

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

**In the Matter of the Dismissal of:**

**ISABEL YBARRA (EN 00727446),**

**A Permanent Certificated Employee,**

**Respondent.**

**OAH No. 2018100600**

**DECISION**

A Commission on Professional Competence (Commission) heard this matter at of the Office of Administrative Hearings in Los Angeles, California, on June 13-14, 17-21, 24-28, and July 29 through August 1, 2019. The Commission members were Krystal Fowler; Judy Stella; and Administrative Law Judge Irina Tentser, Office of Administrative Hearings, State of California, who presided.

Alex Y. Wong and Ronnie Arenas, Attorneys, Liebert Cassidy Whitmore, represented the Los Angeles Unified School District (District).

Tamra M. Smith, Attorney, Equality Law LLP, represented respondent Isabel Ybarra, who was present and assisted by readers Cosme Dominguez and Erika Scott throughout the hearing.

Oral and documentary evidence was received. The record was left open until August 1, 2019 for submission of documents referred to by respondent's counsel during closing argument; the documents were received and marked as Exhibit 770. The record closed and the matter was submitted for decision on August 1, 2019. The Commission thereafter deliberated in executive session.

## **SUMMARY**

The District seeks to dismiss respondent, a Psychiatric Social Worker with the District's School Mental Health (SMH) Ramona Clinic, for allegedly failing to comply with the District's performance and ethical obligations. According to District, respondent habitually failed to timely complete required documentation and forms, as well as failed to timely correct returned documentation, within deadlines mandated by the District SMH and Los Angeles County Department of Mental Health (DMH). District further alleges respondent failed to practice and maintain standards of client confidentiality. Further, District alleges respondent willfully falsified billing. Respondent is also accused of acting derelict in her duties, and demonstrating poor clinical judgment and unprofessional conduct when meeting with her clients and/or their families. Based on the foregoing allegations, District asserts respondent is unsuitable to serve as a District Psychiatric Social Worker and asks that her dismissal be upheld by the Commission.

Respondent denies the District's allegations. Respondent, whose vision deteriorated over the course of her employment with the District and who is legally blind, asserts that District failed to provide reasonable accommodation for her disability, and wants to dismiss her instead of accommodating her disability.

After evaluation of the evidence by the Commission, a preponderance of the evidence did not establish causes for dismissal, and the Commission unanimously concluded that respondent should not be dismissed from her position as a permanent certificated employee of the District.

## **FACTUAL FINDINGS**

### **Background**

1. Respondent is a permanent certificated employee of the District who was assigned as a Psychiatric Social Worker (PSW) at the District's SMH Ramona Clinic in Los Angeles, California, from approximately August 2016 until May 2018. She started working for the District in 1999. Respondent is a licensed clinical social worker who holds a master's degree in social welfare from the University of California, Los Angeles. There was no evidence of license discipline during the 20 years respondent has been licensed.

2. As stipulated to by District and confirmed by respondent's credible testimony and that of her treating optometrist, Dr. Chester Chang, respondent is legally blind. A person who is legally blind has vision worse than 20/200. Respondent began to lose her sight when she was in college, approximately 28 years ago. She has a history of Vogt-Koyanagi-Harada (VKH) syndrome, an autoimmune condition that has ocular involvement. Her eye history includes chronic inflammation, cataract

surgery, and swelling of the retina, which has left respondent significantly visually impaired. Respondent's vision deteriorated over the course of her employment with the District. She was able to drive until 2008, at which time she lost more vision in her right eye after an eye surgery. During times relevant to this matter, respondent's right eye vision included light perception with projection, which Dr. Chang described as "really nonfunctional." Respondent's left eye sees finger counting at two feet, which Dr. Chang described as akin to taking a thin satin scarf and blindfolding yourself with that scarf. Respondent can see outlines of people's shapes, depending on the light, with her left eye.

3. For the last seven years of her employment with the District, respondent was required to work in a "clinic-based" PSW position. As a clinic-based PSW, respondent's regular assignments included, but were not limited to: providing individual, group and family treatment targeting students who are at risk of school failure due to social, behavioral, and emotional problems; providing student and parent psycho-education on topics that include mental health, trauma awareness, social skills, conflict mediation, grief, drug prevention, and other social emotional issues that impact learning; utilizing electronic health records for documentation pertaining to programmatic requirements, complying with federal, state and Los Angeles County DMH, and District SMH policies, guidelines, and regulations; and collaborating with teachers and school staff in providing mental health consultation.

4. In order for respondent to work with a computer, respondent needs to utilize a computer program called JAWS (Job Access With Speech). JAWS is a screen reading software which is incompatible with the District's computer program (Welligent) that held respondent's job duties. As a result, respondent's visual disability made it difficult for her to function with her computer documentation-related job

duties as a PSW at Ramona, which required her to keep meticulous records of her client interactions on tight deadlines using the Welligent software, which is inaccessible to the blind.

5. The District took no steps to make Welligent directly accessible to respondent during her tenure as a PSW, dismissing the idea as cost-prohibitive without any substantive evidence to support that assumption. In addition, the District took no reasonable steps, such as working with the Department of Rehabilitation (DOR), to make Welligent directly accessible to respondent through JAWS. Instead, the District attempted to accommodate respondent by providing her a sighted Communication Support Assistant (CSA) or "reader" to help enter data into Welligent.

6. Respondent repeatedly advised the District that the CSA accommodation was not effective in allowing her to complete the required recordkeeping within the strict guidelines demanded by the District's SMH and DMH. Most significantly, the process of recordkeeping through a third-party intermediary caused the recordkeeping tasks to take longer. None of respondent's supervisors were willing to acknowledge the foregoing reality, insisting that the CSA accommodation was effective despite clear evidence to the contrary. In fact, respondent's supervisors believed that she had an advantage over her sighted PSW co-workers by being assigned a dedicated CSA, at times exaggerated her visual impairment, and should have been able to complete recordkeeping in a timely manner. Any issues with CSA performance were attributed to respondent, including a perception that respondent was difficult to deal with based on CSA complaints (which respondent credibly denied) and, therefore, caused a high rate of CSA turnover.

7. In evaluating respondent's performance, none of respondent's supervisors gave due consideration to the fact that respondent could not complete

Welligent documentation at home that she was unable to complete at the clinic or that she fell further behind on documentation when respondent or her reader was absent from work. In fact, presumably because respondent's JAWS software was compatible with Outlook email, one of respondent's supervisors incorrectly reported to the District reasonable accommodation committee that respondent could, in fact, access Welligent. (Exhibit 44.) Additionally, respondent's clinical supervisor at the SMH Ramona Clinic returned Welligent documentation frequently for revisions by sending it through the Welligent system. Respondent was often unaware of these messages because she could not see them and was fully reliant on the CSA to make her aware of any communication through Welligent.

8. Respondent is an avid self-advocate and frequently communicated the challenges inherent in her CSA accommodation to her supervisors, asking the District repeatedly for more effective accommodations. None of her substantive requests were granted. Most notably, the District refused, without valid reason, to transfer respondent to a school-based PSW position, which she had previously held during her tenure with the District. Such a position would have reduced her Welligent computer documentation requirements by approximately seventy percent. Respondent repeatedly provided the District with medical documentation from her optometrist, Dr. Chang, explaining her visual impairment and recommending a transfer to a PSW position with more face-to-face counseling and less computer documentation duties. (Exhibit 667.)

9. Despite the challenges, respondent made a concerted effort to keep up with recordkeeping deadlines identified during the 2016-2017 school year, which included, among other things, working from home to complete client records. By 2017-2018, respondent's recordkeeping improved. Nevertheless, the District remained

dissatisfied with respondent's performance. As a result, a litany of other charges, including allegations of knowing falsification of timekeeping records and unprofessionalism in the treating of clients, were brought against respondent during the 2017-2018 school year.

10. On September 12, 2018, the District's Board of Education took action to dismiss respondent. As set forth in the operative pleading, the Amended Accusation, the District filed a statement of charges notifying respondent of its intent to dismiss her on the following grounds: immoral conduct (Ed. Code §§ 44932(a)(1) and 44939);<sup>1</sup> unprofessional conduct (§ 44939(a)(2)); dishonesty (§ 44932(a)(4)); unsatisfactory performance (§ 44932(a)(5)); evident unfitness for service (§ 44932(a)(6)); persistent violation of, or refusal to obey, the school laws of the state, or reasonable regulations prescribed for the government of public schools by the State Board of Education or by the governing board of the school district employing her (§ 44932(a)(8)); and willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing district (§ 44939). Each of the charges contained in the Amended Accusation is discussed below based on the Amended Accusation's factual allegations, which fall into the categories of 1) recordkeeping; 2) timekeeping; and 3) professionalism.

## **Introduction**

11. SMH Ramona Clinic provides mental health services to primarily District students and their families. The District is a contracted agency with the DMH to provide the aforementioned mental health services. Ramona has both DMH cases,

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<sup>1</sup> All statutory references are to the Education Code unless otherwise noted.

which are subject to strict DMH recordkeeping guidelines and deadlines, and non-DMH cases. As a SMH Ramona Clinic PSW, respondent was required to submit client health records through Welligent, consistent with District SMH policy and, for DMH cases, within DMH guidelines. Failure to comply with record timekeeping DMH deadlines places District SMH at risk for not receiving reimbursement for services, failing an audit, and being required to return to DMH all reimbursement funds received. Client assessments, consisting of over 10 pages of documentation, are to be completed by PSW's within 30 days. Client treatment plans are also to be completed within 30 days. In addition, client progress notes are to be completed within 24 hours. Respondent was also tasked with submitting referral information into Welligent and correcting notes in compliance with her program facilitator's instructions. District provided no evidence that any of respondent's alleged late recordkeeping or falsification of timekeeping records resulted in District SMH either not receiving reimbursement for services, failing an audit, or being required to return to DMH any reimbursement funds received. In addition, District did not provide evidence that any of respondent's alleged late recordkeeping or falsification of timekeeping records resulted in District SMH having to refund reimbursements received from any other federal, state, and/or local government programs.

12. In August 2016, respondent was transferred to Ramona, where she had previously worked during her PSW tenure at the District. Ramona clinic is located adjacent to Ramona High School. Respondent was transferred to the clinic based on her request to be transferred to a location closer to her home for disabled paratransit commuting and safety reasons. Her belongings and computer remained at her prior work location until September 2016, after the 2016-2017 school year commenced in mid-August 2016.

13. Respondent's program facilitator at Ramona was her former Ramona co-worker and college classmate, Rosanna Serrano. Ms. Serrano is a licensed PSW, whose District assignment as program facilitator of both the Ramona and Roybal Clinic began in approximately 2016. As a program facilitator, Ms. Serrano supervises seven clinicians, including respondent, at relevant times. Her duties included meeting with clinicians to discuss their caseloads, auditing their cases, and reviewing progress notes, assessments, and all the paperwork needed to do client intake and assessment. When a clinician, such as respondent, opens a case, Ms. Serrano reviews diagnosis and treatment to ensure that the clinician's diagnosis and intervention plan are appropriate to the symptoms. Ms. Serrano essentially provides quality assurance to ensure not only that clients receive good care, but that the District submits client paperwork correctly, thereby ensuring it is compensated by DMH for the services it provides and is not subject to DMH audit.

14. Respondent was the only visually impaired PSW employed by District. At no time did Ms. Serrano or any other Ramona clinic staff receive any training by the District in how to work with a sight-impaired PSW. Further, Ms. Serrano testified that she had no knowledge of any of the reasonable accommodations provided by the District to respondent.

## **District's Charges<sup>2</sup>**

### **2016–2017 SCHOOL YEAR RECORDKEEPING – CHARGES 4, 5, 9, 10, 11, 12, 13, 14, 15, AND 16**

15. The District established through a preponderance of the evidence that for the 2016-2017 School Year, respondent did not submit records into Welligent as required by DMH and District SMH, as set forth in Charges 4, 5, 9, 11, 12, 13, 14, 15, and 16, thereby placing District's SMH at risk of audit failure and the possibility of having to refund all reimbursements received from federal, state, and/or local government programs.

16. The District did not establish through a preponderance of the evidence that for the 2016-2017 School Year respondent did not submit records into Welligent as required by DMH and District SMH, as set forth in Charge 10.

