

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

BEATRICE ESSAH (EN 716647), A  
Permanent Certificated Employee of the Los  
Angeles Unified School District,

Respondent.

OAH Case No. 2016050044

**DECISION**

This matter was heard by Thomas Y. Lucero, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), in Los Angeles, California. Under Education Code section 44944, the parties submitted a statement in writing, Exhibit 7, to OAH, indicating that both parties waived the right to convene a Commission on Professional Competence and stipulated to having the hearing conducted by a single ALJ.

Complainant was represented by Meredith Karasch and Michael Voight, each assistant general counsel to the Los Angeles Unified School District (LAUSD or the District).

Respondent Beatrice Essah was represented by Rosemary O. Ward, Rosty G. Gore, and Deborah Eshaghian, Attorneys at Law.

Oral and documentary evidence was received and argument was heard. The matter was submitted for decision on March 28, 2017.

**SUMMARY**

The District seeks the termination of the respondent tenured teacher. It asserted five statutory grounds: (i) unprofessional conduct (§ 44932, subd. (a)(2)<sup>1</sup>; (ii) unsatisfactory performance (§ 44932, subd. (a)(5)); (iii) evident unfitness for service (§ 44932, subd. (a)(6)); (iv) persistent violation of or refusal to obey school laws of the state or reasonable regulations for the government of schools (§44932, subd. (a)(8); and (v) willful refusal without reasonable cause to perform regular assignments as prescribed by reasonable rules

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<sup>1</sup>Statutory citations are to the Education Code unless otherwise noted.

and regulations of the employing district (§44939). The evidence favored the District's case, indicating that respondent's teaching methods were substandard, she was unable to improve, though provided much guidance and assistance toward that end, and her relations with other teachers and administrators was contentious and detrimental to learning.

## FACTUAL FINDINGS

1. Complainant Justo H. Avila executed the accusation in his official capacity as the District's Chief Human Resources Officer.

2. Respondent is a certificated teacher employed by the District. The District commenced proceedings on March 25, 2016, when complainant executed a statement of charges against respondent and caused it to be filed with the District's governing board. (Exhibit 2.).

3. On April 13, 2016, the District gave respondent written notice of its intent to terminate her (the notice). (Exhibit 1.) Respondent made a timely request for hearing. (Exhibit 3.) The District served the accusation on respondent by mail on May 10, 2016. (Exhibit 4.)

4. During the relevant period, that is, at the time of "matters occurring [no] more than four years before the filing of the notice" (Educ. Code § 44944, subd. (b)(2)(B)), respondent was teaching at San Fernando Middle School (SFMS). She had two teaching assignments during the relevant period.

A. In the 2012-2013 and part of the next academic year, respondent was a teacher in the Resource Specialist Program (RSP). Teachers in the program, resource specialist teachers (RSTs or RSPs), provide Special Education to students with mild to moderate learning disabilities and those in need of special assistance in one or more areas of learning. As an RST, respondent went each day, for part of each class period, to one or another classroom where General Education teachers taught in self-contained classes. SFMS was legally required to provide RSP services.

B. Starting in the second half of the 2013-2014 academic year, respondent was an SDP teacher, that is, a teacher in the Special Day Program (SDP). SDP teachers give special assistance to students whose learning may be hindered by such things as physical disability or their status as English language learners. In SDP respondent was a teacher in a self-contained sixth-grade class.

### *Respondent's October 2012 Dispute with SFMS Administration*

5. During the relevant period, Freddy Ortiz was the Principal at SFMS. At his request in 2012 (and later), Michael Harrington, one of the Assistant Principals at the school, observed respondent's teaching methods.

A. Mr. Harrington has been employed by the District since 2004. He was promoted to the assistant principal position in 2009 or 2010. He had experience as an administrator at another school in the Los Angeles area. He had previously acted as assistant principal at an LAUSD high school in North Hollywood. Before that, he taught music at a middle school in Hollywood. He has also taught college courses part time.

B. As assistant principal at SFMS, Mr. Harrington has many duties, some changing year to year. He has been in charge of the English Language Learner program, safety, student discipline, and the school's overall campus.

*Charge 1: Events in November and December, 2012*

6. On October 24, 2012, Mr. Harrington wrote respondent "to summarize . . . our informal conference on October 23, 2012." (Exhibit 8.)

A. Informal conferences between an administrator and a teacher generally do not lead to discipline of a teacher. Formal conferences, on the other hand, more often result in discipline, which may include the teacher's suspension or dismissal. After 2012, respondent was required by Mr. Harrington and later by Mr. Ortiz, to participate in several formal conferences.

B. During the October 23, 2012 informal conference, Mr. Harrington noted that some of respondent's Special Education students had missing documentation relating to each student's Individualized Education Program (IEP).

(i) Public schools must create an IEP for every child receiving Special Education services in accordance with the Individuals with Disabilities Education Act (IDEA), Title 20 United States Code section 1400 et seq.

(ii) Several educators meet as a team to prepare an IEP. IEP team meetings must be held before the expiration of deadlines specified by IDEA and its implementing regulations. Failure to meet the deadlines usually causes a school to be out of compliance with federal law.

(iii) Documentation was missing, as Mr. Harrington noted, and as described in more detail below, because respondent had not updated records for students identified as her responsibility in a Special Education Student Assignment Coordination report (SESAC). Using SESACs, the District and a particular school like SFMS maintain a current count of students receiving Special Education services.

(iv) Respondent had not updated the students' records in the Welligent IEP management system (Welligent). Welligent is a computerized system that assists schools in complying with federal law. SFMS and other LAUSD schools use Welligent to calendar the federal deadlines and to schedule IEP meetings in order to coordinate and facilitate the participation and preparation of IEP team members and their draft IEP's. Respondent, like

other RSTs, was required to log on to Welligent and provide input on such matters as when an IEP meeting took place.

7. On October 25, 2012, respondent replied in writing to Mr. Harrington but did not address any issue involving the Welligent records: “Your summary of our meeting . . . violates my due process rights but I expect that you will make me whole . . .” (Exhibit 9.)

8. On November 1, 2012, an email from Lester Powell, Specialist, Outcome 13<sup>2</sup>, LAUSD, Division of Special Education, to Sonia Munoz at SFMS, advised her that several students were not being tracked in Welligent in October 2012. Respondent should have been tracking five of them. (Exhibit 10.)

9. Later in November 2012, respondent had not yet activated at least two students in Welligent. Consequently, those students were not properly tracked. (Exhibit 11.)

#### *Conferences with Administrators Followed by Conference Memos*

10. Respondent’s responsibility for tracking students in Welligent was the subject of a conference with Mr. Harrington, after which he sent her a Conference Memo.

A. On several occasions during the relevant period, SFMS administrators, Mr. Harrington and Mr. Ortiz, held in-person conferences to discuss with respondent their evaluation of her teaching. The evaluation of each administrator was based primarily on his unannounced visit to respondent’s classroom that generally occurred a few days before each conference.

B. Generally after each conference, the administrator sent respondent a Conference Memo describing and memorializing the substance of the conference.

C. Conference Memos are inter-office correspondence. Each teacher at SFMS was assigned a mail slot, a compartment or pigeonhole which school administrators used to distribute written materials, such as bulletins, correspondence, and Conference Memos.

D. The several Conference Memos described below were distributed to respondent the day they were written (except for the revised version of one), either by hand delivery or, more often, by placement in her designated mail slot.

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<sup>2</sup> Outcome 13 is one of 15 outcomes ordered in a 2003-2004 Modified Consent Decree (MCD) binding on LAUSD. The outcomes focus upon graduation rates, parent participation, and teacher quality, among other issues. Under the MCD, the District’s Special Education Division was required to develop each year a plan to promote and measure progress. Outcome 13 addressed the District’s delivery of services as stated in IEPs and in substantial compliance with law.

E. Respondent claimed unconvincingly that she was not timely provided the October 2012 Conference Memo addressed to her by Mr. Harrington, maintaining she did not receive it until several months later.

F. Beginning in early 2013, respondent chose not to discuss her evaluations in person, exercising her right to respond to Conference Memos in writing instead. In consequence, after early 2013 there was never a face to face, give-and-take dialogue between respondent and administrators.

G. Each Conference Memo offered assistance and guidance designed to improve respondent's teaching. As indicated below, the Conference Memos were not the only form of assistance and guidance provided respondent. She also attended several seminars over the course of two years, in the 2013-2014 and 2014-2015 academic year, as the administration requested.

H. Each Conference Memo included directives, followed by a warning phrased in substantially identical language:

Failure to follow administrative directives may lead to disciplinary action such as but not limited to a Notice of Unsatisfactory Act(s), Notice of Unsatisfactory Service, suspension without pay up to and including dismissal from the Los Angeles Unified School District.

*The December 7, 2012 Conference and December 13, 2012 Conference Memo*

11. The December 13, 2012 Conference Memo Mr. Harrington sent respondent described his conference with her on December 7, 2012.

A. They discussed that respondent must, for students on her caseload: (i) complete service logs;" (ii) update and/or complete the service page in Welligent according to FAPE 2;" and (iii) "co-plan with the general education teachers on a weekly basis and generate a lesson at those co-planning meetings." (Exhibit 12.)

B. During the conference, Mr. Harrington gave respondent screenshots, that is, images from the Welligent website, "showing [her] exactly what needs to be updated . . . ." (*Ibid.*) He also used a laptop computer and a projector to show her items in Welligent that needed updating. They reviewed the Service Log page in Welligent together. Mr. Harrington printed out names of courses available from the LAUSD website for Welligent training, which he recommended that respondent attend. He stated that a plan for co-planning had been put in place, requiring that respondent attend co-planning meetings one day per week in alternate weeks for English and Mathematics instruction.

C. Mr. Harrington gave respondent two directives: (i) to input logs for students she serviced on a daily basis; and (ii) to review and update Welligent information daily. Like

the other Conference Memos to her, it included the warning that she must follow directives or face possible discipline, including dismissal. (*Id.*)

12. Respondent wrote Mr. Harrington a January 11, 2013 memorandum about their December 12, 2012 conference.

A. Respondent maintained that Mr. Harrington's "account of discussions and responses [were] inaccurate." (Exhibit W.)

B. She said that she was not responsible for inaccuracies in the Welligent records of several students.

C. Nevertheless respondent acknowledged that the record of one student, V [REDACTED] O., "ha[d] a direct association with [her] performance, which could have been resolved with a simple email to make the correction . . . ." (*Ibid.*)

D. Despite the seeming acceptance of responsibility for the problem with V [REDACTED] O.'s record in Welligent, respondent added that, "Someone dropped the ball but it is certainly, not me."

#### *Charge 2: Co-planning in December 2012*

13. As indicated below, such as in the testimony of SFMS teachers Nicole Golden and Karen Ruth Arco, respondent failed at times to co-plan with General Education teachers. However, the evidence did not establish that respondent failed to co-plan specifically in December 2012, as alleged in Charge 2 of the accusation.

#### *Charges 3 and 4: Events on January 14, 2013*

14. At times respondent did not treat co-workers with respect. An instance occurred on January 14, 2013, when respondent attempted to suspend a student in her class. But she had not completed a form setting forth information required to implement a suspension under provisions of an agreement between the District and UTLA (United Teachers of Los Angeles), the union in which respondent is a member.

15. Respondent sent the student to the office of SFMS administrator Margaret Mulder with a note stating she was suspending him for using foul language. Ms. Mulder was the school counselor in the student services office. Ms. Mulder, who testified at hearing, previously taught elementary school for several years, including at schools in the District and in the Las Virgines Unified School District, and at other schools. She retired in 2014.

16. Ms. Mulder telephoned the classroom and told respondent that before the student could be suspended, respondent must first complete the required paperwork. Respondent did not discuss the required paperwork. She asserted instead that she had a right to suspend students and she would not accept this student back into class. Then she hung up.



17. Ms. Mulder spoke to calm the student in her office. He was near tears. Before sending him back to respondent's class, Ms. Mulder told him he should apologize to respondent. He agreed to do that. Ms. Mulder sent the student back to respondent's class with a note on how respondent could access the paperwork necessary for suspension.

18. Shortly afterwards respondent walked into Ms. Mulder's office with the student. She raised her voice to tell Ms. Mulder again that she would not accept the student back and that she had a right to suspend a student. She left immediately afterwards, giving Ms. Mulder no opportunity to respond.

19. Ms. Mulder described the incident in terms similar to her testimony, as set out above, in an email she sent to Mr. Harrington the day of the incident, January 14, 2013. (Exhibit 13.)

20. Respondent's version of the attempted suspension was different. Her testimony regarding these events was not convincing.

A. She testified that she suspended the student properly after her good morning greeting to him was met with "cuss words." Initially she testified that she had completed a form to suspend the student before sending him with the form to Ms. Mulder. The implication seemed to be that the student did not present the UTLA form to Ms. Mulder.

B. Then respondent testified that the problem was that Ms. Mulder thought respondent had presented her with the wrong form. Respondent said she had used the proper UTLA form. Respondent said that Ms. Mulder sent a note to her when Ms. Mulder sent the student back explaining where respondent could find the proper form and to call her if she needed more help.

