was promoting R&H Entertainment, so they discussed a better way to market R&H Entertainment, and came up with idea to use the young teacher inspired by her students. According to Ms. Tatum, respondent also denied in the interview that she displayed the "I ♥ Teachers" t-shirt at school, and stated that her involvement in the websites stopped in March/April 2011. Respondent also admitted to Ms. Tatum that it never occurred to her to think about the impact her actions would have on the district as a result of her involvement in the websites.

52. In his August 22, 2012 deposition, Mr. Fields admitted that the original plan for these websites was to make money for his retirement. According to Mr. Fields, however, while there was no agreement between him and respondent regarding how to split the revenues from the various websites, Mr. Fields "was hoping to make a whole bunch of money," and "was hoping to stay with Heidi. So, the money that I made was gonna be our money." In her August 23, 2012 deposition, respondent confirmed that she intended to make money off the website businesses. According to respondent, "the intention was for Rich to make money for his retirement. That was the goal. And eventually if he was super successful and there was an opportunity for me to leave education and make great money, sure. That would be alluring to anybody." At hearing, respondent asserted that she hoped Mr. Fields would be successful. And when asked if in the future there could be a payoff from her investment, respondent stated, "Yeah, but I think everyone thinks that when they have an idea in their head. I've had many ideas in my head thinking I would make a lot of money, and nothing ever happened." At hearing, Mr. Fields asserted that although the websites were taken down in or about September 2011, after respondent called him and asked him to shut them down, Mr. Fields decided to keep the 360pig.com website up and running because it had the potential to make money as a result of the news article regarding him and respondent that was scheduled to be released by *The Stockton Record.*

53. In her August 23, 2012 deposition, respondent also confirmed that she considered Mr. Fields to be her business partner, and admitted that she used her district-issued laptop to work on the websites with Mr. Fields at her home "[p]robably five or six times," during which time they would "talk about how this could work, and if there's any way to even get pictures ...." According to respondent, the work included "taking notes, stuff like that."

54. In her deposition, respondent also admitted that her husband knew the password to her district-issued laptop, and that he would use her laptop at their home. In addition, respondent's babysitter, Samantha McGregor, would sync her iPhone to her laptop to upload photographs. At hearing, respondent admitted that her twin sister used the photo booth application on her laptop to take pictures. In his August 29, 2012 deposition, Mr. Fields admitted that he had the password to respondent's district email. Respondent could

not recall signing an agreement with the district indicating that she would not allow anybody else to use her district-issued laptop, but agreed that if she had signed such an agreement, then she was in violation of that agreement.

55. Donald Vilfer has been the President of Califorensics, a computer forensics firm, since 2002. Prior to his current position, Mr. Vilfer was a Supervisory Special Agent for the White Collar Crime and Computer Crimes Squad of the FBI from 1996 to 2001. In the fall of 2012, Mr. Vilfer was hired to conduct a forensic analysis of respondent's laptop. In his September 19, 2012 Computer Forensics Report, Mr. Vilfer recounted that his assignment was to "recover all deleted items and determine, if possible, the dates the deletions occurred." Mr. Vilfer was also asked to retrieve all information pertaining to the teachertitties.com, mysluttyteachers.com, and 360pig.com websites, and "identify all sexually explicit items" and report the details relating to those images. Of the 1,698,632 items Mr. Vilfer identified, 207,775 of those items were "data carved from unallocated space." According to Mr. Vilfer, as files had been data carved, they "were unable to determine when many of the files were deleted from the hard disk."

56. At hearing, Mr. Vilfer defined the "unallocated space" on a computer as space that the operating system has not set aside for a particular file; the "allocated space" on a computer as space where the operating system saves information that a user downloads; and "cache" as temporary storage space. According to Mr. Vilfer, it is not common knowledge to computer users what is retained on a computer, or that deleted does not mean permanently deleted.

57. According to Mr. Vilfer, respondent's computer contained iPhone backups of photographs from respondent's husband's phone number; pictures of naked children that could not be classified as child pornography; 40 images related to teachertitties.com that in Mr. Vilfer's opinion were not sexually explicit; a "Mozilla Firefox bookmark referencing mysluttyteachers.com, with sexually explicit carved images; information related to 360pig.com with no sexually explicit graphics; a spreadsheet listing the top selling sex toys and other sex paraphernalia that was created on respondent's laptop on August 10, 2011; 338 sexually explicit images, 332 of which were in the unallocated space, and six of which were resident in allocated space; and glamour shots of respondent that Mr. Vilfer opined "are not considered sexually explicit or pornographic."

Respondent's Background

58. Respondent holds a clear Multiple Subject Teaching Credential in general subjects, a clear Cross-Cultural, Language and Academic Development (CLAD) Certificate, and a clear Level II Education Specialist Instruction Credential authorizing her to teach students with mild/moderate disabilities.

59. Respondent has been teaching in the LUSD since the 2002-2003 school year. During 2002-2003, she taught special education at John R. Williams Elementary School, and in the 2003-2004 school year, began teaching special education at LHS. She teaches English and English study skills. During this time, respondent also coached girls' varsity soccer for four years for the LUSD. Prior to working for LUSD, respondent taught special education for three years at Chapparral High School in Parker, Colorado.

60. Observations of respondent's classroom conducted between 2008 and 2010, by Vice Principal Joseph B. Hancock, were positive. On October 15, 2008, Mr. Hancock observed respondent's fifth period RSP English Support class and concluded that respondent's lesson "served as a great instrument to assist/accommodate the successful placement of your students in a regular English class." He noted in his report that "[t]his was a positive learning environment. Great job Heidi!"

61. On March 25, 2009, Mr. Hancock observed respondent discussing the "*The Diary of Anne Frank*" with her fourth period SDC English 4 class. Mr. Hancock concluded that "[t]he students followed the story very well. It was an interesting story and I could look around the room and see everyone was engaged. Vocabulary and concepts were clarified within each dated narrative that was read. Students provided input and respected comments made that added to the discussion."

62. An evaluation of respondent performed on April 29, 2010, indicated that she met or exceeded district standards in all categories of her instructional and professional responsibilities. Her overall rating was satisfactory. The evaluator commented that "Heidi has taken on a valuable role as a collaborating teacher within our Strategies department. This has been an essential role in maximizing students [sic] success in English and interaction with their regular education peers. Heidi is an effective teacher and effectively breaks curriculum down through Sparknotes text analysis and other eclectic preview/review strategies."

63. An observation of respondent's sixth period English Support class was conducted on October 1, 2010, and the notes indicated that "[t]here was good on task behavior and multitasking by the teacher. The students made good use of heir time and were on task. One student in the back of the class was not doing much other than socialize [sic] and was sharing silly bands with her friend the first day; You [sic] did a good job prompting her to get something done, i.e. reading. Good strategy of 'grabbing a magazine' for those who were done since they got chatty. Students seemed very comfortable to get feedback from you on their essays."

64. In a November 3, 2010 observation of respondent's English Support class, respondent co-taught the reading of the "*Enders Game*" with Melissa Prettyman. Mr. Hancock commented in his report, in pertinent part, that "[t]his was a very effective collaborative lesson. Both of you take a great amount of time to dissect key points of a

reading when presenting to your classes. Working together maximized the students receiving the same opportunity to reinforce their understanding of the text .... All students were paying attention and taking notes. Some of those taking notes were not following the reading of the text so I did not know if they had already read this information or if this was common practice."

Respondent's Defenses

65. Respondent contends that the charges against her are the result of a vendetta by her husband. According to respondent, if she had not had the extramarital affair with Mr. Fields, "this would never have been an issue." However, after her husband discovered that she was having an affair it was his mission to destroy her. He threatened her, told her he would get her in trouble with her job, and hired a private investigator to lie to the district about what happened. In support of her contention, respondent claims that subsequent to their separation, when her husband came over to her house to play with their children, respondent saw him shut down her laptop when she walked into the kitchen. Respondent believes that her husband installed maliciously incriminating evidence on her laptop at that time. Respondent also believes that because her husband was paying private investigator Jeffrey Rinek to make her look bad, that she could see how Mr. Rinek could also have transferred incriminating images onto her laptop.

Respondent's contentions are without merit. The incriminating images and documents that served as the basis for the charges against respondent were resident in the unallocated and allocated spaces of respondent's laptop as a direct result of the work she did with Mr. Fields on the various pornographic and adult entertainment websites beginning in the fall of 2010. This was corroborated by respondent's own testimony, and that of Mr. Fields, who confirmed that the images and documents were used for specific websites, the "I ♥ Teachers" t-shirts, the postcard business venture, and the boudoir book. Moreover, no evidence was presented to establish that any of the incriminating images or documents was installed on respondent's laptop by either her husband or Mr. Rinek.

66. Respondent acknowledged her awareness of an Administrative Regulation providing that employees only use district equipment for district use only, but contends that personal use of the district-issued laptop was permissible in the district. In support of her contention, respondent asserted that "[t]he District told us from day one, when we were issued computers, that we had to take it home, that we had to take an insurance policy on it, and that basically – yeah, it was written "Not for personal use," but they were [sic] knew we were using it for personal use. So, how can I assume that this computer that I'm supposed to use and take home with me and take an insurance policy out on, that I can't use, at times, for personal use when I'm at home? Tell me how that's – I mean, why would I have to take out an insurance policy, then?" The Loan Agreement signed by respondent when she was issued the laptop indicated, in pertinent part, that "[b]efore equipment can be borrowed, an insurance policy must be executed in which the replacement value of the equipment is

protected against damage or loss. A current homeowner's or renter's policy is acceptable." Respondent's contention that she was permitted to use the district-issued laptop for personal reasons because she had to provide evidence of homeowner's insurance is without merit. Respondent acknowledged that the laptop was "Not for personal use," and no where in the language of the Loan Agreement did it give respondent permission to use the district-issued laptop for personal use. The insurance coverage was specifically to protect the laptop from damage or loss.

