

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

In the Matter of the Accusation and  
Statement of Charges Against:

PAULETTE JACKSON,  
A Certificated Employee,

Respondent.

OAH No. 2010050307

**DECISION**

This matter was heard by the Commission on Professional Competence in Los Angeles on March 7 – 10, 14 - 16, and 21, 2011, under the authority of Education Code sections 44932 and 44939. The Commission was comprised of the following panel members: Diane Banas, retired teacher, Los Angeles County Office of Education; Deanna Durr Clark, retired special education teacher, Los Angeles County Office of Education; and Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings.

Complainant Vivian Ekchian, Chief Human Resources Officer, Los Angeles Unified School District was represented by Mampre R. Pomakian, Assistant General Counsel. Respondent Paulette Jackson was present throughout the hearing and represented by her labor representative, Michael A. Wells, Ph.D.

During the hearing, complainant dismissed the charges contained in Paragraphs 26, 56, and 65 of the Accusation and Statement of Charges. On March 21, 2011, the parties presented written and oral arguments. Complainant's Closing Brief was marked as Exhibit 122. Respondent's Summary of the Case was marked as Exhibit CC and her Request for Judicial Notice was marked as Exhibit DD. The Commission on Professional Competence conducted deliberations thereafter.

On his own motion and in order to supplement or explain other substantive evidence pursuant to Government Code section 11513, the Administrative Law Judge hereby admits respondent's Exhibits H, I, S, U, X, Z, AA, and BB, which were marked for identification during the hearing but were not moved into evidence by respondent's lay representative. Respondent's Exhibits A and Y were not admitted into evidence.

Oral, documentary, and stipulated evidence having been received and oral and written arguments having been heard and considered, the Commission on Professional Competence submitted this matter for decision on March 21, 2011, and finds as follows:

### FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on July 20, 2010, the Accusation and Statement of Charges was made and filed by complainant Vivian Ekchian in her official capacity as Chief Human Resources Officer of the school district. With administrative offices located at 333 South Beaudry Avenue in Los Angeles, the school district is one of the largest comprehensive school districts in the nation.

2. (A) At all times relevant herein, respondent has been employed as a permanent certificated employee of the school district. From the 1998-1999 school year and continuing through the 2009-2010 school year, she was assigned to and worked as a special day class teacher in the special education department at Daniel Webster Middle School in West Los Angeles. Respondent has been a credentialed teacher for an undetermined number of years and has also attained an administrative services credential.

(B) At Webster Middle School, respondent was assigned to a classroom and required to teach five periods of special day classes. During the course of each school day, she taught approximately 30 to 60 pupils who were in sixth, seventh, and eighth grades and entitled to receive special education services and supports in addition to access to the general education curriculum. In addition, respondent was assigned to monitor a Special Education Student Assignment Coordination (SESAC), or special education caseload, of approximately 13 to 20 pupils.

(C) For each of these pupils in her special education caseload, respondent was required, in part, to obtain information and data in preparation for a team meeting to discuss and prepare the pupil's Individualized Education Program (IEP) pursuant to state and federal laws and in accordance with school district policies and procedures and the modified consent decree in the *Chanda Smith* court case. Respondent was responsible for obtaining, collating, and reviewing such information as the current services and supports being provided to the pupil, assessments, present levels of educational performance, and progress towards the goals and objectives under the pupil's current IEP. Completion of these special education tasks required respondent to confer with the pupil's special and general education teachers and service providers. She was also required to notify school staff, service providers, the pupil's parents, and other mandatory participants of the date and location of the IEP team meeting where participants could discuss the pupil's special education program, determine necessary services and supports, and prepare and sign the IEP document. After or during the IEP team meeting, respondent was required to prepare the IEP document for the pupil.

(D) Until the position was eliminated in February 2008, a special education bridge coordinator assisted administrators and special education teachers by overseeing and

facilitating the IEP process at the school. Thereafter, special education teachers were responsible for coordinating the IEP process for pupils in their special education caseload.

### School District Policies

3. (A) Under Article IX, sections 1.0 - 3.0, of the collective bargaining agreement between the school district and the United Teachers of Los Angeles, the professional workday of full-time regular employees require no fewer than eight hours of on-site and off-site work. All employees are required, upon each arrival to and departure from their assigned work location, to enter their initials or to sign-in and sign-out on a form provided by the school district. All full-time classroom teachers at a particular school are assigned a minimum of on-site duties of uniform duration but may have differing class schedules, hours of assignment, and starting times.

(B) At Webster Middle School, school site policy required that teachers sign-in each school day at the main office no later than the first bell at 7:49 a.m. by signing or initialing their time cards. Teachers who have a first period class were expected to open their classrooms for students around 7:49 a.m. and to begin instruction at the second bell at 7:55 a.m. In respondent's case, she taught a first period class which was to begin at 7:55 a.m. She also taught four other class periods and had one conference or preparation period. The remaining two hours of her eight-hour workday were non-classroom hours that she could use to perform and to prepare for her professional teaching duties.

4. (A) Under Article IX, section 4.0, of the collective bargaining agreement, employees are responsible not only for classroom duties for which they are properly credentialed but also for all related professional duties. Professional duties include instructional planning; preparing lesson plans in a format appropriate to the teacher's assignment; reviewing and evaluating the work of pupils; communicating and conferring with pupils, parents, staff, and administrators; maintaining appropriate records; supervising pupils both within and outside the classroom; participating in staff development programs and professional activities related to their assignment; and attending faculty, departmental, grade level, and other meetings called for or approved by the immediate site supervisor.

(B) Under Article IX, section 4.1, of the collective bargaining agreement, classroom teachers are required to furnish lesson plans or other evidence of planning in a format appropriate to their assignments upon request of their immediate supervisor. Under section 8.0, resource specialist teachers and special day class teachers, such as respondent, have supervisory responsibility for each pupil's total instructional program throughout each school day. The daily schedules of such special education teachers are determined primarily by the aggregate or composite of the pupils' IEP's.

5. (A) In order to facilitate both the provision of special education services and supports to eligible pupils and the process for preparing IEP's, the school district has promulgated and published a Special Education Manual, which its schools and personnel are

required to follow in assessing and evaluating pupils, proposing services, setting educational goals, conducting IEP team meetings, preparing IEP's, and providing a free and appropriate public education (FAPE) as required by state and federal law. The Special Education Manual is distributed to the schools, school administrators, and special education teachers. At Webster Middle School, the principal has been the primary administrator responsible for directing staff and teachers to follow the policies and procedures outlined in the Special Education Manual.

(B) In Part II, Chapter 4, entitled, "Getting Ready for an Individualized Education Program (IEP) Meeting," the Special Education Manual reiterates state and federal mandates that the IEP is a written document constituting the school district's offer of FAPE, and is developed and agreed to by a team at a meeting. The IEP describes, in part, a pupil's eligibility for special education and related services, the pupil's present levels of educational performance and educational needs, the pupil's educational goals and objectives, the manner by which the pupil's progress will be measured and reported, and the special education and related services, accommodations, and placement that the pupil needs and will receive. The IEP is an agreement that states not only what services and supports the pupil will receive but also functions as a communication vehicle enabling parents, teachers, and providers to make joint informed decisions for the pupil, a compliance tool for determining whether a pupil is receiving FAPE, a management tool to ensure a pupil is provided needed special education and related services, and a commitment of school district resources.

(C) In general, an IEP team meeting must be held when a pupil has been assessed pursuant to an assessment plan, at least annually to review the pupil's progress and continued eligibility, when a pupil demonstrates a lack of anticipated progress, or when a parent or school district staff member requests a meeting to review a pupil's IEP. The IEP team must include the pupil's parents, a school administrator or administrative designee, one special education teacher or provider of the pupil, one general education teacher of the pupil, and a staff member who is knowledgeable about the procedures used to assess the pupil and familiar with and qualified to interpret the instructional implications of the assessment results. The IEP team meeting must be held within certain timelines and the majority of IEP team meetings are annual reviews of a pupil's progress. In the instant matter, the school district utilizes the Welligent IEP management system (Welligent system) to calendar the dates by when all annual reviews and triennial reviews must be held. Schools can use the Welligent system to schedule IEP meetings in advance in order to coordinate and facilitate the participation and preparation of IEP team members.

(D) Recognizing that the school administrator or administrative designee will probably attend more IEP team meetings than any other staff member, the Special Education Manual recommends that the administrator or administrative designee employ systematic planning of IEP meetings. The administrator or administrative designee must schedule an appropriate time period for the IEP team meetings to discuss all relevant issues, verify availability of all required staff before scheduling the meeting, and schedule the meetings at times agreeable to parents to facilitate their participation. Parents must receive written notification of their child's IEP team meeting at least 10 calendar days prior to the meeting.

The manual recommends use of the school district's notification form that can be completed and produced using the Welligent system. Parents must also receive copies of the school district's parent guide to special education and procedural rights. School staff must also be given 10-day advance notice of the IEP team meeting on the Welligent system.

(E) In preparing for an IEP team meeting, the Special Education Manual advises the administrator or administrative designee to take certain actions before the meeting to ensure an effective and efficient meeting, including verifying that all staff participants received notification of the meeting and are able to attend, clarifying roles and responsibilities of staff, and reviewing the assessment plan on the Welligent system to ensure that all assessment reports have been completed and provided to the parents. In addition, the manual recommends that the administrator or administrative designee direct staff to review assessment reports, summarize information on the pupil's present level of educational performance, and review the pupil's current IEP, unless it is a pupil's initial IEP meeting, to determine whether the pupil has made progress towards meeting IEP goals and objectives and whether changes must be made to the IEP. The manual adds that, while decisions at an IEP team meeting are to be based on the input from all participants, any participant may come to the meeting prepared with draft recommendations for consideration by the IEP team. The administrator or administrative designee must also determine which participant will be responsible for writing the IEP during the meeting, direct that participant to complete sections A through C of the IEP prior to the meeting, and check that the information is current.<sup>1</sup> While another member of the IEP team may chair the meeting, the manual states that the administrator or administrative designee is usually the chair of the IEP team meeting.

6. Under the school district's Code of Ethics, all employees are expected to conduct themselves in the course of their employment to ensure that all others are given fair and just consideration, regard, and treatment. Employees must conduct themselves in a manner that deserves the respect of students, parents, and the communities served by the school district. Employees are likewise expected to uphold state and federal laws and the policies, procedures, rules, and regulations of the school district. Employees are responsible for, and accountable for, the performance of the specific assignments they are employed to perform.

7. Under its Employee Attendance Policy, the school district has decreed that unnecessary absenteeism has a negative impact on student achievement due to the interruption of the continuity of instruction and results in the loss of productivity and service and increased costs. The Board of Education has decreed, in part, that employees are to maintain regular attendance and to avoid absenteeism; be at their work stations on time every working day; and comply with school district policy and procedures and collective bargaining rules for the reporting and provision of appropriate documentation for absences. Supervisors are required to explain and insist upon regular attendance, maintain accurate

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<sup>1</sup> Section A of the school district's IEP form requires information about the meeting, including dates and type of meeting. Section B requires information about the pupil. Section C concerns the pupil's language acquisition.

employee attendance records, monitor employee attendance, and enforce all employee attendance policies and standards through performance evaluations and disciplinary processes. Employees who use illness and personal necessity leaves for unauthorized reasons are in violation of school district policy and related laws. The failure to comply with the Employee Attendance Policy can result in disciplinary action, including termination.

