

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

In the Matter of the Proceeding to Dismiss:

**JENNIFER KAISER, a Permanent Certificated Employee,
Respondent.**

OAH Case No. 2023050871

DECISION

On October 30 through November 3, 2023, a Commission on Professional Competence (Commission) heard this matter from Sacramento, California. The Commission was comprised of Susan Carol Evans, Julie Murdaugh, and Administrative Law Judge Wim van Rooyen.

Courtney de Groof, Attorney at Law, Lozano Smith, represented the Rocklin Unified School District (District).

Matthew Chevedden, Attorney at Law, Langenkamp, Curtis, Price, Lindstrom & Chevedden LLP, represented Jennifer Kaiser (respondent), who was present at hearing.

Evidence was received, and the Commission concluded its deliberations on November 3, 2023. The record was left open until November 8, 2023, to allow the parties to submit a revised joint confidential names list. On November 8, 2023, the

parties filed their revised joint confidential names list, which was marked and admitted as Exhibit 27 and sealed by protective order. That same day, the record was closed and the matter submitted for decision.

FACTUAL FINDINGS

Jurisdiction and Background

1. Respondent is a permanent certificated employee of the District. She serves as a special education teacher at Rocklin High School.
2. On April 20, 2023, Tony Limoges, Ph.D., Associate Superintendent of Human Resources for the District, signed and filed with the Rocklin Unified School District Board (Board) a Notice of Intent to Dismiss; Placement on Immediate Unpaid Suspension Pending Outcome of Disciplinary Proceedings; and Statement of Charges (Statement of Charges) against respondent. The Statement of Charges specified the following grounds for dismissal: (1) immoral conduct (Ed. Code, §§ 44932, subd. (a)(1), and 44939); (2) unprofessional conduct (Ed. Code, § 44932, subd. (a)(2)); (3) evident unfitness for service (Ed. Code, § 44932, subd. (a)(6)); and (4) persistent violation of Board rules and regulations (Ed. Code, § 44932, subd. (a)(8)).
3. On May 17, 2023, respondent submitted a Request for Hearing and Notice of Defense to the Statement of Charges. This hearing followed.

The District's Evidence

4. The Statement of Charges outlines five incidents of misconduct respondent allegedly engaged in with District students, staff, and parents on January 9, 2020; on February 18, 2022; in July 2022; on August 20, 2022; and on December 14,

2022. The District's evidence regarding each incident is discussed separately below. Dr. Limoges also testified regarding the District's ultimate decision to pursue respondent's dismissal following the five incidents.

JANUARY 9, 2020 INCIDENT

5. On January 9, 2020, at the end of the school day, respondent and her husband, Scott Wilcher, came to the office of Parker Whitney Elementary School, a District elementary school their son D.W. attended at the time. Sheryl Murphy, the school clerk, and Nicole Blackwell, the school health aide, were present in the office when they arrived. Ms. Murphy and Ms. Blackwell both submitted written statements regarding their interactions with respondent and Mr. Wilcher that day. Ms. Murphy also testified at hearing consistent with the written statements.

6. Upon entering the school office, respondent and Mr. Wilcher asked to speak to the principal, Kari Auwae. However, Ms. Auwae was in a meeting and unavailable. Respondent and Mr. Wilcher expressed dissatisfaction that D.W.'s teacher sent him to the office that day. They asked Ms. Murphy how much time D.W. spent in the office, but Ms. Murphy did not know. Respondent then told Ms. Murphy that respondent was "done" with D.W.'s teacher and that D.W.'s teacher "just needs to shut the fuck up."

7. Ms. Murphy knew respondent because respondent previously taught special education at Parker Whitney Elementary School. Ms. Murphy was shocked by respondent's statement because she did not expect respondent to be so vocal about another teacher. She had never heard another District employee refer to a colleague using profanity and derogatory statements. Ms. Murphy observed, even though

respondent was visiting the school office as a parent, "all eyes are always on you when you are a teacher."

8. On February 26, 2020, Dr. Limoges issued respondent a Conference Summary Memorandum, which stated, in part:

During our conversation I reminded you that as an employee of the District you are expected to exhibit professional behavior at all school sites. This includes all District schools and property, including the school where your child attends. The fact that you may be at a school site as a "parent" versus a teacher does not exclude the expectation of professional behavior as an employee. I explained to you that this applies to all employees and gave you the example of an employee engaging in misconduct at a football game.

[. . .]

Though I was unable to confirm the allegations, you are reminded to conduct yourself in a professional and courteous manner and refrain from making offensive and inappropriate remarks. Failure to adhere to this expectation of professionalism will result in discipline, up to and including dismissal . . . At this time, this letter will not be placed in your personnel file.

FEBRUARY 18, 2022 INCIDENT

9. On February 18, 2022, around 2:00 p.m., parents S.B. and C.H. stood across the street from Rocklin High School holding signs to protest the school mask mandate and support students who participated in a “walk out” to protest that mandate. At the time, respondent drove out of the Rocklin High School staff parking lot and pulled up to the stop sign closest to the parents. S.B. and C.H. both submitted written complaints to the District regarding their interaction with respondent that day. S.B. testified at hearing consistent with those written complaints.

10. Respondent rolled down her car window and told S.B. and C.H. to go protest at the District’s office instead. The parents agreed that it was a “great idea” but stated they were presently at the school to support the student “walk out.” In response, respondent yelled: “You’re wasting your time here. We don’t have any control here. We don’t make the rules here, the District has all the power.” The parents responded: “Actually, you do have a say. Every teacher and student have [*sic*] power here to stand up and make a difference. All we want is a choice.” Respondent then screamed: “Your kids can’t do anything about it and you look like two fucking idiots standing here with your stupid signs.” Thereafter, respondent sped off, holding up her hand. The parents could not tell whether she gave them “the middle finger or the peace sign.”