As further support for her contention that personal use of the district-issued laptop was permissible in the district, respondent asserted that she was told by LHS' Principal, Debra Holmerud, that they "had to ... take [their] computers home." At hearing, Principal Holmerud testified that when the laptops were issued, all the teachers were given the option to either use a locking cable to secure their laptops to heavy classroom furniture, store them in a locking cabinet at school, or take their laptops home. According to Ms. Holmerud, the teachers were given these options to protect their laptops from theft or damage. Ms. Holmerud's testimony was persuasive, while respondent's was not. Therefore, respondent's contention that it was appropriate for her to use her district-issued laptop for personal use because she was told to take her computer home is without merit. Ms. Holmerud's instructions were to protect the district-issued laptop from theft or damage, and did not constitute permission to use the district-issued laptop for personal use.

Respondent also contends that personal use of the district-issued laptop was permissible because it was the "culture" of the district. According to respondent, "if my department head is doing stuff personally during school hours with a group of people all the time during their prep, how is that showing me an example that it's not acceptable and common practice for people to use their computer for personal stuff?" In addition, respondent contends that there are teachers who do drugs and use the district's email "to connect a time to go party," so they are using their computers "on campus during school hours for personal use." Respondent also identified an LUSD custodian who allegedly used the district's time and technology to send an email of a "nudie picture of a woman; a very erotic picture" to "a whole chain of people" on October 7, 2011. In his August 29, 2012 deposition, Mr. Fields confirmed that he received the email from the LUSD custodian, and identified other LUSD custodians and security officers who were on the email distribution list. However, no evidence was presented to establish that respondent's department head was using her laptop for other than incidental personal use, and no evidence was presented that the district knew that teachers were doing drugs and using the district's email to schedule their parties, or that the LUSD custodian was emailing erotic pictures to other LUSD custodians and security officers. Therefore, respondent's contention that her personal use of the district-issued laptop was permissible because it was the culture of the district is without merit.

Respondent also contends that because the district knew that teachers were using their district-issued laptops for personal use during school time, she did nothing wrong when she

used her district-issued laptop at home to register the domain name for R&H Entertainment, and to view and categorize pornographic video clips. Furthermore, in her deposition, respondent queried, in pertinent part, "[w]ell who's the moral compass here of saying what is right and what's wrong? ... I'm just saying that you're saying that what I did was wrong. Who's saying that that's wrong?" And when asked in her deposition if she admitted to Ms. Tatum during her January 19, 2012 interview that she knew she was not supposed to use the district's computer for personal reasons, respondent stated: "[w]ell that's what's stated on the paper, but that's not what they know every teacher does," and when asked again if she admitted that she knew she was not supposed to her use district laptop for personal use, respondent stated: "[w]ell, then, I want to make sure that it's clear that yeah, you guys are telling me that's the case, but that's not what everybody does." Respondent then went on to identify all of her colleagues in the special education department who used their district-issued laptops for personal use, and asserted that "they're buying plane tickets, or they're checking Facebook, or they're doing iMovie, or they're putting photos together for an 8th grade graduation thing. It's all done during school time around their prep. I saw it happen all the time."

At hearing, Dr. Moreira admitted that she checks her Facebook at school on her district issued-laptop, and Ms. Tatum affirmed that teachers use their laptops to check their Facebook and emails, and to maintain pictures of their family and friends and personal songs. According to Ms. Tatum, incidental is acceptable.

The laptop was issued to respondent for district-related business. Incidental personal use of the laptop to check Facebook and email, and to maintain pictures of family and friends and personal songs, was acceptable to the administration. However, while respondent claims she only registered a domain name and viewed and categorized pornographic video clips using her laptop at home, respondent also used her laptop to type notes from meetings with the web developer, and store pictures of women's breasts; hundreds of images of people engaged in sex acts; logos for the websites and t-shirt businesses; a flyer advertising the teachertitties.com website; a business investment proposal; a model release form; and trademark applications, all in furtherance of the development of the websites, "I ♥ Teachers" t-shirt, and postcard business venture. In addition, respondent used her laptop to store personal pictures for a boudoir book; a drawing of a special education student as worthless trash; and a racist cartoon. None of these materials relate to district business, and the sheer volume of images and documents found on respondent's laptop confirm that it was not used for incidental personal use. It is disquieting that respondent equates her personal use of the district's laptop with that of checking Facebook and emails. That was clearly not the case here. Therefore, respondent's contention that she did nothing wrong when she used the district laptop for personal business is without merit.

67. Respondent contends that the district did not provide her with notice of the administrative regulations or board policies prohibiting her from using her district-issued laptop for personal business, and did not provide her with in-service training regarding the

use of her district-issued laptop, or how computers operate and store information. According to respondent, "I don't know enough about computers to know that if you go somewhere, that junk comes in"; "I don't know what happens when you're on certain sites"; and "I don't know what gets downloaded without your knowledge." In addition, respondent asserted that she was unaware that viewing and categorizing pornographic video clips would leave anything on her computer.

The evidence presented established, however, that respondent signed a Consent and Waiver on behalf of the San Joaquin County Office of Education Data Processing JPA (DP JPA), and the District, on September 9, 2009, in which she agreed to the following pertinent terms regarding her use of the school's computer network:

> My use of the IT JPA WAN must be consistent with the DP JPA and the district's primary goals.
>
> I will not use the IT JPA WAN for illegal purposes of any kind.
>
> I will not use the IT JPA WAN to transmit threatening, obscene, or harassing materials. The district and DP JPA will not be held responsible if I participate in such activities. In fact, by completing this contract, I agree that the DP JPA and district are not responsible for such behavior on my part.
>
> I will not use the IT JPA WAN to interfere with or disrupt network users, services, or equipment. Disruptions include, but are not limited to, distribution of unsolicited advertising, propagation of computer worms or viruses, using printers other than those designated in my department for employees use, and using the network to make unauthorized entry to any other machine accessible via the network.
>
> I will not use the IT JPA WAN to access information or resources unless permission to do has been granted by the owners or holders of rights to those resources or information. It is assumed that information and resources accessible via the IT JPA WAN are private to the individuals and organizations which own or hold rights to those resources and information unless specifically stated otherwise by the owners or holders of rights.

The Consent and Waiver also warned, in pertinent part, that:

> In accordance with the Electronic and Communications Privacy Act of 1985, 18 USCS Section 2510, all employees are hereby given notice that there are no facilities provided by the IT JPA WAN for sending or receiving private or confidential electronic communications. All messages shall be determined to be readily accessible to the general public. Do not use this system for any communications which the sender intends only for the sender and intended recipients to read ....

Respondent signed the Consent and Waiver subject to the following:

> I understand and will abide by the provisions and conditions of this contract. I understand that any violations of the above provisions may result in disciplinary action, the revoking of my user account, and the appropriate legal action. I also agree to report any misuse of the information system to my supervisor or to the Department of Information and Technology. Misuse can come in many forms, but can be viewed as any messages sent or received that indicate or suggest pornography, unethical or illegal solicitation, racism, sexism, inappropriate language, and other issues described in this document. All the rules of conduct described in district or school site policies, procedures, and handbooks, apply when I am on the network.
>
> **I understand that the email account supplied by the Data Processing JPA (DP JPA) is not my personal e-mail and that it and it's [sic] content are solely the property of the DP JPA and can be viewed by those authorized by the DP JPA.**
>
> [Bolding in original.]

While respondent is not charged with using the district's network to work on the websites, "I ♥ Teachers" t-shirts, and postcard business venture, the Consent and Waiver form signed by respondent provided her with general notice regarding the misuse of the district's information system, and specifically identified "messages sent or received that indicate or suggest pornography, unethical or illegal solicitation, racism, sexism, inappropriate language, and other issues ...." In addition, the Consent and Waiver provided respondent with notice that there were "rules of conduct described in district or school site policies, procedures, and handbooks," albeit they apply to use of the district's network.

Moreover, in her June 1, 2012 Unemployment Insurance Appeal Hearing in Stockton, California, respondent admitted, inter alia, that she understood the laptop was for work use only; she allowed her husband and her babysitter to use the laptop; there were quite a few inappropriate pictures of adults on her laptop; and that the inappropriate pictures on her computer was a violation of her employer's policy. When asked by the Administrative Law Judge why she did it, respondent answered: "I wasn't thinking that it would ever be known ...." Respondent's admissions at the Unemployment Insurance Appeal Hearing establish that she was aware that district policies existed regarding the use of district equipment, even though those policies had not been placed in front of her or signed by her. Moreover, an ordinary, reasonable person would have known that use of district property for personal use would not include working on for-profit adult entertainment or pornographic websites, a t-shirt business depicting women's breasts, a postcard business depicting people sitting on a toilet, or a boudoir book. Finally, respondent admitted to district administrators in her January 12, 2012 interview that she knew the district-issued laptop was not for personal use. Therefore, respondent's contention that the district failed to provide her with notice of the administrative regulations or board policies prohibiting her from using her district-issued laptop for personal business, was without merit.

68. Respondent contends that she was unaware that when she plugged her iPhone into her laptop, the iPhone would "sync" with her laptop to automatically upload the photographs from her iPhone to her laptop. At hearing, respondent asserted that when she connected her iPhone, she only saw "activity" if she looked at iTunes, and that she usually did not look at iPhoto because she looked at those photos through her iPhone. Respondent could not recall if the iPhone displayed an image on the screen that it was syncing information, but admitted that she did not alter the iPhone to automatically sync with her laptop. Respondent testified at hearing that "now I plug it into the wall."