C. Respondent thought Ms. Mulder's note made no sense because she thought she had used the right form. She telephoned Ms. Mulder and told her that. According to respondent, Ms. Mulder apologized to her, but said that the student could not be suspended because there was no room to keep him in Ms. Mulder's office. During the call, students in respondent's classroom became noisy. Respondent put the telephone down to quiet them but she said she did not mean to hang up and did not hang up on Ms. Mulder.

D. Shortly after that, respondent happened to see Ms. Mulder, who said respondent had hung up on her. Respondent apologized to Ms. Mulder even though she had not hung up on her.

E. Respondent denied that she ever raised her voice to Ms. Mulder. She said that in any event there was no discussion at which respondent, Ms. Mulder, and the student were present.

21. As Ms. Mulder testified, guidelines the District has promulgated in cooperation with UTLA for student suspension protect students. So do required forms.

Teachers have power over students. A clash between teacher and student may generate personal animosity. Guidelines and forms help to keep issues and concerns less personal and more professional. If teachers do not observe rules and do what is required, their power may be exercised unprofessionally and abused, to the grave detriment of students.

22. Mr. Harrington held a conference with respondent regarding the incident on February 6, 2013. Randall Ebelhar attended as her union representative. The District has employed Mr. Ebelhar for more than 20 years. His experience includes teaching Special Education. During the relevant period and at present, he serves as a Chapter Chair and UTLA representative at SFMS. Like Chapter Chairs at other school sites, he acts as the local liaison between the UTLA main office in Los Angeles and the local school. As Chapter Chair he also defends members' professional rights and helps resolve conflicts with School administration.

23. In his Conference Memo to respondent that day, February 6, 2013, Mr. Harrington wrote that respondent had acted disrespectfully toward Ms. Mulder regarding suspending the student. He provided her copies of the LAUSD Employee Code of Ethics and the LAUSD Board Resolution Reaffirming Respectful Treatment of All Persons. The Conference Memo included the same warning as the December 13, 2012 Conference Memo. (Exhibit 16.)

#### *Charge 5: Co-planning in March 2013*

24. Respondent did not co-plan with other teachers in March 2013. Respondent testified that she consistently co-planned, but that co-planning was difficult when she was an RST because her workload was so heavy.

25. Respondent did not claim her workload made it difficult to co-plan until after Mr. Harrington stated she had not been co-planning but must do so in future.

26. An SFMS General Education teacher, Karen Ruth Arco, testified to her experiences with respondent, especially relating to co-planning. At the hearing, she testified the District has employed her for approximately 19 years. She has been a teacher in both Special Education and General Education classrooms. She has taught at SFMS for the last 14 years. Ms. Arco, like respondent, is familiar with and has regularly taught using the Read 180 and the similar System 44 programs, both computer-assisted and minutely scripted to improve comprehension and the reading scores of middle school students.

27. While an RST during part of the relevant period, respondent was assigned to assist Special Education students in Ms. Arco's class. To be effective in this role, respondent should have met Ms. Arco at frequent intervals, at least once per week, to co-plan, that is, to plan out instruction together. Respondent did not meet for co-planning. Ms. Arco did not see respondent except during class time, as instruction was delivered.



28. Likewise, respondent never co-taught any lessons with Ms. Arco. Ms. Arco never witnessed respondent teach a planned lesson in her classroom.

29. Respondent did not consistently attend Ms. Arco's class to assist students. There were occasions during several months when respondent should have been in Ms. Arco's classroom helping students, but was absent.

30. Respondent was good at disciplining students, but harshly. Ms. Arco has taught Special Education students, several with low lexiles (numerical reading comprehension scores that allow comparison of same-age peers), who have gone on to college and earn good grades. Ms. Arco has found that too often students in Special Education are discouraged, having been told, sometimes for all the years that they have been in school, that they are failures. To help them improve and learn, she usually speaks to them encouragingly, even gently, whereas respondent was stern, and spoke to students harshly. Ms. Arco recalled one occasion in particular when students tried to sit at respondent's table. She ordered them away brusquely, refusing to listen to them.

31. Ms. Arco acknowledged that not all students improve, even when a teacher is skilled and is dedicated to giving the student attention, assistance, and good instruction.

32. Ms. Arco also admitted that she never brought respondent's performance to the attention of an administrator, though she believed respondent often failed to fulfill her teaching duties.

*Charges 6 through 8: March 12, 2013 Classroom Observation*

33. On March 12, 2013, Mr. Harrington observed respondent in two classes, a second-period English class and a fourth-period mathematics class. He described what he observed in an April 19, 2013 conference, where Mr. Harrington and respondent were joined by another SFMS assistant principal, a certain Ms. Welsh, and by Mr. Ebelhar. Mr. Harrington wrote respondent an April 23, 2013 Conference Memo regarding his observations. (Exhibit 18.)

34. The observations have considerable detail, referencing what respondent did to the minute at times, such as "I observed you [at] 9:28-stand in the back of the classroom, 9:40-sit down next to a student and quietly speak to him . . . ." (Exhibit 18.) As indicated below, there followed throughout the relevant period, many other Conference Memos from both Mr. Harrington and Mr. Ortiz, usually with classroom observations similarly detailed.

35. Respondent did not conduct herself as an effective teacher when observed on this occasion. She did no teaching she had planned. She reacted to students instead, such as by answering their questions. She wasted instructional time while waiting to react. As Mr. Harrington wrote respondent in the Conference Memo, there was "need to teach a planned lesson of some sort everyday [*sic*], every period. You are not to simply walk around the

room answering random student questions or simply supervise the students while they work.” (*Id.*)

36. The April 23, 2013 Conference Memo reiterated advice Mr. Harrington had imparted previously: “You need to co-plan with the general education teachers on a weekly basis and generate a lesson at those co-planning meetings.” (*Id.*) Mr. Harrington observed that on March 12, 2013, respondent failed to use a lesson she had generated before class started, leading to Mr. Harrington’s conclusion that she had not co-planned at all or, if she had tried, had done so ineffectively. In either case, Mr. Harrington found that she had not generated a usable and effective lesson.

37. At hearing, Mr. Harrington acknowledged that co-planning could be quite informal and might be accomplished in many ways. Two teachers could co-plan extempore, such as during a five-minute conversation in a school corridor. Or they might discuss the topic for an hour or two in a more formal setting. The goal is that each teacher is clear on what each plans to teach and that their teaching is complementary.

38. Respondent had not entered service logs for nine students for six days in March 2013. In the Conference Memo respondent was directed to enter the logs by April 26, 2013. This directive was followed by the same warning, quoted above in Finding 10.H., to the effect that respondent’s failure to follow administrative directives could lead to discipline. (*Id.*)

39. The April 23, 2013 Conference Memo also provided assistance and guidance. In addition to what Mr. Harrington had discussed at the April 19, 2013 conference, he described several strategies and aids respondent might use. For instance, he wrote that respondent might “[f]acilitate Kagan cooperative learning groups.” (*Id.*) Also known as Kagan structures (named after a University of California professor of psychology and education), this method of teaching encourages students to cooperate with other students, helping each other learn the lesson collectively and individually.

40. Respondent did not respond to Mr. Harrington during the April 19, 2013 conference, except to say that she would do so in writing.

41. Respondent sent Mr. Harrington her own memo dated April 29, 2013.

A. In the April 29, 2013 memo, respondent made these points: “but you failed to mention three other pertinent facts,” “you failed to include in your observation,” “[y]our observation . . . paints an incomplete picture of what actually occurred,” “[c]onspicuously missing from your observation is the fact,” “but as you have done throughout this summary you left out the most important part of the narrative,” “I take exception to your description of my performance . . . .” (Exhibit O.)

B. Respondent set out three reasons for standing at the back of the class at 9:28 a.m., as Mr. Harrington observed and mentioned in his Conference Memo. First, the class

had just started a minute before. Second, respondent wanted to stand clear of the classroom's sole entry door at the back. Third, she wrote that she "patiently listened and politely waited" (*Ibid.*) until the students had finished a reading with the General Education teacher.

C. She gave two reasons for her conduct at 9:40 a.m., as noted by Mr. Harrington, when respondent sat down next to a student and spoke quietly to him. First, she wrote that in sitting next to the one student Mr. Harrington mentioned, she was near him and his Kagan group, which allowed respondent's "coaching the entire Kagan group through the pair share activity; per the current school plan, as I am required to do." (*Id.*) Second, she explained that she spoke quietly to avoid disturbing the General Education teacher. She then asks rhetorically, "should I pitch my voice to match that of the general education teacher?" (*Id.*)

D. Respondent's memo rebuffed, denied, or disputed every concern or criticism in Mr. Harrington's memo.

E. Respondent's memo concludes:

You ended your summary of charges with the comment that were you asked to evaluate me at this point that you would rank my performance at below standard. I reject this assessment as unfair, unjust, and not supported by the true and complete facts. The only way you can reach such a conclusion is to rely on the biased narrative that you presented in your summary. In your determination to find fault with me, you skewed facts, deliberately omitted essential information, and culled out of your narrative any details or explanation that proved that I did my work diligently. To conclude, I strongly assert that any unbiased reading of my answer would prove your evaluation of my performance as inaccurate and unwarranted. (*Id.*, Exhibit O.)

#### *Charges 9 through 17: March 19, 2013 IEP Meeting*

42. On March 19, 2013, an IEP meeting convened concerning one of respondent's Special Education students. In attendance at the meeting were: (i) respondent, (ii) Sonia Munoz, acting as Bridge Coordinator, (iii) Marta Ortega, mother of the student for whom the IEP was prepared, and (iv) Lynda Silberschein, a General Education teacher, who was called to join the meeting in progress.

43. A LAUSD Bridge Coordinator such as Ms. Munoz, who testified at hearing, works with both General Education and Special Education teachers to integrate the two types of teaching and has duties to monitor Special Education activities. The District has employed Ms. Munoz for 22 years in several positions, including General Education assistant, Special Education assistant, and Bridge Coordinator. She has worked at SFMS since the 2005-2006 academic year, attending dozens of IEP meetings in that time.

44. Ms. Silberschein testified at the hearing. The District has employed her as a teacher since 2000 and as a member of SFMS's mathematics department. At weekly department meetings for sixth grade mathematics, questions were answered and lesson plans were discussed so that the teachers could be sure they were delivering the same instruction to all the sixth graders. Ms. Silberschein, who served as the team leader, organized meetings and made sure that paperwork was completed.

45. Respondent stated at the March 19, 2013 IEP meeting that the student had met his mathematics goals. Ms. Silberschein, who was the student's General Education teacher, disagreed and commented that the student had not met his mathematics goals. Ms. Silberschein had previously questioned the student and found he lacked understanding of basic mathematical concepts whose mastery the District expected of a student at his level. Additionally, Ms. Silberschein had maintained possession of the student's written work that demonstrated that the student had not met his goals, but she had not brought the work with her to the IEP meeting. Despite this, respondent claimed that the student had met his goals, although she would not share specifically why she believed the student had. Instead, respondent walked out of the meeting, leaving Ms. Munoz to finish writing the IEP.

46. On April 5, 2013, Mr. Ortiz sent respondent a Conference Memo, describing his conference with her that day. (Exhibit 17.) As he noted, he spoke to Ms. Ortega, the student's mother, who came to him saying that respondent was disrespectful to all in attendance at the IEP meeting because she "was mad, rude, and was not interested in [the mother's] questions. She was not interested in my own suggestions about my son. She said no to suggestions given." (*Ibid.*, at hearing, however, Ms. Ortega could not remember why she went to Mr. Ortiz about the meeting.)

47. Mr. Ortiz had previously told respondent that he had instructed Ms. Munoz to assist respondent in her Special Education work. Despite this, respondent always refused any help from Ms. Munoz. Specifically, Ms. Munoz made a point of going to respondent regularly, at least three times per week, to offer her support. Respondent never accepted support from Ms. Munoz.

48. Respondent's memorandum is dated April 12, 2013. (Exhibit Y.) She denied any disrespect at the IEP meeting and stated that all discussions held during the IEP meeting were routine.

*Charges 19 and 20: March 21, 2013 IEP Meeting*

49. On March 21, 2013, an IEP meeting convened concerning one of respondent's Special Education students. Respondent had been in charge of helping the student progress toward a planned exit from the Special Education program into the General Education program, however, respondent did not attend an IEP meeting, because she was out sick. The meeting had been scheduled the previous month, February 2013, but respondent had failed to prepare a usable draft IEP, and respondent failed to complete any section of it.

Consequently, shortly before the meeting started, Ms. Munoz was forced to prepare the draft IEP with inadequate time and data.

50. The student's parent who attended the meeting, Estalla Duran, as she testified, was upset that respondent had prepared an inadequate draft IEP for the meeting. Some of the information in the draft was incorrect, such as the description of her child's disability. It was Ms. Duran's expectation, based in part on her having attended several IEP meetings before March 2013, that if the draft IEP was not going to be ready in time for the IEP meeting, the person responsible, respondent in this case, should have called the parent ahead of time about the problem. That did not happen, prompting Ms. Duran to later complain to the principal.

51. The parent considered the IEP and meeting crucial to her child's joining his peers in a General Education classroom. LAUSD's policy is that students who are able to benefit from General Education classes should be in those classes, while other students should receive Special Education services only so long as it helps them master the curriculum and goals that the General and Special Education programs share.