11. S.B. and C.H. were “blown away” by respondent’s unprofessional behavior. S.B. had never seen a teacher behave this way. She was concerned about respondent’s temperament and ability to work with students. At the time, S.B. and C.H. did not know respondent’s name. They only later discovered her name through inquiries with other parents. S.B. and C.H. ultimately filed their written complaints and raised the issue of respondent’s February 18, 2022 conduct at a Board meeting.

12. On May 2, 2022, Dr. Limoges issued respondent another Conference Summary Memorandum, which found the parents' allegations were established by a preponderance of the evidence. It further stated:

You are reminded once again to conduct yourself in a professional and courteous manner and refrain from making offensive and inappropriate remarks. Failure to adhere to this expectation of professionalism will result in discipline, up to and including dismissal . . . A copy of this letter will be placed in your personnel file after 10 days.

JULY 2022 INCIDENT

13. On an unknown day in July 2022, Kimberly Ann Martin, a District special education aide, was working in a summer school class when respondent suddenly entered her classroom. Ms. Martin submitted a written statement about her interaction with respondent that day. She testified at hearing consistent with her written statement.

14. Respondent supervised Ms. Martin during the regular school year, but was not working that summer. The previous day, Ms. Martin had submitted a request to transfer to Whitney High School for the 2022–2023 school year because of bullying Ms. Martin experienced from other aides at Rocklin High School. At the time, Ms. Martin believed respondent may have heard about the transfer request and come to the summer classroom to discuss it. Thus, Ms. Martin asked respondent if she could speak with respondent in private outside the classroom.

15. Once outside, Ms. Martin mentioned her transfer request to respondent. Respondent asked Ms. Martin why she had not first given respondent an opportunity

to “fix the problem.” Ms. Martin responded that respondent had previously ignored Ms. Martin’s requests to address the bullying due to respondent’s friendship with one of the bullying aides. Respondent then became angry and said: “You are so unprofessional! You fucked me and when someone fucks me, they are done! You will never work at Rocklin High again!” Ms. Martin was “stunned” at respondent’s outburst. She felt threatened by respondent’s words and tone.

16. Judy Kevin, another summer special education aide and a retired teacher, observed a portion of the discussion between respondent and Ms. Martin. Ms. Kevin testified at hearing. She recalls respondent making hand gestures, saying the “f-word,” and moving forward towards Ms. Martin, with Ms. Martin moving backward. Ms. Martin looked frightened, and Ms. Kevin feared the altercation would become physical. At the time, Ms. Kevin did not know who respondent was. She thought respondent was a disgruntled parent confronting Ms. Martin. Ms. Kevin only later learned respondent was a special education teacher in the District. Ms. Kevin had never seen a teacher behave in such an aggressive manner. It made Ms. Kevin sad. She was glad no student had observed the interaction.

17. On October 14, 2022, Dr. Limoges issued respondent a 45-Day Notice of Unprofessional Conduct (45-Day Notice) based on the July 2022 incident. He found the conduct was established by a preponderance of the evidence. The 45-Day Notice directed respondent to treat all students, staff, and community members with respect and dignity; review and follow the District’s Professional Standards Policy; follow reasonable directives given by any District administrator; refrain from unprofessional conduct; refrain from using profanity on school grounds; refrain from threatening a staff member’s employment; refrain from yelling and cursing at staff; and refrain from retaliating against staff. The 45-Day Notice cautioned respondent that failure to

implement the directives may result in termination. The 45-Day Notice was placed in respondent's personnel file.

AUGUST 20, 2022 INCIDENT

18. On September 15, 2022, C.S., the mother of K.R., filed a complaint against respondent with the District. K.R. was a special education student in respondent's class, but respondent was not K.R.'s case manager. The complaint alleged respondent overstepped her role as a teacher and circumvented K.R.'s case manager when respondent: (i) sent an e-mail to K.R.'s parents about K.R. missing school after a family member passed; (ii) sent an e-mail to K.R.'s parents about K.R. potentially being moved to a different school; (iii) sent an e-mail to K.R.'s parents justifying K.R.'s placement in a child development class; and (iv) talked to K.R. about missing school to go to the dentist and attend basketball camp. Additionally, the complaint referenced an August 20, 2022 meeting between respondent and K.R.'s parents to discuss their concerns. At that meeting, respondent allegedly got up, raised her voice, and pointed her finger at C.S. before leaving the room.

19. Two attendees at the August 20, 2022 meeting testified at hearing: Maureen Duffy and Michael Pappas. Ms. Duffy is a Program Specialist II with the District. She has a total of 23 years of experience in education, holds a special education credential, and oversees the special education program at all three District high schools. She attended the August 20, 2022 meeting because K.R.'s parents requested District representation.

At the start of the meeting, K.R.'s parents were "already a little hot." At one point, C.S. started yelling and making lots of accusations against respondent. In response, respondent stood up, yelled back at C.S., and then left the room. Ms. Duffy

was shocked by respondent's behavior because it was unprofessional and displayed a lack of decorum and self-control. Ms. Duffy had never witnessed similar behavior by a teacher meeting with parents. Based on Ms. Duffy's attendance at hundreds of meetings with parents of special education students, she acknowledged parents frequently get upset. However, a teacher must still act professionally and end the meeting if the conflict becomes unmanageable. It is never appropriate for a teacher to yell at parents.

20. Mr. Pappas is an Assistant Principal at Rocklin High School. As an Assistant Principal, Mr. Pappas attends approximately 50 meetings with parents of special education students each year. He recalled the August 20, 2022 meeting was contentious. K.R.'s parents "escalated the situation" by directing numerous accusations at respondent and other meeting participants. At one point, respondent stood up, raised her voice, and pointed her finger at K.R.'s parents. Respondent then left the room. Mr. Pappas believes respondent acted unprofessionally. Notwithstanding the parents' behavior, respondent should have remained calm and respectful.

21. On December 19, 2022, Matt Murphy, the District's Director of Personnel, issued respondent a Letter of Reprimand based on the August 20, 2022 incident, which he found was established by a preponderance of the evidence. The Letter of Reprimand directed respondent to refrain from unprofessional conduct in all District environments; to treat students, staff, and community members with respect and dignity; and not to interact with K.R. and her parents. The Letter of Reprimand was placed in respondent's personnel file.

