

BEFORE A  
COMMISSION ON PROFESSIONAL COMPETENCE  
CHUALAR UNION ELEMENTARY SCHOOL DISTRICT  
COUNTY OF MONTEREY  
STATE OF CALIFORNIA

In the Matter of:

VIRGINIA ROACH,  
a certificated teacher,

Respondent.

OAH No. 2013070289

**DECISION**

Administrative Law Judge David L. Benjamin served as the chairperson of the Commission on Professional Competence. Kelly Maxwell and Beatrice Rowan served as members of the commission. The matter was heard on September 10-13 and 30, 2013, in Monterey, California.

Manuel F. Martinez and Sarah Levitan Kaatz, Attorneys at Law, Lozano Smith, represented complainant Roberto Rios, Superintendent of the Chualar Union Elementary School District, who was present.

Joseph A. Cisneros, Attorney at Law, The Biegel Law Firm, represented respondent Virginia Roach, who was present.

The record remained open to allow the parties to file written briefs, and also to allow the parties to file redacted copies of certain documents, to identify any documents to be sealed, and to file a confidential names list. Complainant's Closing Brief was marked Exhibit 64 and complainant's Closing Reply Brief was marked Exhibit 65. Respondent's Initial Closing Argument was marked Exhibit K, and her Second Closing Argument was marked Exhibit L.

On October 28, 2013, complainant filed a letter that included redacted copies of numerous documents, that identified certain documents to be placed under seal, and that set forth a confidential names list. The letter was marked Exhibit 66. There was no objection to Exhibit 66 by respondent. Accordingly, the redacted copies were substituted for the originals, and the originals were placed under seal; also placed under seal were those documents identified to be sealed in Exhibit 66, and Exhibit 66 itself.

The record closed and the matter was deemed submitted on October 28, 2013.

## FACTUAL FINDINGS

### *Jurisdiction*

1. Respondent Virginia Roach is a permanent certificated employee of the Chualar Union Elementary School District (district). On May 4, 2013, complainant Roberto Rios, superintendent of the district, issued a statement of charges against respondent and notified respondent of his intent to dismiss her from employment. Respondent requested a hearing. On July 2, 2013, complainant issued an accusation against respondent that restated the allegations in the statement of charges. Respondent filed a notice of defense, and this hearing followed.

2. Broadly speaking, the allegations against respondent fall into two categories: allegations that she mistreated students, and allegations that her performance as a teacher was unsatisfactory. The accusation alleges cause to dismiss respondent based on unsatisfactory performance, unprofessional and immoral conduct, evident unfitness for service and persistent violation of school laws and regulations. Respondent denies the allegations and maintains that there is no cause to dismiss her.

### *Respondent*

3. Respondent graduated from Stockton State University in New Jersey with a bachelor's degree in psychology. She has done the coursework toward a master's degree in education at California State University, Monterey Bay, but has not written her thesis. Respondent holds a multiple subject teaching credential and a BCLAD (Bilingual, Crosscultural, Language and Academic Development) certificate. She is fluent in English and Spanish.

4. Respondent joined the district in 2006 as a classroom teacher. During the four years prior to the filing of the notice of intent to dismiss, respondent taught kindergarten, second grade and third grade.

### *District*

5. The district has one school, Chualar Elementary School, which serves preschool through eighth-grade students. The school has two classes for each grade level. Rios has been the principal of the school, and the superintendent of the district, since July 2009. For nine or 10 years before that, Rios taught second grade at Chualar Elementary School.

### *Background to issuance of the statement of charges*

6. During the past four years, Superintendent Rios has received numerous complaints from parents whose children were assigned to respondent's class. Each year, to accommodate those complaints, Rios has transferred students from respondent's class to the other grade level class. In the past two school years, Rios has transferred five or six students each year due to parent complaints.

7. Between October 2010 and August 2012, Rios received over 15 complaints about respondent. Generally speaking, these complaints alleged that respondent was harsh with her students. Rios sent each complaint to respondent under a cover letter that advised her that the district took the complaint seriously; that it intended to investigate the complaint; and that he wished to meet with her to hear her side of the story. Respondent met with Rios with respect to many, if not all, of the complaints. The district's investigation of those complaints led to this proceeding.

8. On November 29, 2012, Rios issued to respondent a 45-day notice of unprofessional conduct, and a 90-day notice of unsatisfactory performance (the 45/90-day notices). The notices set forth Rios's behavioral expectations of respondent, including express directions to allow students to go to the bathroom when they request to do so, and not to yell at students. The notices did not include an evaluation of respondent's teaching. There has been no formal evaluation of respondent in the past four years.