#### 2006-2007 School Year

8. From July 2005 through the present, Kendra Wallace (Wallace) has been the principal at Webster Middle School, which is considered a low-performing school. Twenty percent of the students at the middle school receive special education services and supports pursuant to their IEP's. There are approximately 78 pupils who are placed in special day classes and another 100 pupils who receive services and supports from other special education programs. As the school principal, Wallace is responsible not only for overseeing and managing the special education program at Webster Middle School but also for ensuring compliance with state and federal laws and school district policies and procedures, including the Special Education Manual. She is also responsible for providing support to teachers and for disciplining them.

9. For the 2006-2007 school year, Wallace instituted a school site policy that special education teachers prepare a draft IEP for every pupil on the Welligent system two weeks prior to the pupil's IEP team meeting. Wallace made this policy so that she could check each draft IEP on the Welligent system for grammar and spelling and for consistency of educational goals and objectives. The principal advised special education teachers of this policy by disseminating memoranda to them and reiterating the policy at weekly departmental meetings.

10. On September 29, 2006, respondent submitted to the principal an Initial Planning Sheet in which she stated her teaching objectives and strategies to meet objectives for the 2006-2007 school year. Among her objectives and strategies, respondent planned to submit roll books and progress reports, maintain accurate and timely records, and be punctual daily and present at school regularly in keeping with school district policies and state law and regulations.

11. (A) By a memorandum dated February 5, 2007, Wallace advised respondent that she as principal would be the administrator at the IEP team meeting for student C [REDACTED] G. that was scheduled in two days on February 7, 2007, and had found on the Welligent system that respondent had not yet started preparing a draft IEP for the student. Wallace reminded respondent that draft IEP's were required to be prepared for her review two weeks prior to the IEP team meeting and asked respondent to place a copy of the draft IEP in her mail box by the end of the next school day.

(B) On February 6, 2007, respondent submitted to the principal a draft IEP for the student C [REDACTED] G. In a memorandum, respondent explained that she was not aware of the

student's IEP team meeting date due to flooding of her classroom, the delay in receiving her files after she had to move to a different classroom, and her absences from school. Respondent added that she had complied with the collective bargaining agreement and school district policy and that the IEP for the student was not late.

(C) On February 7, 2007, Wallace wrote to respondent that she had returned her draft IEP in her mail box and asked respondent to correct typographical errors, including the misspelling of the student's name, and to clarify the student's present level of performance for English language arts. Wallace added, "[T]his is why we ask for IEP's 2 weeks in advance. This is a legal document." On the memorandum, respondent replied that there was one misspelled word and that the principal's directive was "extra work" and could have been done at the IEP team meeting.

(D) Based on Findings 11(A) – (C) above, respondent failed to submit a draft IEP for student C [REDACTED] G. to the principal two weeks prior to the student's IEP team meeting in violation of the principal's directive.

12. (A) On March 15, 2007, Principal Wallace issued a memo to respondent reminding her that her roll book for the fall 2006 semester had been due on February 23, 2007, and directing her to submit her roll book by 8:00 a.m. the next day. Wallace reminded respondent that the timely submission of "legal documents" was part of her Stull evaluation and expected of all campus staff under the collective bargaining agreement.

(B) A teacher's roll book contains the students' grades for academic work in the teacher's classes during a semester and demonstrates whether students met goals or mastered subjects in the classes. The roll book also corroborates the students' grades in the classes in the event that parents challenge their students' grades. The school district requires that a teacher submit a roll book each semester to the site administrator. At Webster Middle School, Principal Wallace required that each teacher submit a roll book to her within two weeks of the end of each semester.

(C) For the fall semester of the 2006-2007 school year, Wallace advised teachers at departmental meetings and in the Principal's Updates that their roll books were due by February 23, 2007. On March 7, 2007, after respondent had failed to submit her roll book by the due date, Wallace gave her notice that her roll book must be submitted by March 15, 2007, but respondent did not submit her roll book by that date either. In her memo on March 15, 2007, Wallace warned respondent that her failure to turn in her roll books by March 16, 2007, may result in disciplinary action, including a letter of reprimand or notice of an unsatisfactory act or service.

(D) Based on Findings 12(A) – (C) above, respondent failed to submit her roll book for the fall semester of the 2006-2007 school year to the principal by February 23, 2007, in violation of the principal's directive.

13. (A) On May 8, 2007, Principal Wallace sent a memo to respondent, stating that she had not received respondent's four-week unit plan for the month of May 2007. Wallace asked respondent to submit her plan as soon as possible.

(B) A teacher's four-week unit plan contains the lessons and key assignments for students in a class. For special education pupils, a teacher's four-week unit plan provides a baseline and framework for the education and support of the pupils. In addition, in the event that a teacher is absent, the four-week unit plan allows a substitute teacher to follow the lesson plan for the class. At Webster Middle School, teachers were required to submit four-week unit plans to the site administrator by the first instructional day of each month and were given a template to help them to prepare the plans.

(C) In response to the principal's memo, on or about May 10, 2007, respondent wrote to Wallace on a copy of the memo that she did not have time to prepare her four-week unit plan for science because the principal had directed her to attend meetings of the special education department and had prevented her from attending science department meetings where she could prepare the four-week unit plan. Respondent also complained that she had to assess students and prepare for IEP team meetings. She stated that the principal was trying to characterize her as being late and had harassed her by making her attend special education department meetings.

(D) Based on Findings 13(A) – (C) above, respondent failed to submit her four-week unit plans for May 2007 to the principal by the first instructional day of the month in violation of the principal's directive.

#### 2007-2008 School Year

14. (A) From September 6, 2007, through October 5, 2007, respondent failed to timely sign-in at the main office of Webster Middle School by 7:49 a.m. on 19 school days as follows: September 6, 10, 11, 12, 14, 17, 18, 19, 20, 21, 24, 25, 26, and 28 and October 1, 2, 3, 4, and 5. Respondent's failures to timely sign-in constituted violations of the policy of the school district or policies of the school and school district, including the collective bargaining agreement. On each of these 19 school days, respondent was late in arriving at school and failed to initial her time card by 7:49 a.m. The school administrative assistant circled these dates with red ink indicating that respondent had not signed-in in a timely manner. In fact, for most or all of these 19 dates, respondent signed-in or initialed her time card later in the day or when she departed the school at the end of the school day.

(B) It was not established that, from September 6, 2007 through October 5, 2007, respondent failed to follow the principal's administrative directives and policies of the school and school district by not signing-out on 19 school days. Respondent's time card for this time period did not contain any notation by the school administrative assistant showing that respondent had failed to properly or timely sign-out on these 19 dates. No probative evidence was presented on this allegation.



15. Prior to September 18 and 21, 2007, Wallace gave notices to respondent, directing respondent to meet with the principal on these two dates. Respondent failed to meet with Principal Wallace for the two conferences scheduled on these two dates. On September 28, 2007, respondent failed to meet with the principal to discuss her need and request for reasonable accommodations for signing-in and signing-out each school day. Respondent's failures to meet with the principal impeded the principal's ability to confer, support, and supervise respondent as a teacher at the school site. As such, respondent violated school district policy requiring certificated employees to attend meetings called by their immediate supervisor.

16. (A) On October 3, 2007, Wallace sent a memo to respondent, directing her to meet with her on October 8 at 8:15 a.m. to discuss respondent's failures to sign-in and sign-out each day, to submit draft IEP's one week in advance of IEP team meetings for the principal's review, to provide textbook cards and students marks to other teachers, and to follow the collaborative model to support students in their elective classes.<sup>2</sup> The principal also asked respondent to bring to the meeting any documentation of her need for reasonable accommodations for signing-in and out. On October 4, 2007, the principal sent another note to respondent to remind her of the upcoming meeting.

(B) On October 8, 2007, respondent failed to meet with Wallace or to attend the noticed conference with the principal in violation of school district policy requiring certificated employees to attend meetings called for by their immediate supervisor. Thereupon, Wallace issued a conference memorandum to respondent, outlining respondent's failures to follow school or school district policies that the principal wanted to discuss at the conference as well as the assistance and guidance and the administrative directives that the principal would have given had respondent attended the meeting.

(C) In the conference memorandum dated October 8, 2007, Wallace directed respondent to sign-in each day on arrival and sign-out on departure from the school, adhere to the attendance policy of the school district, be on time for departmental meetings and for professional developmental sessions on Mondays, attend meetings upon request or direction from administrators, arrange for her own representation at these meetings, follow administrative directives, provide relevant student information to her teaching colleagues, provide bell-to-bell instruction for all students, submit and follow a schedule for a collaboration policy, follow the school district's Code of Ethics, and not retaliate against any student or staff member who files a complaint against her.

(D) In her October 8, 2007 conference memorandum, Wallace warned respondent that her failure to follow her administrative directive could result in disciplinary action, including issuance of a notice of unsatisfactory act or service and suspension without

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<sup>2</sup> At the beginning of the 2007-2008, Wallace changed the school site policy for submitting draft IEP's, directing special education teachers to submit draft IEP's to her one week before the IEP team meetings.

pay. Wallace also indicated that she was still investigating respondent's failures to follow school and school district policies.

17. On October 8, 2007, respondent sent a reply memo to Wallace, acknowledging receipt of her October 8, 2007 conference memorandum and complaining that the principal was "inundating" her with memos and that she was forced to use her instructional day to date stamp the memos and to write responses. Respondent replied that she would continue to respond to anyone "who intentionally lies or create[s] a situation that may be perceived as lies as it relates to [her] responsibilities" and accused the principal of singling her out and violating the school district's Code of Ethics. Respondent's conduct in sending her reply memo to the principal that accused the principal of lying and unethical conduct violated the school district's Code of Ethics requiring certificated employees to treat others in a fair, just, and respectful manner.

18. (A) Three days later, on October 11, 2007, Principal Wallace held the conference to discuss respondent's actions. Respondent attended the conference and was accompanied by her representative, Dr. Michael A. Wells. Robert Samples, staff relations field director of the school district's Local District 3, also participated in the conference.

(B) During the October 11, 2007 conference, Wallace discussed respondent's failures, in part, to sign-in and sign-out, to follow directives to meet with the principal, to submit draft IEP's one week before the IEP team meetings, to provide information about her request for reasonable accommodation, and to follow the Code of Ethics. In response, respondent stated, in part, that she had previously sent a memo asking for reasonable accommodation due to a workers' compensation claim injury, believed that the principal's directive to submit draft IEP's was intimidating to parents and not supported by school district policy or law, and found the principal's earlier conference memorandum was retaliatory. The principal provided respondent with assistance and guidance and reiterated the directives and disciplinary warnings contained in her October 8, 2007 conference memorandum. In addition, Wallace directed respondent to meet with her within a reasonable time period, to "input" her own grades instead of delegating the task to a paraprofessional, to submit a copy of her grade book for math and science and syllabus by October 12, and to remain professional in her demeanor and in her verbal and written communications with school staff.

(C) It was not established that, on or about October 11, 2007, respondent failed to follow administrative directives and school district and school policy by refusing to attend administrative conferences, not submitting her "collaboration period plan," and not submitting draft IEP's to the principal one week prior to IEP team meetings. Respondent attended the conference on October 11, 2007. No evidence was presented regarding any collaboration period plan or draft IEP's.

19. (A) In or about October 2007, Principal Wallace agreed that respondent could have a reasonable accommodation for signing-in at the main office each morning. Because respondent had a handicap parking tag on her vehicle, Wallace allowed respondent to park in

front of the school each morning to sign-in at the main office and to then drive to the back of campus and park near her classroom. Wallace agreed to the reasonable accommodation even though the principal could not find any documentation in any files at the school or the school district's Department of Reasonable Accommodation that respondent had any work restriction or need for any reasonable accommodation. In addition, respondent did not provide any medical or school documentation that she was entitled to any reasonable accommodation.