17. **Charge 4.** From September 7, 2016 to November 3, 2016, respondent did not complete her session notes within 24 hours of providing the services, as mandated by DMH and SMH. This includes all billable and non-billable notes for DMH and non-DMH clients. (See Exhibit 3 for list of overdue notes, Amended Accusation, p. 6-7, lines 11-1.)

18. **Charge 5.** From September 7, 2016 to November 3, 2016, respondent did not complete documentation of her required clinical forms within the mandated timelines required by DMH and District SMH. This documentation included, but was

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<sup>2</sup> All references to "charges" refer to paragraph numbers in the Amended Accusation, filed and served on June 13, 2019.

not limited to, her assessments and client treatment plans. (See Exhibit 3 for list of overdue assessment and client treatment plans, Amended Accusation, p. 7, lines 11-23.)

19. **Charge 9.** From September 20, 2016 to February 17, 2017, respondent did not correct returned documentation within the mandated timelines required by DMH and District SMH. (See Exhibit 3 for list of corrections, Amended Accusation, p. 10, lines 10-24.)

20. **Charge 10.** District did not establish through a preponderance of the evidence that, from October 5, 2016 to February 7, 2017, respondent did not complete her session notes within 24 hours of providing the service as mandated by DMH and District SMH. (See Exhibit 3 for list of overdue notes, Amended Accusation, p. 11, lines 3-13.) For two of the students, [REDACTED] M and J. [REDACTED] G.,<sup>3</sup> the notes were submitted on time. (Exhibit 168, p. 5538 and Exhibit 182, p. 5724). The remainder of the listed students cancelled or failed to appear at their appointments, so there was no progress note to be prepared. (See Exhibit 670, Table 3.)

21. **Charge 11.** From October 14, 2016 to February 7, 2017, respondent did not complete the documentation of required clinical forms within DMH and District SMH mandated timelines. (See Exhibit 3 for list of overdue notes, Amended Accusation, pp. 11-12, lines 20-4.)

22. **Charge 12.** From October 14, 2016 to May 15, 2017, respondent did not complete documentation of required clinical forms within DMH and District SMH

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<sup>3</sup> Students and parents are referred to by their first name and first initial of their last name to protect privacy.

mandated timelines. (See Exhibit 3 for list of overdue clinical forms, Amended Accusation, pp. 12-13, lines 11-5.)

23. **Charge 13.** From November 9, 2016 to May 15, 2017, respondent did not complete session notes within 24 hours of providing service as mandated by DMH and District SMH. (See Exhibit 3 for list of overdue notes, Amended Accusation, p. 13, lines 11-26.)

24. **Charge 14.** From November 18, 2016 to May 15, 2017, respondent did not correct returned documentation within DMH and District SMH guidelines. (See Exhibit 3 for list of corrections, Amended Accusation, pp. 14-15, lines 6-4.)

25. **Charge 15.** From December 9, 2016 to February 27, 2017, respondent did not correct returned progress notes within DMH and District SMH mandated timeless. (See Exhibit 3 for list of progress notes, Amended Accusation, p. 15, lines 10-14.)

26. **Charge 16.** From January 16, 2017 to May 15, 2017, respondent did not correct returned progress notes within DMH and District SMH mandated timelines. (See Exhibit 3 for list of progress notes, Amended Accusation, pp. 15-16, lines 20-5.)

27. Respondent's assigned CSA from August 2016 through June 2017 (2016-2017 school year) was Eilisie Cotledge. Ms. Cotledge was hired by the District and trained by Ms. Serrano. Respondent did not participate in the training of Ms. Cotledge, her CSA, nor did respondent's supervisors discuss with respondent what her needs or expectations were of a CSA prior to Ms. Cotledge's training.

28. Ms. Cotledge's training consisted of a review of the folders that pertained to the work of a PSW and an explanation by Ms. Serrano as to what Ms. Cotledge's role would be as respondent's CSA. PSW guidelines and instructions were also

reviewed to provide Ms. Cotledge with an understanding of the functions of a PSW. Ms. Cotledge testified that while she was not a PSW, she understood her role to be "as basically just typing in information." Ms. Serrano also trained Ms. Cotledge on how to use Welligent to assist respondent in entering documents and information into Welligent, including client progress notes, intake information, and referrals. Instructions on making corrections to progress notes were also discussed. Ms. Cotledge's training lasted a week, with Ms. Serrano available for follow-up questions.

29. From the beginning of their collaboration in mid-August 2016, respondent and Ms. Cotledge's working relationship was subject to a steep and difficult learning curve. Because of client privacy considerations, Ms. Cotledge was not present during any client sessions conducted by respondent. Accordingly, Ms. Cotledge was tasked with entering documentation into Welligent primarily when respondent was in session with clients.

30. Up until October 2016, respondent used a tape recorder, a District approved practice she had been utilizing for years, to record client intakes. Ms. Cotledge would then be provided the tape recording to transfer the information into Welligent. After the information was entered into Welligent, Ms. Cotledge and respondent would meet in order for the information entered into Welligent to be read back to respondent so that respondent could provide final approval on the record to be submitted into Welligent. Ms. Cotledge was also responsible for entering progress notes on behalf of respondent into Welligent, which would either be dictated verbally by respondent or typed in Word by respondent to then be typed into Welligent by Ms. Cotledge, all subject to respondent's final review and approval.

31. In October 2016, the District caused respondent to fundamentally change her typical work habits by notifying respondent that she would no longer be allowed

to use a tape recorder to record client sessions, effective immediately. The change caused respondent to have to type up information during the client sessions in a Word document, which would then be provided to Ms. Cotledge to transcribe into Welligent, for final review and approval by respondent before the information could be submitted through Welligent.

32. In addition to the foregoing recordkeeping demands, from the beginning of the school year, client records submitted into Welligent by respondent through Ms. Cotledge were subject to extensive correction by Ms. Serrano. Respondent had difficulty adjusting to the level of revision required by Ms. Serrano; past supervisors had not demanded so many changes or so extensively questioned her clinical judgment. When Ms. Serrano requested respondent change a diagnosis for several clients, respondent was unable to submit needed documentation to open up an intake until all client documentation was changed to be consistent with the new diagnosis, further delaying the timeliness of recordkeeping.

33. During her testimony, Ms. Cotledge testified that respondent was behind in recordkeeping from the beginning of her tenure at Ramona, describing the situation as a "mountain of clients that needed corrections."

34. At the same time, respondent felt that she was being circumvented and undermined by Ms. Cotledge challenging her instructions about how client records were to be drafted, and communicating directly to Ms. Serrano about client records. In turn, Ms. Cotledge felt that her function was to enter Welligent information based on Ms. Serrano's, rather than respondent's, instructions, and provided feedback to respondent when she felt respondent was asking her to enter client information into Welligent that was contrary to Ms. Serrano's training. Further, respondent asserted that Ms. Cotledge made errors in entering recordkeeping into Welligent and did not

always inform her what, if any, changes Ms. Serrano required to be made to client documentation, both claims Ms. Cotledge denied. Respondent's claims that Ms. Cotledge made errors in Welligent records were corroborated, however, by subsequent assigned CSA's during the 2017-2018 school year, thereby undermining Ms. Cotledge's credibility.

35. Throughout hearing, it was unclear from the evidence presented what steps the District took, if any, to monitor how effectively respondent's assigned CSA's were performing their duties. The District's position was that respondent was ultimately responsible for any information entered into Welligent by any assigned reader, despite the fact that respondent was entirely dependent on her assigned readers to provide her with correct information.

36. Whenever Ms. Cotledge was absent from work, respondent did not have a dedicated CSA at Ramona. She would document client sessions and intakes on a word document until her CSA's return, further delaying the timely submission of records into Welligent. Occasionally, respondent and Ms. Cotledge had computer issues, which further delayed recordkeeping. Throughout the early 2016-2017 school year, respondent frequently communicated her recordkeeping challenges at Ramona to her other supervisors, rather than just to Ms. Cotledge and Ms. Serrano. Those supervisors were Mr. Jeffrey King, licensed PSW, District School Mental Health and Ramona Specialist, and Ms. Kim Griffin-Esperon, licensed PSW, Field Coordinator, Clinic Services, District School Mental Health.

37. Further, as of October 2016, respondent had yet to complete her CCTV (Close Circuit Television) training and was not provided with all the requisite client forms available in an accessible Word format for completion until approximately November 2016, with some forms still outstanding until Spring 2017. Despite the

issues with the effectiveness of respondent's accommodation of a CSA reader, the District began to issue conference memos to respondent that she was not timely meeting recordkeeping requirements beginning in November 2016, culminating in respondent being issued a May 2, 2017 Below Standard Evaluation.

38. At hearing, Mr. King testified regarding the counseling he provided throughout the 2016-2017 and 2017-2018 school years to respondent. On November 14, 2016, Mr. King provided a conference memo to respondent regarding his counseling. (Exhibit. 11.) Mr. King testified that he based his all his counseling memos regarding late recordkeeping on his review of the first Welligent pop-up screen, which showed outstanding records, without reviewing the actual client records in detail. Despite the lack of 2016-2017 client record review, the assertion of late recordkeeping for much of the 2016-2017 was established by the weight of other credible evidence, including submitted client Welligent records. However, notably, much of Mr. King's information regarding respondent's late Welligent recordkeeping was not reliable for the 2017-2018 school year and for portions of the 2016-2017 school year. (See Factual Findings 20.) In addition, Mr. King did not consider whether the client records in question for the 2016-2017 school year were still being transcribed by Ms. Cotledge from recordings and/or from Word documents provided by respondent to Ms. Cotledge on a flash drive.

39. In fact, Ms. Cotledge's CSA responsibilities were not clarified until after respondent was counseled on November 14, 2016 for, among other things, failing to meet mandated timeline requirements. On November 15, 2016, Ms. Griffin-Esperon met with respondent and Ms. Cotledge to clarify both respondent and Ms. Cotledge's responsibilities. (Exhibit 655.) During that meeting, outstanding issues, such as who would assist respondent in Ms. Cotledge's absence, were addressed. However, Ms.

Griffin-Esperon directed that no past due documentation would be entered into Welligent by the substitute CSA aid unless directed by the substitute aid's administrator. Ramona's client treatment sessions were generally 60 minutes, with a two-hour session for initial client intakes. However, Ms. Griffin-Esperon directed that "unless there is a need for longer appointments, client appointments will be 45 minutes long so the remaining 15 minutes can be used for documentation purposes." (Exhibit 655, p. 4982.) Often, client sessions ran past the 45-minute time period goal based on respondent's professional opinion a client's effective treatment required a full 60-minute session.

40. During the November 15 meeting, respondent notified Ms. Griffin-Esperon that she had written notes and assessment information that were ready to be copied and pasted into Welligent. After the November 15 meeting, respondent and Ms. Cotledge worked to the best of their abilities for the remainder of the 2016-2017 school year to catch up on past due documentation while keeping up on the additional ongoing case assignment documentation and the progress note corrections of Ms. Serrano.

41. Despite respondent's ongoing insistence that the accommodation of the CSA was ineffective for the 2016-2017 school year and the corroboration of multiple disciplinary District memos regarding late recordkeeping, District asserts it has cause to dismiss respondent for late recordkeeping in 2016-2017. Based on the circumstances, however, District did not establish through a preponderance of the evidence that respondent's timekeeping deficiencies were the result of respondent's performance issues, rather than the District's failure to provide an effective reasonably accommodation to her disability for the 2016-2017 school year.

## **2017-2018 SCHOOL YEAR RECORDKEEPING – CHARGES 21, 22, 34, AND 35**

42. The District did not establish through a preponderance of the evidence that for the 2017-2018 School Year respondent failed to submit records into Welligent as required by DMH and District SMH, thereby placing District's SMH at risk of audit failure and the possibility of having to refund all reimbursements received from federal, state, and/or local government programs; nor did the District establish that respondent engaged in misconduct by failing to timely submit records and willfully refused to perform her regular duties or assignments without reasonable cause, as prescribed by reasonable rules and regulations.

43. The District's allegations regarding submission of late documentation were primarily based on Mr. King's testimony regarding his review of the initial pop-up Welligent record for 2017-2018 School Year. A review of specific student Welligent records, however, revealed that his representations were unreliable because they were either specifically contradicted by relevant Welligent records for the student as timely submitted, there was a cancellation, there was no Welligent record provided for the student to corroborate Mr. King's testimony, or respondent was absent the day the note was due, in two instances, because of her mother's heart attack. Accordingly, the District's charges are unsupported by the weight of credible evidence.