DECEMBER 14, 2022 INCIDENT

22. On December 14, 2022, J.P., a Rocklin High School parent, filed a complaint against respondent with the District. In her complaint and subsequent interview, J.P. alleged respondent: (a) bullied Rocklin High School wrestlers (including her son T.P.) during a wrestling match at Granite Bay High School on December 14, 2022; (b) had a verbal altercation with J.P. and her husband after the conclusion of that wrestling match and used profanity; and (c) consumed alcohol before, and was intoxicated at, the match.

23. Numerous witnesses provided conflicting testimony concerning the events at the wrestling match. To the extent a particular witness's testimony or portion of their testimony is not discussed, the Commission found it not credible, unpersuasive, and/or immaterial to resolution of this matter.

24. Tiffany Baker has worked as a resource specialist program aide for the District for five years. She knows respondent as a special education teacher at Rocklin High School. Ms. Baker's child is also on the wrestling team. She enjoys attending wrestling matches. She submitted a written statement regarding her observations at the December 14, 2022 wrestling match and testified at hearing consistent with that statement.

Ms. Baker and her husband were sitting at the top of the bleachers watching the match. A few Rocklin High School students entered the gym, sat down approximately six rows in front of Ms. Baker, and started watching the match while eating Chick-Fil-A. Respondent sat in the same bleachers as Ms. Baker and the aforementioned students. Ms. Baker saw respondent get up from her seat, walk toward the students, and point her finger at them while saying: "You are a fucking disgrace and you do not deserve to

wear those colors." Respondent returned to her seat before approaching the same group of students for a second time. Respondent again admonished them in an elevated voice, pointing with her finger. After returning to her seat, respondent got up and approached the students for a third time, and said to one particular unidentified student: "You are a fucking loser." Thereafter, respondent returned to her seat for the final time.

At the end of the match, J.P. and her husband entered the gym and approached respondent and her husband. There appeared to be a heated conversation between the two couples. However, Ms. Baker did not hear any specifics before she left.

Ms. Baker was shocked and confused by respondent's behavior. At the time, she had no idea what prompted it. She had never heard a teacher speak to students using profanity and found it highly inappropriate, even for a sports match. She explained that, as a teacher, "students look up to you even when you are not on campus" and "we always represent where we work." Additionally, respondent's behavior raised serious concerns regarding her temperament and self-control.

25. Dale Eckenburg teaches social studies and is a tennis coach at Rocklin High School. He has known respondent as a colleague for approximately 15 to 20 years. Mr. Eckenburg enjoys attending high school sporting events, including wrestling matches. He submitted a written statement regarding his observations at the December 14, 2022 wrestling match. He testified at hearing consistent with that statement.

Upon his arrival to the wrestling match, Mr. Eckenburg noticed "something was going on with our wrestling program." Several members of the wrestling team were not wrestling and instead sitting in the bleachers eating Chick-Fil-A. Mr. Eckenburg

then observed respondent approach the group of students and berate them. Respondent's statements to the students included: "You are a fucking disgrace to Rocklin High School," "You should never be wearing Rocklin gear," and "You quit on your team." After returning to her seat, respondent twice stared excessively at the students. At the end of the match, respondent stood up and emphatically asked the crowd to thank the coach and competing wrestlers. Curious about what transpired, Mr. Eckenburg later talked to one of the student wrestlers. That student informed him there had been a "student walkout" against the wrestling coach.

Mr. Eckenburg was "stunned" by respondent's "highly inappropriate" behavior at the match. He had never heard a teacher speak to students like that. He believes "anytime a teacher is in public you are part of the District and must act in a certain way."

26. J.P. testified at hearing. She did not attend the wrestling match because her son (T.P.) was not wrestling that night. However, she and her husband went to pick up T.P. after he called her upset. T.P. told her about respondent's interactions with him and other wrestling team members sitting in the bleachers. J.P. arrived towards the end of the match. J.P. and her husband confronted respondent and Mr. Wilcher about respondent's behavior towards T.P. The conversation escalated in volume until both J.P. and respondent were yelling. However, J.P. testified respondent did not use any profanity. J.P. reported respondent's behavior that evening to the District because she was concerned for the welfare of Rocklin High School students.

27. On February 7, 2023, Dr. Limoges issued investigation findings regarding J.P.'s complaint. Based on his investigation, Dr. Limoges found the majority of J.P.'s allegations were substantiated by a preponderance of the evidence. The allegation respondent had been intoxicated at the wrestling match was not substantiated.

DISTRICT'S DECISION TO PURSUE RESPONDENT'S DISMISSAL

28. Dr. Limoges filed the Statement of Charges recommending respondent's dismissal due to the number of incidents of unprofessional conduct and their serious nature. Additionally, because such conduct persisted despite the imposition of progressive discipline, Dr. Limoges believes respondent is unable to conform her conduct to professional expectations and is thus unfit to teach.

Respondent's Evidence

29. Respondent offered documentary evidence and testified at hearing. She also presented the testimony of her husband, two colleagues, and two parents of former students.

RESPONDENT'S TESTIMONY

30. Early events in respondent's life led her to the world of special education. She was in a near-fatal car accident in college and seriously injured. She spent three years in a wheelchair and six years walking with a cane. The experience taught her the world was not always an accessible place. This inspired her to work with those less able. Through her college studies, she discovered the field of special education and decided to pursue a career in it. After completing her bachelor's degree, she worked as a substitute teacher in the San Juan and Sacramento City Unified School Districts. Respondent then obtained her special education credential and a master's degree in special education from National University.

31. In August 1999, respondent started working for the District as a special education teacher. She first taught at Rocklin High School. Subsequently, she also taught at Rocklin Elementary School and Parker Whitney Elementary School. After

spending two years in administration as a District office program specialist, she returned to working as a special education teacher at Rocklin High School in 2015.