(B) On November 21, 2007, Wallace notified respondent that she was modifying respondent's reasonable accommodation for signing-in each morning. Instead of coming into the main office to sign or initial her time card, Wallace allowed respondent to sign-in by calling from her classroom on the brown phone no later than 7:48 a.m. If she left school by 4:00 p.m., she was required to come to the main office to sign-out. However, if she planned to stay at school after 4:00 p.m., respondent was allowed to sign-out by calling the main office on the brown phone before 4:00 p.m. Wallace indicated that this modification of her reasonable accommodation was effective through December 2007 at which time she planned to review the modification.

20. (A) On or about January 22, 2008, Principal Wallace issued a memorandum to respondent and directed her to attend math department meetings on Mondays for her professional development. Respondent refused to attend the math department meetings because she did not like the chairperson of the math department and did not feel comfortable attending any meetings held in the chairperson's classroom. Respondent felt betrayed by the chairperson because, on November 13, 2007, the chairperson had written a note to the principal, criticizing one of respondent's math lessons and stating that respondent would not likely seek assistance since she had "low expectations of [her] students."

(B) On an undetermined date in or about January 2008, Assistant Principal Antonio Hernandez (Hernandez) observed respondent in her classroom teaching math to students and determined that respondent would benefit from attending the math department meetings. On February 6, 2008, Hernandez held a conference with respondent and directed her to attend math department meetings for professional development purposes. Hernandez advised respondent that attending professional development meetings every Monday was part of her professional responsibility, required by the collective bargaining agreement, and would help her to support her students to receive a standards-based education. Respondent was informed that her failure to follow the administrative directive and attend the math department meetings could result in disciplinary action.

21. (A) On February 6, 2008, respondent informed the principal that she was unable to attend the upcoming math department meeting because it was detrimental to her health. Wallace replied that she took respondent's assertion seriously and scheduled a medical evaluation for her with the school district's medical director. Wallace told respondent that she had to be "cleared" by the medical director before she could return to work.

(B) On February 7, 2008, respondent saw the medical director for a fitness for duty evaluation. Respondent discussed issues or problems that she was having with the administrators at her school but did not report having any physical problems or emotional distress from her teaching job to warrant further evaluation. The medical director found that respondent was fit to perform all of her duties as a teacher, cleared her to return to the classroom, and suggested to respondent that she solve her problems with the school administrators.

22. (A) On March 4, 2008, Hernandez held a conference with respondent and her labor representative to discuss her continued failure to attend math department meetings for her professional development. Respondent reiterated that she was not comfortable attending math department meetings in the department chairperson's classroom and stated she felt that the Hernandez was harassing her as the principal's "Willie Lynch Agent."

(B) On March 6, 2008, respondent wrote a memorandum to Hernandez and asked the assistant principal to check his "moral compass," cease his "involvement in Principal Wallace's Willie Lynch Management System," and stop harassing her. Respondent stated that there was a "lack of administrative competency" at the middle school and that Principal Wallace was retaliating against her. She ended her memorandum by stating she would not endure this harassment any longer and that her memorandum would be the last communication she would have with the assistant principal on this matter. [Para. 12]

(C) On March 12, 2008, respondent wrote a memo to Principal Wallace that she entitled, "Your continued on-going retaliation, harassment and your use of the Willie Lynch Management System against my person at Webster Middle School." Respondent told Wallace that she continued to demonstrate a lack of knowledge of the collective bargaining agreement and the "basic practices and procedures of a trained LAUSD site administrator." In her memo, respondent asked Wallace to "cease and desist any and all of [her] present lynching mechanisms" and accused Wallace of trying to destroy her professional standing as an "African-American female, highly qualified special education instructor." Respondent indicated she had no need to meet with Wallace because the principal had not shown any reasonableness.

(D) Respondent's conduct in writing and issuing her two memos in March 2008 to Hernandez and Wallace constituted violations of the school district's Code of Ethics requiring an employee to treat other employees in a fair, just, and respectful manner. Both Principal Wallace and Assistant Principal Hernandez were concerned and displeased by respondents' references to the "Willie Lynch Management System" and criticisms of the two administrators in her two memos. Wallace, who also found respondent's memos to be offensive, determined that respondent was referring to a so-called "system" of managing or controlling slaves by fear and intimidation that was purportedly used or advocated in pre-Civil War times. In the opinion of the staff relations field director, respondent's accusations were "outrageous" and disrespectful.

(E) During the hearing in this matter, respondent explained that she was only trying to say that she felt harassed and overwhelmed by the numerous memorandums issued to her by the administrators and that she apologized to the principal for her statements in a conference. Respondent's explanation did not necessarily excuse her actions or statements set forth in her two memos.

23. Notice of Unsatisfactory Acts--On or about March 13, 2008, Principal Wallace and the school district's Local District Administrator issued to respondent a Notice of Unsatisfactory Acts of Certificated Employee. Respondent was charged with discourteous treatment of a fellow employee and failure to follow administrative directives and school district policy for issuing her memorandums to Wallace and Hernandez that contained references to the "Willie Lynch Management System." In addition, respondent was charged with willful disobedience and failure to follow administrative directives and school district policy for refusing to attend math department meetings as directed. Respondent failed to attend conferences held on March 13 and 14 where administrators planned to discuss and give her the unsatisfactory notice. Thereafter, Wallace and/or the school district mailed the Notice of Unsatisfactory Acts to respondent by regular and certified mail.

24. (A) On March 31, 2008, after she had been issued the Notice of Unsatisfactory Acts, respondent went to the classroom of the math department chairperson for that Monday's math department meeting. Respondent entered the classroom, signed the sign-in sheet, and left the classroom and meeting. Assistant Principal Hernandez was present and followed her outside. As she was walking away, he directed respondent to come back to the meeting. Respondent responded that she did not want to attend the meeting in that particular classroom. Shortly, respondent returned to the door of the classroom and sat by the door and outside the classroom during the math department meeting. She did not participate in the math department meeting.

(B) It was not established that respondent's conduct on March 31, 2008, in signing the sign-in sheet for the math department meeting and then leaving the math department meeting constituted dishonest conduct. By sitting outside the classroom respondent cannot be said to have participated in the meeting in a meaningful way, but, she was present just outside the classroom where the meeting was held and she did not take any action to receive credit for attending the meeting or misrepresent her attendance or participation in the meeting. In other words, respondent did not make a false statement or engage in any dishonest conduct after signing the attendance sheet for the meeting.

(C) During the hearing, respondent explained that she was not comfortable attending meetings in the math department chairperson's classroom because she believed the chairperson had betrayed her friendship by writing an unfavorable report of an observation of respondent's classroom. Respondent had also been attending science department meetings and, after being directed to attend math department meetings, asked that the location of those meetings be changed to the library or another classroom. On an undetermined date after March 31, 2008, respondent began attending the math department meetings for her professional development.

25. On April 1, 2008, Assistant Principal Hernandez issued a notice and directive respondent to attend an administrative conference scheduled for the next day. On April 2, 2008, respondent gave a memo to Hernandez stating that she would not be attending the conference. As such, respondent willfully disobeyed and failed to follow an administrative directive and thereby violated school district policy requiring attendance at meetings called for by an immediate supervisor.

26. Notice of Suspension--On or about April 29, 2008, Principal Wallace issued to respondent a Notice of Suspension of Certificated Employee, suspending her from employment for two days without pay. Wallace suspended respondent for failing to follow administrative directives and school district policy by refusing to attend math department meetings and an administrative conference and for "work-related dishonesty" for leaving a math department meeting after signing-in for the meeting. Respondent did not attend the April 29, 2008 conference where the principal had planned to discuss the suspension. The suspension notice was mailed to respondent by regular and certified mail.

27. (A) Several weeks later, on June 3, 2008, respondent was teaching and left her classroom to speak with another teacher in the adjoining classroom. She left the classroom to speak to the other teacher because the door between their classrooms was blocked by school equipment or furniture. When she left her classroom, respondent did not have another teacher or aide present in the classroom and left the seven students unsupervised while she was out of the classroom. During her absence, student N■■■ S. and a boy engaged in "horseplay." N■■■ S. fell, struck her mouth, and injured herself, resulting in her tooth being chipped. Respondent returned to her classroom, calmed down the students, and asked what happened. The school bell then rang, signaling the end of the class, and N■■■ S. left respondent's classroom. Respondent did not send the student to the school nurse for medical aid and did not report the incident or the student's injury to the main office or any school administrator. Shortly thereafter, respondent went to the main office and spoke to the principal but did not mention the incident or the student's injury to the principal. The next day, the principal learned about the incident when the student's mother reported that her daughter was injured and not allowed to see the school nurse. The student's mother was upset about the incident.

(B) On June 26, 2008, Principal Wallace conducted a conference with respondent and discussed the incident where the student N■■■ S. was injured in her classroom. Respondent explained that she was just outside the door to her classroom and consulting with the teacher in the next classroom. She indicated she was out her classroom for only a short time. She added that the student was not taking her medications and instigated the incident that resulted in her suffering a chipped tooth. Respondent stated that she did not send the student to the school nurse because the incident occurred at the end of the school day and claimed to have called the student's mother to inform her of the incident and the fact that her daughter was not taking her medications. On June 26, 2008, Wallace directed respondent not to leave her classroom unless the students were supervised by a certificated staff member, to immediately report any accidents in the classroom to an administrator, and to send injured students to the school nurse for medical treatment. The

principal issued a memorandum to respondent to memorialize the conference and warned respondent that the failure to follow an administrative directive could result in disciplinary action.

(C) Based on Findings 27(A) – (B) above, on June 3, 2008, respondent failed to supervise students in the classroom in violation of school district policy when she left her classroom to speak with another teacher and failed to have another teacher or aide present to supervise the seven students. As a result of her failure to supervise students, one of the students was injured.

28. During the hearing, respondent testified that the student N■■■S. is her niece and she was concerned for her niece's health and safety. Respondent testified that N■■■S. was unruly and uncooperative earlier in the school day. When the student was injured, respondent told her to wait but the student left suddenly after the bell rang because she wanted to go home on the bus and refused to see the school nurse. Respondent's explanations were not credible and did not excuse or mitigate her conduct in leaving her classroom and pupils unsupervised, failing to send the injured student to the school nurse, and failing to report the incident to school administrators. Her conduct demonstrated not only a disregard for school district policy requiring teachers to supervise students but also poor judgment as a teacher.

29. (A) On June 3, 2008, Principal Wallace directed respondent to meet with her on June 13 to discuss her tardiness, continued use of disparaging remarks, and allowing students to be out of her class without passes.

(B) On June 3, 2008, respondent gave Wallace a Certificate to Return to Work dated June 2, 2008, in which a psychiatrist stated that respondent was under his care, receiving weekly therapy, and needed time-off from work for bed rest. The psychiatrist indicated respondent would not be at work from June 4 through June 12. On June 3, 2008, Wallace informed respondent that she would need to receive clearance from the medical director before she could return to work.

(C) From June 4 through June 11, 2008, respondent took six days of illness leave from her teaching job. From June 12 through 17, 2008, respondent was on unpaid leave. On June 9, 2008, respondent wrote to the medical director to schedule her fitness for duty evaluation and indicated that she felt she was being harassed and not being given reasonable accommodations. On or about June 17, 2008, respondent saw the medical director for the fitness for duty evaluation and was given medical clearance to return to work.

#### 2008-2009 School Year

30. Notices of Unsatisfactory Acts and Suspension of Certificated Employee—At the beginning of the school year, on October 21, 2008, Principal Wallace and the school district's Local District Administrator issued a Notice of Unsatisfactory Acts of Certificated

Employee and a Notice of Suspension of Certificated Employee to respondent in connection with her conduct in the June 3, 2008 incident when student N■■■S. was injured in her classroom. Respondent was cited for poor judgment, failure to properly supervise students, and failure to follow school and school district policy for leaving her classroom and failing to immediately notify school administrators of the student's injury. As a result of the notices, respondent was suspended for three days. Respondent and her representative attended the conference that was conducted on issuance of the notices. Respondent disagreed with the suspension order.