44. **Charge 21.** As set forth in Factual Findings 42 and 43, District did not establish through a preponderance of the evidence that, from November 30, 2017 to March 5, 2018, respondent did not complete her required session notes and clinical forms within the DMH and District SMH timelines. (See Exhibit 3 for list of overdue notes, Amended Accusation, pp. 21-22, lines 18-5.) As noted, the session notes were either submitted on time, the session was cancelled, and/or respondent was absent

from work on the date the note was due because of her mother's heart attack and promptly turned in the note upon her return to work. (See Exhibit 670, Table 2.)

45. **Charge 22.** Based on District's failure to establish the misconduct alleged by Charge 21, as set forth in Factual Findings 42 through 45, District did not establish through a preponderance of the evidence that respondent willfully refused to perform her regular assignments without reasonable cause as prescribed by the District's reasonable rules and regulations.

46. **Charge 34.** As set forth in Factual Findings 42 and 43, District did not establish through a preponderance of the evidence for the period from February 7, 2018 to March 5, 2018, that respondent did not correct returned documentation within the DMH and District SMH mandated timelines. (See Exhibit 3 for list of notes, Amended Accusation, p. 31, lines 11-19.) As noted, the corrected session notes were either submitted on time, the session was cancelled, and/or respondent was absent from the work on the date the note was due. (See Exhibit 670, Table 1.)

47. **Charge 35.** Based on the District's failure to establish the misconduct alleged by Charge 34, as set forth in Factual Findings 42, 43, and 46, the District did not establish through a preponderance of the evidence that respondent willfully refused to perform her regular assignments without reasonable cause as prescribed by the District's reasonable rules and regulations.

## **TIMEKEEPING – CHARGES 17, 18, 23, 24, 25, 26, 29, 30, 31, 32, 33, 38, AND 39**

48. Ramona' PSW's are responsible for client and caregiver session timekeeping, as submitted through Welligent. Welligent automatically populates each session to 60 minutes, requiring a manual edit if a session is longer or shorter. The

District prohibits falsification of timekeeping records and PSW's are charged with accurate timekeeping. Waiting room sign-in sheets were used to have clients sign-in for sessions at Ramona, but were not used to sign clients out after their sessions were completed. No evidence was presented by District as to what, if any, specific training Ramona PSW's received and whether the training was vision-impaired-accessible for respondent during the relevant time period regarding how to track their session times.

49. A number of charges against respondent are based on the District's allegations that she willfully falsified her timekeeping for client sessions for the 2017-2018 school year. For example, District alleges that respondent routinely directed her 2017-2018 CSA's, Ms. Christie Ibarra and Ms. Cindy Juarez, to indicate more face-to-face and collateral billing time than respondent actually spent with students and/or caregivers. Many of the timekeeping charges name specific students and times that were allegedly falsified by respondent. However, none of the witness testimony or documentary evidence credibly supports the allegations of willful falsification of timekeeping by respondent through a preponderance of the evidence, as more fully described below. Rather, the credible evidence established that respondent made occasional inadvertent errors approximately twice a month in her client session timekeeping. Respondent corrected the errors when she was informed by her reader that Ms. Serrano asserted errors had been made. Ms. Serrano did not time respondent's client sessions and based her assertions of error on subjective interpretation, rather than documentation. Respondent made corrections to timekeeping when she agreed with Ms. Serrano's client time assessment. Respondent did not make Ms. Serrano's suggested change when she believed she had accurately timed a session or when she was unaware that the accuracy of her timekeeping was being questioned.

50. The witnesses who testified regarding respondent's alleged falsification of timekeeping (Ms. Serrano, Ms. Irma Gonzalez, Ms. Christie Ibarra, and Ms. Cindy Juarez) did not indicate that they were aware that, as an accommodation to her vision impairment and to facilitate timely recordkeeping, respondent had been instructed by Ms. Kim Griffin-Esperon in November 2016 that she was to spend 45 minutes of each client session on face-to-face time, with the other 15 minutes of the 60-minute session to be spent documenting the session with her reader (collateral time). The witnesses' lack of knowledge about how long respondent's face-to-face client sessions were to last undermined the reliability of their assertion that respondent either shortened or fraudulently billed for face-to-face client sessions. Further, much of the testimony of the District's witnesses was based on vague hearsay statements and anecdotes and was unsupported by more reliable evidence of timekeeping, such as specific dates and start and end times of sessions. (Evid. Code, § 412.) In many instances, witnesses were unable to recall the specific client sessions as alleged in the charges, thereby providing little weight to the District's allegations of respondent's fraudulent billing.

51. Respondent was not trained on how to bill for sessions by Ms. Serrano and did not believe that her billing was an issue based on Ms. Serrano approving all the timekeeping records that the District alleged were falsified. As previously noted, clients were generally scheduled back-to-back for 60 minute sessions, with respondent taking the full 60 minutes to provide counseling. Based on the identified needs of the client, respondent's sessions sometimes lasted longer than 60 minutes. Accordingly, respondent's regular practice was to bill based on the length of each scheduled session. Respondent was not formally counseled face-to-face regarding her timekeeping until she was confronted by Ms. Serrano and accused of fraudulent billing on February 7, 2018, a claim respondent vehemently denied to both Mr. King and Ms. Serrano. After the February 2018 confrontation, respondent began to more carefully

time her client sessions, completely ceasing any sporadic inadvertent timekeeping errors. The fact that respondent corrected her timekeeping errors subsequent to early February 2018 was corroborated by the testimony of her CSA at that time, Ms. Juarez. Further, at hearing, respondent was credible in her testimony that she did not fraudulently bill for sessions, but billed to the best of her ability, admitting to occasional errors in the time she instructed her readers to submit through Welligent. As noted, Welligent automatically populated the time for each client session to 60 minutes, requiring respondent, who could not see and access Welligent directly, to instruct her reader to manually change the time from the automatic 60-minute population, as necessary.

52. **Charge 17.** District did not establish through a preponderance of the evidence that from August 2017 to February 2018, respondent "routinely directed" Ms. Christie Ibarra, Medical Assistant assigned as respondent's temporary Communication Support Assistant, to indicate 60 minutes of billing time for students despite the fact that the actual sessions were much shorter.

53. The District's primary evidence in support of charge 17 was the testimony of Ms. Ibarra. She testified that there were a "couple of incidents" on days she couldn't recall that parents complained of shorter sessions, during her approximately seven-month tenure as respondent's CSA. Ms. Ibarra further asserted, without specifying dates, that on one occasion respondent instructed her to indicate 50 minutes for a client session, when the session was actually 15 minutes. On that occasion, Ms. Ibarra testified that she told respondent the time she was asking her to enter was longer than the session had lasted, to which respondent responded that she should put in the time anyway and that if "they wanted to return it, they will return it." Ms. Ibarra further asserted that, on a second occasion, respondent instructed her to enter 30 minutes in

time, when the client session was 10 minutes, and on another occasion, respondent corrected time based on Ms. Serrano's feedback. Ms. Ibarra's testimony is unconvincing in that it was vague as to dates when respondent engaged in the foregoing alleged conduct and uncorroborated. None of the District's other timekeeping witnesses, Ms. Serrano, Ms. Gonzalez, and Ms. Juarez, testified that respondent dramatically shortened any client sessions. Further, Ms. Ibarra's testimony was uncorroborated by any other documentary evidence and was inconsistent with respondent's timekeeping practices, as credibly testified to by respondent.

54. Even if Ms. Ibarra's testimony were accepted as convincing evidence, the isolated, approximate two occasions of incorrect recordkeeping would not establish charge 17 through a preponderance of the evidence, as they do not support the allegation that respondent "routinely directed" Ms. Ibarra to indicate 60 minutes of billing time when the sessions were much shorter.

55. **Charge 18.** Based on Factual Findings 49 through 51, the District did not establish through a preponderance of the evidence that respondent willfully refused to perform her regular assignments without reasonable cause, as prescribed by the District's reasonable rules and regulations.

56. **Charge 38.** The District did not establish through a preponderance of the evidence that from February 2018 to March 2018, respondent routinely directed Ms. Cindy Juarez, her assigned CSA, to enter more face-to-face and collateral billing time than respondent actually spent with her students and/or caregivers.

57. Ms. Juarez testified that respondent's timekeeping was generally accurate, but that respondent would overbill once or twice a month for unspecified client sessions. On the isolated occasions Ms. Juarez opined respondent was

overbilling for a session, she did not notify respondent and did not time the sessions. Ms. Juarez did not indicate during her testimony whether she was aware that respondent had been instructed to bill 45 minutes of face-to-face time and 15 minutes of collateral time for sessions to facilitate recordkeeping in November 2016. Ms. Juarez testified that after Ms. Serrano's meeting with respondent on February 7, 2018, in which she accused respondent of falsifying her timekeeping, respondent became more careful to avoid timekeeping errors and ceased any overbilling. Accordingly, District's charge that respondent "routinely directed" Ms. Juarez to overbill in February 2018 through March 2018 is inconsistent with Ms. Juarez's hearing testimony and was not established.

58. **Charge 39.** Based on Factual Findings 53 and 54, District did not establish through a preponderance of the evidence that respondent willfully refused to perform her regular assignments without reasonable cause, as prescribed by the District's reasonable rules and regulations.

59. **Charge 23.** The District did not establish through a preponderance of the evidence that, on December 12, 2017, respondent completed and submitted a session note for student D [REDACTED] D. indicating 60 minutes of face-to-face billing time, despite the fact that D [REDACTED] D. was in session with respondent for approximately 30 minutes. District further did not establish through a preponderance of the evidence that Ms. Serrano, when reviewing this note, returned it to respondent reminding her that respondent could only bill for the time actually spent with D [REDACTED] D. District further did not establish that respondent subsequently returned the note with 45 minutes of face-to-face time indicated.

60. The documentary and testimonial evidence presented by District did not establish charge 23, as discussed below. Specifically, the Welligent session note record

for D [REDACTED] D. indicated 45 minutes for face-to-face time and 15 minutes of collateral time for service on December 15, 2017. (Exhibit 659.) While Ms. Serrano testified that respondent overbilled for an unspecified session with D [REDACTED] D., she also testified that she could not "specifically" recall D [REDACTED] D.'s case and the date of the session. Ms. Serrano testified she "may" have been up at the front desk waiting area when respondent came to get a client for session and was in the waiting area when the client came back from session, thereby determining that the client was not there for "more than 35 or 40 minutes." However, she could not identify the client as D [REDACTED] D., did not time or document her observations of what she speculated was D [REDACTED] D.'s session, and did not recall the date of service. The Welligent note Ms. Serrano wrote to respondent, to be read by her CSA, regarding D [REDACTED] D.'s December 15, 2017 session that was dated December 15, 2017, was vague and general in nature, stating, "Please make sure you are only billing for the time client you actually met with client." (Exhibit 659.) The Welligent note did not specify any information regarding how long D [REDACTED] D.'s session lasted on December 15, 2017. There was no documentary evidence to support the allegation that the time specified in the note was changed by respondent after Ms. Serrano's December 15, 2017 note.

61. District witness Ms. Gonzalez, a front office staff worker at Ramona SMH, took it upon herself, without informing respondent, to keep informal track of the length of respondent's client sessions. After several months of surreptitiously watching respondent without using a formal time-keeping method to time respondent's client sessions, Ms. Gonzalez communicated her opinion to Ms. Serrano that respondent was not conducting face-to-face sessions a full hour. Beginning in March 2018, in response to Ms. Serrano's instruction, Ms. Gonzalez prepared a written record of the beginning and end times for all Ramona PSW's sessions. The referenced written time-keeping record was not submitted into evidence by District. At hearing, Ms. Gonzalez's

testimony was based on a hearsay statement that a session ended early, made to her by D [REDACTED] D. at an unspecified time period. Aside from additional vague anecdotal testimony that some of respondent's sessions ended early and that some parents occasionally complained of shortened sessions, Ms. Gonzalez provided no specific testimony regarding the beginning and end time of D [REDACTED] D.'s session on or about December 12, 2017. During her testimony, Ms. Gonzalez did not indicate whether she was aware that respondent had been instructed to conduct client sessions consisting of 45 minutes of face-to-face time as of November 2016.