52. Respondent contended that in her absence, the Bridge Coordinator, Ms. Munoz, could have taken her place and that she had completed enough of the draft IEP in preparation for the March 21, 2013 meeting that it should have been no special burden on Ms. Munoz to complete the draft. Respondent noted, moreover, that the administration had not specifically demanded that respondent be at the March 21, 2013 meeting.

53. The District contended respondent had time to prepare a draft IEP but failed to use her time wisely. Respondent asserted she had approximately six IEP's to prepare in this period, February and March 2013, so that she should not be blamed for not trying to draft sooner.

*Charge 21: Failure to Administer Formal Testing of Student Despite Parent's Request*

54. Respondent acknowledged that the parent who attended the March 21, 2013 IEP meeting had previously asked respondent for formal academic testing of her son. Mr. Ortiz noted this fact in his April 5, 2013 Conference Memo to respondent. (Exhibit 17.) Respondent admitted at hearing that she did not administer the testing before the meeting.

55. Respondent excused her conduct by asserting that the law forbids formal testing without a written request. Respondent referred the parent to Bridge Coordinator Ms. Munoz, so that Ms. Munoz might follow up with the parent to prepare the necessary forms. As respondent wrote in her April 12, 2013 memo in response to Mr. Ortiz's Conference Memo, the forms were not provided to respondent by the time of the March 21, 2013 meeting. (Exhibit Y.) Respondent testified to the same at hearing.

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*Charges 22 and 23: April 17, 2013 Classroom Observation*

56. Unannounced, Mr. Harrington observed respondent in the classroom on April 17, 2013, as he described in a conference and Conference Memo on April 29, 2013. Like the April 19, 2013 conference, the April 29, 2013 conference included SFMS Assistant Principal, Ms. Welsh, and union representative Mr. Ebelhar. (Exhibit 19.)

57. Mr. Harrington presented details in a format similar to that in the previous, April 23, 2013 Conference Memo, including references to what respondent was doing at precise times. This time, however, Mr. Harrington described more frequent events, every two to five minutes:

I observed you do the following: 9:55-walking around the classroom, 9:58-sat down at a table and spoke to a student, 10:03-worked on laptop, 10:07-Put away your laptop and walked around the room, 10:11-stood in one place, 10:13-left the classroom, 10:16-returned to the classroom and walked around.

. . . Your need [is] to teach a planned lesson of some sort everyday, every period. You are not to simply walk around the room answering random student questions or simply supervise the students while they work. You are to deliver pre-planned instruction on a daily basis to the students. (*Id.*, Exhibit 19.)

58. The assistance and guidance provided respondent in the April 29, 2013 Conference Memo is substantially the same, and sometimes the same verbatim, as that provided in the previous, April 23, 2013 Conference Memo. Again Mr. Harrington gave respondent directives:

- a. Plan instruction to ensure that all students have equal access to the curriculum.
- b. Deliver rigorous instruction to our students daily.
- c. Review and adhere to the California Standards for the Teaching Profession.

As before, the directives were followed by the same warning, quoted above in Finding 10.H., to the effect that if respondent failed to follow administrative directives, she could be disciplined. (*Id.*)

59. As before, respondent wrote her response at length, in a memo of five and a half pages dated May 7, 2013. She described how walking around the classroom was an effective teaching method of hers. She then asked and asserted:

[I]f you prefer, I could remain stationary at a designated spot, a spot that I would ask you to select so that in the future you would no longer accuse me (as you did in your April 23, 2013 Summary) of “stand[ing] in the back of the classroom” . . . etc. As



you ponder on your decision regarding this issue, I would remind you that if you choose to order me to stay stationary at a designated spot, the special education students will be adversely affected. . . . [I]f I am stationed away from the special education students (because of your order that I not walk around the classroom, or sit by the special education students to help them), they will respond by withdrawing from participation in classroom activities. (Exhibit P.)

60. Respondent noted that some of Mr. Harrington's comments were identical in the April 19 and April 29, 2013 Conference Memos. In response, in her May 7, 2013 memo, Exhibit P, she repeated verbatim from her April 29, 2013 memo, Exhibit O, these comments:

While I am willing to abide by your order that I "deliver pre-planned instruction on a daily basis to the students," I can only do this if the teachers let me know well-ahead of time what they plan on teaching. Currently, I do not receive a copy of the general education teachers lesson plans, nor am I informed about what they plan to cover until the day of the lesson (that is, while I am in the classroom); this makes it impossible for me to "deliver pre-planned instruction on a daily basis to the students." Additionally, I am unable to demand that the teachers provide me a copy of their lesson plans (in advance) because you ordered me not to tell the teachers what to do. If I tell them to provide me with their lesson plans, I will be in violation of your order. Since you have prohibited me from asking the teachers, please remember to tell the teachers to make their lesson plans available to me at least two weeks in advance [a reasonable time for six teachers and eight preps]. (*Id.*, Exhibit P.)

61. As before, respondent concluded her memo by stating her belief that Mr. Harrington was biased and distorted facts to suggest that respondent was "engaged in nefarious activities during school time and/or . . . [her] work was not satisfactory. . . . To conclude, I find your statement that my performance was unsatisfactory as unfair, unjust, and biased." (*Id.*)

#### *Below Standard Evaluation*

62. Toward the end of the 2012-2013 academic year, Mr. Harrington evaluated respondent's performance as below standard. Respondent sought to avoid such an evaluation in a memo she sent Mr. Ortiz dated May 3, 2013. She stated that Mr. Ortiz should be her evaluator, not Mr. Harrington, adding:

Mr. Michael Harrington . . . appears to have taken over your job as my evaluator since March 12, 2013 or thereabouts. Without giving me the required opportunity to defend myself against his claims, claims that are clearly biased, unfair, unproven, and unwarranted, he is now threatening to issue a below standard evaluation for me at a conference that he has scheduled for May 6, 2013. (Exhibit XX, p. LAUSD 2468.)

*Charges 24 and 25: Events on May 22, 2013*

63. On May 22, 2013, Ms. Silberschein received permission from school administration to use the classroom usually assigned to respondent. Ms. Silberschein's usual classroom was infested by rats and she was asked to move to the other classroom to make way for pest control.

64. That afternoon, respondent went to the classroom, where Ms. Silberschein was still working with two students for a few minutes after the bell had rung and the period had ended. Ms. Silberschein asked respondent whether the students might stow learning materials in a cabinet to tidy the room. Respondent became upset and yelled at Ms. Silberschein, loudly refusing to allow her any further use of the room and saying that the administration had allowed Ms. Silberschein and her students only one day to use the room. Respondent said she needed the room to test students.

65. Ms. Silberschein pointed out that because they had the same conference period, there should be no conflict between her and respondent's use of the room. Ms. Silberschein also explained that there was a health and safety issue in her own classroom. Respondent said that she did not care, she would take the room back. Ms. Silberschein apologized and suggested that respondent talk to school administration. Respondent told Ms. Silberschein that she, not respondent, should do that, as the problem was hers. Ms. Silberschein and the two students exited the room shortly afterwards.

66. Ms. Silberschein reported the incident to Mr. Harrington in an email the next day, May 23, 2013. (Exhibit 22.) At hearing, Ms. Silberschein testified credibly to the same facts.

67. On June 5, 2013, when he conducted a conference with respondent and wrote her a Conference Memo, Mr. Harrington described the incident as reported by Ms. Silberschein and by the two students. Respondent, accompanied by Mr. Ebelhar, said that she had requested a copy of Ms. Silberschein's complaining documents but had not received them. She did not comment on the substance of what Ms. Silberschein reported in her email.

68. Mr. Harrington offered assistance and guidance, particularly: "It is never appropriate to yell or shout at another staff member in anger or frustration. . . . Should a situation such as this happen again, please contact the main office for assistance." (Exhibit 23.) He also gave directives, especially to "[s]how respect to Staff members at all times," followed by the same warning quoted above in Finding 10.H., that failing to follow administrative directives could result in discipline. (*Id.*)

69. On June 9, 2013, respondent provided Mr. Harrington a memo of five and a half pages, Exhibit Q, regarding the incident.

A. She reiterated that she had asked for but never received Ms. Silberschein's written complaint.

B. She disputed an opening phrase in Mr. Harrington's Conference Memo that "items were discussed." (*Id.*) She wrote that Mr. Harrington was implying "a back-and-forth conversation, or an exchange of different views, ideas, and explanation took place; this would be far from the truth." (*Id.*, Exhibit Q.)

C. Respondent further stated: "There was no 'yelling' or anger involved and I strongly reject any notion that I acted unprofessionally; however, Ms. Silberschein's behavior was another matter, and her lack of proper conduct will be explained later in this document." (*Id.*, Exhibit Q.)

D. Respondent wrote that Ms. Silberschein started the conflict by asking whether she, Ms. Silberschein, might move respondent's books in the classroom, to which respondent said no. (*Id.*)

E. In respondent's version, Ms. Silberschein was unprofessional in "ordering [respondent] to move out of my assigned classroom. . . . Ms. Silberschein shed her sense of proper professional conduct by initiating the conversation and by evicting me out of my classroom in front of the students. . . . Ms. Silberschein would not stop arguing, she pursued me into the hallway." (*Id.*)

F. Respondent saw the incident as part of a pattern, Mr. Harrington's actions against her: "[Y]ou created a poisonous atmosphere at the workplace by engaging in a systematic campaign to find me guilty of something, of anything. I have to say that you have been relentless in your quest to destroy me." (*Id.*)

*Charges 26 and 27: Events on August 23, 2013*

70. On August 23, 2013, respondent was acting as substitute teacher for a sixth grade class in which G L. was one of the students.

71. It was unclear from the hearing testimony of G L. whether respondent failed to treat her appropriately.

72. Frank Salazar, a security guard at SFMS who has been employed by the District for 13 years, saw G L. outside the classroom. She was upset and he spoke to calm her. G L. admitted at hearing that she had inappropriately and without respondent's permission left the classroom as respondent was teaching.

73. G L. left her backpack in the classroom. When later she tried to retrieve it, respondent blocked her and tried to close the door. G L. put her foot in the doorway, but then she withdrew it and respondent was able to close the door. G L. waited for the bell to ring and the students to exit. She went in and was making her way out with her backpack when she saw respondent at the door. G L. ducked under respondent's arm and left. She did not hear respondent call her any names, such as loudmouth, as the accusation alleges.

74. G [REDACTED] L.'s September 18, 2013 statement about the incident, Exhibit 25, does not establish that respondent used the word loudmouth or that respondent spoke or acted inappropriately otherwise.

75. The evidence did not establish that respondent engaged in improper conduct at SFMS on August 23, 2013.

76. Part of Mr. Harrington's Conference Memo dated October 8, 2013, Exhibit 27, described the incident and concluded that respondent acted inappropriately. It is based on the statements of the students, including that of G [REDACTED] L. and, like them, do not establish that respondent spoke or acted inappropriately.

77. Respondent responded to the Conference Memo in writing and denied that she called G [REDACTED] L. a loudmouth or that there was any confrontation between them. (Exhibit Z.)

*Charges 28 and 29: Classroom Observation on September 11, 2013*

78. When he observed respondent's fifth period on September 11, 2013, specifically seventh grade mathematics, Mr. Harrington could not hear respondent clearly. As a result, he could not tell whether she delivered differentiated instruction to the Special Education students.

79. Differentiated instruction is often necessary for effectively teaching Special Education students. In a General Education class, students are generally assumed to have normal perception and other abilities. In Special Education, however, a student may have perceptual difficulty, such as in seeing clearly or in hearing what the teacher says. For students with these types of disabilities or difficulties, a solution may be to have them sit closer to the teacher. Another student may have difficulty grasping narrow objects like a pen or pencil and could be given one that is unusually thick. Yet another might have difficulty with oral instructions, and be given a visual aid. All such accommodations may be considered types of differentiated instruction.

*Charges 30 through 37: Events in Mr. Foote's Class in October 2013*

80. At times in October 2013, respondent disrupted the classroom of General Education teacher Gregory Foote, who testified at hearing. The District has employed Mr. Foote for 14 years. He was new to SFMS in 2013. The Antelope Valley Union High School District currently employs him.

81. Respondent would attempt to assist students in Mr. Foote's class for about 30 minutes at a time, several times per week. She did not co-plan with Mr. Foote. She did not comply with previous directives to co-plan with General Education teachers to whose classrooms, like that of Mr. Foote's, she was assigned as RST.

82. Mr. Foote described several difficulties that respondent caused him and his students in an October 22, 2013 email to Mr. Harrington. (Exhibit 28.) As he testified at hearing, he preferred not to criticize another teacher, but he sought out Mr. Harrington for advice on how to deal with respondent's conduct during his classes. Mr. Harrington insisted that Mr. Foote set out his concerns in writing. Mr. Foote complied with some reluctance. He testified reluctantly as well.

83. Respondent would loudly express to certain students that they were misbehaving, asking at times that a student change seats or leave the room, interrupting Mr. Foote's teaching to the class in general. She would also take one or another student, sometimes a few together, out of class and into the hallway as a way to discipline and admonish the students.