31. At the beginning of the 2008-2009 school year, on September 15 and 29, 2008, the special education department at Webster Middle School held departmental meetings at which the principal or her designee reiterated to special education teachers that they were required to submit draft IEP's to the principal for her review one week before the scheduled IEP team meetings. The agendas for the departmental meetings were distributed to teachers by electronic mail. Special education teachers were reminded frequently to submit draft IEP's to the principal.

32. It was not established that, on or about October 27, 2008, respondent failed to submit a draft IEP for student G.H. to the principal one week prior to the scheduled IEP team meeting. No probative evidence was presented on this allegation.

33. (A) On or about January 29, 2009, respondent failed to submit a draft IEP for student T.B. to the principal for her review at least one week prior to the IEP team meeting scheduled for the student.

(B) On or about February 3, 2009, respondent failed to submit a draft IEP for student M.P. to the principal for her review at least one week prior to the IEP team meeting scheduled for the student.

(C) On or about February 12, 2009, respondent failed to submit a draft IEP for student P.L. to the principal for her review at least one week prior to the IEP team meeting scheduled for the student. The student had a triennial IEP team meeting scheduled for February 19, 2009. By February 12, 2009, respondent had not submitted a draft IEP for student P.L. to the principal.

(D) On or about February 12, 2009, Wallace reminded respondent by a written memo that she was required to submit a draft IEP for student A.G. to her by February 17. The student's IEP team meeting was scheduled for February 24. Subsequently, on February 17, 2009, respondent failed to submit a draft IEP for student A.G. to the principal for her review at least one week before the scheduled IEP team meeting for the student. [Ex. 64]

(E) Based on Findings 33(A) – (D) above, by not submitting draft IEP's to the principal at least one week prior to the IEP team meetings, respondent failed to follow the school site policy and administrative directives of the principal that were issued for her oversight and management of the IEP team meeting process at the school.



34. (A) On or about February 6, 2009, prior to the IEP team meeting for student M.P., respondent failed to obtain the signature of the parents or guardians on the requisite form showing that they were notified and agreed to the date and place of the IEP team meeting scheduled for their student M.P. and had agreed to attend or confirmed their attendance at the upcoming meeting.

(B) On or about February 13, 2009, prior to the IEP team meeting for student P.L., respondent failed to obtain the signature of the parents or guardians on the requisite form showing that they were notified of the date and place of the IEP team meeting for their student P.L. and had agreed to attend or confirmed their attendance at the upcoming meeting.

(C) On or about February 24, 2009, prior to the IEP team meeting for student A.G., respondent failed to obtain the signature of the parents or guardians on the requisite form showing that they were notified of the date and place of the IEP team meeting for their student A.G. and had agreed to attend or confirmed their attendance at the upcoming meeting.

(D) Based on Findings 34(A) – (C) above, by not obtaining the prior signatures and confirmations of the parents or guardians on the meeting notification form, respondent failed to follow school district policy and the modified consent decree in the *Chanda Smith* court case for conducting IEP team meetings.

35. (A) On or about February 6, 2009, respondent failed to obtain or arrange for substitute teachers to cover the classes of teachers who were required to participate in the IEP team meeting for student M.P.

(B) On or about February 19, 2009, respondent failed to obtain or arrange for substitute teachers to cover the classes of teachers who were required to participate in the IEP team meeting for student P.L. On February 13, 2009, the principal reminded respondent by written memo that she had not requested substitute teacher coverage for a general education teacher who planned to attend the student's IEP team meeting scheduled for February 19. Subsequently, respondent still failed to obtain or arrange for such coverage.

(C) Based on Findings 35(A) – (B) above, by not arranging for substitute teacher coverage, respondent failed to follow school policy and administrative directives by failing to arrange for substitute teacher coverage. As a special education teacher, respondent was required to confer with the school's *Chanda Smith* clerk prior to IEP team meetings in order to obtain substitute teacher coverage for the classes of teachers required to participate in the IEP team meetings so that the instructional process of their classes would not be unnecessarily disrupted by the teachers' excused absences.

36. On or about February 10, 2009, prior to conducting an assessment of student P.L., respondent failed to obtain the parents' written consent to have their student undergo testing or an assessment. Respondent's failure to obtain the parents' consent violated state

law or requirements and the terms of the modified consent decree in the *Chanda Smith* court case.

37. Between February 10, 2009, and February 17, 2009, respondent failed to timely notify the school's *Chanda Smith* clerk that the IEP team meetings for students M.P., T.B., A.G., and P.L. had been changed or cancelled. The clerk had arranged for and secured meeting rooms and the participation of certain school staff for the IEP team meetings. Thereafter, school staff appeared for the meetings unaware that the meeting times or dates had been changed or the meetings cancelled. Respondent's failure to timely notify the clerk of the meeting changes and/or cancellations disrupted the instructional and operational processes at the school.

38. (A) On October 15, 2008, Principal Wallace sent respondent a second request that she submit her four-week unit plans for the month of October 2008, which had been due two weeks earlier on October 1. Wallace informed respondent that the four-week unit plans must be submitted to her by the next day, October 16.

(B) On October 16, 2008, respondent informed the principal by a handwritten memo that she had already submitted her four-week unit plans for seventh grade and was busy preparing for three upcoming IEP team meetings. The principal responded by telling respondent that she was still required to submit her four-week unit plans for sixth and eighth grades. Eventually, respondent submitted her four-week unit plans for all three of her grade levels for October 2008 to the principal albeit late.

39. (A) On November 1, 2008, respondent failed to submit her four-week unit plans for the month of November 2008 to the principal for her review.

(B) On December 1, 2008, the principal sent a written reminder to respondent that her four-week unit plans for December 2008 were due. On December 8, 2008, the principal forwarded a memo to respondent to remind her that four-week unit plans constituted instructional planning under the collective bargaining agreement and were due on the first of the month. The principal indicated she also did not receive respondent's four-week unit plans for November 2008. The principal directed respondent to submit her December 2008 four-week unit plans by the next day.

(C) On December 9, 2008, respondent wrote to the principal that she did not receive her reminder until that day and would not be able to submit her December 2008 four-week unit plans to her until after lunch. Respondent complained that she was required to plan instruction for three grade levels, was acting as her own special education bridge coordinator, and was not receiving any support.

40. (A) On January 13, 2009, Principal Wallace sent a memo to respondent that she had not received her four-week unit plans for the month of January 2009. The principal reminded respondent that this was the third month of the school year that she had not

submitted four-week unit plans to her. Respondent was directed to submit her four-week unit plan for both January and February 2009 by the next day.

(B) On January 14, 2009, respondent wrote to the principal, “[I]t is a lie that I have not turned in my unit plans—you have my unit plans, which are date stamped.” Respondent also stated that she had just returned from winter break and would submit the unit plans by the end of the week after she had an opportunity to assess what lessons she had to teach again. Respondent complained that the principal was targeting her for retaliation and harassment since the principal had directed her to attend special education department meetings and she was not able to attend English department meetings to prepare her four-week unit plans in conjunction with other English teachers.

41. (A) Based on Findings 38 – 40 above, respondent failed to timely submit to the principal her four-week unit plans for the months of October 2008, November 2008, December 2008, and January 2009 by the due date of the first instructional day of each month. Respondent’s conduct violated her professional duties to conduct instructional planning and prepare lesson plans as required by the school or school district policy. In failing to submit her four-week lesson plans, respondent also violated directives of the principal.

(B) It was not established that, on January 13, 2009, respondent had failed to submit her four-week unit plans for the month of February 2009 inasmuch as those four-week unit plans were not due until February 1, 2009.

42. (A) On December 8, 2008, Principal Wallace sent a memo to respondent, stating that she had not yet received respondent’s emergency lesson plans despite numerous reminders to do so. The principal advised respondent that the preparation and submittal of emergency lessons were required by school district policy and the collective bargaining agreement. Respondent was directed to file her emergency lesson plans by December 10 and reminded that the failure to follow an administrative directive could result in disciplinary action.

(B) Emergency lesson plans are standards-based instructional planning tools or documents that inform and help substitute teachers to instruct pupils in the event of the absence of the regular teacher. Under school district policy, teachers must submit emergency lesson plans to their school administrator by the end of the first month of the new school year or October 1. At Webster Middle School, Principal Wallace informed teachers of the due date of emergency lesson plans through the issuances of principal updates, calendars, and written reminders.

(C) Based on Finding 42(A) – (B) above, on December 8, 2008, respondent failed to timely submit her emergency lesson plans for the 2008-2009 school year to the principal by the October 1, 2008 due date. Respondent’s conduct violated her professional duties to conduct instructional planning and prepare lesson plans as required by school district policy and the collective bargaining rules.

(D) Respondent submitted her emergency lessons plans for the 2008-2009 school year to the principal two months late on December 12, 2008. The principal had a special education consultant review the emergency lesson plans and the plans had to be revised. In her defense, respondent averred that she had prepared her emergency lesson plans but had kept them in a drawer or cabinet of her classroom.

43. (A) On an undetermined date at the end of the fall semester for the 2008-2009 school year, Principal Wallace reminded respondent that she was required to submit her fall semester roll book.

(B) On February 11, 2009, respondent wrote a memo to the principal stating she would not be able to submit her roll book until the following week. Respondent cited, in part, her various responsibilities as a special education teacher, the “retaliatory” actions by the principal, depositions, and the constant memos and directives by the principal to attend administrative conferences and professional development meetings as reasons that she was not able to submit her roll book. Respondent added that the principal should also take into account the principal’s “discriminatory behaviors” and “use of other school personnel to harass” her on a daily basis. Respondent indicated that she would submit her roll book but did not intend to overburden herself or damage her health in doing so.

(C) One week later, on February 18, 2009, respondent had not submitted her roll book to the principal. On that date, Assistant Principal Tom Iannucci sent a memo to respondent that she had not submitted her roll book for the fall semester. The assistant principal reminded respondent that the roll book had been due that day and that she was required to maintain and submit her roll book under the terms of the collective bargaining agreement. The assistant principal directed respondent to submit her fall semester roll book to him by February 20. Subsequently, respondent did submit her roll book for the fall semester to the principal but her submittal was late.

(D) Based on Findings 43(A) – (C) above, respondent violated her administrator’s directive and school district policy by failing to submit her roll book for the fall 2008 semester to the principal in timely manner.

44. It was not established that, on or about February 20, 2009, respondent failed to submit her second or spring semester course syllabus and parent letter to school administrators or caused the school administrators to have insufficient time to review or distribute her course syllabus in timely manner. The school district asserted that these allegations were supported by the memos in Exhibits 72 and 73 but those memos by the principal and a handwritten reply by respondent pertained to a course syllabus and parent letter that were purportedly due in September 2008. As such, no evidence was presented to prove these particular allegations that purportedly occurred in February 2009.

45. (A) On January 23, 2009, Principal Wallace held a conference with respondent and discussed her failures to timely submit her four-week unit plans and emergency lesson plans, submit draft IEP’s one week prior to IEP team meetings, and prepare instructional

documents. During the conference, respondent replied, in part, that she was the only teacher being disciplined for submitting her emergency lesson plans late, her pupils were not in the general education program and lacked the ability and motivation to do the academic work expected of them, and she was not being allowed to conduct instructional planning with her colleagues.