At hearing, Ms. Tatum testified that when she plugs her iPhone into her laptop, the iPhone default setting indicates that it is "syncing" the information from the iPhone to the laptop, and instructs her not to disconnect the iPhone. Ms. Tatum's testimony on this issue was plausible and credible, while respondent's was not. Therefore, respondent's contention that her iPhone automatically uploaded photographs from her iPhone to her laptop without her knowledge is without merit.

69. Respondent contends that the images and photographs identified by the district's forensic expert were not on the district-issued laptop at all as they could not be seen by anyone who opened the laptop. According to respondent, the images and photographs were primarily buried in bit maps in the unallocated space of respondent's laptop, and could only be seen with the use of specialized forensic software. In support of her contention, respondent asserted that, "I didn't think there was anything on there, because everything, I thought, had been deleted." Once again, respondent's contention is without merit. Even if the images and photographs are stored in the unallocated spaces of the laptop that does not exonerate respondent. She still used the district-issued laptop to work on the pornographic

and adult entertainment websites, "I ♥ Teachers" t-shirt, postcard business venture, and boudoir book.

70. Respondent also proffered the defense that her work on the websites was a "ruse" to spend time with Mr. Fields. According to respondent, they created the Business Investment Proposal for R&H Entertainment and the Non-Disclosure Agreement to deceive respondent's husband into believing that they were working on the websites rather than their relationship. At hearing, respondent described the Business Investment Proposal as a "joke," and R&H Entertainment as a "fake business." However, respondent's testimony is belied by her own admission, and Mr. Fields' confirmation, at hearing that respondent registered the trademark for R&H Entertainment using her maiden name in December 2010, and that Mr. Fields paid respondent's friend and former LUSD student, Lindsey Halloran, to create a Facebook page for R&H Entertainment in or about May 2011. No evidence was presented at hearing to establish that respondent transferred or sold her ownership of the R&H Entertainment trademark. Therefore, as the current owner of the trademark, she is responsible for that website. Respondent also admitted that April Scott took the Facebook page down at respondent's house in September 2011, after Lindsey Halloran text the fictitious person access information to either her or April Scott. In addition, at hearing, respondent testified that because Mr. Fields and his son were in a band, they intended to use R&H Entertainment to promote music bands in town. Therefore, R&H Entertainment was a legitimate business.

These admissions, in conjunction with their meetings with web developers; Mr. Fields' purchase of the website domain names; Mr. Fields' payment of monies to web developer Estrellado; respondent's sketch of a logo for the "I ♥ Teachers" t-shirts; respondent's modeling of the "I ♥ Teachers" t-shirt to her colleagues; respondent's discussion with Dr. Moreira and Melissa Prettyman-Pope regarding the teachertitties.com website; respondent's viewing and categorizing of adult entertainment video clips for content for the mysluttyteachers.com website; respondent's sketch of a logo for the 360pig.com website; respondent's referral to Mr. Fields of an artist named Brandon to draw a pig logo; respondent's trip to the Adult Video New Expo in Las Vegas; respondent's request to EDTC for a list of the top 1,000 selling sex toys and accessories; and respondent's work to launch a postcard business venture, establish that respondent was in fact working on pornographic and adult entertainment websites, the "I ♥ Teachers" t-shirt, and the postcard business venture. Respondent's contention that her involvement in the websites was a "ruse" to make her husband believe she was working on the websites is astounding and absolutely without merit.

71. Respondent contends that she was authorized by Assistant Principal Bender to use her district-issued cell phone for personal business beginning on September 2, 2011. In her August 23, 2012 deposition, respondent asserted that when she asked Ms. Bender if she could use the district's cell phone to make personal calls to her parents and family, that Ms. Bender "said, 'Absolutely,' and '... made it appear, to me very clear, that, 'Use it. I understand the circumstances. We'll get this figured out. Do whatever you need to do.'"

However, three months prior to her deposition, in her June 19, 2012 Answers to Special Interrogatories, respondent stated, in pertinent part, that after her husband "smashed her personal phones," she "asked [Ms. Bender] if she could temporarily use her district-issued cell phone for personal business. Ms. Bender didn't give her an answer one way or another, but indicated that she would advise the principal [sic] of the situation.... On October 6, when she was confronted by district administrator Joe Hancock regarding the phone use, she told him about her crisis involving [her husband], her attempts to obtain permission from Ms. Bender, and she offered to pay for all her use." Then, at hearing, respondent asserted that on September 2, 2011, she explained to Assistant Principal, Katherine Bender that she was going through a divorce, her husband had "busted" her cell phones, and she did not have a bank account or money to purchase a replacement cell phone, and asked Ms. Bender if she would talk to LHS Principal Holmerud about allowing respondent to use the district's cell phone to call her parents and family until she could obtain a replacement cell phone. According to respondent, she also told Ms. Bender she was willing to pay for any charges once she received her next paycheck. Respondent followed up with Ms. Bender on three or four occasions, but never heard back from her.

At hearing, Ms. Bender testified that respondent approached her while she was finishing up a meeting, and asked her a quick question regarding in what capacity she could use the district-issued cell phone. Ms. Bender told respondent she would talk to Principal Holmerud and get back to her. According to Ms. Bender, respondent did not tell her why she needed to use the district-issued cell phone, and did not offer to pay for the phone charges. Subsequent to their first discussion, respondent shared with Ms. Bender that her marriage had broken up, and that she wanted to make things right. Ms. Bender encouraged respondent to do so for her children. Ms. Bender testified that in their second discussion, respondent never told her that her husband had threatened her and broken her phones, or that she had no money, credit cards, or bank accounts. Ms. Bender explicitly denied ever telling respondent that she could use the district-issued cell phone, and asserted that she never checked with Principal Holmerud because "it didn't seem urgent," and because Principal Holmerud was "very accessible," so respondent could have spoken directly with Principal Holmerud.

Ms. Bender's testimony at hearing was persuasive and credible, while respondent's was not. Ms. Bender's testimony was also corroborated by respondent's hearing testimony in which she stated that she followed up with Ms. Bender on three or four occasions. Had Ms. Bender given respondent permission to use her district-issued cell phone for personal business, respondent would not have had to follow up with her. Therefore, respondent's contention that Ms. Bender authorized her to use the district-issued cell phone in September 2011 is without merit.

72. Respondent also proffered the defense that the use of her district-issued cell phone for personal business from September 2, 2011 through October 3, 2011, was justified as an emergency. According to respondent, her husband had broken her phones, and she did not have sufficient funds to purchase her own cell phone, and the money to which she did

have access was necessary for the purchase of diapers, wipes, food, gas, utilities and clothes for herself and her children. However, at hearing, April Scott confirmed that she offered respondent whatever help she needed following the break-up of her marriage. The evidence also established that in summer 2011, respondent kept approximately $700 in an envelope in a drawer at Mr. Fields' house, and between spring 2011 and fall 2011, respondent only used $500 to purchase clothes and boots for herself. At hearing, Mr. Fields confirmed that there was "a couple hundred dollars left after August." At hearing, respondent denied that there was any money left from the $700 she kept at Mr. Fields' home, because a pair of boots she wanted was $20 more than she had in the drawer.

In addition, on September 1, 2011, respondent's joint checking account with her husband had a balance of $6,082.90. Although withdrawals were made from the account for medical bills, utilities, daycare, credit card payments, life insurance premiums, educational supplies, and mortgage payments, as well as cash withdrawals totaling $1,531.83 made by Mr. Kaeslin, the account remained open and accessible to respondent until it was closed on September 9, 2011. Furthermore, in an email to respondent on September 3, 2011, Samantha McGregor stated "Can I help you out with the phone situation ... Or can u only use a phone from rich or whatever ...." On or about September 4, 2011, Mr. Fields met respondent at a Target store and offered to buy her a phone; however, according to Mr. Fields, respondent did not take him up on his offer because "she had the school phone ...." On September 6, 2011, respondent opened a savings account at Wells Fargo Bank with a deposit of $95, and on September 13, 2011, respondent deposited $500 into the account, which she received from Mr. Fields. As of September 30, 2011, the balance in the savings account was $595.

On September 13, 2011, respondent also opened a checking account at Wells Faro Bank with a deposit of $500, which she received from Mr. Fields, and on September 16, 2011, deposited $4,000 into the account, which was also given to her by Mr. Fields. On September 30, 2011, respondent's paycheck was directly deposited into the account. Between September 16 and October 17, 2011, withdrawals were made from the account for Netflix; food at Donut King, S-Mart, Raley's, Marina Marketplace, and Safeway Stores; gas; retail purchases at Best Buy, Old Navy, Target, CVS, Jo-Ann Stores, and Wal-Mart; DIRECTV; utilities; dry cleaning; a show at the cinema; and mortgage payments. There were also cash withdrawals totaling $500 made by respondent. On October 17, 2011, the balance in the checking account was $1,336.77. In her deposition, respondent also confirmed that Mr. Fields added her name to his business account maintained at the Bank of Stockton, and that the $500 in the account was available to her "[i]n case I ever needed money." Therefore, respondent always had access to the $500 in her joint business account with Mr. Fields.

Respondent's contention that her use of the district-issued cell phone was justified as an emergency because she did not have access to money to purchase her own cell phone, was

not credible, and therefore is without merit. Respondent had access to money immediately following the break-up of her marriage, but chose instead to use the district-issued cell phone.

73. Respondent contends that her use of her district-issued cell phone for personal business was not improper because "[t]eachers are on that cell phone all the time making personal calls during classroom. You can see them outside." In her deposition, respondent specifically identified one district employee and generally identified employees in the special education department who use their district-issued cell phone for personal business. In his deposition, Mr. Fields admitted that he contacted respondent on her district-issued cell phone subsequent to the break-up of her marriage, and while she was at work, "as many times as I could ... before, during and after work hours," because "I knew how her classes were. I knew how – I knew her schedule, and she had a lot of down time" during which they could talk. At hearing, respondent confirmed that there were opportunities for down time in her classroom, and asserted that she did not see the harm in taking a personal phone call if she chose to.