84. Mr. Foote acknowledged that he ran his class in a freeform way that other teachers might not appreciate or may consider as lacking in order, but in doing so he created a good environment for learning, with which both he and his students were comfortable. Respondent's conduct in his class detracted from the environment he fostered. She deprived the students who were subject to her attempts at discipline of valuable instructional time.

85. Mr. Foote's October 22, 2013 email described more specific examples of respondent's conduct which he found inappropriate.

A. During a class on October 17, 2013, respondent called out that Mr. Foote should stop what he was doing. Respondent then told three students that she was removing them from the class. Mr. Foote told the students to stay in their seats and focus. After class, respondent told Mr. Foote that someone must deal with those students and she was willing to do so. Mr. Foote replied that he did not think the students were acting badly but rather were excited by the lively discussion the class was having. He emphasized that he did not want students removed from class unless there was an immediate safety issue, because students "need their instructional time." (Exhibit 28.)

B. On October 21, 2013, respondent asked that student E [REDACTED] A. get up and move. Mr. Foote was standing right next to the student, trying to help her to focus on her work. He told the student that she should not move away, as respondent had demanded.

86. Mr. Harrington convened a conference on November 13, 2013, inviting another administrator, Barbara Posalski. Respondent attended with Mr. Ebelhar. Mr. Harrington's November 13, 2013 Conference Memo summarizes the conference "regarding your unprofessional behavior in the classroom" (Exhibit 30), describing Mr. Foote's complaints, including the October 17, 2013 incident, when respondent asked Mr. Foote to stop while respondent said she was removing several students from the class.

87. Respondent testified that she co-planned with Mr. Foote, but not according to her usual practice. He had not yet been transferred to SFMS at the beginning of the 2013-2014 academic year and she could not introduce herself to him then and discuss how they

might co-plan. Respondent recalled that at times when she might have been co-planning with Mr. Foote, she was too busy with an IEP meeting she was required to attend. Nevertheless respondent maintained that she co-planned with all the General Education teachers with whom she worked, including Mr. Foote.

88. In her November 22, 2013 memo in response to Mr. Harrington's Conference Memo, respondent accused him of unfairness for not providing her the "complaining documents." (Exhibit D.) She also explained that she asked students to change seats at times or took them outside the classroom for a few minutes at a time as a reasonable way to correct misbehavior and avoid disruption.

*Charges 39 through 46: October 24, 2013 Classroom Observation*

89. As indicated in his November 14, 2013 Conference Memo, Mr. Harrington observed respondent's conduct in two classes on October 24, 2013, General Education teacher Ms. Denning's mathematics class and General Education teacher Ms. Weiss's English class. The observations were discussed at a conference on November 13, 2013, attended by Mr. Harrington, Ms. Posalski, respondent, and Mr. Ebelhar. (Exhibit 31.)

A. Mr. Harrington observed nothing to indicate that respondent had co-planned with either teacher. He saw no plan book, teacher's edition, or lesson outline.

B. There was no differentiation of instruction, though respondent was there to provide such Special Education services to the students.

C. Respondent provided none of the students a directed teaching lesson. She did not participate in providing the instruction that the other two teachers provided, or provide the lesson to a small group of students.

D. Instead, respondent at times stood in the back of the room, at other times she circulated, looking at student work and answering a question that one or another student put to her, and at one point she sat next to one student and looked on as the General Education teacher was teaching, without helping or commenting on the work of the student next to whom she sat.

E. She did not help the Special Education students on her roster with accommodations and support.

90. Mr. Harrington offered assistance and guidance. As he had done before, he told her she should plan instruction with the General Education teachers. He wrote that she should do so weekly. He asked her to ensure that in the classroom evidence of her planning, such as her plan book, remain visible. He suggested different types of activities she might use to engage her students, such as facilitating a writing circle. He also attached reference materials, such as one of the District's Policy Bulletins, this one describing the role of the RST. (Exhibit 31.)



91. In respondent's November 21, 2013 written response, she denied any shortcomings in her teaching or preparation, discussing point by point essentially all of the content of Mr. Harrington's Conference Memo. Regarding the plan book and related materials, respondent did not state whether they were visible, but that they were available and ready:

It is not true that I did not have my lesson plan, plan book, etc., available in the classroom; I did have all of these items ready. Unfortunately, because you chose not to inform me that you were my evaluator or ask to see these items, you did not give me the opportunity to demonstrate my preparedness. (Exhibit V.)

92. She concluded with questions of Mr. Harrington and her argument that he should have warned her he would be observing her:

[W]ithout informing me and without speaking to me, how could I have known, to give you the above mentioned evidence of planning, and explain what I was doing. Given the secrecy and trickily [*sic*] that you have started this year, can you in all honesty be able to evaluate me in a fair and equitable manner? (*Id.*)

*Charges 47 through 52: January 15, 2014 Classroom Observation*

93. Mr. Harrington sent respondent a February 5, 2014 Conference Memo about what he observed respondent doing in a mathematics class on January 15, 2014. The observations were discussed at a conference on January 31, 2014, attended by Mr. Harrington, Mr. Ortiz, respondent, and Lisette Rodriguez, acting as respondent's union representative. (Exhibit 34.)

94. Mr. Harrington's observations were similar to those he made previously in the two classrooms on October 24, 2013. Again, there was no evidence of effective co-planning with the General Education teacher and no visible evidence of respondent's having otherwise prepared to teach, such as a visible plan book. He did not observe differentiation in her teaching. Respondent did not teach a lesson and she did not play a role in the lesson taught by the General Education teacher. (*Id.*)

95. As before, Mr. Harrington observed very specific deficiencies, such as this example described in the Conference Memo's section 2.d:

When students worked on ratio problems, you sat with the students with an IEP and asked, "What did you come up with? Did you look at your paper? If you have the answer, check with her." Instead of reviewing the student's [*sic*] work yourself and providing them feedback and support. (*Id.*, p. 34-2.)

96. As he did in the November 14, 2013 Conference Memo, Mr. Harrington offered guidance and assistance in his February 5, 2014 Conference Memo, much of it the

same as before. He attached again the District's Bulletin describing the role of the RST. He attached other useful materials, such as an article entitled "Direct Instruction: Targeted Strategies for Student Success" by David W. Moore. (*Id.*, p. 34.4.)

97. Respondent's written response to Mr. Harrington is a memo dated February 12, 2014. Again she discusses point by point essentially all of the content of Mr. Harrington's Conference Memo. Although Mr. Harrington's memo did not address lesson plan format, respondent stated:

[W]hile you have the right to ask for a lesson plan, demanding that the lesson plan follow a "special format" is illegal. The passage in the contract (LAUSD/UTLA Contract Article IX 4.1) reads as follows: "No special format for a lesson plan shall be required." (Exhibit F, p. LAUSD 288.)

Respondent's memo also addressed Mr. Harrington's concern regarding evidence of lesson planning:

It is patently untrue that "evidence of lesson planning" was not made visible to you. Not only did the general education teacher project the objective and lesson outline on the projector, but the lesson outline was clearly written on the white board (located on the west wall of the classroom), and while you were present in the classroom, the students copied the information into their notebooks. Additionally, the teacher's edition was also visible on the teacher's desk and in plain view. During the time you were in the classroom, had you asked me to point to the teacher's edition, the outline on the white board, the projected image of the lesson outline, or any other item that you had difficulty seeing, I would have promptly done so. (*Id.*)

*Charges 53 through 62: March 7, 2014 Classroom Observation*

98. Mr. Harrington's March 27, 2014 Conference Memo described respondent's conduct in her Special Day Class on March 7, 2014. The observations were discussed at a conference on March 27, 2014, attended by Mr. Harrington, Ms. Posalski, respondent, and Mr. Ebelhar. (Exhibit 35.)

99. Mr. Harrington observed a number of deficiencies in respondent's preparation and teaching. Among the detailed observations were instances when respondent confused students, but did not clear up any of the confusion. For instance, Mr. Harrington's memo quoted respondent's statements that he found confusing, and then offered advice on how respondent could have avoided the confusion:

a. "Before I left for my two day conference I explained what you were to do. Some of you have done it and some of you missed a few steps." However, you did not review what you had told them before you left to your conference nor did you review the steps that you said some of the students missed.

b. “You need to have a transition word or a transition sentence. But if you have never used a transition sentence before then a transition word will be fine.” You did not explain or provide examples of transition sentences nor did you provide a list of transition words for the students to reference. (*Id.*, Exhibit 35, p. 35-2.)

These are two of several examples of how respondent displayed little or no understanding of how to teach effectively.

100. Respondent sent Mr. Harrington an April 7, 2014 memo in response, denying each of his points. With respect to Mr. Harrington’s criticism about respondent’s confusing the students, respondent asserted that she cleared the confusion when she “circulated the room and gave instructions that addressed each individual student’s needs.” (Exhibit G, p. LAUSD 308.)

101. Respondent’s April 7, 2014 memorandum in response to Mr. Harrington’s memo is worded like previous memos she sent him. It demonstrates what Mr. Harrington deemed to be a recurring theme of respondent’s denial, deflection, discontent, distrust, and difficult attitude, evidenced by some of respondent’s statements:

- (i) “You have wrongly accused me . . .” (Exh. G, p. LAUSD 304);
- (ii) [There is] “[u]ndisputed proof that I had previously taught my students the strategies listed above was very evident . . .,” (*Ibid.*);
- (iii) “If I had not previously reviewed the vocabulary . . ., how could some of the students had [sic] been so near to completion of their . . . assignment?” (*Id.*);
- (iv) “[I]t is clear that you failed to take into consideration . . .” (*Id.*);
- (v) “Thus, your claim that I did not teach or provide examples of transition words/phrases varies greatly from the truth . . .” (*Id.*, p. LAUSD 305);
- (vi) “Rather than accusing me of providing no help, you should have mentioned how I used my time judiciously throughout the class period . . .” (*Id.*);
- (vii) “There is a disconnect in this sentence; it sounds like two different voices or two people speaking . . .” (*Id.*);
- (viii) “[Y]ou decided not to use any punctuation marks to clarify my spoken sentences . . .” (*Id.*, p. 307);
- (ix) “I have made this offer before, but let me repeat it: if at any time you have difficulty seeing anything in my classroom, feel free to ask me to point it out to you . . .” (*Id.*, p. LAUSD 306);

(x) “. . . I did exactly what an astute and proficient teacher who is well versed in the special needs of his/her students would do,” (*Id.*, p. 305);

(xi) “Although you did not accurately present my statements, I will acquiesce and accept the spirit of the statement . . .” (*Id.*, p. 308);

(xii) “A ‘counter argument’ is the same as ‘opposite argument.’ . . . I explained ‘counter argument’ to the student by using the more student-friendly word: ‘opposite . . .’” (*Id.*, p. 309.);

(xiii) “[Y]ou imply that because I ‘circulated the room . . . that . . . was contrary to effective teaching. However, . . . you mandate that I ‘Circulated throughout the classroom on a regular basis . . . . So, which order should I obey, the one where I should stop circulating or the one where you want me to circulate the classroom?’” (*Id.*, p. 310.);

(xiv) “Please explain to me why . . . you believe it is wrong for me to ask a student to observe a peer’s work . . .” (*Id.*, p. 310);

(xv) “As to your offer of the “Thinking Maps”, and “Write From Beginning and Beyond”, on reading it, I busted out laughing because I could not think of any other emotion that would be appropriate other than laughter . . .” (*Id.*, p. 314);

(xvi) “. . . I use the strategies from the IEP’s (some of which I wrote), since I am considered the expert in this field . . .” (*Id.*, p. 314); and

(xvii) “I no longer believe that you will remain professional enough to assess my performance on its true merits . . .” (*Id.*, p. 317).

#### *Respondent’s Access to Resources for Teachers*

102. A teacher, one of respondent’s peers, helped respondent learn skills to help her become a better teacher. Specifically, respondent participated in the Peer Assistance and Review (PAR) Program in the 2013-2014 academic year, from August 12, 2013 to May 9, 2014. Susan Masero, coordinator of the program for the District, attested to the program’s design and respondent’s participation. (Exhibit 110.)

A. The PAR Program is authorized under the Education Code and the District’s agreement with UTLA. Education Code section 44502 provides that the District may select consulting teachers who provide assistance to peers and report their peer reviews as part of the program.

B. Qualifying as a consulting teacher requires classroom experience and positive evaluations for several years. Full time consulting teachers must be active full-time employees of the District. Recently retired teachers may be part-time consulting teachers.

C. The PAR Program established performance goals for respondent as a participating teacher. The consulting teacher worked with respondent to develop strategies to assist and support respondent in the effective delivery of instruction.

D. Respondent's consulting teacher observed respondent on several occasions over the course of the academic year. The consulting teacher described the observations in peer review reports, and provided respondent with advice and critiques in several conferences.

E. A panel of nine, five UTLA members and four administrators from the District, govern the PAR Program. At the end of the academic year during which peer assistance was provided, the panel determines, based on the peer review reports, whether a participating teacher, such as respondent, met the goals of the PAR program.

F. A District employee may participate in the PAR Program for two consecutive years at most. Though a teacher might be ineligible to participate in the PAR program, resources from the program remain open to them. Among the assistance and guidance offered respondent in February 2016 were registration and attendance at PAR Professional Development workshops. (Exhibit 87, p. LAUSD 2175.)