(B) Wallace was appalled and displeased with respondent's response. As a special day class teacher, respondent was required to teach subjects, including English language arts, to special education pupils of three different grade levels. Wallace provided guidance and assistance to respondent, recommending, in part, that she consult with an instructional coach to review her lessons plans and to obtain strategies for presenting an English curriculum to three grade levels of pupils. Wallace also recommended that respondent meet with a special education and instructional administrator to review what expectations she should have for her pupils. The principal then directed respondent to turn in her plans by the due dates, use the instructional guides and state standards to prepare her lesson plans, follow administrative directives, submit draft IEP's one week prior to the IEP team meetings, and submit her monthly four-week unit plans on the first instructional day of month. On January 29, 2009, Wallace prepared a conference memorandum to memorialize their discussion and the guidance and directives that she gave respondent and sent the memorandum to respondent.

46. (A) On or about January 29, 2009, after receiving the principal's January 23, 2009 conference memorandum, respondent made a copy of the memorandum and wrote the following note on it: "Thank you for your support and deep insight. I have grown use[d] to your intentional misrepresentations on all levels. . . . Stop harassing me." Respondent wrote the same note in two places on the memorandum and then sent two copies of her handwritten note to the principal. The tone of respondent's notes was rude, sarcastic, and disingenuous. Her conduct in writing and sending her notes on copies of the conference memorandum to the principal constituted a violation of the school district's Code of Ethics requiring an employee to treat other employees in a fair and just manner and with respect.

(B) When she sent the January 29, 2008 conference memorandum to respondent, Wallace had included a copy of an article entitled, "How to Develop a Lesson Plan." Respondent returned the first page of the article to the principal with a handwritten note that stated, "Thanks. You're twenty plus years late." This written remark was not necessarily rude, sarcastic, or disrespectful and was not a violation of the Code of Ethics requiring fair, just, and respectful conduct between school district employees.

47. On February 9, 2009, Principal Wallace gave written notice to respondent that directed her to attend a conference scheduled for February 13 and told her that she could bring a representative with her. On February 13, 2009, respondent appeared for the conference by herself and brought a tape recorder. Wallace and Assistant Principal Iannucci were present. When respondent turned on the tape recorder, Wallace informed respondent that she did not have permission to use the device and could not record the discussion at the conference. Wallace asked respondent to turn off her tape recorder. Respondent refused to

turn off the device. Wallace directed her several times to turn it off. Finally, respondent turned off the tape recorder, told the administrators that they could do whatever they wanted but she was not going to meet with them, and left the conference. By refusing to turn off the tape recorder and by leaving the conference, respondent failed to follow administrative directives to turn off the device and to attend the conference in violation of her professional duties to attend meetings called by her immediate administrator as required by school district policy.

48. It was not established that, on February 13, 2009, respondent violated the Code of Ethics to treat fellow employees with fairness and respect when she told the principal and assistant principal that they could do whatever they needed to do but that she was not going to meet with them. Respondent's words were not necessarily disrespectful or discourteous under the circumstances.

49. On February 20, 2009, Principal Wallace prepared a conference memorandum of the February 13 conference that respondent left after being directed several times to turn off her tape recording device. In the conference memorandum, Wallace reviewed respondent's attempt to record the conference, her failures to comply with special education procedures, her failure to complete a four-week unit plan, the disrespectful remarks that she wrote on the January 23, 2009 memo, her failure to maintain an updated roll book, and other incidents. Wallace stated the guidance, assistance, and directives that she would have given to respondent if she had stayed and attended the conference, including suggestions and directives that respondent review her responsibilities as a special education teacher; meet with the *Chanda Smith* clerk on a weekly basis to review the schedule of upcoming IEP team meetings, the need for substitute teacher coverage, and necessary documents; request a mentor to receive assistance with time and case management; attend administrative conferences and follow administrative directives; refrain from making or writing hostile or disrespectful remarks; and contact the Employee Assistance Program to receive help with anger management issues. Wallace attached several documents to the conference memorandum and had the conference memorandum delivered to respondent.

50. Three days later, on February 23, 2009, respondent sent an envelope to Principal Wallace by special delivery to the school's main office. When the principal opened the envelope, Wallace found her February 20, 2009 conference memorandum cut into small pieces and only the first page of the memorandum intact with a handwritten note. On that page, respondent had written that she had met with the principal on February 13 and further stated, "Please refer to this material yourself. You're only preventing me from getting my work done. More retaliation." Respondent signed the note, "P. Jackson." Respondent used scissors to cut up the February 20, 2009 conference memorandum and sent the cut-up memorandum and her handwritten note by special delivery to the principal. Wallace was made to feel uncomfortable and concerned upon receiving the envelope and its contents. Respondent's conduct was insubordinate and disrespectful and violated the school district's Code of Ethics to treat fellow employees in a fair, just, and respectful manner. Respondent admitted that she cut up the conference memorandum.

51. (A) On February 23, 2009, Wallace gave a written directive to respondent to attend a conference scheduled for February 27 at 3:15 p.m. Respondent replied that she could not attend the conference because she had a doctor's appointment and her representative was not available to accompany her.

(B) On February 24, 2009, Wallace gave a written memo to respondent directing her to attend the conference that was re-scheduled to March 3. On February 26, 2009, respondent returned the memo to the principal.

(C) On February 27, 2009, which was the original scheduled date for the conference, respondent appeared at the main office at 3:30 p.m. even though she had told the principal that she had a doctor's appointment that day and could not attend the conference. In the main office, respondent discussed the expulsion of a student and spoke with other teachers and the principal. She remained in the main office until approximately 4:00 p.m.

(D) On March 3, 2009, on the date of the re-scheduled conference, respondent appeared at the main office at 3:34 p.m., signed out for the school day, and checked her mail box.

(E) Based on Findings 51(A) – (D) above, respondent failed to attend administrative conferences with the principal on February 27, 2009, and March 3, 2009, after she was given advance notices of the conferences, and thereby failed to follow administrative directives in violation of school district policy.

52. It was not established, that on or about February 23, 2009, respondent wrote a memo to the principal in which she, in part, purportedly referred to a suspension and stated that the principal lacked a "conscience" and enjoyed "wasting paper." No evidence of such a memo was presented during the hearing.

53. On March 9, 2009, Principal Wallace prepared a conference memorandum in which she summarized the topics or incidents that she wanted to discuss at the conferences scheduled for February 27 and March 3 that respondent failed to attend. If respondent had attended the conference, Wallace indicated she would have discussed her absences, her sending of the cut-up February 20, 2009 memorandum and disrespectful remarks, her failures to submit course syllabuses and roll books, her failure to follow administrative directives, and other incidents. In the memorandum, Wallace noted the guidance and directives that she wanted to provide at the conference. The principal then sent or delivered the conference memorandum with attachments to respondent.

54. On or about March 12, 2009, respondent dropped off an envelope addressed to the principal on the counter of the school's main office. The school administrative assistant found the envelope on the counter and delivered it to the principal. Upon opening the envelope, the principal was surprised to find the shredded remains of her March 9, 2009 conference memorandum that she had sent to respondent. Only the first page of the conference memorandum was returned intact and not shredded. The envelope had been used

by the principal to send the conference memorandum to respondent. Respondent had used the envelope to send the shredded conference memorandum to the principal. The first page of the memorandum contained a stamp that respondent had received the memorandum on March 9, 2009. The preponderance of the evidence demonstrated that respondent had received the principal's March 9, 2009 conference memorandum, shredded it, stuffed the shredded remains back into the envelope, and re-sent the envelope with the shredded memorandum back to the principal. Respondent's conduct in returning the shredded conference memorandum to the principal was insubordinate and disrespectful and violated the school district's Code of Ethics to treat fellow employees in a fair, just, and respectful manner. Respondent's claim that she did not shred the memorandum was not credible.

55. Notices of Unsatisfactory Acts and Suspension of Certificated Employee—On March 30, 2009, Principal Wallace and a representative from the school district's Human Resources Division held a conference with respondent and issued to a Notice of Unsatisfactory Acts and Notice of Suspension of Certificated Employee to her. The grounds for the unsatisfactory acts notice and suspension notice were that respondent's services were unsatisfactory due to her discourteous treatment of a fellow employee, failures to follow administrative directives, and failures to follow school district policy. Wallace and the school district filed 10 charges against respondent, asserting, in part, that she engaged in discourteous conduct and failed to follow administrative directives and/or school district policy by sending disrespectful messages to the principal, trying to record and failing to attend the February 13, 2009 conference, failing to attend the March 3, 2009 conference, and returning conference memoranda to the principal after she had cut-up and shredded the memoranda. In the notices, Wallace and the school district informed respondent that this was not the first unsatisfactory acts notice that she had received and that she had not corrected prior deficiencies. Respondent was warned that her continued failure to show "marked and sustained improvement" would result in further discipline, including dismissal. Both the Notice of Unsatisfactory Acts and Notice of Suspension of Certificated Employee were presented to and received by respondent but she refused to sign either notice. As a result of the suspension notice, respondent was suspended from her employment for 12 days.

56. (A) During the 2008-2009 school year, from September 3, 2008, through June 22, 2009, respondent failed to maintain regular attendance at her teaching job at Webster Middle School and failed to avoid absenteeism by being absent on 24 school days. Respondent failed to provide the principal with appropriate documentation or verification for 16 of the 24 absences. During this school year, six different substitute teachers were required to cover respondent's classroom during her absences. As such, respondent was excessively absent from her teaching position during this school year and thereby violated the school district's Employee Attendance Policy.

(B) On May 8, 2009, Principal Wallace conducted a conference with respondent and discussed her absences during the school year. Respondent replied that she usually did not have that many absences in a school year and that the principal knew why she was absent. Respondent stated she tried to ensure that a particular substitute teacher filled in for her and she left lesson plans for the substitute teacher. The principal provided



respondent with guidance and directives to comply with the school district's Employee Attendance Policy. On May 14, 2009, Wallace memorialized the conference in a memorandum and sent the memorandum with a copy of the Employee Attendance Policy to respondent.

(C) Respondent received the May 14, 2009 conference memorandum and returned a copy to the principal with a number of handwritten remarks. Respondent told the principal, in part, to stop retaliating and harassing her, that her records were incorrect and falsified, and that the principal never followed the collective bargaining agreement or directives from the school district's Office of General Counsel. Respondent also characterized the principal's memos as false and contrived and accused the principal of trying to discourage her and other minorities on the school campus. On the Employee Attendance Policy, respondent wrote that the principal should give a copy to "other non-minority teachers who have been out at [least] 100 days" since Wallace became the principal of the school. Respondent's remarks were insubordinate and disrespectful. Her conduct in writing her remarks and sending her remarks to the principal on a copy of the conference memorandum violated the school district's Code of Ethics requiring employees to treat each other in a fair, just, and respectful manner.

#### Stull Evaluation

57. (A) On or about May 14, 2009, Principal Wallace prepared an Evaluation of Instructional Personnel Final Evaluation, or Stull Evaluation, of respondent for the 2008-2009 school year.<sup>3</sup> Respondent was described as a special day program teacher in English for grades six through eight. According to the Stull Evaluation, during the school year, respondent was observed in the classroom on six dates and conferences were held on four dates with the last conference having occurred on May 8, 2009. As the evaluator and reviewing administrator, Wallace reviewed respondent's performance in the areas of support for student learning, planning and designing instruction, classroom performance, professional development, and attendance. The principal found respondent's overall performance was below standard, noting that respondent had "resisted suggestions, disregarded administrative directives, and written disparaging remarks." Respondent was recognized for having made efforts in April and May 2009 to use the school district's instructional guide to provide pupils with access to the general education curriculum. Wallace recommended that respondent come to work regularly and on time; timely submit her roll book, grades, emergency lesson plans, course syllabuses, four-week unit plans, and draft IEP's; and work with colleagues to ensure pupils are given access to grade level curriculum. For assistance, Wallace recommended that respondent attend school district training sessions and contact the Employee Assistance Program for support. In an Attachment to the Stull Evaluation, Wallace outlined specific deficiencies, recommendations for improvement, and assistance provided and to be provided to respondent.