Respondent's contention that it was appropriate for her to use her district-issued cell phone for personal business during school time because everyone was doing it is not persuasive. No evidence was presented to establish that employees identified by respondent were misusing their district-issued cell phones. Nevertheless, the district regulations and policies expressly prohibit use of the district-issued cell phone for personal business during class time absent an emergency, and respondent has failed to establish that her use of the district-issued cell phone was justified as an emergency. In addition, respondent failed to establish that she obtained permission from the district to use her district-issued cell phone for personal business. Therefore, respondent's contention that is was appropriate to use the district-issued cell for personal use because everyone was doing it, is without merit.

74. Respondent contends that she was not required to check with the administration if she could leave the campus and go home during her prep period. According to respondent, "... I didn't have to check, when my department head and other people on campus were always leaving during their prep. So, why would I check if my boss – my department head boss and other people are doing it?" However, respondent acknowledged that the head of her department was not an administrator, but a faculty member, who was not responsible for conducting her evaluations. In her deposition, respondent identified two teachers who she believed left campus during their prep period with the administration's knowledge. However, she did not know if those teachers had cleared it with the administration prior to leaving campus, and no evidence was presented to establish that the administration knew that these teachers were leaving campus during their prep period without authorization. Therefore, respondent's contention is not persuasive and is without merit.

75. Respondent also contends that it was appropriate for her to go home during her prep period prep class to conduct personal business because she did not have students during that time; she "worked through a majority of [her] lunches"; and she "would stay after school" to tutor students, for which she did not get paid. According to respondent, her fourth period prep class "backed up" to her lunch period. However, at hearing, Principal Holmerud testified that prep period is district time, and that time is designated for teachers to prepare to teach, and Ms. Prettyman-Pope testified that prep period was for preparing lessons, working on IEPs, and conducting school, not personal, business. The testimony of Principal Holmerud and Ms. Prettyman-Pope was a plausible explanation of what is expected of teachers during their prep period. In addition, Ms. Tatum confirmed that prep period is district time in which teachers prepare their IEPs, reports and lesson plans. According to Ms. Tatum, teachers are generally not permitted to go home early for lunch, even if their prep period is before lunch; however they can do so in the event of an emergency. Ms. Tatum was extremely thoughtful with her responses, and presented as a sincere, credible witness. Therefore, respondent's contention that it was appropriate for her to go home during her fourth period prep class to conduct personal business is without merit.

76. Respondent contends that the district did not follow proper procedure when they met with her on October 6, 2011. According to respondent, the district was required to, but did not offer her union representation prior to questioning her. Ms. Tatum testified that no prior written notice of the meeting was given to respondent, and she was unaware that respondent would be placed on leave at the outset of that meeting. According to Ms. Tatum, however, respondent was free to leave the meeting at any time, and neither she nor Superintendent Uslan conveyed to respondent that she had to stay in the meeting, which lasted approximately one hour.

Respondent's contention is without merit. No evidence was presented by respondent to support her contention that the district was required to offer her union representation prior to their questioning. However, the evidence did establish that once respondent requested union representation, the meeting was adjourned pending the arrival of union representative Janet Holmstead. In addition, respondent admitted at hearing that she was the high school teachers' union representative at LUSD during the 2010/2011 school year, and that she served as a union co-representative in the 2011/2012 school year, until she was placed on administrative leave. Therefore, she knew, or reasonably should have known the provisions of the bargaining agreement regarding her rights to union representation.

77. Respondent contends that the district has failed to demonstrate that she was dishonest. In support of her contention, respondent asserted that at the time she answered Superintendent Uslan's questions, there was no pornography on her laptop because she had deleted it, and she was not in a business relationship with Mr. Fields because by that time their relationship had ended. However, the evidence established that during the October 6, 2011 meeting with Superintendent Uslan, respondent initially denied that there was pornography on her computer but corrected herself upon further questioning, and that

respondent's relationship with Mr. Fields did not end until May 2012. Respondent also denied that she had any connection to the teachertitties.com, mysluttyteachers.com, and 360pig.com websites, when in fact she was an integral part of the work necessary to get the websites up and running. Respondent also told Mr. Uslan that she came up with the idea for teachertitties.com, but at hearing asserted that she did not, and only told Mr. Uslan that she did because she did not want to name anybody else. Moreover, respondent told Superintendent Uslan that she had permission from Ms. Bender to use the district-issued cell phone, when in fact she did not.

At hearing, respondent acknowledged that the charge of dishonesty also included respondent's statements that she ceased her involvement with R&H Entertainment in fall 2010; teachertitties.com and mysluttyteachers.com in April 2011; and the "I ♥ Teachers" t-shirts in spring 2011, and that she was not involved with 360pig.com. However, the evidence established that in August 2011, respondent used the R&H Entertainment email address to obtain contact information for her "Sweet Nothings" iPhone app.; in June 2011, respondent assisted April Scott in obtaining pictures of women's breasts for the teachertitties.com website; on October 7, 2011, respondent had copies of the Model Release form that was to be used for content for the teachertitties.com websites in her classroom; and on August 10, 2011, a spreadsheet listing the top selling sex toys and other sex paraphernalia was created on respondent's laptop. Therefore, respondent's contention that the district failed to demonstrate that she was dishonest is without merit.

78. Respondent contends that the district has failed to establish that she was insubordinate. In support of her contention, respondent asserted that she was not required to check with the administration prior to leaving for Florida to visit her sister while she was on paid administrative leave in January 2012. According to respondent, she traveled to Florida to visit her sister for five days to help her with her children, and to work on "Quickbooks stuff," and admitted that she did not check with the administration prior to leaving. In her deposition, respondent queried, in pertinent part, "[w]hy would I need to check? They put me on administrative leave, and no one told me that I wasn't allowed to do anything while I'm at home waiting to find out what's going to happen with my job. No one gave me any clear rules or expectations until after I came home …." Respondent asserted that even after she received notice from the district that she was not supposed to leave the state while she was on paid administrative leave, she did not understand why she could not leave the state, and contended that "[i]f you are putting me on leave and – not you, meaning you, but the District – putting me on leave, not allowing me to perform my duties, and not expecting me to be sitting in a room somewhere at least during the time they're investigating, who are they to tell me what I can and cannot do? Meaning the District, not you." Respondent admitted however, that she was paid her regular salary during that time.

At hearing, Ms. Tatum explained that if a teacher has a family emergency or needs to leave town, they are required to communicate with the Human Resources Department to determine if Personal Need is necessary. According to Ms. Tatum, paid administrative leave

is not a paid vacation. In addition, teachers do not acquire paid vacations. In a letter dated January 25, 2012, Ms. Tatum advised respondent that "as an active District employee," she is "expected to be available to the District during regular District hours on designated days." Ms. Tatum also notified respondent that "[i]f for any reason you are not available, you are expected to comply with the existing leave request protocols outlined in the collective bargaining agreement and other policies and procedures, including, but not limited to, notifying the District's HR office and filling out applicable leave requests and obtaining permission. The District will then make appropriate modifications to your leave banks and pay status, as appropriate. Specifically, you are advised that your status on administrative leave is not a 'paid vacation' and you are not free to leave the town without following these protocols." Ms. Tatum asserted that respondent's decision not to follow her directive was considered by the district to be insubordination.

Respondent's decision to travel to Florida to visit family while she was on paid administrative leave demonstrates her lack of respect for the provisions of the Bargaining Agreement between the California Teachers Association and LUSD, which provides that employees are entitled to use up to seven days of accumulated sick leave for Personal Necessity Leave, and for "unspecified compelling reasons." Article VII, Section 3 of the Bargaining Agreement also specifies, in pertinent part, that "[p]ersonal necessity leave shall not be used for vacation, recreation, or to engage in other employment." Respondent knew, or reasonably should have known, that personal necessity need was available to her.

Moreover, respondent's testimony that the district had no right to tell her what to do when she was on paid administrative leave screams defiance. Respondent has been employed by the district since 2002. Her lengthy employment, coupled with her role as the high school teachers' union representative, establishes that she knew, or reasonably should have known, that teachers do not acquire paid vacations. She also knew, or reasonably should have known, that paid administrative leave was not a paid vacation. At a minimum, respondent should have notified the district that she was leaving the state to visit her family. The fact that respondent received the January 25, 2012 letter from Ms. Tatum after she returned from her trip to Florida, does not relieve her of her obligation to follow the rules established under her employment contract. Therefore, respondent's contention that the district failed to establish that she was insubordinate is without merit.

79. Respondent contends that she is a highly regarded and excellent teacher who was misguided by her extramarital affair. The following letters were submitted in support of respondent's contention.

Shelly Moreira, Ed.D. is the Department Chair of LUSD's Special Education Department. In an email to LUSD's Strategies Department, dated October 9, 2011, Dr. Moreira urged the staff to "do all that you can to stop the rumors" circulating about

respondent being out on leave, and indicated that "[t]his is a huge loss for our department, as we can all agree that Heidi is an excellent, caring teacher. My hope is that Heidi will return to her teaching position soon and pick up where she left off."

On January 2, 2012, the parent of a LHS student wrote a letter "To whom it may concern," stating that his contacts with respondent have been "professional, courteous, polite and caring," and that respondent "has been a positive influence [with their daughter] helping her academically and socially."

On April 14, 2012, April Scott[4] wrote a letter on Wicklund Elementary School (WES) letterhead on behalf of respondent, and signed it as the Principal of WES. In her letter, April Scott asserted that respondent's knowledge of the curriculum was "exemplary," and her "passion for teaching is evident." She described respondent as "always cooperative with administration and looked to as a leader amongst her peers." At hearing, however, April Scott admitted that she used the WES letterhead without permission from the administration, and signed it as the Principal of the school even though she had resigned from WES, under unfortunate circumstances, in March 2012. April Scott testified at hearing that she did not think it was inappropriate to use the WES letterhead to write a reference letter for respondent, or to sign it as the Principal. April Scott's demeanor at hearing was disrespectful, dismissive, and completely unprofessional. The Commission found that April Scott was not a credible witness.