103. Respondent was required to participate in the PAR program in the 2013-2014 academic year because she had received a below standard performance evaluation in areas related to instruction, as indicated in Finding 62 above.

104. The PAR panel determined toward the end of the 2013-2014 academic year that respondent had not met the established PAR goals to improve her teaching for that academic year and advised her so in writing. (Exhibit 110, p. LAUSD 1563.)

105. Respondent received another below standard performance evaluation in areas related to instruction for the 2013-2014 academic year. The District required respondent to participate in the PAR program again in the 2014-2015 academic year.

106. Toward the end of the 2014-2015 academic year, the PAR panel determined that respondent had not met the established PAR goals to improve her teaching for that academic year and advised her so in writing. (Exhibit 110, p. LAUSD 1564.)

107. In addition to the PAR program, Mr. Ortiz advised respondent that SFMS teacher Nicole Golden would serve as her mentor during the 2014-2015 academic year. Ms. Golden, who was the head of the Mathematics Department at SFMS, and whom the District has employed for 10 years, has mentored other teachers in the past. Respondent never sought help or guidance from Ms. Golden.

108. Respondent did not take advantage of other resources available in the Mathematics Department either. Approximately three times per month, the mathematics teachers would meet to plan and ensure that there was fidelity in their teaching, including

preparing quizzes and tests that all of the teachers might use. Respondent was reminded of and invited by email messages to attend these meetings, but did not attend during the relevant period except occasionally during the 2014-2015 academic year.

*Charges 63 through 74: May 14, 2014 Classroom Observation*

109. Mr. Ortiz observed as respondent taught mathematics on May 14, 2014 from 9:40 to 10:44 a.m. He noted a number of problems and teaching methods she might improve. He met respondent to discuss these matters on May 29, 2014. She said during the conference that she would respond in writing. She also requested the notes of his observation.

110. Mr. Ortiz described his observations in about three and a half pages of his May 30, 2014 Conference Memo. (Exhibit 52.) Most of the memo's remaining two and a half pages were assistance, guidance, and directives. Respondent replied with a memorandum of six and a half pages dated June 6, 2014 describing the same events from respondent's perspective.

111. During part of the class, respondent had demonstrated how to solve a problem in long division. It involved numbers with decimal points, specifically dollars and cents. Respondent incorrectly wrote the answer as 40 dollars, as opposed to 40 cents. Mr. Ortiz generally refrained from speaking while observing a class, but in this instance he spoke up to point out the error. Respondent excused herself by saying "she was doing it [the long division problem in her] head and forgot" to show the students the final step, which required moving the decimal point. (Exhibit 52.)

112. Mr. Ortiz noted respondent did not use academic language at times. She used the words "point" or "decimal," rather than the correct term, "decimal point." Respondent employed the term anticlockwise, from British usage, instead of counterclockwise, the preferred American term. She allowed students to use phrases like "up and down" or "side to side" instead of referencing location along a graph using the X and Y axis.

113. Respondent's June 6, 2014 memorandum to Mr. Ortiz denied that she incorrectly named the decimal point. She denied she incorrectly solved the long division problem and explained:

I deny uttering the statement "I think I'm doing it in my head and forgot to show you how to do it." There was no call for me to make such a statement because the students are accustomed to me working out problems without the use of a calculator; informing them of a practice that I employ on a daily basis would have been redundant. (Exhibit I.)

114. At hearing, respondent asserted that her observers failed to consider the following: (i) how burdensome her schedule was when she was an RST; (ii) her routine during classes; (iii) the IEP's and disabilities of her students when she was an SDP teacher,



which caused her to work in a way misunderstood by others; (iv) rights under the contract between the District and UTLA; and (v) other teachers' inappropriate conduct that adversely affected respondent.

115. Mr. Ortiz criticized respondent about the way she treated her students at times:

Your interactions with some students were negative, demeaning or inappropriate. You only called attention to student L ■ R. when he was off task but said nothing to the several other students that were unfocused and off task. (Exhibit 52, p. 52-3.)

Respondent replied in a memo:

Although you provided absolutely no proof and cite no incident to support your claim, you decided to accuse me of engaging in interactions with students that "were negative, demeaning or inappropriate." Without reservation, I reject this charge as unfounded and unjust! You state that I "called attention to student L ■ R. when he was off task," except you did not demonstrate what was "negative, demeaning or inappropriate" about a teacher telling a student to pay attention. You continued your charge by claiming that while I called on L ■ to pay attention, I "said nothing to the several other students who were unfocused and off task." First, I did not ignore any student; indeed, any student caught off task was told to start working. Second, if we take your claim that I said nothing to "the several other students" as true (let me add that I do not concede that I behaved in such a manner), how can I then be guilty of saying things to these students that "were negative, demeaning or inappropriate." Simply, I cannot both, not say nothing to "the several other students" and at the same time say to these "several other students" something or statements that "were negative, demeaning or inappropriate." (Exhibit I, p. LAUSD 347.)

*Charge 75 through 84: August 28, 2014 Classroom Observation*

116. Mr. Ortiz prepared and sent respondent several Conference Memos after observing her in the classroom, as indicated below. Mr. Ortiz's Conference Memos were as detailed as Mr. Harrington's and similar in format to Mr. Ortiz's May 30, 2014 Conference Memo, Exhibit 52. As Mr. Harrington had, Mr. Ortiz included in each memo guidance, assistance, and directives. Each included the warning, quoted in Finding 10.H., above, that failure to follow administrative directives could lead to discipline, up to and including dismissal.

117. Exhibit 58 is Mr. Ortiz's September 30, 2014 Conference Memo regarding his observation of respondent's classroom on August 28, 2014.

118. Mr. Ortiz noted that respondent was inadequately prepared because she failed to indicate what the students were to learn and did not make a connection to previous learning. She posted an agenda:

Homework Check  
Warm-Up (English/Math)  
Lesson  
Exit Ticket (Exhibit 58, p. 58-1.)

Mr. Ortiz observed that respondent did not clear up confusion among students. Specifically, she asked students for the dimensions of certain square units, but she did not review the meaning of “dimensions.” A student asked, “Dimensions?” Respondent repeated the word without explanation. (*Id.*, p. 58-1.) Mr. Ortiz found respondent’s instruction too simple, evidenced by her questions calling for basic recall, rather than analysis. (*Id.*, p. 58-3.) Mr. Ortiz noted that respondent singled out a student for talking to another student, though other students were doing the same. (*Id.*, p. 58-3.)

119. Respondent sent Mr. Ortiz a memo dated October 7, 2014, in which she claimed that, procedurally, he was not entitled to evaluate her as he did. She did not respond to the points Mr. Ortiz highlighted in his memo regarding respondent’s teaching. Instead, she wrote, “I will declare your summary . . . simply as null and void due to the undisputable violation of both the language and spirit of the [LAUSD/UTLA] contract . . . .” (Exhibit B.)

*Charges 85 through 92: October 22, 2014 Classroom Observation*

120. Exhibit 59 is Mr. Ortiz’s November 14, 2014 Conference Memo regarding his observation of respondent’s classroom on October 22, 2014. A November 10, 2014 conference regarding the observations included respondent and Mr. Ebelhar.

121. Mr. Ortiz noted that the agenda respondent posted was not only vague, but she did not follow it:

1. HW ck
2. Standard/Object
3. Directed Lesson
4. I, we, you
5. Closure
6. Exit Ticket (Exhibit 59, p. 59-1.)

122. Mr. Ortiz also noted that respondent did not teach a directed lesson, and was ill-prepared for what she told the students. Specifically, respondent drew a chart for use by the students which depicted two fingers resembling a peace sign to represent a “yes” response, and depicted one finger to represent a “no” response, which Mr. Ortiz concluded could be interpreted as an obscene gesture. Respondent told Mr. Ortiz that she had not drawn the sign, a student had. (*Id.*, Exhibit 59, p. 59-3.) At hearing respondent drew a

similar chart, Exhibit J, except that she showed one finger for yes and two fingers (similar to a peace sign) for no.

123. Neither party proffered any evidence that respondent prepared a written response to the November 14, 2014 Conference Memo. However, at hearing respondent denied that Mr. Ortiz's observations were grounds for criticism of her teaching, either because his observations lacked context, as he entered her classroom after instruction had begun, or his observations were simply inaccurate or mistaken altogether.

*Charges 93 through 99: February 9, 2015 Classroom Observation and the Read 180 Program*

124. Exhibit 61 is Mr. Ortiz's March 18, 2015 Conference Memo regarding his observations in respondent's classroom on February 9, 2015, during a Special Education English class that used Read 180 materials.

125. The Read 180 program includes a set of books, graduated readers, and computer software that provides students instant electronic feedback regarding their understanding of words and concepts. The program provides scripts for teachers to use, as well as step by step guidelines on how teacher and students should use the materials. The Read 180 Teacher Guide is Exhibit 120 and excerpts from Read 180 books are Exhibits 115, 116, and 117.

126. Mr. Ortiz observed that, despite the programmed nature of Read 180, respondent was not adequately prepared to make good use of the materials, having no detailed lesson plan. She skipped, or inadequately presented, a number of activities normally conducted early in the class period designed to lead to better and quicker understanding by students later, such as warm-up activities.

127. There was extensive testimony by respondent describing at various times and in various years, her pedagogical uses of the Read 180 program.

128. Her testimony regarding Read 180 made clear that respondent understood the program well. Also clear, however, was that respondent was nevertheless unwilling or unable to use the program effectively. For example, respondent's pace through the program was too slow.

129. On more than one occasion, Hanh Kim D'Aloisio observed respondent's class along with Mr. Ortiz. Ms. D'Aloisio, who has been a teacher since 1996, began working for the District in 2003 and is currently a principal at LAUSD's Oliver Wendell Holmes Middle School. She previously supervised Special Education at LAUSD's Robert A. Millikan Middle School for approximately eight years. Each time after observing respondent's classes, Mr. Ortiz and Ms. D'Aloisio compared notes and discussed the deficiencies they observed. They also discussed what assistance and guidance they could offer to help respondent improve her performance.

130. As Ms. D'Aloisio observed, respondent did not implement the program as it was intended to be implemented. Mr. Ortiz would provide suggestions on how to teach a lesson effectively in his Conference Memos, as described above. Weeks later, however, Ms. D'Aloisio observed that respondent was using the same ineffective methods, such as in teaching vocabulary. Her students were forced to spend many weeks on the same basic materials which they should have been able to master within two weeks.

131. In response to the criticism regarding her use of the Read 180 program, respondent asserted that because her students had IEP's, proceeding at a very slow pace was appropriate.

132. During Mr. Ortiz's and Ms. D'Aloisio's observations, they noted that one of the Read 180 lessons addressed understanding and using the word "minimum" correctly. Respondent presented a definition and instructed the students to repeat the word. She did not model how to use the word in a sentence, so when she asked the students to use the word in a sentence, they did so incorrectly.

133. Respondent provided Mr. Ortiz her response to the Conference Memo in a memo dated March 25, 2015, Exhibit LL. She claimed that Mr. Ortiz was incorrect about several activities, like a warm-up, at the beginning of class. She maintained that he had missed approximately 11 minutes at the beginning of the class, and so had not witnessed her instructing the students in appropriate activities. At hearing respondent proffered similar testimony regarding Mr. Ortiz's observation, as well as the comments of other administrators who observed a number of respondent's classes. Specifically, respondent explained that their criticism of her methods was misguided, because they had not been present during the whole class period from beginning to end. However, based on Mr. Ortiz's experience of Read 180 and in order for this particular argument from respondent to be valid, respondent would have had to complete a number of activities within the short period that Mr. Ortiz and the other administrators were not present in respondent's classroom. For example, if such activities were completed in the first 11 minutes of class on February 9, 2015, Mr. Ortiz concluded respondent would have had to speed through the activities at a pace that would have made the lesson ineffective.

134. Respondent defended her teaching of the word "minimum" by describing how she had used scaffolding. That is, she did not have the students use the word itself, but its meaning or definition in a sentence, the "scaffold." They were then told to strike out that part of the sentence (or scaffold) and replace it with the word. (*Id.*, Exhibit LL, p. LAUSD 36.) However, respondent acknowledged in her memo that she did not appreciate that the students had used the word incorrectly and thus did not learn.

*Charges 100 through 106: May 8, 2015 Classroom Observation*

135. Exhibit 63 is Mr. Ortiz's May 26, 2015 Conference Memo regarding his observations in respondent's classroom on May 8, 2015, during another Read 180 session.

136. Mr. Ortiz concluded that respondent, again, was not adequately prepared to teach the material, as she followed no apparent lesson plan. At his request, respondent had provided Mr. Ortiz with a weekly lesson plan. For Monday of that week, the lesson plan stated:

Read 180 S44  
Rotations  
Present tense verbs (Exhibit 63, p. 63-1.)

Mr. Ortiz determined that such a lesson plan was vague and inadequate. The lesson plan for other days, Tuesday through Thursday, included similar lists, which Mr. Ortiz also considered vague and inadequate. For Friday it stated only, “Reading log checks.” (*Ibid.*)

137. Respondent explained at hearing that she gave Mr. Ortiz vague lesson plans, just as she had for other classes in previous years. For instance, her lesson plan for February 3, 2014 stated:

I & E  
Ratios  
Math 6 – Ratios (Exhibit 105, p. 105-1.)