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<sup>3</sup> In the 2006-2007 school year, respondent received a favorable Stull Evaluation in which she was found to have met performance standards. (Exh. I)

(B) On May 14, 2009, Wallace scheduled a conference with respondent to discuss her Stull Evaluation. However, respondent did not attend the conference, sign the Stull Evaluation, or discuss the evaluation with the principal. Because respondent did not sign the evaluation, the Stull Evaluation cannot be considered a final evaluation.

(C) On May 15, 2009, Wallace took maternity leave from her administrative position as principal of Webster Middle School and the school district appointed Augustin Herrera (Herrera) to be an interim or acting principal at the school. On May 15, 2009, the Stull Evaluation was sent by certified mail to respondent at her home. However, the Stull Evaluation was not delivered or claimed by respondent and later returned to the school by the post office as undelivered or unclaimed.

(D) Based on Findings 57(A) – (C) above, it was not established that the school district gave written notice of unsatisfactory performance to respondent within the meaning of Education Code section 44938.

58. Notice of Unsatisfactory Service--(A) Before she took maternity leave from her position, Wallace prepared a Notice of Unsatisfactory Service and charged respondent with failure to be in regular attendance at her teaching job; failure to follow administrative directives and school and school district policies and procedures; failure to complete and submit records, reports, and documents as required; and failure to properly present subject matter. Under this Notice of Unsatisfactory Service, Wallace recommended that respondent be dismissed from her employment with the school district.

(B) As the acting or interim principal, Herrera reviewed the pertinent file and documents regarding respondent and determined to issue and sign the Notice of Unsatisfactory Service. On June 17, 2009, Herrera notified respondent that he wanted to meet with her on June 22 to issue the Notice of Unsatisfactory Service and directed her to attend this meeting. On June 18, 2009, respondent wrote to Herrera that she was surprised and dismayed on receiving his directive and asked if he “was conspiring and retaliating against [her] because [she] is black?” Respondent asked that the meeting be delayed until June 26 and that the location of the meeting be changed to the district office.

(C) On June 22, 2009, respondent was absent from school and missed the scheduled meeting with the acting principal. On June 22, 2009, Herrera signed and issued the Notice of Unsatisfactory Service, noting that respondent had failed to attend the conference, and mailed it to respondent by certified mail. Herrera issued the Notice of Unsatisfactory Service on his last day as the acting or interim principal of the middle school. Respondent did not attend the June 22 meeting as directed because she was ill and went to the hospital. However, she accepted delivery of and received the Notice of Unsatisfactory Service.

2009-2010 School Year

59. On September 21, 2009, and November 29, 2009, the special education department at Webster Middle School held departmental meetings at which Principal Wallace reiterated her directive to special education teachers that draft IEP's were required to be submitted to her at least one week before the students' IEP team meetings. At the meeting on September 21, 2009, special education staff reviewed IEP notification forms, sample IEP's, best practices for completing IEP's, and compliance guidelines for scheduling and completing IEP team meetings.

60. On or about November 1, 2009, respondent failed to submit four-week unit plans for her classrooms for the month of November 2009. Her failure to timely submit the four-week unit plans to the principal was a violation of school district policy and the collective bargaining agreement requiring teachers to plan instruction and prepare lesson plans.

61. On November 10, 2009, respondent attempted to conduct an IEP team meeting scheduled for student Arthur B. The student was a special education pupil in respondent's caseload who needed supports to be eligible for a possible change in his educational placement. Prior to the meeting, respondent failed to have the student re-evaluated in accordance with the parent's request, failed to notify school administration that the student had not been re-evaluated within the mandated timelines, and failed to notify the parent and obtain the parent's written consent for the scheduled IEP team meeting. On November 10, 2009, the IEP team meeting for student A■■■■ B. had to be cancelled and re-scheduled to another date due to respondent's failures to follow procedural guidelines for conducting an IEP team meeting. Respondent's failures to re-assess the student and to notify the parent of the meeting constituted violations of school and school district policy and procedures for conducting an IEP team meeting.

62. On November 17, 2009, Wallace conducted a conference with respondent and discussed her recent failures to submit her four-week unit plans for November 2009 and to follow procedural guidelines for the IEP team meeting for student A■■■■ B. Respondent had nothing to say during the conference.

63. (A) It was not established that, in or about December 2009, respondent made disparaging or demeaning remarks to students A■■■■ B., A■■■■ V., or T■■■■ S. at school, during class, or at any other relevant time or place. The statements written by students A■■■■ V. and T■■■■ S. and the statement of student A■■■■ B. that was transcribed by the principal were not persuasive based on the circumstances under which the statements were obtained by school administrators. The statements were not signed by the students and were contradicted by the student statements presented by respondent. Respondent denied having made such statements to her students. As such, the testimony of the school counselor regarding the statements and allegations by the students was not sufficient to overcome the deficiencies of the weight of the evidence.

(B) It was not established that, on or about January 27, 2010, respondent made humiliating public remarks to a student or students, compared students with one another, or argued with the student or other students in front of others about the student's score or performance on the Secondary Periodic Assessment. The evidence presented on these allegations was vague and not persuasive.

64. It was not established that, on or about January 27, 2010, respondent tampered with her time card by scratching out a signature for that particular school day. While the date for that school day was blotted or obliterated by initials or mark, the evidence did not demonstrate that respondent, in fact, made such initial or mark with the intention to tamper with her time card or to mislead the school administrative assistant or administrators.

65. (A) On February 5, 2010, respondent failed to submit draft IEP's for students E [REDACTED] H. and M [REDACTED] P. to the principal for her review at least one week prior to the students' scheduled IEP team meetings in violation of school site policy and the principal's directives. The IEP team meeting for student E [REDACTED] H. was scheduled for February 9, 2010, and the IEP team meeting for student M [REDACTED] P. was scheduled for February 10, 2010. As of February 5, 2010, respondent had not submitted draft IEP's for these students to the principal or even started drafting or preparing the IEP's for the students.

(B) It was not established that, on February 5, 2010, respondent failed to submit a draft IEP for student G [REDACTED] O. to the principal for her review. This allegation was not established by either the testimony of the principal or her February 11, 2010 conference memorandum. Only students E [REDACTED] H. and M [REDACTED] P. were referenced in the principal's testimony and memorandum with regard to respondent's failures to submit draft IEP's to her.

66. On February 5, 2010, Principal Wallace held a conference with respondent to discuss, among other items, her failures to submit draft IEP's for students E [REDACTED] H. and M [REDACTED] P. and her time card. Respondent attended the conference and replied, in part, that she did not know that she was required to submit a draft IEP to the principal. During the conference, the principal offered guidance and assistance to respondent and reiterated her directive that respondent submit copies of draft IEP's to her one week in advance of the IEP team meetings. The principal reminded respondent that she received this directive one year ago in February 2009. The principal also directed respondent to follow school district policy for signing in and out and for arriving on time in her classroom. On February 11, 2010, Wallace prepared a conference memorandum and sent it to respondent.

67. On an undetermined date on or before March 11, 2010, respondent failed to complete the testing of student A [REDACTED] B., which testing results were necessary for completion of the student's psychological report, and failed to inform an administrator that she was having difficulty completing the testing of the student. As a result, respondent was unable to timely commence or conduct an IEP team meeting for the re-evaluation of the student. Respondent's failure to complete the testing and inform administrators were violations of school district policy for preparing an IEP and conducting an IEP team meeting.

68. Between January 19, 2010, and March 8, 2010, respondent was tardy or late in arriving in her classroom on the following dates: January 19; February 2, 10, 12, and 25; and March 8, 2010. On each of these six occasions, respondent failed to sign-in or to use the brown phone in her classroom to sign-in, by 7:49 a.m. As result, respondent was marked as being tardy by the school administrative assistant. On some of these six occasions, administrators or teachers also observed respondent arriving at her classroom after 7:49 a.m. Respondent's failures on these dates to sign-in and/or be present in her classroom by 7:49 a.m. violated school and school district policy and administrative directives.

69. On March 11, 2010, Principal Wallace conducted a conference with respondent to discuss her handling of the IEP for student A [REDACTED] B., her tardiness, and instruction. Respondent declined to speak and stated she would respond in writing.

70. It was not established that, between February 11, 2010, and March 11, 2010, respondent failed to provide bell-to-bell instruction of students in her assigned classrooms. While the evidence demonstrated that respondent was late in signing-in and arriving at school on a number of occasions, it was not established that respondent arrived in her classroom after the bell rang at 7:55 a.m. signaling the start of the first period class on any occasion.

71. It was not established that, on or about March 11, 2010, respondent failed to monitor her SESAC caseload or to provide general education teachers with information about students' IEP goals and required accommodations. These items were discussed at the March 11, 2010 conference as memorialized in the conference memorandum but were not corroborated by any testimony or other evidence during the hearing. As such, these allegations were not established by any probative evidence.

### Statement of Charges

72. (A) On April 26, 2010, the school district made the Statement of Charges, alleging that causes existed under Education Code sections 44932 and 44939 to suspend and dismiss respondent from her employment with the school district.

(B) On May 4, 2010, the Statement of Charges was presented and filed with the Board of Education at a closed session meeting. On May 5, 2010, pursuant to the action and resolution of the Board of Education, the school district duly notified respondent of the intention of the Board of Education to dismiss her from her employment with the school district within 30 days unless she demanded a hearing. The school district also notified respondent that she was suspended from her employment without pay.

(C) On May 9, 2010, respondent demanded a hearing under Education Code sections 44930 through 44988 to determine whether there was cause to dismiss her from her employment with the school district.

### Respondent's Evidence

73. Respondent presented the testimony of Rene Diedrich and Leonard G. Eisenberg who were identified as character witnesses. Both Diedrich and Eisenberg are certificated teachers and permanent employees of the school district. Respondent met them five or six months ago after they had both been placed on administrative leave from their teaching positions pending the outcomes of their own disciplinary cases. Both Diedrich and Eisenberg testified that it was unfair that respondent had been placed on unpaid administrative leave. Neither of the two witnesses have previously worked with respondent at a school or observed her in a classroom.

74. (A) Respondent also presented the testimony of Joyce Sherrard, who is a former teacher and counselor for the school district. In 2006, Sherrard retired from her job with the school district after approximately 40 years of service. From 1998 through 2004, she was a counselor and administrator at Webster Middle School where she evaluated respondent's teaching performance. Since retiring in 2006, Sherrard has mentored respondent and helped her to finish the coursework and projects to obtain her administrative services credential. She lives near respondent and has helped respondent with the care of her son. Sherrard has known respondent for several years now, speaks with her frequently, and attends church meetings with her.

(B) In Sherrard's opinion, respondent's teaching performance as a special education teacher at Webster Middle School met the standards of a certificated teacher. Sherrard noted that many of respondent's duties in special education should have been performed by the former special education bridge coordinator for the school. She was concerned when respondent was assigned to teach math and science since respondent's credential and/or educational background is in English. Sherrard advised respondent to speak with the school district about her assignment and told her to speak with Principal Wallace on a daily basis and to abide by her directives. Sherrard found that respondent tried to follow the directives but became frustrated, upset, and demoralized by the principal's disciplinary actions. In March 2008, Sherrard instructed respondent not to attend or participate in the special education and professional development meeting but to sit outside the door to the meeting.