62. **Charge 24.** District did not establish through a preponderance of the evidence that, on or about December 12, 2017, respondent completed and submitted a session note for student S [REDACTED] F. indicating 60 minutes of face-to-face billing time, despite the fact that S [REDACTED] F. was in session with respondent for approximately 30 minutes. District further did not establish through a preponderance of the evidence that Ms. Serrano, when reviewing this note, returned it to respondent reminding her that respondent could only bill for the time actually spent with S [REDACTED] F. District further did not establish that respondent subsequently returned the note with 45 minutes of face-to-face time indicated.

63. Similar to charge 23, the documentary and testimonial evidence presented by District did not establish charge 24's allegations, as discussed below. Specifically, the Welligent session note record for S [REDACTED] F. indicated 45 minutes for face-to-face time and 15 minutes of collateral time for service on December 15, 2017. (Exhibit 658.) Ms. Serrano testified that respondent overbilled for an unspecified session with S [REDACTED] F., which she asserted lasted 30 minutes, and that respondent failed to correct the session note when Ms. Serrano requested correction to the note. However, after additional direct examination regarding the length of sessions with

S [REDACTED] F., Ms. Serrano testified that while she knew there were instances of overbilling by respondent, she could not distinguish between the clients. Ms. Serrano did not time or document her observations of what she speculated was S [REDACTED] F.'s session, and did not recall the date of service. The Welligent note Ms. Serrano wrote to respondent, to be read by her CSA, regarding S [REDACTED] F.'s December 15, 2017 session was dated December 15, 2017, was vague and general in nature, stating, "Please make sure you are only billing for the time client you actually met with client." (Exhibit 658.) The Welligent note did not specify any information regarding how long S [REDACTED] F.'s session lasted on December 15, 2017. There was no documentary evidence to support the allegation that the time specified in the note was changed by respondent after Ms. Serrano's December 15, 2017 note. Further, contrary to Ms. Serrano's testimony the note indicated 45 minutes, rather than 30 minutes of face-to-face time with S [REDACTED] F. Ms. Gonzalez testified that the name sounded "familiar," but that she did not recall S [REDACTED] F.

64. **Charge 25.** Similar to charges 23 and 24, the District did not establish through a preponderance of the evidence that on January 16, 2018, respondent completed and submitted a session note for student D [REDACTED] L., indicating 60 minutes of face-to-face billing time, despite the fact that D [REDACTED] L. was only in session for approximately 30 minutes.

65. District did not submit respondent's Welligent session note for D [REDACTED] L. for the relevant time period into evidence to support the allegation. The only session note submitted into evidence for D [REDACTED] L. was for February 6, 2018, almost a month after the January 16, 2018 time-period. (Exhibit 174.) Ms. Serrano testified that she didn't recall "specifically" the timing of respondent's sessions with D [REDACTED] L. Further, Ms. Gonzales testified that she did not recall D [REDACTED] L.

66. Based on District's failure to establish respondent's misconduct as related to charges 23 through 25, as set forth in Factual Findings 59 through 65, District did not establish that respondent willfully refused to perform her regular assignments without reasonable cause, as prescribed by the District's reasonable rules and regulations.

67. **Charge 29.** District did not establish through a preponderance of the evidence that, on January 18, 2018, respondent completed and submitted a session note for student T [REDACTED] A. indicating 60 minutes of face-to-face billing time, despite the fact that T [REDACTED] A. was in session with respondent for approximately 35 minutes, as set forth in Factual Finding 68 below.

68. The session note submitted by District to support charge 29 indicated a February 1, 2018 session date. (Exhibit 654.) Both T [REDACTED] A. and her mother, A [REDACTED] A., testified at hearing in support of respondent, highly praising respondent's kind, caring, and attentive treatment and professional abilities as a PSW. In response to questions about the length of respondent's session with T [REDACTED] A., T [REDACTED] A. testified that her sessions lasted an hour and that there were never any times when her session with respondent ended after approximately 35 minutes. A [REDACTED] A., who participated in monthly family sessions with T [REDACTED] A. and respondent, testified that she brought T [REDACTED] A. to Ramona for her sessions with respondent and specifically denied that any of her daughter's sessions ended after approximately 35 minutes, testifying that T [REDACTED] A.'s sessions with respondent lasted an hour.

69. **Charges 30.** The District did not establish through a preponderance of the evidence that, on January 19, 2018, respondent completed and submitted a session note for student A [REDACTED] B. indicating 50 minutes of collateral billing time (time

with parent), despite the fact that the parent was not present in the clinic for longer than 30 minutes, as set forth in Factual Finding 70 below.

70. The District provided no persuasive evidence to support charge 30. The primary witness who testified regarding the length of A [REDACTED] B.'s sessions with respondent was Ms. Gonzalez. However, Ms. Gonzalez offered no support for her testimony that A [REDACTED] B.'s sessions with respondent would sometimes end after between 10 and 15 minutes. No evidence was presented regarding time in session with respondent's parent during the specific session alleged in the charge. Ms. Gonzalez's testimony was unpersuasive and unreliable because she also testified that T [REDACTED] A.'s sessions with respondent ended earlier than 60 minutes, a claim T [REDACTED] A. specifically denied during her hearing testimony.

71. **Charge 31.** The District did not establish through a preponderance of the evidence that, on January 30, 2018, respondent completed and submitted a session note for student C. A [REDACTED] indicating 45 minutes of face-to-face billing time, despite the fact that C. A [REDACTED] was in session with respondent for less than 30 minutes, as set forth in Factual Finding 72 below.

72. Similar to charge 30, District provided no persuasive evidence to support charge 31 because the primary witness who testified regarding the length of C. A [REDACTED]'s sessions with respondent was Ms. Gonzalez, whose testimony generally was not found reliable. Ms. Gonzalez provided no specific testimony regarding the start or end time of C. A [REDACTED]'s session with respondent on or about January 30, 2018. Rather, she testified, based on her "estimate," that respondent's sessions with C. A [REDACTED] ended between 10 and 15 minutes early on between two of five occasions. Even if Ms. Gonzalez's testimony is accurate, respondent ending sessions 10 to 15 minutes early

with a client was consistent with her supervisor's instruction that she conduct 45 minute face-to-face sessions with clients to facilitate respondent's recordkeeping.

73. **Charge 32.** The District did not establish through a preponderance of the evidence that, on February 5, 2018, respondent completed and submitted a session note for student I [REDACTED] V. indicating 60 minutes of face-to-face billing time, despite the fact that I [REDACTED] V. was in session with respondent for no more than 30 minutes, as set forth in Factual Finding 74 below.

74. The District provided no persuasive evidence to support charge 32. Ms. Gonzalez testified, without documentary corroboration, that "probably three out of five" sessions between I [REDACTED] V. and respondent ended early. Admittedly, she did not actually time the sessions, and provided no specific testimony about a session that occurred on or about February 5, 2018. Ms. Serrano did not remember any instances of overbilling for I [REDACTED]. Ms. Juarez did not know that respondent's sessions were to last 45 minutes of face-to-face time. She testified that she recalled a specific instance with I [REDACTED] V. when respondent instructed her to enter 60 minutes into Welligent for a session Ms. Juarez testified she believed lasted "about 35" minutes. Aside from a general estimate, Ms. Juarez provided no specific date for the session or the method on which she based her testimony regarding the alleged instance of overbilling.

75. Based on District's failure to establish respondent's misconduct as related to charges 29 through 33, as set forth in Factual Findings 67 through 74, District did not establish that respondent willfully refused to perform her regular assignments without reasonable cause, as prescribed by the District's reasonable rules and regulations.

**UNPROFESSIONAL CONDUCT, DERELICTION OF DUTIES, VIOLATION OF  
STUDENT CONFIDENTIALITY, FAILURE TO COMPLY WITH DISTRICT POLICIES, –  
CHARGES 6, 7, 19, 20, 27, 28, 36, 37, 40, 42, 43, AND 44**

76. **Charge 6.** The District did not establish through a preponderance of the evidence that from October 26, 2016 to November 10, 2016, respondent was derelict in her duty and/or acted unprofessionally when, on several occasions, she left clients in the waiting room after their appointment start time, even though she was available to see the client at the time they were scheduled to be seen. District did not establish that: (a) Student C [REDACTED] P. arrived for his 3:00 appointment on October 26, 2016, but respondent did not arrive to pick him up until 3:15 p.m.; (b) Student A [REDACTED] G. was regularly scheduled for 1:00 p.m. appointment weekly, but was picked up 10 minutes late for most appointments; (c) Student A [REDACTED] C. arrived on time for her appointment on October 27, 2016, but was picked up by respondent 10 minutes after her appointment start time; and (d) Student L [REDACTED] A.'s father arrived on time for his 8:00 a.m. appointment on November 10, 2016, but respondent picked him up at 8:07 a.m.

77. The District provided insufficient evidence to support the foregoing charge consisting only of hearsay testimony from District witnesses, such as Mr. King, rather than specific client records and documents regarding late session start times. Even if the allegations were supported by sufficient documentary evidence, there is no basis for respondent dismissal based on this charge, which asserts relatively minor and professionally common delays of client session start times. Respondent credibly testified that she was occasionally late picking up clients for their appointments because she was either in session with other clients or on the phone discussing cases. Ms. Cotledge, testifying for the District, corroborated respondent's assertions that she

did not willfully leave clients waiting to be picked up for session when respondent was available; she testified that, on those occasions, when respondent was negligibly delayed in picking up a client from the waiting room, it was because respondent was working. Further, respondent required additional time to navigate from her office to the waiting room to pick up clients because she is legally blind. After counseling by Mr. King, respondent consistently made her best effort to pick up clients for sessions in as timely a manner as feasible based on her professional demands.

78. **Charge 7.** The charge refers to the time period between October 17, 2016 and October 31, 2016, when Ms. Griffin-Esperon attempted to meet with respondent on three occasions to discuss respondent's reasonable accommodation needs. District alleges that respondent purposefully refused to meet with Ms. Griffin-Esperon on all three occasions and that the failure to meet constitutes a basis to dismiss respondent. While it was established that respondent and Ms. Griffin-Esperon did not meet on October 17, 24, and 31, 2016, District did not establish that respondent's failure to meet with Ms. Griffin-Esperon on those occasions is a reasonable basis for respondent's dismissal. First, the October 17 meeting did not go forward because respondent simply forgot the meeting. Based on the totality of the circumstances at the time, including respondent's professional demands at Ramona, this assertion is convincing. Second, the meeting on October 24 did not go forward because respondent called in sick to work. District provided no evidence to question respondent's assertion that she was absent from work because of illness. Absence due to illness does not provide a basis for negative performance evaluation in this instance.

79. With regards to the third scheduled meeting on October 31, District's assertions that respondent refused to proceed with the meeting does not fully and accurately reflect the facts. Respondent credibly testified that, based on past negative

reasonable accommodation meetings experiences with the District in which she was told that she should take a disability retirement rather than continue working at the District, she felt uncomfortable participating in a reasonable accommodation meeting with supervisors without someone present on her behalf. As a result, after the October 31 meeting was scheduled, respondent asked people she had been working with at DOR if one of them could accompany her to this meeting, a claim corroborated by at hearing by the testimony of DOR vocational rehabilitation counselor, Pamela Chase. Respondent was unable to schedule someone to accompany her to the October 31 meeting from DOR in time. As a result, when Ms. Griffin-Esperon arrived for the meeting, respondent was unable to provide the name of the person because respondent did not know who would be accompanying her to a future meeting from DOR. Respondent did not then refuse to proceed with the meeting, but asked Ms. Griffin-Esperon if she could audio tape the October 31 meeting. Respondent's request to audio tape the October 31 meeting was denied by Ms. Griffin-Esperon after consultation with District's counsel. In addition, Ms. Griffin-Esperon instructed respondent to cease her practice of audio taping intake interviews with clients immediately. The next meeting respondent had with District was not a reasonable accommodation meeting, but the November 2016 meeting, attended by DOR's Ms. Chase, during which respondent was counseled for her performance by Mr. King.