32. Throughout respondent's career in the District, principals and administrators frequently consulted respondent due to her special education expertise. Parents often expressed gratitude for the difference she made in their children's lives, as demonstrated in several e-mails offered at hearing. Respondent also received several accolades, including a "Teacher Who Made a Difference" award. Outside of the classroom, respondent is proud to have brought the Unified Sports program to Rocklin High School. This program pairs general education and special education students for participation in sports. She provided a declaration from former colleague Scott Shier, who attested to their meaningful work together on the Unified Sports program as well as respondent's general competence and professionalism.

33. Respondent testified about each incident alleged in the Statement of Charges. Respondent admitted she and her husband went to the Parker Whitney Elementary School office to speak to the principal on January 9, 2020. Respondent previously filed a complaint against her son D.W.'s teacher for sending him to the office excessively in violation of his individualized education program (IEP). Respondent was frustrated and upset this pattern was continuing, depriving D.W. of instruction time. When respondent and her husband were informed the principal was unavailable to speak to them, they initially waited but ultimately left.

Respondent went to the school office in her capacity as a parent, not as a District teacher. She denies using any profanity during the visit. Respondent did not know why Ms. Murphy or Ms. Blackwell would state respondent used profanity because respondent has never had issues with them before.

34. On February 18, 2022, respondent left work early because it was the Friday before the February break. There had been mask mandate protests at the school all day, and she wanted to leave before the protestors returned. Respondent admitted speaking to S.B. and C.H. at the stop sign outside the staff parking lot. Respondent suggested they protest at the District office instead of the school because that is where policy is made. However, respondent testified she never told the parents they were stupid, never used profanity, and never made any hand gesture towards them. When respondent was asked why she previously testified at her deposition that she waved at the parents while she drove away, she stated she did not recall whether she waved. Respondent never taught S.B. or C.H.'s children and never interacted with them before. She had "no idea" what motivated S.B. or C.H. to make their allegations.

35. In July 2022, respondent went to the school campus to pick up reading materials from a student. As respondent left the student's classroom, Ms. Martin "chased [respondent] down" and asked to speak to respondent. Ms. Martin then informed respondent Ms. Martin had requested a transfer to Whitney High School for the 2022–2023 school year due to bullying by other aides. That was the first time respondent heard anything about such bullying.

Respondent was shocked and upset because Ms. Martin was a good aide. Additionally, respondent thought it unprofessional to give so little notice right before the new school year when aides are difficult to find. Respondent acknowledged telling Ms. Martin "I cannot believe you are doing this to me." However, she denied threatening Ms. Martin's employment prospects. If respondent "cussed," it was to herself and not towards Ms. Martin. Respondent believed Ms. Martin may have lied about the alleged employment threat because Ms. Martin was angry about having to leave Rocklin High School because of her issues with the other aides. Nevertheless,

respondent admitted she could have handled the situation better. Instead of arguing with Ms. Martin, respondent should have just walked away when respondent became upset.

36. With regard to the August 20, 2022 incident, respondent admitted she previously communicated with K.R. and/or her parents about K.R.'s absences, K.R. potentially being moved to a different school, and K.R.'s placement in a child development class. Respondent addressed those types of issues with all her students and their families because she truly cared about their progress and welfare. Moreover, C.S., K.R.'s mother, was initially appreciative and even sent respondent an e-mail in June 2022 thanking respondent for her efforts.

For unknown reasons, C.S. later became dissatisfied with respondent's involvement and started posting negative information about respondent online. C.S. also sent e-mails to Rocklin High School's principal, Davis Stewart, to complain about respondent. Respondent found C.S.'s behavior "very offensive and unnecessary." Mr. Stewart requested respondent attend a meeting with K.R.'s parents to "clear the air." Respondent was initially uncomfortable, but agreed to attend when Mr. Stewart assured her he would stop the meeting if it became abusive.

At the August 20, 2022 meeting, C.S. sat directly opposite respondent. C.S. was combative, aggressive, and loud. Eventually, C.S. started yelling at respondent. She told respondent she would sue respondent. At that point, respondent got up, pointed at C.S., told C.S. "go ahead," and then left the room. Respondent did so because she did not feel safe and felt "it was time to go."

37. On December 14, 2022, respondent completed her workday at Rocklin High School. She then visited a student on home hospital from approximately 4:00

p.m. to 5:00 p.m. After, she met her husband at a local taphouse where she had one and a half beers before going to watch the wrestling match at Granite Bay High School. Respondent's son D.W. attended Rocklin High School that school year. She wanted to attend the wrestling match because D.W. was on the wrestling team and scheduled to compete that night. She also served as a parent volunteer for the wrestling team.

Upon her arrival to the wrestling match around 6:20 p.m., respondent noticed most of the wrestling team was not participating in the match. The previous day, D.W. had told her some students had refused to attend wrestling practice and wanted the coach fired because they believed he was gay. A group of about five students, including T.P., were sitting in the bleachers right behind the coach, eating Chick-Fil-A. Although they were not heckling or engaging in any overt actions, it seemed obvious to respondent they were continuing their protest against the wrestling coach. She found their behavior very offensive, embarrassing to Rocklin High School, and intimidating to the wrestlers who participated in the match.

Respondent admitted she approached the group of students twice during the match. The first time, she told them they were disgraceful and should not be there. The students did not respond and just continued eating. The second time, she told them they should not be wearing the "Rocklin blue." Again, the students did not respond. Respondent acknowledged using a "louder voice" when she addressed the students. She did not tell the students why she was troubled by their presence because she believed it was obvious given the circumstances.

Respondent denied using any profanity towards the students. She explained, "I was fully aware of who I was and where I was." Additionally, respondent abhorred bigotry or hate speech. She feared "if [she] had used profanity, [her] point would be

lost.” Respondent did not know why Ms. Baker or Mr. Eckenburg claimed she used profanity. She never had any issues with them. Respondent offered the declaration of D.A., another District parent who observed respondent’s interaction with the students. D.A. did not hear respondent use profanity.