On April 19, 2012, Dr. Moreira wrote a letter of recommendation in which she described respondent as "a valued teacher"; "a dedicated staff member"; and "an excellent Resource Specialist" who "understands the difficulties students with Learning Disabilities face." At hearing, Dr. Moreira stated "I wrote it like a fool and didn't realize I was being set up." According to Dr. Moreira, respondent asked her to write the letter because her attorney told her she needed reference letters so she could apply for positions in other school districts. However, respondent had not revealed to her what the charges were, and Dr. Moreira had not reviewed the Statement of Charges against respondent at that time. Once she learned of those charges, however, Dr. Moreira regretted writing the letter because she realized she did not know the extent of the problems facing respondent, and believed that she had written the letter for someone she did not know. Dr. Moreira asserted that had she known about the charges, she would not have written the letter of recommendation. Later, when she was approached by Ms. Tatum regarding the reference letter, Dr. Moreira realized "what an idiot I had been for not asking someone about it first."

On April 26, 2012, Tara Bell, Principal of Franklin-McKinley School District, wrote a reference letter describing respondent as "a hardworking, dedicated, and organized Resource

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[4] April Scott was a Vice Principal at LHS for eight years prior to being demoted for, inter alia, using district resources to access information to help her son who was involved in the disciplinary process at LUSD.

Specialist Teacher" whose "dedication to her students and the Lincoln High School Community was extremely valued." At hearing, respondent admitted that she did not tell Ms. Bell that she had been fired from LUSD when she asked for the reference letter. According to respondent, Ms. Bell "pretty much knew why I was being fired."

80. Respondent contends that she was only involved in an ill-conceived idea for a brief period. However, respondent worked on the websites, the "I ♥ Teachers" t-shirt, and the postcard business venture for at least 10 months during the 2010/2011 school year, and was still using the R&H Entertainment email address on August 22, 2011, when she asked Mr. Schapiro to send her the contact information for a lead on her idea for a "Sweet Nothings" iPhone app. In addition, at hearing, Dr. Moreira confirmed that "for months" beginning in the spring of 2011, respondent talked to her about the teachertitties.com website in the special education office, and then "weeks later" modeled the "I ♥ Teachers" t-shirt for her in the "back office" during their lunch period. According to Dr. Moreira, she was "disappointed" with respondent, "devastated", and could not believe it had gone that far. Dr. Moreira told respondent to "be careful," because "it was a bad idea." Therefore, respondent's contention that she was only involved in an ill-conceived idea for a brief period is without merit.

81. Respondent contends that her actions did not cause harm to her students, or the district. Insufficient evidence was presented to establish that students were impacted by respondent's conduct. However, at hearing, Dr. Moreira testified that when respondent talked about the teachertitties.com website in the special education office, and modeled the "I ♥ Teachers" t-shirt for her in the "back office" during their lunch period, there were "always people in the special education office during their lunch period because "we routinely ate lunch together." Dr. Moreira was disappointed when she learned that respondent was working on the teachertitties.com website. Respondent also showed the "I ♥ Teachers" t-shirt to Ms. Prettyman-Pope and two other colleagues in the back office of the special education department. Ms. Prettyman-Pope testified that she was shocked that respondent had taken it that far.

Furthermore, in an October 12, 2011 email to Ms. Tatum, Vice Principal Hancock summarized his 15-minute interview with a paraprofessional regarding her observations of respondent, noting that:

1. Making copies of Bank of America Mortgage Statement
2. Many phone calls made/received during class. Hushing the students when on personal calls. One student even asked the teacher to take a call outside. Personal paperwork was being shuffled on many of the calls, but no further details provided.

3. The aide was sent to take care of American Fidelity paperwork having to do with personal deductions. That took about 30 minutes.
4. A couple of times the teacher left the room and the aide was in the room.

Lisa Fields has been a paraprofessional with LUSD for five years. She serves as an instructional aide to resource and mainstream English teachers. In the fall of 2011, Ms. Fields worked in respondent's classroom during three English classes and two resource classes. At hearing, Ms. Fields testified that in September 2011, she observed respondent on a cell phone "constantly," and "a lot during class time." In addition, she observed respondent leaving the classroom to take a phone call a "handful of times," and asserted that respondent was on the phone in the classroom more times than she was on the phone outside. According to Ms. Fields, respondent "shushed" the class on at least two occasions while she was on the phone, and was gone an entire class period on one occasion, leaving Ms. Fields to take over the lesson. Lisa Fields was a credible witness. At hearing, respondent admitted that she used the phone frequently during the work day, but asserted that it was "mostly during my prep period." Respondent also admitted that calls came in when she had students in the classroom, but that she would step outside to take the call. According to respondent, there were times that the aides would step in and take on the teaching role. Respondent also admitted that she shushed the children in her class when she was taking a phone call, but asserted that it was when she was leaving a message for a parent regarding a student who had not finished their homework. Respondent denied ever leaving the classroom for an entire class period.

In addition, on November 16, 2011, The Stockton Record ran a news article entitled "Teacher's role in porn websites investigated," detailing the events leading up to respondent's placement on paid administrative leave, and her subsequent "marriage troubles." Several news articles followed in print and on the Internet, nationally and internationally. A Google search of respondent's name in June 2012 returned 48,500 results of media reports regarding the status of respondent's role as a special education teacher for LUSD, and her involvement in the websites teachertitties.com, mysluttyteachers.com, 360pig.com and R&H Entertainment.

Thereafter, on November 16, 2011, Superintendent Uslan received an email from a parent of a former LHS student. The email expressed "how disturbed" the parent "was by the news article regarding Heidi Kaeslin and Officer Mr. Fields," and summarized how the parent had asked Principal Holmerud on numerous occasions to reassign her son to a different Special Education representative, because respondent's "tactics and behavior were not that of an advocate."

On November 23, 2011, Superintendent Uslan also received an email from a gentleman expressing his "outrage at the serious misconduct reported by the Stockton Record involving a Lincoln High School teacher, Heidi Kaeslin." The author believed that

respondent should be terminated from her job at LUSD for using "a taxpayer funded computer to host pornographic websites – which she intended to run as a profit making enterprise." According to the author, "Ms. Kaeslin will never regain her reputation among parents, her students, and the community at large necessary to be an effective public school teacher." The author also pointed out that "Ms. Kaeslin has the difficult and important responsibility of helping guide Lincoln High school teenagers through a mine-field of difficult issues ...," and "has made a mockery of the teaching profession." The author went on to describe respondent as "a laughing stock of her students," and "ethically challenged," and urged Superintendent Uslan to "seek all possible remedies to keep [respondent] away from the children of Lincoln Unified."

The impact of respondent's actions on her colleagues and the district is apparent. Therefore, respondent's contention that her actions did not cause harm to the district is without merit.

82. All other defenses raised by respondent at hearing which are not addressed herein were considered and found to be without merit.

District's Decision to Terminate Employment

83. At hearing, Superintendent Uslan testified that after receiving Mr. Rinek's report in mid-November 2011, he determined that respondent's conduct was "outlandish, unprofessional and immoral"; that she exploited her position as a teacher; and that she was dishonest with LUSD's administrators about the extent of her involvement in the websites, and about obtaining permission to use the district-issued cell phone for personal calls. Superintendent Uslan also testified that respondent never expressed remorse for being involved in pornography-related websites; for using her district-issued laptop to sort through pornography; for using her district-issued laptop to store pornography, a racial cartoon, and a drawing portraying a special education student as trash; or for using her district-issued cell phone without permission. According to Superintendent Uslan, respondent is an embarrassment to the school district; students and the administration do not respect her; parents have expressed concerns about her potential return to the school district; and respondent's name will forever be associated with adultery and pornography. Superintendent Uslan believes that respondent should be terminated from her position with LUSD.

84. At hearing, Assistant Superintendent Tatum testified that after reviewing Mr. Rinek's report, she was "absolutely" concerned that the pictures of women's breasts would be used as pornography on a website, and asserted that it was "very disturbing" to find pornography on the district-issued laptop, which was to be used for educational purposes only. She was concerned that there were a large number of nude pictures of respondent's children on the laptop, which were focused on the child's genital area, or the child was in a provocative pose. According to Ms. Tatum, the large volume of child pictures on respondent's laptop was disconcerting to the district, especially because they were found

along with a large volume of pornographic images. Ms. Tatum was also concerned that one of the pictures on respondent's laptop was of a paraprofessional taking a photograph down her shirt in a LUSD classroom, and "extremely concerned" that a discriminatory, prejudicial, offensive and inappropriate cartoon was on respondent's laptop, as well as a drawing depicting a special education student as worthless trash which she described as "clearly offensive." Ms. Tatum believes that respondent's work on the websites, coupled with the publicity regarding her involvement served as a distraction from the learning environment, and infringed on her instructional and prep time.

85. Ms. Tatum was also concerned that respondent used her district-issued cell phone to talk excessively to her boyfriend during a time when she was expected to teach and work with her students. According to Ms. Tatum, during the time respondent was on the district-issued cell phone with Mr. Fields, the students were not properly supervised, and when she was out of the classroom preoccupied with the phone, there was no evidence that she had a complete visual of all her students, so her students were at risk.