Her lesson plan for February 29, 2016 stated:

BIC Tutorial  
Study Guide and Area of Right Triangle  
David & Solomon  
Present-Tense Questions (Exhibit 105, p. 105-62.)

138. However, respondent claimed that the lesson plans she showed administrators were not the sort of lesson plan she actually used in preparing her classes. Respondent asserted that she prepared much more detailed plans, which she kept under lock and key in her classroom, for her use only. Respondent never showed any administrator her detailed lesson plans, despite the requests, because respondent believed that she could not legally share her detailed lesson plans, as they would reveal confidential information about students with disabilities. She never told the administrators that she was withholding these materials, or why, and never requested clarification of any confidentiality rules in relation to her lesson plan, even after administrators had repeatedly instructed respondent to submit her lesson plans. Additionally, respondent never told administrators that the skeletal lesson plans she submitted were abbreviated versions of her more detailed “confidential” lesson plans. Respondent’s testimony in this regard was therefore deemed not credible, given the unreasonable nature of her explanation.

139. Mr. Ortiz noted that respondent did not teach any directed lessons on May 8, 2015, despite his direction on previous occasions to do so. Instead she instructed her

students to prepare notes or letters addressed to their mothers, in preparation for Mother's Day.

140. Mr. Ortiz noted that when respondent circulated or walked about the classroom, she did not carefully or closely check students' written work. If she had, Mr. Ortiz believed, she would have been able to notice mistakes and comment to the students about them. Because of this failure and others, Mr. Ortiz concluded respondent did not advance her students toward mastery of common core state standards (set out in Exhibit 109).

*Charges 107 through 116: August 24, 2015 Classroom Observation*

141. Exhibit 66 is Mr. Ortiz's September 9, 2015 Conference Memo regarding his observations during respondent's classroom on August 24, 2015.

142. Mr. Ortiz noted that respondent did not design differentiated lessons or activities for the class. Consequently, Mr. Ortiz concluded that the needs of respondent's 12 IEP students were not met.

143. Mr. Ortiz concluded that a large part of respondent's presentation of the Read 180 learning materials was illogical and not useful to the students, particularly a Powerpoint slideshow, which students appeared to view passively. At the end of her presentation, respondent did not ensure that students understood how to proceed in the Read 180 program. She did not ask high-level questions (i.e., questions that ask for critical thinking, rather than simple recall). (*Id.*, Exhibit 66.)

144. Respondent disputed all of Mr. Ortiz's statements in a September 17, 2015 memo, Exhibit T. Respondent claimed that it was too early in the year for her students to have a good understanding of the Read 180 program, and stated further:

This is a perfect example of an observation that is grossly unjust, unfair and inequitable. When you taught your math-intervention class last year, how many of your students became proficient in math by the end of the 2nd or even by the 22nd day of class? If your answer is: yes, and you can show incontrovertible proof, then I would ask you to teach me how to achieve this miraculous result. But if no student of yours achieved such a standard, then the question begging to be asked is: Why are you demanding that I meet a standard that you yourself, as the principal of this school, could not achieve? (Exhibit T, p. LAUSD 2216-2217.)

*Charges 117 through 125: September 28, 2015 Classroom Observation*

145. Exhibit 73 is Mr. Ortiz's October 21, 2015 Conference Memo, which references his October 20, 2015 conference with respondent, accompanied by Mr. Ebelhar.



Also in attendance was Mauro Mejia, a School Administrative Assistant. The memo described respondent's Read 180 class, which Mr. Ortiz observed on September 28, 2015.

146. Mr. Ortiz found that respondent was as ineffective and ill-prepared as she had been in his previous observations. For instance, Mr. Ortiz found that respondent was not helpful to students, even after they expressed difficulties in obtaining information she asked them to obtain from her teacher's edition. Although respondent told her students to copy a definition from the Read 180 teacher's edition, they could not all use the book at one time and had trouble standing close enough to see what was in the book. One student asked that respondent write a word's definition on chart paper, but respondent refused to provide such help, saying that there was no room to write it, even though much of the chart paper available was blank and respondent could have used a different, blank sheet. (Exhibit 73, p. 73-3.)

147. Respondent wrote an October 28, 2015 memo in reply, Exhibit DD, in which she denied all of Mr. Ortiz's statements. She gave this explanation regarding her lesson planning:

Additionally, I have previously explained the confidentiality requirements regarding students' IEPs, but you continue to insist that I indicate this in my planning. To put an end to this back-and-forth, I am requesting that you issue a mandate compelling me to discuss my students' IEPs in my planning. I assure you that upon receipt of such a written mandate, I will write individual students' names, their goals, accommodations, and services such as counseling etc., in my lesson plans. And, if at some future date I am questioned as to why I did not follow District, State, and Federal mandates on confidentiality, I will produce your written mandate as the reason why. (Exhibit DD, p. LAUSD 2246.)

#### *October 16, 2015 Notice of Suspension*

148. The District issued an October 16, 2015 Notice of Suspension. It informed respondent her employment was suspended for 11 days. (Exhibit 72.)

A. The causes stated in the Notice of Suspension were: (i) unprofessional conduct; (ii) unsatisfactory performance; (iii) willful refusal to perform regular assignments without cause, as prescribed by the District's reasonable rules and regulations; and (iv) persistent violation of and refusal to obey California's school laws or reasonable regulations prescribed for the government of the public schools by the State Board or by the District's Governing Board.

B. The charges stated in the Notice of Suspension were the same as those Mr. Ortiz had set out in four of his Conference Memos to respondent, dated: (i) September 30, 2014 (Exhibit 58); (ii) November 14, 2014 (Exhibit 59); (iii) March 18, 2015 (Exhibit 61); and (iv) May 26, 2015 (Exhibit 63).

*Charges 126 through 134: November 13, 2015 Classroom Observation*

149. Exhibit 79 is Mr. Ortiz's December 7, 2015 Conference Memo, which references his December 1, 2015 conference with respondent. The memo describes respondent's English class on November 13, 2015, an hour of which Mr. Ortiz observed, accompanied by Ms. D'Aloisio.

150. During their November 13, 2015 visit, Mr. Ortiz and Ms. D'Aloisio observed the same types of teaching deficiencies observed previously in respondent's classes. At one point, for instance, respondent took time to sharpen students' pencils, which was not an effective use of instructional time. Additionally, Mr. Ortiz and Ms. D'Aloisio concluded that respondent demonstrated ineffective teaching, evidenced by how much of the students' time was consumed in a vocabulary lesson on one word only, "income." Moreover, they noted that the methods respondent used during the lesson were low-level. For instance, she instructed the students to rate the word according to this scale:

- 1 = I don't know
- 2 = I have seen the word
- 3 = I have seen the word and know how to use the word

She then simply dictated the word's meaning to all, not using the scale or other means to differentiate instruction.

151. At hearing, Ms. D'Aloisio corroborated observations memorialized in Mr. Ortiz's Conference Memo, particularly how respondent failed to differentiate instruction for those students who required it. She, like Mr. Ortiz, concluded respondent was generally ineffective and greatly in need of improvement.

152. Respondent's memo dated December 14, 2015 is respondent's point by point response to Mr. Ortiz's comments. She denied that any of her teaching was deficient and then stated the following:

I know that you believe that all will be well if only I would close my eyes to your policy of favoritism, inaccurate reporting and downright fabrications, unfortunately, I cannot and would not accept anything other than the truth. For that reason, I asked to transfer and continued to ask out of your school. Your response was to write even more inaccuracies with one goal and only one goal in mind which is to see to it that I am dismissed from LAUSD, and not even my offer to take an administrative transfer would satisfy this quest of yours there, I stand by my opening response to your first Informal Observation of August 24, 2015, you must and do indeed hate me. (Exhibit U, pp. LAUSD 2268-2269.)

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*Charges 135 through 144: Events on December 7 and 10, 2015*

153. Exhibit 85 is Mr. Ortiz's December 18, 2015 Conference Memo, which references a conference with respondent that was twice scheduled, but which she failed to attend. The memo describes Mr. Ortiz's observations of respondent's mathematics class on December 10, 2015, which he attended for approximately one and one quarter hours.

154. Mr. Ortiz noted that respondent failed to comply with his mandate that she submit her lesson plans to him before the formal observation. As described below, Mr. Ortiz concluded that respondent's failure to cooperate beforehand contributed to the ill-prepared and ineffective nature of respondent's teaching that he witnessed.

155. Mr. Ortiz observed deficiencies similar to those he had witnessed several times before. Specifically, respondent had not designed her lesson so that it promoted learning commensurate with the State's common core standards for mathematics. Respondent presented a lesson on calculating the perimeter of a parallelogram, but it was confusing, in part because she did not model any calculation and did not explain how to use two formulae she provided the students. Mr. Ortiz found that respondent failed to respond effectively to address students who expressed confusion. For instance, one student answered respondent that the number one was a factor of a higher number. Respondent said that one was not used as a factor, but she did not explain or guide the student to revise his answer. Mr. Ortiz also found that the calculation she asked her sixth-grade students to perform was activity appropriate for third-grade students.

156. Respondent sent Mr. Ortiz a January 15, 2016 memo in reply. As before, she denied each of his criticisms, stating:

I am in receipt of your memo dated December 18, 2015. The fact that you held a previous conference meeting the first week of December, 2015, and attempted to hold this additional meeting when the contract allows one and only one conference meeting per month, means that this meeting which did not take place; was not and would not have been in compliance with the contract, even if you had held the meeting. ¶ . . . ¶

[M]y evidence contracts *[sic]* yours; evidence that I will provide if and when it becomes necessarily. ¶ . . . ¶

[Y]ou had no intention of being anything other than to pretend, and for that you were indeed dishonest, and you confirmed my assertions that your evaluations are pre-determined, and biased in nature.

I will ask again that you recuse yourself as my evaluator and again that you use your administrative power to transfer me out of your school to prevent the continuance of this harassment that you believe I deserve for no other reason because of your deep seated hatred of me. I know that you deny hating me,

but your public admittance that you do not treat all teachers equally at this school site is proof; so that even if you were to deny this, does it not trouble you that at some point someone will start to wonder how to distinguish your definition of not hating verses [sic] all others versions of not hating since no one can claim not hating yet deliberately put that individuals [sic] life in jeopardy. Use that power to transfer me out of your school, since you do not want me here and I do not wish to be here, one thing I know is that I do not wish to die. (Exhibit S, pp. LAUSD 2183, 2186 [heading numbers omitted].)

*Charges 145 through 151: Class Observation on February 8, 2016*

157. Exhibit 87 is Mr. Ortiz's February 22, 2016 Conference Memo, which references his observation of respondent's mathematics class on February 8, 2016 and a conference held on the same day with respondent. Ms. D'Aloisio observed the class but did not attend the conference. Two other people attended the conference: (i) Mauro Mejia, School Administrative Assistant, and (ii) a teacher, Christine Kizito.

158. Mr. Ortiz noted that the types of deficiencies observed in respondent's teaching were similar to what he had observed during previous observations. Specifically, Mr. Ortiz found that respondent was not adequately prepared, evidenced by her failure to post a content standard that corresponded to the lesson she gave. Mr. Ortiz also found respondent's instruction deficient, evidenced by her failure to state the purpose of the lesson, to model skills, and to effectively check to ascertain whether her students understood the lesson. Mr. Ortiz found respondent's directions to students as unclear, such that some resorted to asking other students what they should be doing. Mr. Ortiz also noted that respondent failed to use precise descriptions of mathematical concepts, such as "angle" instead of "corner" and "equal" instead of "same."

159. As Ms. D'Aloisio noted, respondent tried to explain right angles, but concluded she did so poorly, because she failed to explain that a right angle has 90 degrees. Additionally, Ms. D'Aloisio noted that respondent did not properly model how to solve for the area of a parallelogram, a two-dimensional object. While respondent tried to model by using a tissue box she had smashed flat, Ms. D'Aloisio found it was confusing to use a three-dimensional object in this way.

160. Respondent provided no written response to Mr. Ortiz's February 22, 2016 Conference Memo.

*Respondent's Rebuttal and Impeachment Evidence*

161. Respondent's primary vehicle to discredit the District's evidence against her was her own testimony. In all of her testimony, respondent took the position she did nothing significant that might have prompted the District to attempt to dismiss her or even to criticize her at any time.

162. Respondent testified that she was responsible for improvements in students' understanding and for their achievements in learning that, but for her good teaching methods, would not have occurred. To support this testimony, respondent relied in significant part upon a "Growth Report," Exhibit 104, showing students' reading test scores near the beginning and toward the end of the 2015-2016 academic year. The report shows slight improvement for a few students, but most demonstrated no significant improvement. A few performed worse on the second testing.

A. *Teresita Rodriguez*

163. Teresita Rodriguez testified at hearing. The District employs her as a Special Education assistant at SFMS. She has approximately 16 years of experience in Special Education.

164. Ms. Rodriguez worked in respondent's self-contained sixth grade classroom from spring 2014 until respondent left SFMS in 2016. Ms. Rodriguez did not at first wish to work in respondent's self-contained classroom, as she told Amy Harrington Trinidad (who is married to SFMS assistant principal Mr. Harrington), the assistant principal in charge at the time of assigning classrooms to teachers and Special Education assistants. Ms. Rodriguez learned that respondent had asked Ms. Trinidad that Ms. Rodriguez be assigned to her classroom. Ms. Rodriguez then told Ms. Trinidad she acquiesced.