80. **Charge 19.** The District did not establish through a preponderance of the evidence that from August 2017 to March 2018, respondent violated, among other things, student confidentiality, LAUSD Employee Code of Ethics, SMH Policies and Procedures, and NASW Professional Code of Ethics, when she routinely did the following: (a) asked parents/caregivers, "Is there anything you want to tell me?" or words to that effect, while in the waiting room and in the presence of staff and

students; and (b) asked parents/caregivers, "Anything you want to see me for today?" or words to that effect, while in the waiting room in the presence of staff and students.

81. Respondent testified that, because of her visual impairment and session time constraints, she made it a habit to ask parents/caregivers in the waiting room if there was anything they wanted to talk to her about. The purpose of the inquiry was not to elicit confidential information, but to take the parent/caregiver back to her office to discuss the matter if the parent/caregiver responded in the affirmative to her inquiry. Respondent credibly testified that it was not her intent to violate student confidentiality, ethics, regulations, and/or policies. Her inquiry was not a "best practice," because it was based on her assumption, without explicit clarification to parents/caregivers, that parents/caregivers understood respondent's inquiry did not mean that she intended for them to discuss a confidential matter in the waiting room. District witnesses testified that they did not observe respondent discuss confidential matters with parents or caregivers in the waiting room, but observed respondent take the parent/caregiver back to her office to discuss further if they answered in the affirmative. Parent/caregiver witnesses also corroborated that respondent did not discuss confidential matters in the waiting room, but took them back to her office. No basis for respondent's dismissal was, therefore, established for this charge.

82. **Charge 20.** Based on Factual Findings 80 and 81, it was not established that respondent willfully refused to perform her regular assignments without reasonable cause, as prescribed by the District's reasonable rules and regulations.

83. **Charge 27.** District did not establish that on January 17, 2018, respondent failed to perform her duties and/or willfully refused to perform her regular duties or assignments without reasonable cause, when she allegedly did not do the following: after student Lizbeth M. admitted to having suicidal ideations and self-

injurious behavior the previous week: a) assess student Lizbeth M. for suicide risk; b) review the safety plan created by Lizbeth's school site to determine previously taken steps; and c) complete a Risk Assessment Referral Data (RARD) form for student Lizbeth M.

84. Mr. King testified that respondent was counseled regarding her January 17, 2018 session with Lizbeth M. because, after he reviewed respondent's progress note regarding the session, he found that respondent had failed to prepare a safety plan for Lizbeth M. The evidence does not support such a determination. On January 17, 2018, respondent did an intake for student Lizbeth M. at Ramona, and assessed Lizbeth M. for suicide risk. Lizbeth M. admitted to having suicidal ideation and self-injurious behavior the prior week. However, at the time of her meeting with respondent, Lizbeth M. denied having any current suicidal ideation. During their session, respondent verbally reviewed the safety plan that was created by the school psychologist with mother and client the week prior, but did not prepare a new safety plan based on instructions she received during the assessment from her supervisor. Specifically, respondent called Ms. Serrano during Lizbeth M.'s assessment to ask for clarification as to whether she needed to do a new safety plan, explaining that one had been done a week prior by Ramona High School's school psychologist. According to respondent, she was told not to create a hard copy of a safety plan, just to get a copy of the school psychologist's safety plan. Based on her understanding of the proper protocol, respondent did not draw up a hard copy safety plan, but did review the safety plan verbally with the parent and client during intake.

85. Verbal review of the safety plan entailed respondent asking her client if she had any current suicidal ideation, which, as noted, Lizbeth M. denied, and also identifying triggers which led to depressive symptoms. Additionally, respondent went

through the required steps to take, if Lizbeth M. had suicidal ideation, with the client and her mother, including whom to report suicidal ideation to, such as calling 911 or taking the client to the emergency room. Respondent also provided Lizbeth M. and her mother with information from the suicide manual regarding hotlines. (Exhibit 578.) Respondent received a hard copy of the safety plan that the school psychologist created on January 18, 2018, the day after her January 17, 2018 session with Lizbeth M. and her mother. After receipt of the safety plan prepared by the school psychologist, respondent reviewed the safety plan and determined that it was consistent with what Lizbeth M. reported to her during their session on January 17, 2018. It was only after respondent's session with Lizbeth M. that Ramona clinic staff were provided with training, clarifying when a safety plan should be prepared by Ramona PSW's in a case where a safety plan has already been prepared by school staff.

86. With regards to the RARD, respondent did not have a Word version of the RARD which she could fill out directly without assistance of a reader during the January 17, 2018 session. In fact, she was not provided with a Word version until February 14, 2018, by Mr. King. (Exhibit 595.) Accordingly, the RARD for her January 17 session with Lizbeth M. was provided to Mr. King by her then CSA, Ms. Ibarra, the day after the intake, on January 18, 2018. (Exhibit 578.) Based on the circumstances described above, no violation of District policy by respondent was established with regards to Lizbeth M.

87. **Charge 28.** Based on Factual Findings 83 through 86, District did not establish that on January 17, 2018, respondent failed to perform her duties and/or willfully refused to perform her regular duties or assignments without reasonable cause.

88. **Charge 36.** The District did not establish through a preponderance of the evidence that on February 23, 2018, respondent failed to perform her duties and/or willfully refused to perform her regular duties or assignments, when she allegedly did not do the following after becoming aware of student Chelsea DLR.'s suicidal ideation/behavior: a) assess student Chelsea DLR. for suicide risk; b) supervise Chelsea DLR.; and c) complete a RARD for student Chelsea DLR, as more fully discussed below.

89. **Charge 42.** The District did not establish that respondent demonstrated poor clinical judgment and unprofessional conduct, and failed to perform her regular duties and/or comply with District policies or her ethical regulations, in her actions towards Chelsea DLR on or about February 23, 2018. The allegations were unsupported by persuasive evidence of respondent's interactions with Chelsea DLR. At hearing, District witnesses Mr. King, Ms. Griffin-Esperon, and Ms. Serrano testified that they had no first-hand knowledge of respondent's actions and/or interactions regarding Chelsea DLR. Ms. Gonzalez provided vague testimony that the principal once called because they needed to have a student, whose name she did not recall, assessed, and that she told respondent that "you might want to check with them and let them know it's almost lunchtime." Respondent's specific testimony, on the other hand, convincingly established the circumstances of her interactions with Chelsea DLR, as more fully described below.

90. The District alleges that respondent violated District policy, which dictates that employees are to respond to potential suicidal students immediately or as soon as possible, by taking her lunch break prior to assessing the student for suicide risk. Based on the totality of the circumstances, while respondent's actions in taking an hour lunch break prior to assessing Chelsea DLR did not constitute "best practice," they were reasonable under the circumstances and do not amount to

violation of District policy. On February 23, 2018, respondent was the duty worker for the day and was working with her reader. At about 12:30 p.m., Ramona's High School principal came into respondent's office and asked respondent to assess a student who had suicidal ideation the week prior. No imminent suicidal threat was communicated to respondent by principal. Assessments generally took two hours to complete. Because respondent was feeling tired that day, wanted to be alert to perform a thorough assessment that could take up to two hours, and no imminent suicidal threat was communicated to her by the principal, she asked the principal if it was okay to take her lunch break prior to assessing Chelsea DLR. According to respondent, the principal told respondent that it was no problem and that she could take her lunch break while the principal and main office staff supervised Chelsea DLR.

91. After respondent returned from lunch, she contacted the main office and the school counselor brought Chelsea DLR to respondent, who proceeded to prepare the safety plan on her computer in Word directly without a reader. After respondent completed the safety plan, which included assessing Chelsea DLR for suicide risk and providing her with the suicide hotline contact information, she contacted Chelsea DLR's parents to inform them that the student had denied any current suicidal ideation and describe the situation.

92. The next morning, the principal informed respondent that she had given suicide hotline information to Chelsea DLR's parents. Respondent provided a copy of her safety plan for Chelsea DLR to the principal. Respondent was informed that the principal and school counsel had started the RARD for Chelsea DLR. As a result, respondent was unsure if she was to do a separate RARD herself. Based on her understanding of SMH protocol, respondent believed that she was to give her administrator the RARD and the safety plan. However, since the principal was the

administrator onsite and had started the RARD on Chelsea DLR, she was unsure as to how to proceed and did not want to overstep her boundaries. Respondent contacted Mr. King to clarify if she needed to do a separate RARD. She was told by Mr. King that she did not have to do a separate RARD because it might be too many RARDs on the same child.

93. **Charge 37.** Based on Factual Findings 89 through 92, District did not establish that on February 23, 2018, respondent failed to perform her duties and/or willfully refused to perform her regular duties or assignments without reasonable cause.

94. **Charge 40.** District did not establish through a preponderance of the evidence that, on February 23, 2018, respondent demonstrated, among other things, poor clinical judgment and unprofessional conduct, and failed to perform her regular duties and/or comply with District policies or ethical obligations with regards to her actions towards student Alejandro B., as more fully described in Factual Findings 95 through 103 below.

95. Alejandro B. was a challenging special needs client assigned to respondent by her Ramona supervisors who had approximately three sessions with respondent between late January 2018 and late February 2018. According to V. Polanco, Alejandro B.'s mother, who credibly testified at hearing, her son did not have any more sessions at Ramona because, after the mother followed up, she was told that respondent was no longer at Ramona. From the beginning of his sessions with respondent, both respondent and V. Polanco had concerns about whether respondent and Alejandro B. were a good fit based on his hyperactive behavior at his sessions with respondent, not on respondent's professionalism, which she praised during her testimony.

96. On January 23, 2018, during the initial session with student and parents, respondent described Alejandro B. as "very impulsive," taking things from respondent's office and putting them in his pockets. According to respondent, it was difficult to complete the assessment during the first session based on Alejandro's impulsivity and based on parents arguing intensely during the session. V. Polanco corroborated respondent's testimony, at least in part, describing Alejandro B. as a "hyperactive" child who would not sit still during the session.

97. Respondent verbally discussed the intensity of the first session with her supervisor, Mr. King. Based on her experience with the family during the first session, respondent decided to conduct the second session, which occurred on February 6, 2018, in a different manner, interviewing the parents separately. While respondent was taking mother and child back to her office to interview them, Alejandro B. started to grab her cane while she was walking, a fact corroborated by his mother at hearing. Based on Alejandro B.'s actions during the first and second sessions, respondent determined it was not safe for her or for him to be treated by her, but decided to complete the intake assessment.

98. Alejandro B. was scheduled for a third treatment plan session between February 6 and 26, 2018, but the student did not show up for the appointment. As a result, respondent was unable to get the parents' signatures on the treatment plan she had completed. Respondent subsequently left a message for Alejandro B.'s mother regarding her failure to come to the treatment plan meeting session. At some point between February 6 and 26, respondent and mother spoke. For the first time during their conversation, mother requested a copy of the assessment for use in an Individualized Education Plan (IEP) meeting at Alejandro B.'s school. Respondent informed mother that she was not done with the assessment, and that she would

consult with her clinical supervisor regarding mother's request. Respondent also informed mother during the conversation that she usually provides clinical summaries for client's use at IEP meetings and that she would get back to mother regarding the matter.

99. An assessment is a twelve-page document and contains extensive confidential information, such as family history and traumatic events. The clinical summary, on the other hand, is a synopsis of the presenting problem and intervention that took place, such as if there was an intake and a description of medications. Accordingly, the clinical summary serves a similar function during an IEP meeting as an assessment without requiring the family to disclose extensive confidential information. Respondent understood at all relevant times that the parent holds the privilege and that Alejandro B.'s mother was entitled to the assessment. However, respondent was concerned about the extent of confidential information contained in the assessment, and wanted to ensure that mother understood that a clinical summary would serve the same function as an assessment at the IEP meeting.