9. Respondent was placed on paid leave on March 22, 2013, and complainant then filed the statement of charges and the accusation.

#### *Respondent's classroom conduct*

10. It is the obligation of every teacher in the district to establish and maintain a suitable learning environment for her pupils. That obligation is set forth in the job description for all district teachers.

11. Twelve of respondent's students testified regarding respondent's conduct in the classroom in school years 2009-10, 2010-11, 2011-12 and 2012-13. Their testimony was supplemented by declarations from other students. On the fundamental allegations of respondent's conduct in the classroom, the testimony of her students was credible and compelling.

#### YELLING AND THE USE OF PHYSICAL FORCE

12. The testimony of YC, CM, AM2, OG, JC2, ES, MS and SD fairly represents the testimony of all of the students who testified.

13. YC is in the fifth grade at Chualar Elementary School. She had respondent for second grade. In second grade, YC testified, respondent yelled at her and at other students almost every day for things like not doing their homework, or talking during a test. YC described respondent's yelling as a "loud voice" that sounded "mean." YC was afraid of respondent. She has never been afraid of any other teacher.

14. CM is in the fifth grade at Chualar Elementary School. She was in respondent's third grade class for a short time. When she was in that class, respondent yelled at her for getting a math problem wrong. CM remembers that respondent used a loud voice that made her feel scared; it was "a mad voice – I felt afraid. I forgot what I did when she said it was wrong." CM

testified that she “felt something in [her] stomach when [respondent] yelled.” CM told her mother that she did not want to go to school. CM’s mother asked Superintendent Rios to transfer her to the other third grade class, and he did so.

15. AM2 is in the fifth grade at Chualar Elementary School. He had respondent for third grade. He remembers respondent yelling at children in a voice that was “75 percent loud,” and “scary.” AM2 also remembers that respondent used to turn out the lights in the classroom to get the children’s attention.

16. OG is in the fifth grade at Chualar Elementary School. He was in respondent’s third grade class in 2011-12. OG heard respondent “yell but just a little loud.” To OG, “yelling” is “screaming.” OG testified that sometimes respondent yelled at him, but “mostly I was good and did my work.” He heard respondent yell at other children, but felt that they “did something bad and they deserved to fare [sic] the consequences.”

17. JC2 is in the fourth grade. She was in respondent’s third grade class. When JC2 raised her hand during a test and said she needed help, respondent “screamed” at her to “Do it by yourself”; respondent was just a few inches away from JC2. JC2 was upset and could not finish the math question. Respondent yelled at JC2 a second time when she failed to wash her hands before she took a pencil; respondent told her that she was going to get the pencil dirty. As JC2 described it, respondent was “right up against my ear.” JC2 thought that respondent “pretended to be nice” when Superintendent Rios came into the classroom.

18. ES is in the fifth grade at Chualar Elementary School. He had respondent for the second grade in the 2010-11 school year. ES testified that respondent “yelled at kids every day.” He was afraid of her. He also remembered that respondent would turn off the lights in the classroom. ES recounted an occasion when he raised his hand to be called on, but did not raise it high enough. Respondent grabbed his arm by the wrist and “pulled his hand up.”

19. MS is in the fourth grade at Chualar Elementary School. He was in respondent’s third grade class. On one occasion during that year, MS was drinking water at the water fountain when respondent yelled, “[MS], you’re not supposed to do that.” (Respondent testified at hearing that MS drank water “a lot” and was “testing her.”) Startled by respondent yelling at him, MS hit his mouth on the fountain.

On another occasion, MS was at the water fountain and respondent wanted him to return to his desk. When he did not do as respondent asked, she put her hands on his shoulders and “pinched” him back to his seat. AB2, a girl who was in the same class, states in her declaration that she saw respondent push MS back to his seat “with her finger knuckle” in his back.

20. SD is a ninth grade student at Gonzales High School. She is 14 years old. SD attended Chualar Elementary School. She never had respondent as a teacher.

During the 2012-13 school year, when she was an eighth grade student at Chualar Elementary School, the librarian asked SD to deliver new dictionaries to respondent’s classroom. SD could hear respondent yelling, and could hear “slapping noises,” as if someone was hitting a

desk, from outside the classroom. The door to respondent's room was closed, so she knocked and respondent let her in. SD heard respondent tell the students in a loud voice to wash their hands before taking a new book. One boy, however, tried to take a book without washing his hands first. Respondent grabbed the student's hand, pulled him back to his desk, and sat him down by pulling on his hand. She yelled at him to wash his hands first. The student began to cry. Respondent told the class that she needed to make an example of the student so that the other students would "respect and obey" her. When SD left the classroom after handing out the dictionaries, the student was still crying.