75. In general, respondent contends that she did nothing wrong that would warrant her dismissal from her job as a special day class teacher at Webster Middle School. She offered explanations and excuses for her transgressions from the administrative directives and school district policies. She continued to assert that she was singled out by the principal and made to feel ineffective, harassed, and frustrated by her orders. For example, regarding her tardiness, respondent claimed that she arrived at school on time but that the brown phone she was allowed to use from her classroom to sign-in each morning as a reasonable accommodation did not work and no one in the main office answered her calls. Regarding her absences, she claimed that she had legitimate reasons for many of her absences, including illnesses and off-site professional development activities, and that no one ever asked her to verify or substantiate her absences. With respect to four-week unit plans, respondent stated

that she completed her instructional plans in collaboration with other subject matter teachers. However, respondent's claims were not altogether persuasive, for she did not present any documentary evidence or the testimony of colleagues to corroborate her claims that she complied with the principal's directives and school district policies.

76. (A) In her instructional and caseload area of special education, respondent conceded that she did not always submit draft IEP's to the principal one or two weeks before IEP team meetings but she performed many of the tasks required of a special education teacher. For example, she did send progress report forms to general education teachers to obtain their comments on students' academic progress and work habits before their IEP team meetings. (exh. X) Respondent explained that she was often overwhelmed by the breadth of her special education duties. She complained that she did not have sufficient time in the school day to complete all of the tasks required for the IEP team meetings but that she was not the only special education teacher who failed to comply with the principal's directives. Many of her tasks, respondent asserted, should have been performed by administrators and the special education bridge coordinator and not special education teachers. Respondent added that the principal's directive to prepare and submit draft IEP's in advance for her review was not only burdensome but contrary to special education law or procedures although she did not present any pertinent laws, regulations, or legal authority to support her arguments.

(B) Here, respondent's explanations did not mitigate or extenuate her failures to comply with administrative directives and school district policies, including directives to submit draft IEP's and instructional plans. While the school district's Special Education Manual outlined tasks for administrators to prepare for IEP team meetings, the principal at respondent's school determined to issue directives and policies to special education teachers to facilitate her management and review of this process, including the submission of draft IEP's in advance of the IEP team meetings. As a result, respondent had many tasks to perform in preparation for the IEP team meetings for her special education caseload, especially after the termination of the position of the special education bridge coordinator in February 2008. Respondent was required to follow and abide by the administrator's directives. She did have a conference period and two other hours in her eight-hour work day to complete her tasks, including notifications and assessments, which were mandatory and subject to strict time limitations. A number of respondent's special education duties did not require her to prepare extensive or detailed reports; rather, respondent was required, in part, to send out notices to student's parents and teachers, obtain information and assessments from teachers and specialists, and communicate with the school's *Chanda Smith* clerk to arrange for substitute teacher coverage and the attendance of participants for IEP team meetings. For the draft IEP's, the principal expected respondent and other special education teachers to prepare and complete only portions of the IEP form on the Welligent system. Over the course of four school years, respondent demonstrated by her continued failures and violations an unwillingness to comply with administrative directives of the principal and with school district policies.

77. Principal Wallace and respondent were the two primary witnesses in this employee dismissal matter. Both were sincere in their testimonies but Wallace was more credible on the issues that were disputed or denied by respondent. Wallace was a new principal when she was appointed to her position in July 2005 and she may have been a demanding and exacting administrator. However, she was entrusted with the job of administering and managing a low-performing school and its staff and students. She issued her directives for the management of the special education program at her school, such as the requirement that teachers submit draft IEP's to her before IEP team meetings, to ensure timely compliance with school district policy, special education requirements, and the modified consent decree in the *Chanda Smith* court case.

78. Allegations contained in the Accusation and Statement of Charges for which there are no specific findings in this Decision were deemed unproven or considered irrelevant upon consideration of all of the evidence.

\* \* \* \* \*

Pursuant to the foregoing findings of fact, the Commission on Professional Competence makes the following determination of issues:

### LEGAL CONCLUSIONS

1. Complainant has the burden of proof in this matter because the school district is seeking to dismiss respondent from employment as a certificated employee. The standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

2. Cause does not exist to dismiss respondent from her employment pursuant to Education Code section 44932, subdivision (a)(4), for unsatisfactory performance in that it was not established that the school district gave her written notice of the charge of unsatisfactory performance prior to the filing of the Accusation and Statement of Charges, based on Findings 1 – 78 above.

Under Education Code section 44938, subdivision (b), the governing board of a school district shall not act upon any charges of unsatisfactory performance, unless it acts in accordance with the provisions of either subdivision (b)(1) or (b)(2). Under subdivision (b)(1), the board or its authorized representative must give written notice of the unsatisfactory performance at least 90 calendar days prior to the date of the filing, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and to overcome the grounds



for the charge. The written notice shall include the evaluation and assessment of the performance of certificated employees under Education Code section 44660 et seq.

Under section 44938, subdivision (b)(2), the board or its authorized representative may act during the time period composed of the last one-fourth of the school days it has scheduled for purposes of computing apportionment in any fiscal year if, prior to the beginning of that time period, the board or its authorized representative has given the employee written notice of the unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and to overcome the grounds for the charge. The written notice shall include the evaluation and assessment of the performance of certificated employees under Education Code section 44660 et seq.

In this matter, on May 14, 2009, the principal at respondent's school prepared and signed a Stull Evaluation in which the principal deemed respondent's performance to have been below standard for the 2008-2009 school year. However, after the principal took maternity leave, the acting or interim principal was not able to meet with respondent due to her absence and did not discuss or give the Stull Evaluation to her. In fact, respondent did not sign the Stull Evaluation. The Stull Evaluation states that only an evaluation that is signed by both the evaluator and employee is to be considered a final evaluation. On May 15, 2009, the acting or interim principal then mailed the Stull Evaluation to respondent by certified mail but it was not delivered or claimed by respondent and the Stull Evaluation was returned to the school. At no time did respondent admit or acknowledge ever having received the Stull Evaluation. As such, the evidence did not establish that the school district gave prior written notice to respondent of the charge of unsatisfactory performance as required by Education Code section 44938.

3. Cause does not exist to dismiss respondent from her employment pursuant to Education Code section 44932, subdivision (a)(3), for dishonesty in that it was not established that respondent engaged in any dishonest conduct, based on Findings 1 – 78 above.

In *Fontana Unified School Dist. v. Burman* (1988) 45 Cal. 3d 208, 220, fn. 12, the California Supreme Court observed that dishonest conduct may range from the smallest fib to the most flagrant lie, adding that not every impropriety will constitute immoral or unprofessional conduct and not every falsehood will constitute dishonesty as a ground for discipline.

In the instant matter, complainant alleged in the Accusation and Statement of Charges that respondent engaged in two incidents of work-related dishonesty as follows: on March 31, 2008, when she signed an attendance sheet for a math department meeting and, on January 27, 2010, when she purportedly tampered with her time card. First, it was not established that respondent was dishonest when she signed the attendance sheet and then walked out of the departmental meeting. Upon direction by the assistant principal, respondent returned to the meeting and sat outside the door to the classroom where the

meeting took place. While respondent did not necessarily participate in the meeting in a meaningful way, she was present and the evidence did not demonstrate that she made any subsequent false statement about attending or participating in the meeting or that she attempted to receive credit for attending the meeting. Respondent did not want to attend the math departmental meeting because she disliked the teacher who was the department chairperson and hosting the meeting in her classroom. Second, the evidence did not support a finding that, in January 2010, respondent intentionally obliterated a signature on her timecard to hide the fact that she was tardy to school that particular day or for any other dishonest purpose. Respondent did not claim that she arrived at school on time that day and no evidence was presented to demonstrate that respondent thus had a motive to obliterate the signature on her time card. As such, respondent did not engage in dishonest conduct on either occasion.

4. Cause does not exist to dismiss respondent from her employment pursuant to Education Code section 44932, subdivision (a)(1), and 44939, for immoral conduct in that it was not established that respondent engaged in any immoral conduct by her remarks and conduct, based on Findings 1 – 78 above.

In general, immoral conduct has been defined as that which is hostile to the welfare of the general public and contrary to good morals. Immorality is not confined to sexual matters but also includes conduct indicative of corruption, indecency, depravity, dissoluteness, willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community and an inconsiderate attitude towards good order in the public welfare. (*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

In the instant matter, complainant has argued, in part, that respondent engaged in immoral conduct by making demeaning remarks to students and administrators and by returning conference memoranda that she had shredded and cut up to the principal. First, the evidence did not establish that respondent made disparaging or demeaning remarks to her special education students. The evidence on these allegations was not persuasive. Second, respondent did criticize the administrators at her school by comparing their managerial and disciplinary styles or actions to the “Willie Lynch Management System.” Her remarks were certainly discourteous, offensive, and disrespectful, for she conjured up inappropriate racial and historical references that served to denigrate the administrators’ integrity and motives. Yet, it cannot be said that respondent was dissolute, indecent, or depraved in making her remarks. She confined her remarks to memos written only to the administrators and was trying to express in no uncertain terms, however regrettable, that she felt harassed and singled out for discipline. She was candid about her opinions and demonstrated poor judgment and a lack of civility and respect but she did not make the comments for immoral purposes. Third, respondent’s conduct in cutting up and shredding two conference memoranda and returning the obliterated documents to the principal was likewise insubordinate and disrespectful but not immoral in nature. For the three school years in question, respondent openly disagreed with certain directives of the principal and contested charges and deficiencies set forth in conference memoranda and unsatisfactory notices. She

avoided and missed conferences scheduled by the principal. Her actions in returning the memoranda to the principal were reflective of her own frustrations and her lack of proper perspective but did not constitute signs of an underlying character for depravity or a willingness to do evil as defined or implicit by the term “immoral conduct.”

5. Cause exists to dismiss respondent from her employment pursuant to Education Code section 44932, subdivision (a)(7), for persistent violation of or refusal to obey reasonable regulations prescribed for the governance of public schools by the governing board of the school district, based on Findings 1 – 78 above.

Under Education Code section 44932, subdivision (a)(7), the violation must be persistent or “motivated by an attitude of continuous insubordination.” (*Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.) Isolated events or incidents involving an issue unresolved over a period of time are generally not considered persistent. (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.) Cause for discipline may be based on the violation of school rules. (*San Diego Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.)

6. Cause exists to dismiss respondent from her employment pursuant to Education Code section 44932, subdivision (a)(1), for unprofessional conduct, based on Findings 1 – 78 above.

First, under Education Code section 44938, subdivision (a), the governing board of a school district shall not act upon any charges of unprofessional conduct, unless at least 45 calendar days prior to the date of the filing, the board or its authorized representative has given the employee written notice of the unprofessional conduct, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. Thus, section 44938, subdivision (a), requires a school district to give a 45-day written notice of the charges of unprofessional conduct against a permanent certificated employee.

Here, the school district gave the required prior written notice to respondent of the charges of unprofessional conduct. The Statement of Charges seeking dismissal of respondent from her employment was made and filed in April 2010 and the Accusation and Statement of Charges was then filed in July 2010. Ten months earlier, on or about June 23, 2009, the school district issued the Notice of Unsatisfactory Service and sent it to respondent by certified mail. Respondent accepted the certified mail on June 23, 2009, and she admitted during the hearing that she received this Notice of Unsatisfactory Service, which gave her written notice of the charges of unprofessional conduct including her failure to be in regular attendance, failure to follow administrative directives and school and school district policies and procedures, failure to complete and submit required reports and documents, and failure to properly present subject matter during the 2008-2009 school year. In addition, the school district gave prior written notices to respondent of charges of unprofessional conduct for the 2007-2008 and 2008-2009 school years by the issuances of Notices of Unsatisfactory

Acts. As such, respondent received the required prior notice of the charges of unprofessional conduct and had all of the 2009-2010 school year to correct her faults and remediate her conduct.