100. On February 26, 2018, respondent spoke with Mr. King regarding her safety concerns for herself and Alejandro B. and mother's request for the assessment. On February 27, 2018, respondent received an email from Mr. King in which he denied respondent's request to have the case reassigned. (Exhibit 609.) Mr. King further instructed respondent to "meet with the mother of Alejandro B. regarding her request for the assessment and/or assessment information" and "clarify her reasons for this request." (*Id.*) In addition, Mr. King directed respondent to "offer to provide her with a clinical summary of your assessment and treatment, for use with the school." (*Id.*)

101. On February 27, 2018, respondent received an email from Mr. King in which he asked respondent "if the father knows that the mother wants the assessment

form to share at school and if he is in agreement with providing this information.” (Exhibit 608.) Mr. King also inquired what agreement respondent had made with parents regarding the confidentiality of information that either parent shared with respondent when the other wasn’t present. (*Id.*) The email concluded, “[H]aving a conversation about this with them is something to consider before releasing any information to the school.” (*Id.*)

102. In accordance with Mr. King’s instructions, respondent contacted the family to reschedule the session. As of February 28, 2018, respondent had not heard back from mother. On February 28, 2018, respondent wrote an email to Mr. King referencing their February 26 conversation regarding her concerns with the case. She notified him that she had yet to hear back from the family to reschedule the session, that she was going to approach the family to offer them the clinical summary, and that she “would try to abide by the code of ethics and keep the client’s information confidential.” (Exhibit 665.)

103. Volanco P.’s mother and respondent did not subsequently meet or speak prior to Alejandro B.’s March IEP meeting. V. Polanco testified during hearing that there was a lot going on during that time and she did not recall when she attempted to schedule sessions. As noted, the next time V. Polanco contacted Ramona to schedule a session, she was informed that respondent was no longer at the clinic. During her testimony, V. Polanco described respondent’s treatment of Alejandro B. as “[G]ood, very nice, professional.” Mother was concerned with the length of time intake took to accomplish, but testified that respondent “was providing services with what she was -- the accommodations that were being made her.”

104. **Charge 43.** The District did not establish through a preponderance of the evidence that, on February 27, 2019, respondent demonstrated, among other things,

poor clinical judgment and unprofessional conduct, and failed to perform her regular duties and/or comply with District policies or ethical obligations with regards to her actions towards student J. [REDACTED] R. and his mother, as more fully described in Factual Findings 105 through 122 below.

105. District seeks to terminate respondent over her decision to consult the Department of Children and Family Services (DCFS) regarding J. [REDACTED] R., a then 10-year old autistic child who was referred for treatment based on experiencing auditory/visual hallucinations at the time of treatment. Respondent suspected J. [REDACTED] R. was being neglected and felt his case was mishandled by school staff who referred the matter. Respondent is a mandated reporter. Based on the information she received during her session with J. [REDACTED] R. and his mother on February 27, 2018, respondent reasonably feared J. [REDACTED] R. was being neglected and exercised sound professional judgment in her handling of the matter. It is unlawful for District to discipline respondent for complying with her obligations as a mandated reporter. (Penal Code, §§ 11666 and 1166.01.)

106. An on-duty Ramona social worker reviewed the referral of J. [REDACTED] R.'s case from his school staff prior to the case being assigned to respondent. Prior to her scheduled intake session with J. [REDACTED] R. on February 27, 2018, respondent reviewed the referral and noticed that, despite the fact that J. [REDACTED] R. was referred to Ramona for exhibiting auditory hallucinations, which were reported to be occurring even during the referral, no interventions were suggested to J. [REDACTED] R.'s parent.

107. On February 27, 2018, J. [REDACTED] R. and his mother (S. B. [REDACTED]) were an hour late arriving at their scheduled session with respondent. Despite their excessive tardiness, respondent proceeded with the session and provided treatment to J. [REDACTED] R. and his mother. She escorted J. [REDACTED] R. and mother from the waiting room to her office. At the outset of their session, respondent covered customary intake steps, including

reviewing the signed consent form, asking if the client and family have questions, explaining confidentiality and its limits, including the fact that respondent was a mandated reporter and that everything client and mother said in session was confidential unless she suspected child abuse.

108. Respondent then proceeded with the assessment by asking for contact information and inquiring of mother why they came to treatment, reviewed the symptoms on the referral, noting how long J█████ R. had been having symptoms and that he was hearing voices. Mother reported that J█████ R. had been having auditory/visual hallucinations since October 2017. According to mother, J█████ R.'s voices commanded him to shave his head with a razor, which he did. Based on the information provided by mother, respondent conducted a verbal safety plan with mother and instructed her to keep all sharp objects out of J█████ R.'s access. Respondent asked mother why she had not taken J█████ R. to the emergency room for an evaluation; mother responded that she thought the voices were part of J█████ R.'s autism diagnosis and minimized the severity of the October incident. Mother said that she took no action to seek treatment for J█████ R. from October 2017 until she was contacted by his school regarding his auditory/visual hallucinations. In late December 2017 to January 2018, mother received a call from J█████ R.'s school; school personnel said that they were concerned because J█████ R. had reported seeing a Chinese boy who died in 1940 in his special education class and was asking that the music in the classroom, normally played at a low volume, be turned up to a loud volume, so that the boy would not bother J█████ R. As a result, mother reported that she had been referred for treatment by J█████ R.'s school. No emergency treatment had been sought for J█████ R. by his mother between January 2017 and the date of the Ramona intake session on February 27, 2019.

109. Respondent educated mother about the different things she could do if J. R. reported hearing voices again, such as calling 911 or going to the emergency room. While respondent was talking to his mother, J. R. said he was hearing voices, including the voice of the Chinese boy. Respondent was concerned that J. R., a special needs autistic child, had been left untreated for months with active auditory/visual hallucinations and proceeded to educate mother about child abuse laws. Respondent asked mother standard clarifying questions on the assessment, such as whether parent intervened to try to alleviate the problem. Mother responded that she told school staff. When respondent asked mother whether she had taken J. R. to a doctor, she answered she did not because she felt he had stopped listening to the voices and it was not a concern.

110. In response to respondent's questions regarding who mother had talked to regarding J. R. hearing voices, mother said she had talked to J. R.'s school psychologist. Respondent asked whether the school psychologist had referred mother to an outside agency to assess J. R. for the voices, and the mother responded that they had not, which was concerning for respondent based on her understanding of proper protocol in a case like J. R.'s.

111. Because of the extent of mother's delay in seeking treatment for J. R. from the time in October 2017 he initially used a razor on himself in response to reported auditory hallucinations, his status as a special needs autistic-child, and respondent's observation of J. R. hallucinating during the session, respondent became concerned that mother's actions could be neglectful. As a result, respondent referred back to the limits of confidentiality she had explained at the beginning of the session. In response, mother was insistent that respondent meet with J. R. alone and left the session. At the time mother left the session, respondent had not completed

the entire assessment. Prior to mother leaving the room, J█████ R. did not tell respondent that he was afraid or that he did not like respondent. By the time mother left the room, they had been in session for almost two hours.

112. After mother left the room, respondent conducted a mental status exam with J█████ R. First, respondent went through her customary preamble prior to conducting a mental status exam, including that everything in the session was confidential, unless she suspected abuse, and that there was no right or wrong answer. J█████ R. responded no to most questions and put his head down on the table during his session with respondent as she went through the exam questions, such as orientation, depressive symptoms, and whether J█████ R. had any current thoughts of hurting himself. In response to the question of whether he wanted to hurt himself in the past, he answered yes. J█████ R. also reported feeling sad. Respondent asked J█████ R. what he wished for and what he was worried about. He reported hearing voices during the session. In response, respondent, trying to assess if there were any safety issues, asked if the voices were telling J█████ R. to hurt himself again, to which he answered no. J█████ R. denied any suicidal ideation. J█████ R. then told respondent that he did not want to do this anymore, he did not like her, and he wanted to get out of the room. Respondent asked him to wait a minute while she got a sticker to give to him and thanked him for answering the questions. By the time respondent walked J█████ R. to the waiting room, they had been meeting alone for approximately 25 minutes.

113. While J█████ R. was in session with respondent, mother was distraught in the waiting room and discussed her dissatisfaction with respondent with Ramona staff, who notified Mr. King, who was at the clinic. Mr. King spoke with mother. Mother told Mr. King that she did not want to schedule another session with respondent because she felt that respondent had scolded her and blamed her for not taking J█████ R. to the

doctor, and had told her that respondent was going to do a child abuse report.

Mother told Mr. King that she no longer wanted services at Ramona.

114. Mr. King met with respondent immediately after the session and reported what mother had told him. Respondent categorically denied mother's allegations that she had scolded or blamed mother, or told mother she was going to report her for child abuse. After Mr. King told respondent that mother was no longer going to come back to Ramona, respondent told Mr. King that she was going to have to report the matter to DCFS because J. R. was a minor and autistic, and she had concerns about his safety. Respondent then reported the matter to DCFS with the intent that, if they deemed it warranted, J. R. be evaluated through their Psychiatric Evaluation Team.

115. Mr. King accepted mother's uncorroborated version of events over that of respondent and formally counseled respondent for her handling of J. R.'s case on March 12, 2018. Respondent provided a written rebuttal of District's allegations regarding respondent's handling of the J. R.'s case. (Exhibit 624.) At hearing, respondent convincingly testified regarding J. R.'s case. Mr. King's testimony regarding what was said during session was based only on the statements of mother.

116. Mother testified at hearing. She testified that in October 2017, J. R. used a razor to cut his hair because a "bad one" made him do it. She admitted to not taking J. R. for treatment at the time, minimized J. R.'s behavior, testifying that she thought her son's reference to a "bad one" was a "scam" to avoid punishment. Mother further testified that she was contacted in December 2017 or January 2018 by J. R.'s school to report that he had gone to his special education classroom teacher on multiple occasions, saying he was being visited by a "little Chinese boy who died in 1940" and that when the music in the classroom was loud enough, the boy would not bother J. R. Subsequently, mother met with the director of special education, a

psychologist, to discuss potential treatment of J█████ R. During the meeting, mother reported the school told her that they were not prepared for the kind of treatment J█████ R. seemed to require and provided her with options consisting of a list of places where she could take J█████ R. for treatment. Mother chose Ramona.

117. Mother testified that at the outset of her and J█████ R.'s session with respondent, "everything was good," but that after mother described the October 2017 incident and J█████ R.'s hallucination, respondent told her "that what I had done with my son was negligence" and "that she would have to do a report because of professional ethics." Mother further asserted that respondent told her that the people at the school were also negligent and wanted their names.

118. Mother testified that respondent also told her that "she would have to report it because of negligence, both the school and mine." Mother testified that she believed she and respondent were not understanding each other because the session was conducted in Spanish and, according to mother, she believed that "at times, it was very hard for her [respondent] to speak in Spanish," and that "maybe she [respondent] did not understand my Spanish." Mother testified that she felt "very bad" and "very uncomfortable" during the session, and wanted to "run out of the room."

119. Mother testified that it was respondent, rather than mother, who asked for respondent to meet alone with J█████ R. and that mother took him aside and convinced him to meet with respondent. While mother asserted that it was respondent, rather than she, who wanted J█████ R. to meet alone with respondent, mother further testified that she wanted her son to meet alone with respondent because she felt that respondent was not believing her and thought that if J█████ R. said the same things that mother was saying, then respondent would realize that mother was "right." Mother testified that she left J█████ R. with respondent and began to cry

when she left respondent's office. In the waiting room, mother testified that Mr. King offered to switch J█████ R.'s case to another therapist, but that she refused and told Mr. King that she wanted to go to another place. Mr. King then offered mother the option of doing a report on respondent regarding her dissatisfaction with the session, which she refused. After mother refused to do a report, she was told by Ramona staff that they would talk to respondent about what happened during the session so that it would not happen again in the future.

120. Mother testified that J█████ R. did not receive any other therapy regarding his hallucinations after his session with respondent. Instead, mother took J█████ R. to Mexico. According to mother, J█████ R. wet his bed several times for a month after his session with respondent, which mother attributed to the effect of the session with respondent on J█████ R. Mother further testified that J█████ R. had bad dreams after his session with respondent, testifying that he said he dreamed about "the woman with the little eyes," a woman she interpreted to represent respondent. Prior to his session with respondent, J█████ R. had never interacted with a legally blind person. According to mother, J█████ R. received therapy at his school during the subsequent 2018-2019 school year when he was in sixth grade and is now doing much better.

121. Mother's testimony regarding the details of her session with respondent is less credible than that of respondent. On direct examination during hearing, mother was able to recall the details of the session without hesitation. However, during cross-examination, mother's testimony became vague. For example, she testified that she could not recall whether respondent had informed her at the outset of the session about the limits of confidentiality and that she would have to report anything mother told her that made respondent concerned about child abuse or neglect. She further denied that respondent had informed mother she was a mandated reporter.