At the end of the match, respondent stood up, thanked the coach and the participating wrestlers, and clapped. As respondent and Mr. Wilcher were preparing to leave the gym, J.P. and her husband aggressively confronted them about respondent’s statements to the group of students, including their son T.P. A loud conversation ensued between the couples. When J.P.’s husband threatened violence, respondent and Mr. Wilcher ended the conversation and left. Respondent denied having been intoxicated at any point that evening.

In hindsight, respondent believed she could have handled the situation with the protesting students better. She should have explicitly identified her concern about bigotry and explained why she believed their behavior and presence at the match were inappropriate.

38. Following the December 14, 2022 incident, the District placed respondent on leave and instructed her not to attend any school events or activities. Nevertheless, the District requested she continue serving two students on home hospital while on leave. Both students were enrolled at Whitney High School and not part of respondent’s regular caseload. Respondent presently teaches at a private school (St. Rose’s School), works as an adult program instructor at Pathways to Employment, and tutors students for Grade Point Tutoring.

39. Respondent strongly desires to return to Rocklin High School as a special education teacher. She considers it her “home” and feels she has made commitments

to students, parents, and colleagues. She still receives lots of questions about when she is returning.

40. Although respondent acknowledged she could have handled some of the above-mentioned incidents better, she vehemently disagreed she is unfit to teach. She has years of experience as a special education teacher, and the District has raised no issues with her substantive knowledge or skills.

41. Respondent only used profanity “situationally.” She agreed it is generally inappropriate to direct profanity specifically at a student, parent, or colleague. However, in her view, using profanity at a student is not necessarily intimidating, harassing, or embarrassing. It “depends on the situation.” If the District were to cease employing persons who use profanity at students, “we would not have any football coaches.”

TESTIMONY OF RESPONDENT’S HUSBAND

42. Scott Wilcher is respondent’s husband. He was present during the January 9, 2020 incident at Parker Whitney Elementary School and the December 14, 2022 incident at the wrestling match. He testified consistently with respondent’s account concerning both incidents.

TESTIMONY BY RESPONDENT’S COLLEAGUES

43. Timothy Scott Hamilton was the Rocklin High School wrestling coach at the time of the December 14, 2022 incident. Mr. Hamilton confirmed some wrestling team members had refused to attend a prior wrestling practice and did not participate in the December 14, 2022 match. He had heard the students and their families were unhappy about his perceived sexual orientation. At the time, he was distraught by

those events. He even brought his wife to the December 14, 2022 match for support and protection. He later resigned as the coach for the sake of his own mental health and wellbeing.

Mr. Hamilton found respondent helpful and supportive as a wrestling team parent volunteer. He did not observe respondent's interactions with the group of students in the bleachers because he was focused on the wrestling match. However, he conceded that if the allegations regarding respondent's statements to the students were true, they were highly inappropriate and grounds for dismissal.

44. Tosha Chauvin has been a District special education aide for approximately 11 years. She worked with respondent daily. They are also friends outside of work. Ms. Chauvin described respondent as passionate about her job and highly knowledgeable about special education. Other District employees frequently asked for respondent's help with complex issues. When respondent was placed on leave in Spring 2023, Rocklin High School special education students were negatively impacted. The students "felt like their safety net had been removed." Ms. Chauvin strongly believed respondent should be reinstated.

At the time of hearing, Ms. Chauvin had not reviewed the Statement of Charges. She has heard respondent use profanity in the classroom, but never directed towards a student. She explained, "sometimes a word just slips out, we all do that." Ms. Chauvin agreed calling a student a "fucking disgrace" or "fucking loser" would be highly inappropriate.

TESTIMONY BY PARENTS

45. J.D. and T.H. each parent a special education student previously taught by respondent. Both described respondent as an excellent teacher who is professional,

passionate, caring, attentive, and an advocate for her students' needs. Neither believed respondent should be dismissed. At the time of their testimony, J.D. and T.H. were unaware of the specific allegations against respondent. They never heard respondent use profanity. They agreed that if respondent called a student a "fucking loser" or "fucking disgrace," it would be highly inappropriate.

Credibility Evaluation Concerning Alleged Incidents

46. Respondent's account concerning the five alleged incidents materially differed from the accounts provided by the District's witnesses. Thus, it is necessary to evaluate witness credibility to determine whether the District established each alleged incident by a preponderance of the evidence.

47. "Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following: (a) [h]is demeanor while testifying and the manner in which he testifies[;] (b) [t]he character of his testimony[;] (c) [t]he extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies[;] (d) [t]he extent of his opportunity to perceive any matter about which he testifies[;] (e) [h]is character for honesty or veracity or their opposites[;] (f) [t]he existence or nonexistence of a bias, interest, or other motive[;] (g) [a] statement previously made by him that is consistent with his testimony at the hearing[;] (h) [a] statement made by him that is inconsistent with any part of his testimony at the hearing[;] (i) [t]he existence or nonexistence of any fact testified to by him[;] (j) [h]is attitude toward the action in which he testifies or toward the giving of testimony[;] [and] (k) [h]is admission of untruthfulness." (Evid. Code, § 780.)

48. It is well-settled that the trier of fact may accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted. (*Stevens v. Parke, Davis & Co.* (1973) 9 Cal.3d 51, 67 [citations omitted].) The trier of fact may also “reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material.” (*Id.*, at 67–68, quoting *Nevarov v. Caldwell* (1958) 161 Cal.App.2d 762, 777.) Moreover, the trier of fact may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) The testimony of “one credible witness may constitute substantial evidence.” (*Kearl v. Bd. of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052.)

49. As to the January 9, 2020 incident, Ms. Murphy credibly testified respondent used profanity in the Parker Whitney Elementary School office when referring to her son’s teacher. Ms. Murphy’s testimony is supplemented by Ms. Blackwell’s consistent written statement. Neither Ms. Murphy nor Ms. Blackwell had any motive to fabricate such an allegation against respondent. Indeed, respondent testified she never had issues with either individual. Respondent admitted she was frustrated and upset with D.W.’s teacher on January 9, 2020. Although respondent and her husband denied her use of profanity, both have a personal and financial interest in her continued employment by the District. Thus, their testimony is less credible. In sum, the preponderance of the evidence demonstrates respondent engaged in the alleged conduct on January 9, 2020.