165. At times Ms. Rodriguez spoke with Sonia Munoz concerning respondent. As indicated in Findings 42 and 52, Ms. Munoz and respondent attended IEP meetings together at times. As indicated in Finding 47, Mr. Ortiz had instructed Ms. Munoz to assist respondent with Special Education work, so that Ms. Munoz reported to respondent's classroom several times per week, though respondent refused her assistance. Ms. Rodriguez witnessed the occasions when Ms. Munoz reported to respondent's classroom and respondent turned her away.

166. Ms. Rodriguez did not recall that respondent ever yelled at another teacher or at a parent, contrary to the testimony of Ms. Silberschein, as noted in Finding 64.

167. Ms. Munoz appeared several times weekly in respondent's classroom, but as Ms. Rodriguez recalled in corroborating some of Ms. Munoz's testimony, respondent repeatedly told Ms. Munoz to leave because she did not need her help.

168. Ms. Rodriguez recalled that standards were posted in respondent's classroom, but she did not recall whether they were changed at times, or whether different standards were posted from time to time.

169. Ms. Rodriguez testified that respondent followed the Read 180 program well. For instance, rotations by the students from one small group to another in respondent's class were at 20-minute intervals, as mandated by the Read 180 program, and no longer. As Ms.

Rodriguez recalled, respondent used a timer with a bell to mark the start of a rotation after each 20-minute interval.

170. Respondent gave Ms. Rodriguez lesson plans each week. They met regularly to discuss their activities in class on Tuesdays and at other times during conference periods.

171. Ms. Rodriguez testified that students liked respondent's teaching. She recalled that one student in respondent's class cried at times. But the student was crying because of her parents' divorce and difficulties at home, rather than because of any treatment by respondent.

172. Both respondent and Ms. Rodriguez circulated about the classroom each day, to be sure that students were doing work and to check the work. When respondent found that a student was not doing work, she would say something to the effect of, "Get back to work or I will call your parents." But Ms. Rodriguez denied that respondent used a harsh tone with children, explaining that both she and respondent were strict, and would speak to students in a tone appropriate to maintain orderly conduct when students were misbehaving.

B. S ■■■■■ N.

173. S ■■■■■ N., who testified at hearing, was one of respondent's sixth grade students in the 2015-2016 school year. She liked respondent. She liked respondent's class and thought it was fun.

C. H ■■■■■ T ■■■■■

174. H ■■■■■ T ■■■■■, who testified at hearing, is the mother of S ■■■■■ N. She observed respondent teaching her daughter and her classmates in the classroom on three occasions and talked to respondent at times about how her daughter was progressing.

175. Ms. T ■■■■■ observed no problems in the classroom and testified that respondent was an excellent teacher, responsive to Ms. T ■■■■■ and attentive to her students. Ms. T ■■■■■ praised respondent and her teaching ability.

D. G ■■■■■ M ■■■■■

176. Another parent, G ■■■■■ M ■■■■■, who testified at hearing, stated that respondent was a good teacher. Ms. M ■■■■■'s testimony was based her son's experience in respondent's class. He did well in the class and was happy with respondent. Ms. M ■■■■■ did not observe respondent yell or raise her voice disrespectfully.

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E. [REDACTED] F [REDACTED]

177. [REDACTED] F [REDACTED], who testified at hearing, is the mother of J [REDACTED] M. She testified that respondent was an effective teacher and that her daughter did well in respondent's class.

*Testimony Particularly Pertinent to Respondent's Credibility*

178. Respondent's testimony regarding her lesson plans, as described above, indicates that she was at times an unreliable witness. She did not prepare detailed lesson plans, as she testified at length that she did. It is incredible that a teacher such as respondent, whose activities were scrutinized and criticized for years, and who faced dismissal for failure to follow directives, would prepare detailed lesson plans but then not tell the principal about them, but rather keep them hidden away. Adequate lesson plans can be prepared without revealing confidential information, despite respondent's assertions to the contrary. Respondent refused to prepare or was incapable of preparing a comprehensive and well-organized lesson plan.

179. Likewise one cannot credit respondent's testimony that she took the photographs of her classroom seen in Exhibit DDD. Respondent's testimony in this regard seemed confident. She did not hesitate to say that she was the photographer. Yet she had no reason to take such pictures and could not explain, when questioned, what her purpose was in taking the photographs. There is, further, a concrete indication that respondent was not truthful or was mistaken about her being the photographer. The photographs were pre-marked as the District's Exhibit 103 (which however the District ultimately decided not to have marked or moved into evidence). The District did not obtain the photographs from respondent. Mr. Ortiz testified credibly he was the photographer and made the photographs available to District's counsel in preparation for the hearing.

180. Respondent admitted at the hearing that Mr. Ortiz told her she was not to require that the students simply copy information, because copying the definition of a vocabulary word, for instance, does not substitute for teaching that ensures a student's comprehension of the word. To comply with Mr. Ortiz's mandate, respondent prepared cards with printed information and distributed them to the students so that they could refer to them. In this way she avoided the stricture against copying by students, but only by distributing copies to them.

*Testimony Rebutting Respondent's*

181. At hearing respondent testified that she received guidance from Christine Lamb on preparing draft IEP's. According to respondent, Ms. Lamb criticized respondent about how she had prepared a draft IEP, but Ms. Lamb had changed her opinion after respondent submitted a later IEP draft that evidenced that respondent adhered to Ms. Lamb's advice regarding IEP drafting. After viewing the second IEP draft, Ms. Lamb supposedly told respondent that, in effect, respondent had mastered the skill necessary to prepare IEP's,

and no longer needed Ms. Lamb's assistance, as the IEP complied with applicable federal law.

182. Respondent's testimony was impeached by Ms. Lamb's testimony at hearing. Ms. Lamb noted that respondent was attentive and willing to learn from her. Nevertheless, at an IEP meeting at which Ms. Lamb accompanied respondent, respondent presented an IEP that was incomplete and not legally compliant. Ms. Lamb could not remember the name of the student who was the subject of the IEP or when the meeting occurred, but did recall that the parent, who attended the meeting, was unhappy with the incomplete IEP draft.

#### *Attempted Transfers*

183. Respondent submitted a Teacher-Initiated Transfer Application to the District, in late 2013. She sent Mr. Ortiz her written Transfer Notice dated December 5, 2013, stating she had received an offer of employment from another school in the District. (Exhibit 32.) The District did not approve the transfer and respondent stayed at SFMS.

184. Respondent again sought transfer to teach at another school in the District. She would have been a teacher at Barack Obama Global Preparation Academy in Los Angeles as of July 1, 2014 (Exhibit VV), but the transfer was cancelled due to her ineligibility. Specifically, respondent was deemed ineligible for transfer because administrators had rated her performance as unsatisfactory.

#### *Credibility*

185. Respondent was articulate and her testimony was extensive, with recollection of events covering the years of the relevant period. She offered in evidence several exhibits, such as Exhibits AA, BB, and CC, which she drew during the hearing, to illustrate charts she had used in her classroom. The exhibits were helpful and respondent's testimony about them showed her ability to communicate effectively.

A. At times respondent's presentation of the evidence faltered understandably, since she was asked, during many consecutive hours on the witness stand, to recall and describe in detail the events of several years. It is a demanding task fraught with challenges and difficulties for any witness.

B. Throughout her testimony, respondent asserted she was an effective teacher. This testimony was not believable, except in minor matters. For instance, there was no reason to fault respondent for the occasional Britishism. Her use in the classroom of a British term like anticlockwise, as discussed in Finding 113, was excusable, because lapses from American usage were not shown to be frequent or particularly confusing for her students. Charge 21, discussed in Findings 54 and 55, concerns respondent's failure to test a student despite a parent's request. The charge was not proven, and in any event such a mistake, if made, was not shown to be grounds for dismissal. On the other hand, respondent's incorrect use of mathematical terms, as set out for instance in Finding 158, indicates a specific way in

which she was ineffective, and not credible in asserting that she was effective, in teaching mathematics.

C. Pertinent here as applicable to much of respondent's testimony is the court's characterization of the credibility of trial testimony in *Wilson v. State Personnel Board* (1976) 58 Cal.App.3d 865, 877-878, quoting *Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140:

On the cold record a witness may be clear, concise, direct, unimpeached, uncontradicted -- but on a face to face evaluation, so exude insincerity as to render his credibility factor nil. Another witness may fumble, bumble, be unsure, uncertain, contradict himself, and on the basis of a written transcript be hardly worthy of belief. But one who sees, hears and observes him may be convinced of his honesty, his integrity, his reliability.

186. The cold record does not materially support respondent's testifying ability in that she was evasive.

A. Questioned on direct examination, respondent almost always professed near perfect recall of events. Many times on cross-examination, however, she testified she had almost no memory of the same facts.

B. Respondent was able to understand and answer with pertinent information when the question came from her counsel. However, at times when asked similar questions by the District's counsel, respondent professed her inability to comprehend.

C. As the hearing proceeded over a series of weeks, respondent's asserted inability to answer questions posed during cross-examination increased. She avoided answers by saying she did not comprehend the District's questions.

187. Much of respondent's testimony regarding particularly important facts was not credible. There are several salient instances.

A. Respondent's testimony regarding her lesson plans, discussed above in Findings 137, 138, and 178, made little sense and was not believable.

B. There was extensive testimony by respondent describing her effective instruction based on the Read 180 program. An example is her description of her teaching in February 2015, referenced above in Finding 133. This extensive testimony, given toward the last few days of the administrative hearing, was not credible. The evidence showed that respondent's pace through the materials was too slow. Her students learned little because respondent presented them with little over the course of weeks.

C. Not credible is the last paragraph in respondent's January 15, 2016 memo, Exhibit S, quoted above in Finding 156. Her statements are confusing, partly

ungrammatical, and make little sense. The last comment, regarding death, is extreme and puzzling, unsupported by the evidence, and apropos of no preceding communications or incidents. Respondent testified that what she wrote in her many memos in response to the several Conference Memos was accurate and truthful, including assertions that Messrs. Harrington and Ortiz were acting against her based on their personal animosity. In the end, respondent had no credible evidence that any personnel of SFMS, administrators or others, expressed or acted upon strong negative emotions towards her.

188. Other teachers were more credible than respondent.

A. Ms. Arco was convincing regarding the simple fact that respondent never co-planned with her. Ms. Arco's demeanor was sincere and straightforward, reinforced by her willingness to acknowledge on cross-examination facts that might be considered as qualifying, in respondent's favor.

B. There was similarly credible testimony from Ms. Silberschein. Ms. Silberschein and respondent were at odds during the IEP meeting on March 19, 2013, as indicated in Finding 45. However, it is unlikely that Ms. Silberschein used her disagreement with respondent as a reason to misrepresent the events she reported to Mr. Ortiz, as indicated in Finding 64, 65, and 66. Like Ms. Arco's, Ms. Silberschein's manner of testifying supported belief.

C. Ms. Mulder was credible regarding respondent's disrespectful conduct in the incident on January 14, 2013, as set out in Findings 14 through 23. In testifying to the incident, Ms. Mulder's demeanor indicated that she was merely recalling what happened, with detailed recollection of facts in testimony that was serious, careful, and respectful.

D. Ms. Lamb gave credible testimony, as indicated in Findings 182 and 183, that impeached respondent on a subject, specifically, IEPs. Ms. Lamb admitted that respondent was an attentive and willing learner, an indication that Ms. Lamb had no bias against respondent. Ms. Lamb's testimony, based on her experience with drafting IEP's and helping teachers, in which she concluded that respondent did not become competent at drafting IEP's, was given great weight.

E. Respondent asserted that Mr. Ortiz prohibited her from asking other teachers for assistance, such as copies of materials like lesson plans. (Finding 60.) Despite respondent's assertion, the weight of the evidence shows that respondent was offered a number of resources, including the PAR program teachers, discussed in Finding 102, and a mentor teacher, Ms. Golden, discussed in Finding 107.

189. The administrators who testified were credible. The Conference Memos written by Messrs. Harrington and Ortiz (a few of the latter's with the help of Ms. D'Aloisio) give good and detailed descriptions of respondent's inadequate teaching methods and activities. They were backed by convincing testimony. Apparent to each administrator throughout the relevant period was respondent's ineffectiveness as a teacher. Respondent

asserted that the administrators should not be believed because they did not teach regularly. The assertion was not persuasive. Administrators, given their level of experience, were capable of recognizing bad or ineffective teaching.

190. One theme apparent throughout respondent's testimony was her penchant for shifting blame to others. For example, if there was a dispute with a teacher like Ms. Silberschein, the problem originated, in respondent's characterization of events, with Ms. Silberschein's failure to communicate promptly with respondent. Similarly if a problem arose in Mr. Foote's class, the problem was not respondent's failure to appreciate Mr. Foote's method of fostering free and spontaneous discussions and excitement for learning, but his failure to keep students quiet and submissive in the way respondent preferred. It did not seem to occur to respondent that communication with other teachers was very much a two-way street, requiring constant cooperation and an accepting spirit.