122. Most troubling, mother demonstrated a willful denial of the severity of J [REDACTED] R.'s cutting his hair because a "bad one" told him to do it and his experiencing auditory and visual hallucinations, which she attributed to his "misbehaving." Based on the totality of the circumstances, mother's failure to continue to seek therapy for J [REDACTED] R. from February 2018 until the next school year in 2018-2019, indicates that District's wholesale acceptance of mother's version of events is unwarranted and that the allegations against respondent are not supported by the evidence. Respondent's concerns regarding potential neglect of J [REDACTED] R. was reasonable and she acted in a professional manner based on her observations. The fact that mother became upset with respondent during treatment because she was confronted with potential unpleasant realities related to her care of J [REDACTED] R. does not support a finding that respondent acted unprofessionally in her handling of the case.

123. **Charge 44.** District did not establish through a preponderance of the evidence that respondent demonstrated, among other things, poor clinical judgment and unprofessional conduct, and failed to perform her regular duties and/or comply with District policies or her ethical obligations with regards to O [REDACTED] S. and his father, C [REDACTED] S.

124. Ramona clinic primarily serves clients that are covered by Medi-Cal insurance. During the 2017-2018 school year, Ramona's policy regarding providing services to clients with private health insurance dictated that PSWs attempt to link clients with private insurance treatment options because treatment of private insurance clients was limited. For example, private insurance clients could not be referred to the District's psychiatrists if treatment required such a referral.

125. In accordance with the policy, respondent was expected to provide short-term therapy, consisting of 10 to 12 sessions, and, if clients required more services, link

them to private insurance treatment sources. O [REDACTED] S. was a client who was assigned to respondent who had private health insurance coverage. In respondent's training in the therapy process, respondent was taught that the day that she was to terminate her client would be the first day that she met the client, so to ease the impact of the termination process, she was to remind the client and family that this was short-term therapy consisting of only 10 to 12 sessions.

126. Consistent with policy and her training, respondent proceeded accordingly with O [REDACTED] S., educating O [REDACTED] S. and his father about the diagnosis and the limits of amount of sessions. This was especially vital in O [REDACTED] S.'s case because respondent felt that the student needed to be referred to a psychiatrist, which was not possible through SMH. Accordingly, in order to ease the transition, respondent gently reminded O [REDACTED] S.'s parents to speak to private insurance, and informed them that she could provide the family with a clinical summary and was available to call private insurance on their behalf.

127. In response to respondent's references to private insurance, parents indicated that seeking private care was a cost issue and that they wanted to proceed at Ramona. Respondent informed parents that she understood the cost issue, but that based on O [REDACTED] S.'s diagnosis and best suggested interventions, in her opinion he needed to see a psychiatrist and respondent was not a psychiatrist.

128. As treatment went on, respondent gently reminded the family about the number of sessions remaining. Based on the family's concerns, before the twelve sessions were concluded, respondent spoke to Ms. Serrano to see if she could provide O [REDACTED] S. with additional sessions. Ms. Serrano suggested that respondent keep the family until the end of the school year, so respondent extended the therapy sessions with the parents and O [REDACTED] S. to the end of the school year.

129. Prior to meeting with O [REDACTED] S. and his family, respondent had not been told that she was not to speak with families about how many sessions they could have at Ramona. Her intent in communicating the limits of treatment was to ensure that the family's expectations regarding treatment were accurate and to educate them about Ramona's private insurance treatment policy. Respondent was not made aware that O [REDACTED] S.'s father had complained about her communicating the number of sessions to the family during treatment until she was counseled by Mr. King on March 12, 2018.

130. At hearing, father testified O [REDACTED] S. was covered by private insurance. He testified that the family initially believed that treatment with respondent at Ramona was an unlimited free service. At the outset, respondent explained the limits of the number of sessions they could have at Ramona based on the fact that they had private insurance coverage and told the family that they could get more help at Kaiser, father's insurance provider. Respondent testified that they discussed the limits of sessions "a couple of times" during treatment, not repeatedly, as alleged by District.

131. According to father, he explained that the family had a budget and asked if there were any other free places where they could take O [REDACTED] S. for help. Father testified that he was dissatisfied with the treatment he received from respondent because he felt that she was treating father more than O [REDACTED] S. Father was unaware that, in response to the family request for additional free services, respondent had spoken to Ms. Serrano about what additional services she could provide the family. Father was not fully aware that his son's sessions had been extended beyond the policy limit for private insurance clients based on respondent's communication of the family's concerns to Ms. Serrano. He "assumed" that respondent did not speak to a supervisor to communicate their concerns because no supervisor came to directly speak to the family.

132. Father expressed his feeling that respondent should have provided more support to the family and felt "hurt" that she did not provide more free service after the family told her about their financial limitations. Father testified that he rejected respondent's opinion during treatment that his son might benefit from prescribed medication and did not seek additional treatment at Kaiser for financial reasons. While father expressed dissatisfaction at the hearing with respondent's treatment, he did not seek another therapist at Ramona and his prior complaints were based on the number of sessions received by the family, rather than the quality of respondent's service. In fact, father described respondent's treatment of O█████ S. during treatment as "nice." According to father, respondent treated him "[L]ike a nice lady, like a human being."

133. Based on the foregoing, District's allegations that respondent "repeatedly" advised O█████ S.'s father that time was running out on his services and did not speak to her specialist regarding the case is unsubstantiated by credible evidence and mischaracterizes respondent's conduct. The fact that father was frustrated with respondent because of the limits to the treatment his family could be provided, based on Ramona's policy for treating privately insured clients, does not provide support for this relevant alleged cause for termination.

## **Discussion**

### **RESPONDENT'S EVIDENCE**

134. At hearing, respondent disputed the charges against her. Respondent loves being a District PSW and is dedicated to helping students and their families. She asserted that she performed her job to the best of her abilities under the circumstances, testifying that any issues associated with respondent's Welligent software recordkeeping were based on the fundamental ineffectiveness of the

District's accommodation of a CSA. Respondent explained that it required additional time to perform her functions using a CSA intermediary, but that the District refused to believe her, instead attributing the delays to deficiencies in respondent's interpersonal skills and allegedly abusive behavior towards CSA's, which respondent disputed. According to respondent, the CSA's were not properly trained and they made good faith errors that were attributed to respondent — all facts that her supervisors were unwilling to acknowledge. Respondent testified that she repeatedly notified her supervisors of the issues associated with the CSA accommodation. While supervisors did attempt to facilitate the logistics of the respondent-CSA working relationship, the District refused to acknowledge the fundamental flaws inherent in the accommodation. Most troubling, supervisors, who had no prior experience or training working with a visually impaired clinic-based PSW, refused to acknowledge the fact that working with an intermediary caused respondent to use additional time to accomplish her job duties. As a result, respondent was in a position where she would inevitably fail if she was required to work as a clinic-based PSW and perform her job duties using a CSA intermediary. Accordingly, respondent requested accommodations, which included, most notably, a transfer to a school-based PSW position which required significantly less Welligent recordkeeping. However, all such requests were refused by District without, respondent argues, valid justification.

135. Respondent testified that after she improved at meeting her recordkeeping deadlines during the 2017-2018 school year, the District, tired of dealing with her blindness and her consistent self-advocacy, began to demand perfection from respondent. She asserts the District acted in a petty and bad faith manner towards her, as reflected in the District's charges related to her conduct that was either neutral or which should be encouraged in PSW's, such as complying with her duties as a mandated reporter or innocuously asking parents before sessions if

there was anything they wanted to discuss with respondent privately before she met with their children for counseling.

136. Respondent's testimony that it takes her longer, as a visually disabled person, to accomplish tasks through an intermediary was corroborated by the testimony of Ms. Chase, DOR vocational rehabilitation counselor with Blind Field Services. At the time of hearing, Ms. Chase had worked with blind individuals, low vision individuals and people with vision problems for nine years at DOR, providing case management with a primary objective of job retention services. In the case of respondent, from 2013 to 2017, Ms. Chase's function was to assist respondent in keeping her District clinic-based PSW position.

137. During her testimony, Ms. Chase described the assistance she provided to respondent. Her support included providing assistive technology to help respondent perform the duties and function of her PSW job, and training on the assistive technology. In addition, Ms. Chase would travel to respondent's job site and help respondent explain and educate District on what respondent might need to do her job effectively, including providing training to CSA's on how to work with a visually disabled person. According to Ms. Chase, she encouraged respondent to use an audio recorder during her sessions because of the difficulty vision impaired people have in taking notes. Ms. Chase confirmed that respondent's vision software, JAWS, and Welligent were incompatible because JAWS does not read Welligent. As a result, she described respondent's job situation as "a very unusual situation because [respondent] doesn't have the means to go in the computer to do her job because of the software not being compatible."

138. Ms. Chase stressed that "for every hour that a sighted person has working on a project, it takes someone who is visually impaired three times as much

compared to that one hour." Accordingly, she suggested that respondent should spread her appointments to allow more time for discussion with her reader before and after the appointment, and for collaboration in making sure that everything was written down and documented. Ms. Chase also stressed the need that a reader not only be trained on Welligent, but on how to work with visually impaired people, training the District never provided to any of respondent's CSAs.

139. Ms. Chase attended respondent's November 2016 District counseling meeting. Prior to the meeting, she testified, she and respondent had been communicating, trying to schedule someone from DOR to attend a reasonable accommodation meeting with respondent and her supervisors. Ms. Chase said it was necessary for another DOR counselor to attend the reasonable accommodation meeting because she was unable to attend the meeting originally scheduled by respondent's supervisors.

140. Ms. Chase observed that the November 2016 meeting she attended with respondent and her supervisors was a "cut and dried" write-up meeting regarding respondent's alleged late recordkeeping, rather than a reasonable accommodation meeting. She described that she and respondent were frequently cut off by the supervisor reading the write-up when they tried to respond or question the evaluation; Ultimately, the parties agreed that respondent's supervisor, Ms. Serrano, would send emails directly to respondent, rather than placing her comments in the Welligent program that was not directly accessible by respondent. Ms. Chase expressed that "nothing got resolved as far as the reasonable accommodation."

141. Respondent and Ms. Chase's assertions that reliance on a reader causes visually impaired people to require more time to accomplish tasks than people without visual impairment was supported at hearing. To ensure due process, respondent was

assisted by a reader throughout the hearing in this matter to read exhibits that were discussed with witnesses, by counsel, and during respondent's testimony. Based on the inherent delays in the intermediary process, the hearing proceeded in a slower manner than those hearings which did not involve a visually impaired respondent.

## **REASONABLE ACCOMMODATION**

142. Respondent argues that the District's assignment of a reader violated the District's obligation to afford her a reasonable accommodation. The District had an affirmative duty to provide respondent reasonable accommodations that would permit her to perform the essential functions of her job. (Govt. Code, § 12940, subd. (m); 2 Cal. Code Regs. § 11068, subd. (a).) Particularly, District was obligated to "engage in a timely, good faith, interactive process with [respondent] to determine effective reasonable accommodation, if any, in response to a request for reasonable accommodation . . ." (Govt. Code, § 12940, subd. (n).) As part of the interactive process, the employer must "consider any and all reasonable accommodations of which it is aware or that are brought to its attention by the . . . employee, except ones that create an undue hardship." (2 Cal Code Regs. § 11068, subd. (e).) Typical reasonable accommodations include, but are not limited to, reassigning the employee to a vacant position, making adjustments to work equipment or the work environment, job restructuring, modifying employer policies, and altering when and how essential job functions are performed. (2 Cal. Code Regs., §§ 11065, subd. (p)(2)(A), (E), (G), (I), (N); 11068, subd. (d).)

143. The District's effort at accommodation turned out to be ineffective. Whether the District violated the ADA and FEHA is beyond the scope of this decision's inquiry. However, based on the weight of the credible evidence, it is clear that the CSA reader for respondent during the 2016-2017 time-period was not an effective

accommodation and respondent cannot be terminated based on inherent deficiencies in the accommodation. District cannot establish that the late timekeeping was the result of respondent's unfitness for service, rather than the result of the ineffective accommodation. (Factual Findings 15-41.)