Second, as one of the specific grounds for which a permanent certificated employee may be dismissed from employment, unprofessional conduct has a broad import, for it refers generally to conduct demonstrating unfitness. However, a particular act or omission on the part of a teacher may constitute not only unprofessional conduct but also evident unfitness for service and a persistent violation of or refusal to obey prescribed rules and regulations. (*Perez. v. Commission on Professional Competence* (1983) 149 Cal. App. 3d 1167, 1174-1175; *Board of Education v. Swan* (1953) 41 Cal. 2d 546, 551.) Unprofessional conduct may be viewed as a lesser included form of proscribed behavior within evident unfitness for service. Conduct constituting evident unfitness for service will often constitute unprofessional conduct, but the converse is not true. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App. 4th 1429, 1445.)

7. Cause exists to dismiss respondent from her employment pursuant to Education Code section 44932, subdivision (a)(5), for evident unfitness for service in that respondent engaged in conduct which demonstrated that she is not fit to be a teacher due to a defect in temperament that cannot be remedied, based on Findings 1 – 78 above.

Evident unfitness for service means clearly not fit or suitable for teaching, ordinarily by reason of a temperamental defect or inadequacy. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence, supra*, 2 Cal.App. 4th at pp. 1444-1445.) Unlike unprofessional conduct, evident unfitness for service connotes a fixed character trait, not remedial upon receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Id.* at 1444.)

In general, the determination of evident unfitness requires an analysis based on the criteria set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, to decide whether, as a threshold matter, the questioned conduct of a permanent certificated employee indicates unfitness for service. (*Board of Education v. Jack M.* (1977) 19 Cal. 3d 691, 696.) If the *Morrison* criteria are satisfied, the next step is to determine whether the unfitness is evident, i.e. whether the offensive conduct is caused by a defect in temperament. (*Woodland Joint Unified School Dist, supra*, 2 Cal.App. 4th at p. 1445.)

In the *Morrison* case, the California Supreme Court held that where charges of immorality or unprofessional conduct are raised in a teacher dismissal case, the applicable standard is whether the person is fit to teach. (*Morrison v. State Board of Education* (1969), *supra*, 1 Cal. 3d. at p. 229.) The terms immoral or unprofessional conduct have been held too vague, standing alone, and must be applied to a specific occupation and given context by reference to fitness for the performance of that occupation. (*Basset Unified School Dist. v. Commission on Professional Competence* (1988) 201 Cal. App. 3d 1444, 1453.) The *Morrison* case requires that the determination whether a person is fit to teach be based on an

objective and analytical approach consisting of a review of the teacher's conduct and an assessment of a variety of specific criteria which include: (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the respondent; (4) the existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; and (7) the extent that discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher. These factors assist a board of education in determining whether a teacher's fitness to teach, and whether the teacher's future classroom performance and overall impact on his or her students are likely to meet the standards of the board of education. (*Morrison v. State Board of Education*, *supra*, 1 Cal. 3d at pp. 229- 230.)

Based on the mandatory application of the *Morrison* standard, the Commission on Professional Competence has broad discretion in matters of teacher discipline and dismissal. The role of the Commission is not merely to determine whether the charged conduct in fact occurred, but to decide whether the conduct, as measured against the *Morrison* criteria, demonstrates unfitness to teach. (*Fontana Unified School Dist. v. Burman*, *supra*, 45 Cal.3d at p. 220.)

8. Discussion—First, the collective bargaining agreement between the school district and its certificated employees, the policies and procedures set forth in the school district's Special Education Manual, the Code of Ethics, and the Employee Attendance Policy, and each of them, constitute reasonable regulations prescribed for the governance of its schools by the governing board of the school district. In the present matter, respondent violated or refused to obey various terms of these regulations. Beginning in the 2006-2007 school year, and even after the principal requested them, respondent failed to timely submit her roll book for the fall semester and her four-week unit plans for May 2007 in violation of the collective bargaining agreement requiring teachers to furnish lesson plans or other evidence of planning on request of their immediate supervisor. During the 2008-2009 school year, respondent failed to submit four-week unit plans for the months of October 2008, November 2008, December 2008, and January 2009; her emergency lesson plan for the school year; and her fall roll book despite receiving reminders and directives from the principal. During the 2009-2010 school year, respondent did not submit her four-week unit plans for November 2009. In addition, at the beginning of the 2007-2008 school year, respondent failed to timely sign-in on her time card on 19 school days in violation of the collective bargaining agreement and school site policy. The next school year, 2008-2009, respondent was absent 24 days and failed to document or verify 16 of those absences in violation of her professional duties under the collective bargaining agreement to communicate with staff and maintain appropriate records as well as the Employee Attendance Policy. She was likewise tardy to her classroom on six occasions from January through March 2010. Respondent's violations of the regulations of the school district were not isolated incidents or limited in time to one school year but were persistent and repeated over the course of four school years.

Second, respondent engaged in unprofessional conduct on numerous occasions. In the 2006-2007 school year, she did not submit a draft IEP to the principal for her review contrary to directives of the administrator. Two school years later, she failed to submit draft IEP's for four students to the principal and failed to follow special education procedures to ensure proper notifications, assessments, and substitute teacher coverage for the scheduling and conduct of IEP team meetings. In February 2010, she failed to submit draft IEP's for two students to the principal and did not follow special education procedures for the conduct of an IEP team meeting for a student who was eligible for a change in placement. In June 2008, when a student was injured in her classroom while she was not supervising her classroom, respondent failed to send the student to the school nurse or to inform site administrators of the incident.

On numerous occasions, respondent refused to attend meetings and conferences called for by her principal and assistant principal. Respondent was always given advance written notices of the scheduled meetings. For example, she failed to attend three conferences scheduled by the principal in the fall 2007 semester and wrote to the assistant principal that she was not coming to a conference scheduled in April 2008. In March 2008, respondent failed to attend two scheduled conferences where administrators planned to issue and discuss a Notice of Unsatisfactory Acts. The next school year, in February 2009, respondent left a conference after being directed several times to turn off her unauthorized recording device. On another date in February 2009, respondent did not attend a conference, claiming to be ill, but she then appeared in the office at the time of the noticed conference. In February and March 2009, respondent failed to attend conferences where the principal wanted to discuss her conduct and responsibilities as a special education teacher. The principal mailed the conference memoranda to respondent who, in turn, returned the memoranda to the principal after she had cut-up one memorandum and shredded the other. In May 2009, respondent returned a conference memorandum to the principal with notes that the principal was harassing her and falsifying records.

On other occasions, respondent had a practice or habit of responding in writing to directives and conference memoranda issued by the principal. Rather than stating her disagreement with directives or guidance, respondent often made rude and inappropriate remarks to the principal. For example, in March 2008, respondent wrote to both the principal and assistant principal and accused them of harassing and retaliating against her, lacking competence and reasonableness, and operating a system of fear at the school. In January 2009, respondent sarcastically thanked the principal for her support and said she had become accustomed to her intentional misrepresentations. Respondent's comments were disrespectful and violated the school district's Code of Ethics requiring fair, just, and respectful conduct among employees.

A review of respondent's unprofessional conduct under the *Morrison* factors demonstrates that respondent is unfit for service as a teacher. First, her failures to abide by the special education procedures adversely affected the efficacy of IEP team meetings and inconvenienced staff. On several occasions, assessments and consents were not obtained and meetings had to be cancelled which would have delayed the delivery of FAPE to the pupils.

Substitute teacher coverage was not arranged affecting the schedules and workload of other teachers and staff. Respondent's inordinate number of absences adversely affected the instructional time afforded to pupils and their abilities to progress with the curriculum. One student did not receive care from a school nurse after being injured in respondent's unsupervised classroom. Second, respondent's conduct was proximate in time, having occurred over the four school years from 2006 through 2010. Third, respondent holds a teaching credential and has special day class experience. She has been employed as a classroom teacher in a middle school and is authorized to provide special education supports and services. As such, respondent has the qualifications and competency to be a classroom teacher and thereby influence not only the academic lives of students but also the lives of their parents who attend IEP team meetings for their students.

Fourth, there were mitigating factors to respondent's conduct. She felt overwhelmed by her responsibilities as a special day class teacher that required her to prepare lesson plans for three grade levels in math, science, and English. The special education bridge coordinator position was eliminated in February 2008 which necessitated respondent and other special education teachers to take on more responsibilities in the IEP process. She believed that some of the principal's directives lacked authority. However, the aggravating circumstances in this matter were more significant. Respondent was absent from work a large number of times in one school year and frequently late in arriving and signing her time card despite having been given reasonable accommodation to use the brown phone in her classroom. She repeatedly violated or disregarded directives of the principal to submit draft IEP's and to attend conferences. She continued to commit violations of the Code of Ethics by engaging in disrespectful behavior toward her supervisors. She did not comply with special education procedures. Fifth, respondent's motives for engaging in her unprofessional conduct were hardly praiseworthy. She did not accept responsibility for her violations of the school district's regulations and refused to attend conferences and follow directives because she felt she was being singled out as a member of a minority group. She believed she was right and that the administrators were wrong. She criticized the administrators' ethics and competency and accused them of harassing her and managing the school by fear and intimidation. Respondent lashed out at the administrators with disrespectful remarks and with memos that she cut-up and shredded and returned to demonstrate her disdain. The evidence thus has a strong tendency in reason to show that respondent's motives were selfish and unprofessional. She sought to defend herself and her actions rather than accept the administrators' advice and directives and conform or change her behavior in accordance with the directives and school district regulations. Sixth, there is a strong likelihood that respondent's unprofessional conduct would recur, for she has continued to commit violations of school district regulations and procedures after being issued notices of unsatisfactory acts and service and notices of suspension. Respondent was afforded the time, guidance and assistance, and the opportunities to change and rectify her conduct but has not done so. Seventh, it was not established that disciplinary action would have an adverse impact or chilling effect on the constitutional rights of respondent or any other teacher or person.

Based on the foregoing analysis under the factors set forth in the *Morrison* case, the preponderance of the evidence demonstrates that respondent's conduct was decidedly unprofessional and indicative of her unfitness for service as a certificated employee for the school district. She showed a lack of professionalism and proper communication and social skills in her interactions with administrators and in her responses to evaluations by administrators. After a department chair criticized one of her lessons, respondent took the criticism too personally and refused to attend departmental meetings in that teacher's classroom. She refused to attend conferences with her principal and often reacted to conference memoranda with disrespectful remarks and conduct, showing a confrontational and obstinate personality. In addition, respondent demonstrated a lack of care and compassion for her special education pupils, remarking on one occasion that the students lacked the ability and motivation to complete the academic work expected of them. In other words, respondent's unfitness for service arises from defects in her temperament and cannot be remedied with further guidance or training. As such, respondent is deemed evidently unfit for service as a certificated employee for the school district and must be terminated from her employment with the school district.

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WHEREFORE, the Commission on Professional Competence makes the following Order:

ORDER

Accusation and the Statement of Written Charges, OAH Case No. 2010050307, filed and issued by complainant Vivian Ekchian, Chief Human Resources Officer, on behalf of the Board of Education of the Los Angeles Unified School District, and against respondent Paulette Jackson, is sustained, based on Conclusions of Law 5 – 8 above, jointly and for all. Respondent Paulette Jackson is terminated or dismissed as a permanent certificated employee of the Los Angeles Unified School District.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Deanna Durr Clark, Commission Member  
Retired Orientation and Mobility Specialist  
and Special Education Teacher  
Los Angeles County Office of Education

Dated: \_\_\_\_\_

\_\_\_\_\_  
Diane Banas, Commission Member  
Retired Teacher  
Los Angeles County Office of Education

Dated: \_\_\_\_\_

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Vincent Nafarrete, Commission Member  
Administrative Law Judge  
Office of Administrative Hearings