That Dr. Limoges previously reached a contrary conclusion does not change the outcome. The Commission gives no deference to Dr. Limoges’s investigative findings,

whether favorable or unfavorable to respondent. Instead, the Commission independently decides the matter on the evidence in the record as a whole.

Additionally, respondent's contention she visited the school office only in her capacity as a parent lacks merit. As numerous witnesses testified, a District teacher is expected to behave professionally on District property at all times.

50. As to the February 18, 2022 incident, S.B. credibly testified respondent called S.B. and C.H. stupid, used profanity towards them, and made a hand gesture at them before driving away. S.B.'s testimony is supplemented by C.H.'s consistent written complaint. Both parents felt strongly enough about respondent's conduct to raise it at a subsequent Board meeting. Neither S.B. nor C.H. had any motive to fabricate the allegations against respondent. Respondent admitted she never taught S.B. or C.H.'s children, had no prior interactions with S.B. or C.H., and had "no idea" what motivated S.B. or C.H. to make their allegations. By contrast, respondent has an interest in minimizing her conduct that day to avoid discipline. At hearing, respondent also denied making any hand gesture towards the parents. This is inconsistent with her prior deposition testimony that she waved at them. Thus, her testimony is generally less credible. In sum, the preponderance of the evidence demonstrates respondent engaged in the alleged conduct on February 18, 2022.

51. As to the July 2022 incident, Ms. Martin and Ms. Kevin credibly testified respondent used profanity towards Ms. Martin, and Ms. Martin credibly testified that respondent threatened her future employment. Ms. Martin and Ms. Kevin had no motive to fabricate the allegations against respondent. Indeed, respondent conceded Ms. Martin was a good aide and she was upset by Ms. Martin's transfer request. Moreover, Ms. Kevin did not know who respondent was when she observed the encounter. At hearing, respondent also conceded she may have used profanity during

the encounter but testified it was not directed at Ms. Martin. That testimony lacks credibility given respondent's interest in minimizing her conduct to avoid discipline. Additionally, that respondent lacked direct authority to hire and fire Ms. Martin is inconsequential. As a teacher, respondent supervises aides and has significant indirect influence over their hiring and firing. Thus, her statements to Ms. Martin could reasonably be perceived as threatening. In sum, the preponderance of the evidence demonstrates respondent engaged in the alleged July 2022 conduct.

52. As to the August 20, 2022 incident, respondent admitted her communications with K.R. and/or her parents that led to the August 20, 2022 meeting. Respondent credibly testified she had K.R.'s best interests at heart. However, the preponderance of the evidence also established she overstepped her role as a teacher, especially after the family became dissatisfied with her involvement. Additionally, Ms. Duffy and Mr. Pappas credibly testified as to respondent's behavior at the August 20, 2022 meeting. Specifically, they recalled respondent got up, raised her voice, and pointed her finger at C.S. before leaving the room. Respondent herself did not dispute that allegation. In sum, the preponderance of the evidence demonstrates respondent engaged in the alleged conduct on August 20, 2022.

53. As to the December 14, 2022 incident, Ms. Baker and Mr. Eckenburg credibly testified respondent approached a group of Rocklin High School students sitting in the bleachers at the wrestling match, berated them, and used profanity towards them. Neither Ms. Baker nor Mr. Eckenburg had any motive to fabricate the allegations against respondent. Respondent admitted she never had any issues with them. Although respondent and her husband denied her use of profanity, both have a personal and financial interest in her continued employment by the District. Thus, their testimony is less credible. The declaration by D.A. is also entitled to less weight. D.A.

stated he did not hear respondent use profanity, but he did not testify at hearing and was not subject to cross-examination. In sum, the preponderance of the evidence demonstrates respondent engaged in the alleged conduct towards the students in the bleachers on December 14, 2022.

However, the preponderance of the evidence did not establish respondent engaged in an unprofessional verbal altercation with J.P. and her husband following the wrestling match. Respondent and her husband Mr. Wilcher credibly testified J.P. and her husband initiated the confrontation. Their testimony is supported by J.P.'s own testimony and the observation by Ms. Baker. Moreover, J.P. herself testified respondent did not use profanity.

The preponderance of the evidence also did not establish respondent was intoxicated at the wrestling match. Respondent admitted she had consumed one and a half beers after work hours and before going to watch the wrestling match. However, there was no credible evidence respondent was intoxicated at the match.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The District bears the burden of proving cause to dismiss respondent by a preponderance of the evidence. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; *Gardner v. Com. on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039–1040.) The term “preponderance of the evidence” means “more likely than not.” (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1387–1388.)

Applicable Law

2. A permanent District employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44932, 44934, and 44944.) Under Education Code section 44944, subdivision (c), the dismissal hearing must be conducted by a three-member Commission on Professional Competence. Two members of the Commission must be non-District teachers, one chosen by the respondent and one by the district, and the third member of the Commission must be an administrative law judge from the Office of Administrative Hearings.

3. When a school board recommends dismissal for cause, the Commission may only vote for or against it. The Commission may not dispose of a charge of dismissal by imposing probation or an alternative sanction. (Ed. Code, § 44944, subds. (d)(1) & (3).) The Commission's decision "shall not be based on nonsubstantive procedural errors committed by the school district or governing board of the school district unless the errors are prejudicial errors." (Ed. Code, § 44944, subd. (d)(2).)

Cause for Dismissal

IMMORAL CONDUCT

4. Under Education Code section 44932, subdivision (a)(1), a school district may dismiss a permanent certificated employee for immoral conduct. Immoral conduct is defined as conduct that:

is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness;

or as wil[ly]ful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare.

(*Bd. of Ed. of San Francisco Unified Sch. Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811; see also *San Diego Unified Sch. Dist. v. Com. on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466.)