## LEGAL CONCLUSIONS

1. The District has the burden of proof. The applicable standard is proof by a preponderance of the evidence. (*Gardner v. Com. on Prof. Competence* (1985) 164 Cal.App.3d 1035, 1040.)

### *Pertinent Law and Regulations*

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

(a) A permanent employee shall not be dismissed except for one or more of the following causes: [¶] . . . [¶]

(2) Unprofessional conduct. [¶] . . . [¶]

(5) Unsatisfactory performance.

(6) Evident unfitness for service. [¶] . . . [¶]

(8) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district employing him or her.

3. Education Code section 44939 provides in pertinent part:

(b) Upon the filing of . . . a written statement of charges formulated by the governing board of a school district, charging a permanent employee of the school district with . . . willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the

employing school district, . . . the governing board of the school district may, if it deems that action necessary, immediately suspend the employee from his or her duties and give notice to him or her of his or her suspension, and that 30 days after service of the notice of dismissal, he or she will be dismissed, unless he or she demands a hearing.

4. Whether a teacher like respondent may be dismissed depends on both statutory law and factors set out in *Morrison v. Board of Education* (1969) 1 Cal.3d 214 (*Morrison*). The *Morrison* factors are set out in California Code of Regulations, title 5, section 80302, subdivision (a):

(a) The Committee, in conducting its investigation, shall determine the relationship between the alleged misconduct and the applicant's or holder's fitness, competence, or ability to effectively perform the duties authorized by the credential. Such relationship may be based on facts which include, but are not limited to, the following:

- (1) The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated;
- (2) The proximity or remoteness in time of the conduct;
- (3) The type of credential held or applied for by the person involved;
- (4) The extenuating or aggravating circumstances surrounding the conduct;
- (5) The praiseworthiness or blameworthiness of the motives resulting in the conduct;
- (6) The likelihood of the recurrence of the questioned conduct;
- (7) The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons;
- (8) The publicity or notoriety given to the conduct.

#### *Cause for Dismissal*

5. Cause for dismissal exists under several sections of Education Code section 44932.

A. Under Education Code section 44932, subdivision (a)(2), dismissal is warranted based on respondent's unprofessional conduct. The statute defines unprofessional



conduct as that which violates the rules or ethical code of a profession or is unbecoming a member of a profession in good standing. (*Board of Ed. v. Swan* (1953) 41 Cal.2d 546, 553, overruled in part, on another ground, in *Bekiaris v. Board of Ed.* (1972) 6 Cal.3d 575, 588, fn. 7.) Another formulation of “unprofessional conduct” is stated in *Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174:

Conduct which produced serious friction in the school and showed the teacher’s insubordination and refusal to conform to the instructions and requirements of her superiors was held “unprofessional conduct.” (*Johnson v. Taft School Dist., supra*, [(1937)] 19 Cal.App.2d 405, 407.)” (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553.) Unprofessional conduct is grounds for dismissal, however, only if it indicates unfitness to teach.

Respondent was unwilling and unable to cooperate with other teachers and school administrators, though cooperation is a professional duty of both an RST and SDP teacher. Such conduct unbecoming a teacher is described in:

- (i) Findings 16 through 19, describing the incident between respondent and Ms. Mulder and respondent’s attempt to suspend a student;
- (ii) Findings 45 and 47, describing the March 19, 2013 IEP meeting and the disagreement between respondent and Ms. Silberschein;
- (iii) Findings 64 and 65, describing the exchange between respondent and Ms. Silberschein when Ms. Silberschein, to make way for pest control, was temporarily using respondent’s classroom.
- (iv) Findings 80 through 88, describing respondent’s conduct in Mr. Foote’s class;
- (v) Findings 107 and 108, describing respondent’s failure to avail herself of having a teacher mentor, Ms. Golden and of resources in the Mathematics Department; and
- (vi) Findings 137 and 138, one among other Findings indicating respondent refused to conform to the instructions and requirements of her superiors.

B. Under Education Code section 44932, subdivision (a)(5), dismissal is warranted based on respondent’s unsatisfactory performance, as indicated, for instance, by her unsatisfactory preparation (Findings 90 and 137), unsatisfactory teaching in English (Finding 129), and her unsatisfactory teaching of mathematics (Findings 159 and 160). In *Perez v. Com. On Prof’l Competence* (1983) 149 Cal.App.3d 1167, the court considered unsatisfactory performance the equivalent of incompetent teaching methods. “Incompetency does not invoke subjective analysis of standards of morality or professionalism which vary from individual to individual dependent on time, circumstances or custom. . . . We hold

incompetency to be its own standard . . .” (*Ibid.*, 149 Cal.App.3d at 1176.) Respondent’s teaching and teaching methods were deficient both as an RST and SDP teacher. As indicated particularly in Findings 47 and 64 through 66, respondent would not cooperate with or communicate with certain other teachers reasonably, which constitutes a deficient teaching method.

C. Under Education Code section 44932, subdivision (a)(6), dismissal is warranted based on respondent’s evident unfitness for service. In *Woodland Joint Unified School Dist. v. Com. on Professional Competence* (1992) 2 Cal.App.4th 1429, the court affirmed a judgment of dismissal against a teacher who, like respondent, conducted himself toward others, including administrators, in a manner that was confrontational, belligerent, and otherwise offensive. The conduct demonstrated evident unfitness for service:

“Evident unfitness for service” . . . means “clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies.” Unlike “unprofessional conduct,” “evident unfitness for service” connotes a fixed character trait, presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectations of the employing school district.

(*Ibid.*, 2 Cal.App.4th at 1444.) (See also *Palo Verde etc. Sch. Dist. v. Hensey* (1970) 9 Cal.App.3d 967. Respondent was confrontational in her dealings with others as indicated particularly in Findings 16 through 19, and 45, demonstrating a temperamental defect or inadequacy that renders respondent evidently unfit for service.

D. Under Education Code section 44932, subdivision (a)(8), dismissal is warranted based on respondent’s persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district employing her. A single instance of refusal or disobedience is insufficient. Termination under the statute is appropriate if there has been continuous and constant refusal to obey, or behavior motivated by an attitude of continuing insubordination. (*Governing Bd. of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.) The record here presents a long history, extending the length of several academic years, during which respondent refused to perform, despite administrative directives, a great deal necessary and beneficial for the education of children: (i) co-planning; (ii) cooperation with other teachers; (iii) preparing adequate lesson plans; (iv) posting appropriate materials in her classroom; (v) delivering lessons designed to instill learning of core educational standards; and (vi) respectful treatment of others.

6. Cause for dismissal exists under Education Code section 44939, based on respondent’s willful refusal without reasonable cause to perform regular assignments as prescribed by reasonable rules and regulations of the employing district, LAUSD. As the evidence established, Mr. Harrington and Mr. Ortiz on several occasions directed respondent to perform regular teaching assignments that she did not perform. A primary example is when the administrators asked that respondent provide them with her lesson plans.

Respondent testified she prepared detailed lesson plans, but never provided them to the administration. Respondent did not prepare such lesson plans. What she prepared and provided were inadequate summaries that often used a single word or a brief phrase to describe an entire lesson lasting a class period, over an hour. (Exhibit 105.) In this way respondent willfully and without cause refused to fulfill a reasonable assignment for which she had more than one specific directive. As respondent was warned repeatedly in Conference Memos, a teacher who refuses to obey such a directive is subject to discipline, up to and including dismissal. (E.g., Exhibit 12, the Conference Memo dated December 12, 2012, and Exhibit 94, the Conference Memo dated April 6, 2016.)

7. Respondent's conduct constitutes unfitness to teach under several *Morrison* factors:

(i) Under the first *Morrison* factor, the likelihood of adverse effect:

(a) Respondent's conduct adversely affected SFMS and has a high likelihood of affecting the School in the future if respondent is not dismissed.

(1) A school cannot function properly when cooperation among its teaching personnel is lacking. Respondent tacitly conceded as much, insisting, for instance, though generally contrary to her actual practice, that she co-planned with other teachers. Co-planning was required in order to keep lessons orderly and consistent. Lack of order in lessons, such as respondent demonstrated repeatedly, and inconsistency between respondent's teaching and that of other teachers, is a detriment to learning. A particular instance of detrimental inconsistency in respondent's case is how slow her pace was in teaching the Read 180 program.

(2) Administrators whose supervision and direction are thwarted or subverted by a teacher cannot keep a school functioning properly. Enterprises involving many people must have direction and supervision and particularly when a number of teachers are working toward a common goal, teaching the same concepts in a structured curriculum, every teacher must obey administrative mandates. Respondent did not. She had an adverse impact on operations at SFMS and is likely to continue to have an adverse impact on the School if she is not dismissed.

(3) Respondent had an adverse impact on students whose learning was directed by IEP's, both when she was an RST and SDP teacher. It is likely that she would continue to have an adverse impact on such students in the future if she is not dismissed. Any student's educational achievement is far less likely under the deficient teaching that respondent delivered.

(4) The rules and regulations respondent violated are those that ensure that a teacher is providing, if not excellent, at least standard, instruction to students. Without such standard instruction, students are deprived of fundamental information.

(ii) The second *Morrison* factor, the time since the conduct, favors dismissal.

(1) Respondent's conduct was recent, lasting the entire relevant period, from the academic year that started in 2012 until she left SFMS in 2016.

(2) Respondent's unfitness lasted during a period of years when she knew she was under scrutiny, underwent discipline, and, unless she changed her ways significantly, was likely to face more discipline. Nevertheless during the relevant period respondent did not change her conduct.

(iii) Under the third *Morrison* factor, concerning the credential involved, respondent's teaching credential allows her to teach elementary school-age children, including those with special needs as indicated in IEP's. This group of students is as adversely affected by deficient teaching as any other group, if not more so.

(iv) Under the fourth *Morrison* factor concerning the presence of extenuating or aggravating circumstances:

(a) There are several aggravating factors, which outweigh any mitigation.

(1) Aggravating circumstances are respondent's dealings with other teachers and administrators stretching over years, throughout the relevant period. She refused to accept help from Ms. Munoz and Ms. Golden, for instance, despite encouragement to do so from the administration. Her written communications were sometimes accusatory, stating that administrators meant her harm. In speaking to one administrator, Ms. Mulder, about respondent's attempted suspension, respondent was unwilling to accept what Ms. Mulder offered her as assistance, cutting off the communication by telephone abruptly and refusing to accept that she, respondent, had attempted to suspend a student improperly. Respondent was completely unaccepting of criticism of her manner, even after years of attempts to encourage her cooperation with others and follow advice on how to be a good teacher. Respondent's unyielding attitude over a long period constitutes a significant aggravating circumstance.

(2) Respondent was given a great deal of assistance and guidance, over years, and in many formats, including conferences, Conference Memos, workshops, printed materials, consultation with other teachers having special expertise, such as Ms. Lamb, and the PAR program. She might have gathered information and skills from these resources to help her mind and implement the rules and regulations of the District and the State of California. However, despite these resources, she did not follow the rules and regulations, to the detriment of her students.

(3) Respondent presented no significant extenuating evidence.

(v) Under the fifth *Morrison* factor, concerning the praiseworthiness or blameworthiness of motives, respondent's motives and resulting conduct were blameworthy. By insisting that her teaching was not deficient and that virtually all her methods were sufficient or better than sufficient, despite much authority to the contrary, respondent may be blamed for unprofessional conduct in providing students substandard instruction. Teaching in the public schools is a profession that demands cooperation. Respondent failed to accommodate the reasonable expectations of others and was unable or unwilling to learn to cooperate for the betterment of her own teaching resources and methods. Her memos in response to administrators' Conference Memos indicate personal animus that developed early in the relevant period and took the place of any motivation to become a better and effective teacher.

(vi) Under the sixth *Morrison* factor, concerning the likelihood of recurrence:

(1) Given that respondent engaged in unprofessional conduct repeatedly for years, recurrence is likely.

(2) Again and again, evident particularly in her memos in response to administrators' Conference Memos, respondent sought to defend herself by attacking others, including the administrators. Her failure to be counseled out of an entrenched position, which yielded no benefit to SFMS and its students, indicates a fixed character trait incompatible with the teaching profession.

(3) Respondent had much guidance and assistance over the years to change the character of her teaching methods, but failed to make any significant change. She is likely to go on as before.

(vii) The seventh *Morrison* factor, concerning how discipline may affect constitutional rights, is not significant here. This is not a case in which there is doubt whether respondent was exercising a right such as freedom of speech or another Constitutional right. Dismissing a teacher based on deficient teaching and other unprofessional conduct does not implicate rights protected by the Constitution.

(viii) The eighth *Morrison* factor, concerning the conduct's publicity or notoriety, the evidence did not show that respondent's misconduct was publicized, and any notoriety was limited to persons with whom respondent dealt at SFMS directly. This factor has little bearing on whether dismissal is warranted.

8. In light of the above, cause exists to dismiss respondent from her employment with the District as a permanent certificated employee.

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## ORDER

The accusation against respondent Beatrice Essah is sustained. Respondent is dismissed as an employee of the Los Angeles Unified School District.

DATED: July 6, 2017

DocuSigned by:  
*Thomas Lucero*  
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THOMAS Y. LUCERO  
Administrative Law Judge  
Office of Administrative Hearings