86. Ms. Tatum testified that respondent violated the district's policies by using her laptop for pornographic images which are not compatible with teaching students and conflict with teacher standards; was dishonest in her interviews with the administration; failed to accept responsibility to adhere to the highest ethical standards; demonstrated unprofessional judgment; and has cast the district in a negative and demeaning light. According to Ms. Tatum, the notoriety surrounding this case can affect potential employees in terms of recruitment; parents thinking about sending their children to LUSD; and students who have heard of this case; and school funding is dependent on school enrollment. Ms. Tatum believes that respondent can no longer teach effectively in the district because she has damaged her professional relationship; the students are aware of her actions; she has been linked to pornography; she will not be taken seriously; she cannot be trusted; she is not willing to take direction from the district; her rationale for doing something is that everyone is doing it, rather than being a role model; she justified and rationalized her actions because she was doing it at home on her own time; she does not believe she did anything wrong; she lacks responsibility; and she lacks remorse.

Evident Unfitness for Service

87. Education Code sections 44932 and 44944 create the statutory framework for this proceeding. The statutes give discretion to both the district and the Commission. The district has the right to determine when to seek disciplinary action against a teacher and what discipline to seek. The Commission has broad discretion to determine whether the charged conduct occurred and whether the discipline sought should be imposed.

88. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, the California Supreme Court identified eight factors to be considered in determining whether a teacher's conduct indicates unfitness to teach: (1) the likelihood that the conduct may have adversely

affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of the conduct; (4) the type of teaching certificate held by the teacher; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct in question; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the recurrence of the conduct in question; and (8) the extent to which disciplinary action may inflict an adverse impact or have a chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Id.*, at pp. 229-230.)

Adverse Affect on Students or Teachers. There was insufficient evidence to support a finding that respondent's involvement with the websites, the "I ♥ Teachers" t-shirts, and the postcard business venture had an adverse affect on students. However, her involvement did have an adverse affect on her fellow teachers. Dr. Moreira's testimony that respondent modeled the "I ♥ Teachers" t-shirts to her, and particularly her comments that she was disappointed that respondent had allowed the development of the websites to get that far, was particularly persuasive. It was evident during Dr. Moreira's testimony that her ability to relate to respondent as a teacher has been irreparably damaged. Moreover, Dr. Moreira explained that their staff routinely ate lunch together in the department lunch room, where respondent talked to her about the teachertitties.com website. In addition, Ms. Prettyman-Pope's testimony that she was shocked that respondent had taken it that far was also persuasive. Furthermore, respondent showed the "I ♥ Teachers" t-shirts to two other colleagues in the back office of the special education department. Therefore, the evidence established respondent's conduct had an adverse affect on her fellow teachers.

The Degree of the Adverse Affect. The damage respondent's actions could have caused to students if they saw adult entertainment materials on her laptop in the classroom is incalculable. The damage her actions caused her fellow teachers is evident. In addition, the district may have been subject to legal action for creating a hostile environment, or for sexual harassment, negligence or infliction of emotional distress, by the employees who viewed the "I ♥ Teachers" t-shirts, and who may have overheard respondent's conversation with Dr. Moreira regarding the teachertitties.com website. Therefore, the evidence established that the potential for harm was great and could easily have been anticipated.

Proximity or Remoteness in Time of the Conduct. Respondent's conduct involving the use of the district-issued laptop and district-issued cell phone occurred between fall 2010 and fall 2011. The district took immediate action to place her on administrative leave and conduct an investigation, and filed the Statement of Charges as soon as legally permissible. The charges were filed within five months of the district's discovery of respondent's conduct. Therefore, respondent's conduct was not remote in time.

Type of teaching certificate. Respondent holds a clear Multiple Subject Teaching Credential in general subjects, a clear Cross-Cultural, Language and Academic Development (CLAD) Certificate, and a clear Level II Education Specialist Instruction Credential authorizing her to teach students with mild/moderate disabilities. During the 2010-2011

school year, she taught English and English study skills in the special education department at LHS.

Extenuating and Aggravating Circumstances Surrounding the Conduct. Respondent's assertion that she stopped working on the websites by March/April 2011 does not constitute an extenuating circumstance. Stopping work on the websites does not make respondent less culpable or exonerate her. Moreover, the evidence established that respondent did not stop working on the websites by March/April 2011. In May 2011, respondent sent a request to Nick Schapiro for a referral to a web designer for a project similar to flashyourrack.com; in June 2011, she went on the boat trip to assist April Scott in obtaining pictures of women's breasts to upload to the teachertitties.com website; in August 2011, she sent a request to Nick Schapiro for a referral to an iPhone app developer for "Sweet Nothings"; and again in August 2011, she received the list of Top 1,000 selling items from EDTC for 360pig.com. Therefore, respondent's decision to stop working on the websites in March/April 2011, was not credible, and as such does not constitute an extenuating circumstance.

At hearing, respondent argued that the extenuating circumstances surrounding her use of the district-issued cell phone was the result of "classic abused women's syndrome." However, no evidence was presented to establish that respondent was abused by her husband. The evidence demonstrated that on August 31, 2011, respondent's husband twisted her wrist on two or three occasions when he pried her purse and cell phones from her after finding out that she was having an extramarital affair. Respondent did not seek medical assistance for problems with her wrist. And other than this incident on August 31, 2011, there was no evidence presented to demonstrate a history of abuse by her husband. Therefore, no connection was established between possible abuse and the excessive use of the district-issued cell phone.

Conversely, aggravating circumstances surrounding respondent's involvement with the pornographic and adult entertainment websites, "I ♥ Teachers" t-shirt, postcard business venture, and boudoir book were established. Respondent exploited her position as a teacher in order to make money, and does not believe her actions were inappropriate. In addition, and despite the overwhelming evidence presented against her, respondent did not accept responsibility or express remorse for her actions. She only expressed remorse for having an extramarital affair, and for how she has been portrayed in this case. Moreover, at hearing respondent denied any culpability for her involvement in the various business ventures, and instead pointed to her boyfriend, Estrellado, April Scott, Lindsey Halloran, and Samantha McGregor, as the ones responsible for the adult entertainment websites, the photographs of women's breasts, the R&H Entertainment Facebook page, and the photographs of naked children maintained on respondent's laptop. No consideration whatsoever was given by respondent to the work that she performed in order to promote the pornographic and adult entertainment websites that objectify female teachers, "I ♥ Teachers" t-shirt, and postcard business venture, including attending meetings with the web developer; taking notes; sketching a logo for the "I ♥ Teachers" t-shirt; viewing and categorizing pornographic video

clips; sketching a logo for the 360pig.com website; attending an Adult Video News Expo in Las Vegas to find a drop shipper for sex toys and accessories; handing out flyers advertising the teachertitties.com website in Las Vegas; modeling the "I ♥ Teachers" t-shirt to co-workers; talking to co-workers about the teachertitties.com website; assisting with obtaining pictures of women's breasts for the teachertitties.com website; emailing EDTC for their list of top 1,000 selling items for the 360pig.com website; registering a trademark application for R&H Entertainment; and maintaining all the information on her district-issued laptop.

Furthermore, aggravating circumstances surrounding respondent's drawing on the classroom whiteboard depicting a "pretty and smart teacher," and a special education student upside down in a trash can as "worthless trash" were established. Respondent's conduct was in complete disregard of the possibility that students may walk into the classroom and view the drawing, or that other teachers would walk into the classroom and view the drawing.

In addition, aggravating circumstances surrounding respondent's excessive use of the district-issued cell phone were established. Without obtaining permission to do so, respondent used the district-issued cell phone to make numerous calls to her boyfriend, during class time. She does not believe this was inappropriate, and shifted responsibility to the district to tell her that she could not use the district-issued cell phone for personal business. Therefore, the evidence established that aggravating circumstances existed related to respondent's use of the district-issued cell phone.

Praiseworthiness or Blameworthiness of the Motive. Respondent's motive for working on the websites, the "I ♥ Teachers" t-shirt, and postcard business venture, was to make money. This motive is neither praiseworthy nor blameworthy. However, respondent is blameworthy for exploiting her position as a teacher, and using her district-issued laptop to do so. Respondent's motive for using the district-issued cell phone was to contact her boyfriend, family and friends following the beak-up of her marriage. This motive is neither praiseworthy nor blameworthy. However, respondent is blameworthy for excessively using the district-issued cell phone without first obtaining permission from the district to do so. Respondent's motive for drawing a picture on the classroom whiteboard depicting a special education student upside down in a trash bin as "worthless trash" was "a joke." It is disquieting that respondent believes that joking around about her students is acceptable behavior for a teacher. The damage that could have been caused to her students had any one of them walked into the classroom and viewed it, is immeasurable. It also illuminates what respondent thinks of her students, and for that she is particularly blameworthy.

Likelihood of Recurrence of the Conduct. The question of recurrence in this case is not difficult to predict. It is likely that respondent will continue to engage in behaviors in the future that will impact her performance as a teacher. Respondent knew, or reasonably should have known the rules regarding use of the district's laptop, yet she used it to work on adult entertainment websites, the "I ♥ Teachers" t-shirt, and the postcard business venture. Her conduct demonstrated a high level of recklessness and an extreme lack of judgment.

Moreover, she was cautioned by Dr. Moreira to be careful, but instead of purchasing her own laptop to continue her involvement in the websites, she continued using the district-issued laptop. And in her Unemployment Insurance Appeals Board hearing, respondent admitted that she did not think she would get caught. Now that she has been caught, she continues to deny responsibility, or express remorse, for her actions. Had respondent not been caught, there is no indication that her involvement in adult entertainment websites would have stopped, as evidenced by her request to Mr. Schapiro in late August 2011 for a referral to an app developer for yet another business venture. All this suggests that respondent may continue to use her laptop to engage in personal matters regardless of the rules prohibiting such use were she confident that she could do so without being caught.