144. Respondent testified that District was intent on counseling her for alleged deficiencies in her performance, was unwilling to understand the limitations that she had in effectively performing her duties within the mandated timelines, and was unwilling to provide her with requested equipment to be able to perform effectively. Respondent's testimony on this point is convincingly corroborated by the testimony of Pablo Murillo, an area representative for United Teachers, Los Angeles (UTLA). Mr. Murillo is the UTLA representative who accompanied respondent to several of her District conferences during the 2017-2018 school year. Mr. Murillo described the District's attitude at the meetings as "nonchalant," asserting that management's demeanor towards respondent was "below standards," and that "they didn't seem to really care to address the needs that she had."

145. With regards to respondent's reasonable accommodation request to transfer to a school-based PSW position, it is evident that District denied the transfer request without valid justification, which tends to support respondent's arguments that the District did not meaningfully engage in an interactive reasonable accommodation process. Ms. Griffin-Esperon testified that District did not transfer respondent to a school-based PSW position because it required Welligent recordkeeping as part of the position's duties and, therefore, respondent would have similar issues in timely recordkeeping as she did in a clinic-based PSW position. However, Ms. Griffin-Esperon's testimony regarding the duties of a school-based PSW was unconvincing, as it was based on a faulty understanding of the duties of a school-

based PSW and was not based on first-hand experience. This was credibly testified to by both respondent, who had previously held a school-based PSW position, and respondent's character reference witness, Dr. Irene Lara, who has been employed by the District for the past 20 years in primarily school-based PSW positions and had also held a clinic-based PSW position during her tenure. According to both respondent and Dr. Lara, Welligent recordkeeping demands for school-based PSW's are significantly less than those of clinic-based PSW's. In addition, according to Dr. Lara, the District had vacancies for school-based PSW's consistently over the past five years.

146. Nevertheless, Ms. Griffin-Esperon did not agree with respondent's reasonable accommodation request to transfer respondent to a school-based PSW position. Her position was based in part on her willful refusal to acknowledge the decrease in Welligent recordkeeping demands inherent in a school-based PSW position, and in part on respondent's relatively recent request for transfer to the Ramona clinic. As a result, respondent engaged in the formal District reasonable accommodation appeal process.

147. Victoria Badmus-Wellington, District's Director of Litigation Research of the Educational Equity Compliant Office, is a facilitator for reasonable accommodations for the District. At hearing, Ms. Badmus-Wellington described the District's reasonable accommodations appeal process generally. Initially, there is an interactive process that starts at the site level with the supervisor and the employee. In situations where a supervisor and employee do not agree as to the accommodations requested, the employee has a right to make a formal request with the District's reasonable accommodation department. If the employee still feels that they are not being accommodated, they have a right to appeal. A committee meeting is then scheduled. An employee file is generated, utilizing the records available through risk

management or the reasonable accommodation department. The committee members review the file prior to the meeting. The committee first meets with the employee, then with supervisors and District's legal department to give them an opportunity to provide input regarding the essential functions of the job or the feasibility of the accommodation. The committee then deliberates and issues its decision. The employee is not provided with an opportunity to respond to the input provided by the supervisors before the decision is made by the committee.

148. In the case of respondent, Ms. Badmus-Wellington testified that the committee denied the request for a transfer to a school-based PSW position based on information from respondent's supervisors, one of whom she identified as Ms. Griffin-Esperon, that respondent would "still have a significant amount of documentation and paperwork she would have to do" in a school-based PSW position and because respondent's transfer request "had already been accommodated."

149. Even if the District did not want to transfer respondent to a school-based PSW position, respondent's argument that the District could have taken other reasonable steps to make Welligent directly accessible to respondent, thereby eliminating the need for the inconsistently effective reasonable accommodation CSA, and facilitating respondent's job performance, is well-taken. Respondent's DOR witness, Ms. Chase, and Sue Sweetman, one of the owners of Sweetman Systems, a company which sells technology and training for people who are blind and low vision, testified regarding adaptive technology avenues that could have potentially made Welligent directly accessible to respondent's JAWS software by developing programming scripts. Ms. Sweetman's company was retained by DOR to work with respondent, which included performing an evaluation at respondent's jobsite during which Ms. Sweetman observed that respondent's JAWS did not work with Welligent.

150. Ms. Badmus-Wellington testified that respondent's request to make Welligent directly accessible to her was rejected because "it was completely financially unfeasible to consider altering software for an individual employee." However, on cross-examination, Ms. Badmus-Wellington demonstrated that her assertions as to the cost of making Welligent directly accessible were speculative and that she did not understand that respondent was requesting a modification to JAWS, rather than Welligent. Further, her testimony is unconvincing because she admitted that the committee took no steps to obtain any estimate to determine how much it would cost to allow a technical fix that would allow respondent to directly access Welligent and did not consider whether respondent's requested technological improvement could be subsidized in whole or in part by DOR. Instead, she testified that the committee determined the CSA was an effective accommodation and all performance deficiencies were attributable directly to respondent's performance, rather than the District's reader accommodation.

## **CHARACTER REFERENCE AND PERFORMANCE EVIDENCE**

151. Respondent is 51-years old. She is the daughter of Mexican agricultural workers and the first person in her family to earn a college degree. Respondent provided testimonial evidence and submitted character reference letters attesting to her honesty, integrity, diligence, and inspirational perseverance.

152. Most notably, in corroboration of respondent's testimony that she is an effective PSW and should retain her District position, respondent presented the testimony of two of her former clients and their parents at hearing. Both former clients and their parents movingly testified about the positive therapy experiences they had under respondent's treatment at Ramona, describing respondent as a kind, caring, and effective PSW.

## **LEGAL CONCLUSIONS**

### **Legal Standards**

1. The Board may not dismiss respondent, a permanent employee, except for one or more of the causes enumerated in sections 44932, subdivision (a), or 44933. The causes for dismissal include immoral conduct (§§ 44932, subd. (a)(1), 44939), unprofessional conduct (§ 44932, subd. (a)(2)), dishonesty (§ 44932, subd. (a)(4)), unsatisfactory performance (§ 44932, subd. (a)(5)), evident unfitness for service (§ 44932, subd. (a)(6)), persistent violation of or refusal to obey the state's school laws 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 (§ 44932, subd. (a)(8)), and willful refusal to perform regular assignments without reasonable cause, as described by rules and regulations of the employing district (§ 44939).
2. The District has the burden of proving cause for dismissal by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.) A preponderance of the evidence means "evidence that has more convincing force than that opposed to it." [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

### **Causes for Dismissal**

#### **UNPROFESSIONAL CONDUCT**

3. "Unprofessional conduct" has been described as "'that which violates the rules or ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing.'" (*Board of Education of the City of Los Angeles v.*

*Swan* (1953) 41 Cal.2d 546, 553, quoting 66 Corpus Juris 55, overruled in part on another ground in *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575, 587, fn. 7.)

4. Based on Factual Findings 1-152 the Commission unanimously concludes that District did not establish through a preponderance of the evidence that respondent engaged in unprofessional conduct. Accordingly, cause for dismissal was not established pursuant to sections 44932, subdivision (a).

### **UNSATISFACTORY PERFORMANCE**

5. Unsatisfactory teacher performance is unprofessional conduct as measured by an objective standard of fitness to teach, such as performance evaluations, and provides a grounds for dismissal separate and apart from unprofessional conduct. (§ 44932, subd. (a)(5); *Perez v. Commission on Professional Competence* (1983) 149 Cal.App. 1167.)

6. Based on Factual Findings 1-152, the Commission unanimously concludes that District did not establish through a preponderance of the evidence that respondent's performance was unsatisfactory. Accordingly, cause for dismissal was not established pursuant to sections 44932, subdivision (a)(5).

### **EVIDENT UNFITNESS FOR SERVICE**

7. Evident unfitness for service means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. [Fn. omitted.]" (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 (Woodland).) This cause for discipline 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.*) "'Unprofessional conduct' is, as it were, often a lesser included form of proscribed behavior within 'evident unfitness for service.' Thus, conduct constituting 'evident unfitness for service' will often constitute 'unprofessional conduct.' But the converse is not true. 'Evident unfitness for service' requires that unfitness for service be attributable to a defect in temperament – a requirement not necessary for a finding of 'unprofessional conduct.'" (*Id.* at p. 1445.)

8. Based on Factual Findings 1-152, the Commission unanimously concludes that District did not establish through a preponderance of the evidence respondent's evident unfitness for service as a District PSW. Accordingly, cause for dismissal was not established pursuant to section 44932, subdivision (a)(6).

### **PERSISTENT VIOLATION OR REFUSAL TO OBEY BOARD REGULATIONS**

9. Persistent violation of, or refusal to obey, the school laws of the state or reasonable regulations prescribed by the governing board of one's employing school district is another independent basis for dismissal. (§ 44932, subd. (a)(8).) Persistent refusal requires a "showing of intentional and continual refusal to cooperate." (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196.) The term "persistent" in this context can be defined as "refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated." (*Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 82.)

10. Based on Factual Findings 1-152, the Commission unanimously concludes that District did not establish through a preponderance of the evidence respondent's persistent violation or refusal to obey board regulations. Accordingly, cause for dismissal was not established pursuant to section 44932, subdivision (a)(8).

## **WILLFUL REFUSAL TO PERFORM REGULAR ASSIGNMENTS WITHOUT REASONABLE CAUSE**

11. Willful refusal to perform regular assignments without reasonable cause, as described by reasonable rules and regulations of the employing district is a separate basis for dismissal. (§ 44939.)

12. Based on Factual Findings 1-152, the Commission unanimously concludes that District did not establish through a preponderance of the evidence respondent's willful refusal to perform regular assignments without reasonable cause, as described by reasonable rules and regulations of the employing district. Accordingly, cause for dismissal was not established pursuant to section 44939.

## **IMMORAL CONDUCT**

13. The phrase "immoral conduct" as used in the Education Code is to be construed according to the common and approved usage, having regard for the context in which the legislature used it. (*Palo Verde Unified School Dist. of Riverside County v. Hensey* (1970) 9 Cal.App.3d 967; see, e.g., *Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808 [falsifying attendance records for purpose of securing continued employment and defrauding state and district].) The "immoral conduct" charges against respondent are based on District's allegations of falsification of timekeeping records.

14. Based on Factual Findings 48-75, the Commission unanimously concludes that District did not establish through a preponderance of the evidence respondent engaged in immoral conduct. Accordingly, cause for dismissal was not established pursuant to sections 44932, subdivision (a)(1) and 44939.

## **DISHONESTY**

15. Section 44932, subdivision (a)(4), permits dismissal of a permanent employee for "dishonesty." Applying the "common and approved usage," [www.merriam-webster.com/dictionary](http://www.merriam-webster.com/dictionary) defines "dishonesty" as meaning 1) lack of honesty or integrity: disposition to defraud or deceive and 2) a dishonest act: fraud. (*Palo Verde Unified Sch. Dist. V. Hensey* (1970) 9 Cal.App.3d 967, 971 [applying the rule of common and approved usage to the phrase "evident unfitness"].)

16. Based on Factual Findings 48-75, the Commission unanimously concludes that District did not establish through a preponderance of the evidence respondent engaged in dishonesty.

## **Disposition**

17. In the case of *Morrison v. State Board of Education*, (1969) 1 Cal.3d 214, (*Morrison*), 1 Cal.3d 214, the California Supreme Court described the factors to consider when determining whether a credentialed employee's conduct and overall impact on students and the school community renders the employee unfit to teach. Here, if cause existed to terminate respondent for, e.g., unprofessional conduct, the *Morrison* factors would be applied to determine whether respondent's conduct and overall impact on students and the school community renders her to be unfit to be a District PSW. However, the Commission did not consider the *Morrison* factors because District did not establish any of the causes for discipline against respondent. Accordingly, a *Morrison* analysis would be superfluous.

18. The Commission concludes that dismissal is not warranted. The evidence established no cause for dismissal. Respondent should be allowed to return as a District PSW.

## ORDER

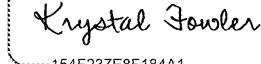
Respondent Isabel Ybarra is not terminated as a certificated employee of the Los Angeles Unified School District.

DATED: November 5, 2019

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IRINA TENTSER

Administrative Law Judge  
Office of Administrative Hearings

DATED: November 4, 2019

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KRYSTAL FOWLER

Commissioner

DATED: November 5, 2019

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JUDY STELLA

Commissioner