5. Moreover, the definition of immoral conduct “must be considered in conjunction with the unique position of public school teachers, upon whom are imposed responsibilities and limitations on freedom of action which do not exist in regard to other callings.” (*San Diego Unified Sch. Dist., supra*, 194 Cal.App.4th at p. 1466.) A teacher is often described as “an exemplar, whose words and actions are likely to be followed by the children coming under [the teacher’s] care and protection.” (*Palo Verde Unified Sch. Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 970.)

6. Here, respondent used profanity on multiple occasions towards District staff, parents, and students. She also threatened the future employment of a District aide. Such conduct was verbally abusive, aggressive, and indecent. It shows moral indifference to the opinions of respectable members of the community and an inconsiderate attitude toward good order and the public welfare. As such, it is hostile to the welfare of the general public and contrary to good morals. Accordingly, the District established cause to dismiss respondent under Education Code section 44932, subdivision (a)(1).

UNPROFESSIONAL CONDUCT

7. Under Education Code section 44932, subdivision (a)(2), a school district may dismiss a permanent certificated employee for unprofessional conduct. The term "unprofessional conduct" is not defined by the Education Code. Nevertheless, the California Supreme Court has held the term may be construed consistent with common usage as conduct that "violates the rules or ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing." (*Bd. of Education of the City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553.)

8. Here, respondent used profanity on multiple occasions towards District staff, parents, and students. She also threatened the future employment of a District aide. Additionally, respondent got up, raised her voice, and pointed her finger at a parent before leaving a meeting with that parent. Such conduct violates the ethical code of the teaching profession and is unbecoming of a teacher. Even when faced with difficult students, parents, or co-workers, a teacher is expected to possess and exercise good judgment and self-control. Accordingly, the District established cause to dismiss respondent under Education Code section 44932, subdivision (a)(2).

EVIDENT UNFITNESS FOR SERVICE

9. Under Education Code section 44932, subdivision (a)(6), a school district may dismiss a permanent certificated employee for "evident unfitness for service." The term "evident unfitness for service," means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." (*Woodland Joint Unified Sch. Dist. v. Com. on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) The term "connotes a fixed character trait,

presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Ibid.*)

10. Here, respondent continued to engage in the immoral and unprofessional conduct discussed above notwithstanding multiple warnings and progressive discipline by the District. Respondent's pattern of misconduct reasonably suggests a temperamental defect of character rendering her unable or unwilling to conform her conduct to professional expectations. To be sure, respondent's substantive knowledge or skills as a special education teacher are not in question. However, her continued inability to self-regulate and exercise self-control jeopardizes the emotional wellbeing of District students, staff, and parents, and renders her unsuitable for the profession of teaching. Accordingly, the District established cause to dismiss respondent under Education Code section 44932, subdivision (a)(6).

PERSISTENT VIOLATION OF BOARD RULES AND REGULATIONS

11. Under Education Code section 44932, subdivision (a)(8), a school district may dismiss a permanent certificated employee for "[p]ersistent 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." A "single violation is not sufficient to warrant dismissal; it is the persistent disregard of school rules that the subdivision is designed to regulate." (*Governing Bd. of the Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 84.)

12. Board Policy No. 4119.21 (Professional Standards) requires District employees to:

Maintain the highest ethical standards, behave professionally, follow district policies and regulations, abide by state and federal laws, and exercise good judgment when interacting with students and other members of the school community. Employees shall engage in conduct that enhances the integrity of the district, advances the goals of the district's educational program, and contributes to a positive school climate.

13. Board Policy No. 5131.2 (Bullying) provides "[n]o individual or group shall, through physical, written, verbal, or other means, harass, sexually harass, threaten, intimidate, retaliate, cyberbully, cause bodily injury to, or commit hate violence against any student or school personnel."

14. Board Policy No. 5137 (Positive School Climate) provides "[a]ll staff are expected to serve as role models for students by demonstrating positive, professional attitudes and respect toward each student and other staff members."

15. Board Policy No. 6145.2 (Athletic Competition) requires "[s]tudent athletes, coaches, parents/guardians, spectators, and others to "demonstrate good sportsmanship, ethical conduct, and fair play during all athletic competitions. They shall also abide by the core principles of trustworthiness, respect, responsibility, fairness, caring, and good citizenship"

16. Here, respondent violated the aforementioned policies when she used profanity towards District staff, parents, and students, and threatened the future employment of a District aide. Respondent failed to uphold her ethical responsibilities, failed to use good judgment, acted unprofessionally, and engaged in aggressive,

bullying, and disparaging behavior on multiple occasions. Taken as a whole, respondent's behavior demonstrates a persistent disregard of Board rules and regulations. Accordingly, the District established cause to dismiss respondent under Education Code section 44932, subdivision (a)(8).

17. The Statement of Charges also alleged respondent violated additional Board rules and regulations. Any such additional violations were not established by a preponderance of the evidence.

Propriety of Dismissal

18. Even when cause for dismissal exists, the District must also demonstrate dismissal is appropriate because there is a factual nexus between respondent's misconduct and her unfitness to teach. (*Morrison v. State Bd. of Education* (1969) 1 Cal.3d 214, 299.) In *Morrison*, the California Supreme Court provided a list of factors for assessing a person's fitness to teach. The inquiry includes (1) the likelihood the conduct may have adversely affected others and the degree of such adversity anticipated; (2) the proximity or remoteness in time of the conduct; (3) the type of certification held by the party involved; (4) the extenuating or aggravating circumstances, if any, 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; and (7) the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.

19. "The [*Morrison*] factors are not rules, but broad classes of issues to be considered to assist in determining whether to impose discipline. Only the relevant factors need to be analyzed." (*Ricasa v. Office of Admin. Hearings* (2018) 31

Cal.App.5th 262, 285.) The factors may apply to all charges in the aggregate, considering the totality of offensive conduct. (*Woodland Joint Unified Sch. Dist.*, *supra*, 2 Cal.App.4th at pp. 1456–1457 [“When a camel’s back is broken we need not weigh each straw in its load to see which one could have done the deed.”].)