In addition, at hearing, respondent asserted that she has no intention of being involved in these business ventures again because she only did it to help Mr. Fields, and is no longer in a relationship with him. The implication she asks the Commission to draw is that she only did it because of Mr. Fields. However, respondent admitted in her deposition that she intended to make money from these businesses. Moreover, her testimony that she only did it to help Mr. Fields, suggests that if respondent were involved in another relationship, there is a strong likelihood she will engage in other actions that may or may not be appropriate, just to help her new beau.

Therefore, the evidence supports a finding that there is a strong likelihood of recurrence of respondent's conduct.

Chilling Effect on Constitutional Rights of Teacher. Disciplining respondent for using her district-issued laptop to work on pornographic and adult entertainment websites, the "I ♥ Teachers" t-shirt, the postcard business venture, and the boudoir book, and for excessively using her district-issued cell phone to call her boyfriend during class time, does not infringe on her constitutional rights or the constitutional rights of other teachers.

89. In *Board of Education v. Jack M.* (1977) 19 Cal.3d 691, the Supreme Court upheld the standard established in *Morrison*, and added two factors for analysis: (1) the effect of notoriety and publicity, and (2) disruption of educational process.

Effect of Notoriety and Publicity. Respondent's conduct was first publicized in the Stockton Record on November 16, 2011. A parent of a former LHS student responded to the article in a letter to Superintendent Uslan expressing how disturbed the parent was by the allegations, and another letter to Superintendent Uslan expressed outrage towards respondent's conduct. The news was also covered in The Lincolnian, LHS' newspaper. Publicity since then has been extensive and continuous, as the Stockton Record article was subsequently picked up by several on-line news papers, resulting in an excess of 48,000 results from a search of respondent's name. In addition, media personnel were present during the hearing of this case. At hearing, Superintendent Uslan explained that respondent is an embarrassment to the school district; students and the administration do not respect her;

parents have expressed concerns about her potential return to the school district; and her name will forever be associated with adultery and pornography. Assistant Superintendent Tatum explained that the notoriety surrounding this case can affect potential employees in terms of recruitment; parents' thinking about sending their children to LUSD; and students who have heard of this case. Therefore, the evidence established that the district has received negative publicity as a result of respondent's actions.

Disruption of Educational Process. Respondent's excessive use of the district-issued cell phone, during class time, disrupted the educational process, as evidenced by Lisa Fields' testimony that respondent was constantly on the cell phone; took calls outside the classroom; left the classroom for an entire class period to take a call; and shushed her students while she was on the phone. Therefore, the evidence established that respondent's actions disrupted the educational process.

90. Additionally, in *Woodland Joint Unified School District v. Commission on Professional Confidence* (1992) 2 Cal. App. 4th 1429, "evident unfitness for service" has been defined as:

> Clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies... [the term] 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.

Respondent's actions connote fixed character traits of poor judgment, lack of common sense, recklessness, and dishonesty - character traits which she is unable or unwilling to remedy, as evidenced by her continuing assertions that her use of the district-issued laptop to work on adult entertainment websites, the "I ♥ Teachers" t-shirt, and the postcard business venture, as well as her use of the district-issued cell phone without permission, was appropriate. Superintendent Uslan and Assistant Superintendent Tatum have lost confidence in respondent's ability to teach and serve as a role model at LUSD.

Accordingly, after application of the analysis in *Morrison*, *Jack M.*, and *Woodland* to respondent's conduct, the charge of evident unfitness for service, as set forth in Education Code section 44932, subdivision (a)(5), is sustained by a preponderance of the evidence.

Immoral Conduct

91. Having determined that respondent's conduct demonstrates that she is unfit to teach, the next question becomes whether her conduct is immoral. In *Board of Education* v. *Weiland* (1960) 179 Cal.App.2d 808, 811, the court explained:

> The term "immoral" 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 inconsistent 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 and the public welfare.

Respondent's use of the district-issued laptop to advance the development of pornographic and adult entertainment websites, the "I ♥ Teachers" t-shirt, and the postcard business venture, and her drawing of a special education student upside down in a trash can as "worthless trash," evidences indecency and shameless conduct showing moral indifference. Respondent's use of the district-issued cell phone to talk to her boyfriend during class time without permission from the district evidences willful and flagrant conduct. Therefore, the charge of immoral conduct, as set forth in Education Code sections 44932, subdivision (a)(1), and 44939, is sustained by a preponderance of the evidence.

Persistent Violation of or Refusal to Obey Laws or Rules

92. The district charged that respondent's use of the district-issued laptop to advance the development of pornographic and adult entertainment websites, and her excessive use of the district-issued cell phone without permission from the district, constitute grounds for discipline pursuant to Education Code section 44932, subdivision (a)(7). The district maintains that respondent has demonstrated persistent violations of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing her. The district established violations of the following LUSD Administrative Regulations, Loan Agreement, Board Policies, and Code of Ethics:

Administrative Regulation 3512, relating to Business & Non-Instructional Operations, Equipment, provides, in pertinent part, that:

> Employees and/or students shall use district equipment only for school-related tasks. The Superintendent or designee shall ensure that all employees understand that personal use of district equipment is prohibited and that a violation may be cause for disciplinary action.

Respondent's use of the district-issued laptop to advance the development of pornographic and adult entertainment websites, the "I ♥ Teachers" t-shirt, the postcard business venture, and the "Sweet Nothings" iPhone application, and to create a boudoir book for her husband, constitutes a persistent violation of Administrative Regulation 3512.

Therefore, the charge of persistent violation of Administrative Regulation 3512 is sustained by a preponderance of the evidence.

Administrative Regulation 4040, relating to Personnel, Employee Use of Technology, On-Line/Internet Services: User Obligations and Responsibilities, provides, in pertinent part, that:

> Employees are authorized to use district equipment to access the Internet or on-line services in accordance with Board of Education policy and the user obligations and responsibilities specified below.
>
> 1. The employee in whose name an on-line services account is issued is responsible for its proper use at all times. Employees shall keep account information, home addresses and telephone numbers private. They shall use the system only under their own account name.
>
> 2. Employees shall use the system responsibly and primarily for work-related purposes.
>
> 3. Employees shall not access, post, submit, publish or display harmful or inappropriate matter that is threatening, obscene, disruptive or sexually explicit, or that could be construed as harassment or disparagement of others based on their race/ethnicity, national origin, gender, sexual orientation, age, disability, religion or political beliefs.
>
> 4. Employees shall not use the system to promote unethical practices or any activity prohibited by law, Board policy or administrative regulations.
>
> [¶] ... [¶]

In exchange for the laptop, respondent signed a Loan Agreement agreeing, in pertinent part, that:

> I agree to hold myself personally responsible for any damage or loss that may come to this equipment while on loan tome [sic] and off LUSD propety [sic]. I agree that no other person shall be allowed to use the equipment. I agree to return the equipment in the same condition as when received from the

District. I agree to pay for any corrective action needed to restore or replace the piece(s) of equipment to the original condition.

Respondent's use of the district-issued laptop to advance the development of pornographic and adult entertainment websites, the "I ♥ Teachers" t-shirt, the postcard business venture, and the "Sweet Nothings" iPhone application; store her drawing of a special education student upside down in a trashcan as "worthless trash"; and store a racist cartoon, constitute persistent violations of Administrative Regulation 4040. In addition, respondent allowed her husband, twin sister, boyfriend, and babysitter to use her laptop, in violation of the Loan Agreement and Administrative Regulation 4040. Therefore, the charge of persistent violations of the Loan Agreement and Administrative Regulation 4040 is sustained by a preponderance of the evidence.

Board Policy 4040, relating to Personnel, Employee Use of Technology, provides, in pertinent part, that:

All Personnel: Employee Use of Technology

The Board of Education recognizes that technological resources can enhance employee performance by improving access to and exchange of information, offering effective tools to assist in providing a quality instructional program, and facilitating district and school operations. The Board expects all employees to learn to use the available technological resources that will assist them in the performance of their job responsibilities. As needed, employees shall receive training in the appropriate use of these resources.

Employees shall be responsible for the appropriate use of technology and shall use the district's technological resources only for purposes related to their employment. Such use is a privilege which may be revoked at any time.

Employees should be aware that computer files and communications over electronic networks, including email and voice mail, are not private. These technologies shall not be used to transmit confidential information about students, employees or district operations without authority.

On-Line/Internet Services

The Superintendent or designee shall ensure that all district computers with internet access have a technology protection measure that prevents access to visual depictions that are obscene or child pornography, and that the operation of such measure is enforced ....

[¶] ... [¶]

The Superintendent or designee shall establish administrative regulations and an Acceptable Use Agreement which outline employee obligations and responsibilities related to the use of district technology. He/she also may establish guidelines and limits on the use of technological resources. Inappropriate use shall result in a cancellation of the employee's user privileges, disciplinary action and/or legal action in accordance with law, Board policy and administrative regulations.

The Superintendent or designee shall provide copies of related policies, regulations and guidelines, upon request, to all employees who use the district's technological resources. Employees shall be asked to acknowledge in writing that they have rad and understood the district's Acceptable Use Agreement.

[¶] ... [¶]

Use of Cellular Phone or Mobile Communications Device

An employee shall not use a cellular phone or other mobile communications device for personal business while on duty, except in emergency situations and/or during scheduled work breaks.

[¶] ... [¶]

Respondent's use of the district-issued laptop to advance the development of pornographic and adult entertainment websites, the "I ♥ Teachers" t-shirt, the postcard business venture, and the "Sweet Nothings" iPhone application, and to create a boudoir book for her husband, constitutes a persistent violation of Board Policy 4040. Therefore, the charge of persistent violation of Board Policy 4040, as it relates to employee use of technology, is sustained by a preponderance of the evidence.

Respondent's excessive use of the district-issued cell phone, without permission from the district, coupled with her inconsistent statements regarding her conversations with Ms. Bender, constitute a persistent violation of Board Policy 4040. Therefore, the charge of persistent violation of Board Policy 4040, as it relates to the use of the cell phone, is sustained by a preponderance of the evidence.

Board Policy 4119.21/4219.21/4319.21, relating to All Personnel, Professional Standards, provides that:

> The Board of Education expects district employees to maintain the highest ethical standards, follow district policies and regulations, and abide by state and federal laws. Employee conduct should enhance the integrity of the district and advance the goals of the educational programs. Each employee should make a commitment to acquire the knowledge and skills necessary to fulfill his/her responsibilities and should focus on his/her contribution to the learning and achievement of district students.

Respondent's use of the district-issued laptop to advance the development of pornographic and adult entertainment websites, the "I ♥ Teachers" t-shirt, the postcard business venture, and the "Sweet Nothings" iPhone application, and to create a boudoir book for her husband, did nothing to enhance the integrity of the district or advance the goals of LUSD's educational programs, and therefore constitutes a persistent violation of Board Policy 4119.21/4219.21/4319.21. Therefore, the charge of persistent violation of these policies is sustained by a preponderance of the evidence.

Board Policy 4136/4236/4336, relating to All Personnel, Nonschool Employment, provides, in pertinent part:

> The Board of Education recognizes that district employees may receive compensation for outside activities as long as these activities are not inconsistent, incompatible, in conflict with or inimical to the employee's duties or to the duties, functions or responsibilities of the district.
>
> **Outside paid activities are incompatible with district employment if they require time periods that interfere with the proper, efficient discharge of the employee's duties** .... [Bolding in original.]

Respondent's use of the district-issued laptop to advance the development of pornographic and adult entertainment websites, the "I ♥ Teachers" t-shirt, the postcard

business venture, and the "Sweet Nothings" iPhone application; create a boudoir book for her husband; store her drawing of a special education student upside down in a trashcan as "worthless trash"; and store a racist cartoon, are activities that are inconsistent and inimical to her duties, and the duties, functions and responsibilities of the district, and therefore constitute persistent violations of Board Policy 4136/4236/4336. Therefore, the charge of persistent violations of Board Policy 4136/4236/4336, is sustained by a preponderance of the evidence.

Code of Ethics of the Education Profession 4119.21, subdivision (a), relating to Professional Standards, provides, in pertinent part, in the Preamble:

> The educator recognizes the magnitude of the responsibility inherent in the teaching process. The desire for the respect and confidence of one's colleagues, of students, or parents, and of the members of the community provides the incentive to attain and maintain the highest possible degree of ethical conduct.

Respondent's use of the district-issued laptop to advance the development of pornographic and adult entertainment websites, the "I ♥ Teachers" t-shirt, the postcard business venture, and the "Sweet Nothings" iPhone application; create a boudoir book for her husband; store her drawing of a special education student upside down in a trashcan as "worthless trash"; and store a racist cartoon, constitute persistent violations of Code of Ethics of the Education Profession 4119.21, subdivision (a). Therefore, the charge of persistent violations of Code of Ethics of the Education Profession 4119.21, subdivision (a), is sustained by a preponderance of the evidence.

Dishonesty

93. The district charged that respondent's statements to district administrators regarding her use of the district-issued laptop and the district-issued cell phone, were dishonest, and constitute grounds for discipline pursuant to Education Code section 44932, subdivision (a)(3). Specifically, the district alleged that respondent was dishonest in her October 6, 2011 meeting with Superintendent Uslan when she initially denied having pornography on her laptop, and corrected herself upon further questioning; when she claimed that she only had a "few" pictures on her computer and that they were primarily of her children, when she had hundreds of pornographic and adult entertainment images stored on her laptop; when she claimed she was not in a business relationship with Mr. Fields, yet admitted in her deposition and to Ms. Prettyman-Pope that she was in a business relationship with Mr. Fields; and when she claimed she did not stand to make money from the website businesses, yet admitted in her deposition that she did intend to make money from the website businesses. In addition, the district alleged that respondent was dishonest in her January 19, 2012 interview with Assistant Superintendent Tatum when she claimed she was instructed to take her district-issued laptop home every night, yet Dr. Moreira gave her three

options how to protect her laptop from damage or loss; when she claimed that she ended her involvement with the websites in spring 2011, yet continued with teachertitties.com through June 2011; and when she claimed that she needed to use the district-issued cell phone because she did not have access to money to buy her own cell phone, yet had sufficient funds in the bank, coupled with offers from Mr. Fields, April Scott and Samantha McGregor to assist her financially.

The evidence established that respondent was dishonest with Superintendent Uslan about the use of her district-issued laptop, the extent and purpose of her involvement with the pornographic and adult entertainment websites, the "I ♥ Teachers" t-shirt, the postcard business venture, and her relationship with Mr. Fields. In addition, the evidence established that respondent was dishonest with Assistant Superintendent Tatum regarding Dr. Moreira's instructions; her access to money to purchase her own cell phone; and her continued involvement in the teachertitties.com website subsequent to spring 2011. Furthermore, the evidence established that respondent was dishonest and inconsistent each time she asserted that she had permission from Ms. Bender to use the district-issued cell phone for personal business, when in fact she did not. Therefore, the charge of dishonesty, as set forth in Education Code section 44932, subdivision (a)(3), is sustained by a preponderance of the evidence.

Appropriate Discipline

94. Having determined respondent's conduct was immoral, constituted evident unfitness for service, and demonstrated persistent violations of administrative and board policies, and that she was dishonest, the only remaining question is whether dismissal is the appropriate discipline. The Commission concludes that it is. Respondent's only real defense is her ability as a teacher; however, while she demonstrated satisfactory teaching skills as a special education high school teacher from October 2008 to November 2010, the Commission is not convinced that the appropriate discipline is less than dismissal.

Respondent held a position of responsibility, and served as a role model. If she expected her students to follow her instructions, then she, too, must abide by the district's policies and procedures. Instead, respondent demonstrated extremely poor judgment and recklessness over a substantial period of the 2010/2011 school year. She knew, or reasonably should have known that using the district-issued laptop to advance the development of pornographic and adult entertainment websites, the "I ♥ Teachers" t-shirt, the postcard business venture, and the "Sweet Nothings" iPhone application, as well as to create a boudoir book for her husband; store her drawing of a special education student upside down in a trashcan as "worthless trash"; and store a racist cartoon, was wrong. The laptop was not a gift from the district. It was a tool to allow her to complete district-related business both on and off campus, as well as to use it for incidental personal use that was not inconsistent with or inimical to her duties, or the duties, functions and responsibilities of the district. Once respondent started using the district-issued laptop for her personal business, it became the

district's business, and respondent's personal use was neither incidental, nor consistent with her duties as a teacher, or the duties and responsibilities of the district. Respondent must have appreciated the consequences if someone were to find the material on her district-issued laptop.

Respondent's indifference to the policies and procedures of the district, in conjunction with her lack of understanding of the impact her involvement would have on her students, fellow teachers, and the district is astounding. Moreover, her refusal to accept responsibility for her actions; her lack of remorse for her actions; and her attempts to blame others, confirm that the district has no assurance that respondent has the ability to make sound judgments, and cannot be satisfied that such misconduct on respondent's part would not recur, particularly if respondent were again to believe that her activities would be undetected. Respondent demonstrated that she lacks respect for authority, and does not appreciate the seriousness of her actions involving the use of the district-issued laptop and district-issued cell phone. Therefore the district's decision to dismiss respondent is the correct one.

LEGAL CONCLUSIONS

Applicable Statute and Case Law

1. The district has the burden of proving the existence of grounds to dismiss Ms. Kaeslin by a preponderance of the evidence. (*Gardener v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1040.)

2. A permanent certificated teacher may be dismissed for any of the following reasons: "immoral... conduct," "dishonesty," "evident unfitness for service," "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." (Ed. Code, § 44932, subds. (a)(1), (3), (5) and (7).)

Cause for Discipline

3. It was established by a preponderance of the evidence that respondent committed acts constituting immoral conduct pursuant to Education Code section 44932, subdivision (a)(1), by reason of Factual Findings 8 through 10, 12, 13, 15 through 19, 21 through 24, 26 through 29, 31, 35 through 45, 48, 52 through 54, 57, 65, 70, 80, 81, 88, 89 and 91.

4. It was established by a preponderance of the evidence that respondent committed acts of dishonesty pursuant to Education Code section 44932, subdivision (a)(3), by reason of Factual Findings 46, 47, 51 through 54, 66, 71, 77 and 93.

5. It was established by a preponderance of the evidence that respondent committed acts constituting evident unfitness for service pursuant to Education Code section 44932, subdivision (a)(5), by reason of Factual Findings 8 through 10, 12, 13, 15 through 19, 21 through 24, 26 through 29, 31, 35 through 45, 48, 52 through 54, 57, 65, 70, 80, 81, 87 through 91.

6. It was established by a preponderance of the evidence that respondent committed acts constituting persistent violation of the rules of the District pursuant to Education Code section 44932, subdivision (a)(7), by reason of Factual Findings 66, 67, 74, 75, 78 and 92.

7. By reason of Legal Conclusions 3 through 6, and Factual Finding 94, dismissal of respondent from her position as a certificated teacher with the district is warranted.

ORDER

The decision by the Board of Trustees of the Lincoln Unified School District to dismiss respondent Heidi Kaeslin, a.k.a. Heidi Renee Kaeslin, a.k.a. Heidi Gates, a.k.a. Heidi Lee, from her position as a certificated teacher with the district, is affirmed.

DATED: March 26, 2013

REBECCA M. WESTMORE
Administrative Law Judge
Office of Administrative Hearings
Commission Member

DATED: March 24, 2013

WENDY TAYLOR
Commission Member

DATED: March 22, 2013

JON ALOTA, Ph.D.
Commission Member