LIKELIHOOD OF ADVERSE IMPACT AND DEGREE OF ADVERSITY

20. Respondent stated another District teacher “just needs to shut the fuck up”; told parents they “look like two fucking idiots standing here with your stupid signs”; threatened a subordinate aide by telling her “you fucked me and when someone fucks me, they are done! You will never work at Rocklin High again!”; raised her voice and pointed her finger at a parent during a meeting; and told students at a wrestling match they were a “fucking disgrace.” Numerous witnesses testified they were shocked and/or intimidated by respondent’s statements and behavior. As such, it had a significant adverse impact on District students, parents, and staff.

PROXIMITY OR REMOTENESS IN TIME

21. The vast majority of respondent’s misconduct occurred in 2022. As such, her misconduct is relatively recent.

TYPE OF CERTIFICATION HELD

22. Respondent holds a special education credential and is a special education teacher. Given special education students are a vulnerable student population, respondent’s inability to self-regulate and exercise self-control is even more troubling.

EXTENUATING OR AGGRAVATING CIRCUMSTANCES

23. The record does not contain credible or persuasive evidence of extenuating circumstances for the incidents of misconduct. To be sure, respondent encountered a difficult and combative parent at the August 20, 2022 meeting. Although she may well have been justified in leaving the meeting, she was not entitled to raise her voice and point her finger at the parent. Even when faced with difficult students, parents, or co-workers, a teacher is expected to possess and exercise good judgment and self-control.

PRAISEWORTHINESS OR BLAMEWORTHINESS OF MOTIVES

24. Respondent testified she confronted the students in the bleachers on December 14, 2022 because she was offended by their homophobic protest against the wrestling coach. Any homophobia or bigotry is unacceptable. Opposing it is laudable. However, the *manner* in which respondent addressed the issue was not praiseworthy. The students were not heckling or engaging in any overt actions at the wrestling match that required respondent's imminent intervention. Instead of calmly raising the matter through appropriate channels, respondent aggressively confronted the students and used profanity towards them without specifying why she objected to their presence. Such conduct was blameworthy, not praiseworthy.

LIKELIHOOD OF RECURRENCE

25. As discussed above, respondent continued to engage in immoral and unprofessional conduct after multiple warnings and progressive discipline by the District. This suggests a temperamental defect likely to result in recurrence of such behavior. Additionally, respondent's hearing testimony confirmed she fails to appreciate the seriousness of her misconduct. Although she acknowledged she could

have handled some of the incidents better, she also concerningly testified that using profanity at a student is not necessarily intimidating, harassing, or embarrassing. She thought it “depends on the situation.” Such troubling lack of insight does not bode well for respondent’s future ability to conform her conduct to professional expectations.

ADVERSE IMPACT OR CHILLING EFFECT UPON CONSTITUTIONAL RIGHTS

26. Respondent argued the discipline sought violates her parental rights and right to speak out against bigotry. That argument lacks merit. The District does not seek to discipline respondent for advocating for her son’s education or for opposing bigotry. Instead, it takes issue with the completely unprofessional *manner* in which she expressed herself. Her use of profanity and aggressive behavior was unnecessary to vindicate her constitutional rights. Thus, respondent’s discipline would not have an adverse impact or chilling effect upon the constitutional rights of respondent or other teachers.

CONCLUSION

27. After considering the *Morrison* factors, respondent’s conduct in the aggregate indicates a factual nexus between her conduct and unfitness to teach. To be sure, respondent’s witnesses laud respondent’s substantive competence, caring nature, passion for teaching, and professionalism. However, those witnesses were generally unfamiliar with the Statement of Charges and conceded that the alleged conduct, if proven, would be highly inappropriate. Additionally, that the District requested respondent to continue serving two students on home hospital while placed on administrative leave is not dispositive. The dire need for home hospital coverage is well known in the special education community. Given respondent was only asked to

serve in a limited role in a controlled environment, it does not undermine the conclusion about her general unfitness to teach. In sum, based on the totality of the circumstances, dismissal is the appropriate discipline.

Impact of *Miller v. Chico Unified School District*

28. The California Supreme Court held a school board is prohibited from “basing any employment decision on its analysis of derogatory information *unless* the board has notified the employee of such derogatory information and has afforded him an opportunity to comment upon it.” (*Miller v. Chico Unified Sch. Dist.* (1979) 24 Cal.3d 703, 707.) Respondent argued the District cannot rely on the January 9, 2020 incident to dismiss respondent because Dr. Limoges did not place the corresponding memorandum in her personnel file. As such, respondent did not have an opportunity to comment or respond to it.

29. As an initial matter, respondent’s argument does not appear supported by the record in this case. The February 26, 2020 Conference Summary Memorandum reflected Dr. Limoges had a conversation with respondent about the January 9, 2020 incident. Thus, respondent was provided notice of the derogatory information and had an opportunity to comment on it during her conversation with Dr. Limoges. Moreover, even though the February 26, 2020 Conference Summary Memorandum was not placed in respondent’s personnel file, respondent was not precluded from filing a written response.

30. Even if the Commission were to exclude the January 9, 2020 incident from all consideration in this matter, it is not a “crucial element” in the Commission’s decision. (*Miller, supra*, 24 Cal.3d at p. 707.) The causes for dismissal and analysis of

the *Morrison* factors are amply supported by the other multiple proven instances of misconduct.

ORDER

Respondent Jennifer Kaiser is DISMISSED as a permanent certificated employee of the Rocklin Unified School District.

DATE: 12/06/2023



Susan Evans (Dec 6, 2023 09:19 PST)

SUSAN CAROL EVANS

Commissioner

Commission on Professional Competence

DATE: 12/06/2023


Julie Murdaugh (Dec 6, 2023 09:28 PST)

JULIE MURDAUGH

Commissioner

Commission on Professional Competence

DATE: 12/06/2023



WIM VAN ROOYEN

Administrative Law Judge, Chair

Commission on Professional Competence

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.