21. Margarita Sanchez is the computer lab technician at Chualar Elementary School; she has worked for the district for 14 years. She saw a boy standing in front of a computer, and heard respondent tell him to "Sit down." When he did not, respondent said "Sit down" a little louder, and then walked over to him and pushed him down by the shoulders.

22. Mary Teresa Edwards works in special education at Chualar Elementary School, and has worked with respondent; she appeared at hearing at respondent's request. Edwards was there one day when respondent told a boy to get in line. When he did not do as respondent directed, she said it again, louder. When he still did not get in line, respondent "touched his shoulders and turned him." In Edwards view, the student was not upset. Edwards's testimony, however, corroborates the students' perceptions of respondent's conduct.

23. Respondent denies that she yelled at her students, or pulled ES's arm, or pushed MS to his seat. According to respondent, she does not yell, but sometimes she talks in a "loud voice." If the class is noisy, respondent stated, her "pitch" goes up. If the class is, to use her word, "belligerent," then she may raise her voice "two or three levels." Similarly, respondent testified that she did not pull ES's arm, she "guided" it, as she may have "guided" MS to his seat.

24. Respondent's testimony advances distinctions without differences; if anything, respondent's testimony corroborates the perceptions of her students. On the fundamental issue of whether respondent maintained a suitable learning environment in her classroom, it is plain that she did not, as students were scared of her. Respondent's use of semantic distinctions to defend her conduct, even after her students have testified that they were afraid of her, demonstrates that she does not acknowledge any wrongdoing; that she lacks insight into her conduct; and that she is indifferent to the effects of her conduct on her students.

25. Respondent maintains that she is being unfairly criticized simply for being a strict teacher. Aldo Castro's son had respondent for kindergarten and second grade. Castro felt that respondent was strict, but testified that his son liked respondent and never complained that she yelled. He noted that his son is a very secure child, a good student, and a child who does not misbehave. Several other parents wrote letters in which they noted the academic achievements of their children, and praised respondent for her teaching. Respondent, however, has an obligation to maintain a suitable learning environment for all of her students, not just the good students or the students who never misbehave.

26. Respondent relies on the testimony of Stephanie Sumarna (formerly Anderson) and Dora Uga to support her claim that she did not engage in any misconduct in the classroom.

Sumarna and Uga have both worked as teachers at Chualar Elementary School. The students in Sumarna's fifth grade class were "reading buddies" to the students in respondent's younger class. Sumarna testified that respondent never yelled at students when their classes were together. The testimony of student JC2 is persuasive, however, that respondent acted one way when she was alone with her class, and another way when other adults were present. Uga never spent any time in respondent's classroom.

27. In her closing brief, respondent argues that the district is small and that the students who testified have "programmed memories," and that they were "led to [their] stories" by their parents or the school's administration. It is true that the district is small, but that in itself does not establish that the students' testimony was scripted, and there is no other evidence to support her claim. Respondent's argument is unpersuasive, and it is rejected.

#### DENYING STUDENTS PERMISSION TO USE THE BATHROOM

28. In January 2011, JL1 was a student in respondent's third grade class. She had just moved with her family from Mexico to Chualar; respondent was her first teacher. On January 31, 2011, within days of starting school, JL1 raised her hand near the end of the day and asked permission to go to the bathroom. Respondent looked at her but did not say anything to her. JL1 raised her hand again, and this time respondent acknowledged her but said she would have to wait because the class was going out in a few minutes. JL1 then went up to respondent because she "couldn't hold it anymore." She asked respondent if she could go to the bathroom and respondent again told her to wait. The bell rang and JL1 ran outside, but did not make it to the bathroom and urinated in her pants. JL1 testified that it made her "very sad because everyone saw [her]." JL1's father, who was waiting for his daughter to get out of school, found her crying and took her to the office. JL1's parents complained to Superintendent Rios about respondent's conduct and she was transferred to the other third grade class.

29. On February 26, 2013, JO, a student in respondent's third grade class, asked for permission to go to the bathroom, which respondent did not give, because the class was going to recess shortly. After recess, JO asked again to go to the bathroom, but respondent said no, because she felt he should have gone to the bathroom during recess, and class was almost over. Respondent finally let JO go, but he could not make it to the bathroom before he soiled himself.

30. During the 2009-10 school year, when respondent's class was in the computer lab, Lab Technician Sanchez noticed a girl "doing a dance in her chair" as if she needed to go to the bathroom. Sanchez asked the girl if she needed to use the restroom and the girl said she did, but that respondent "does not let us use the bathroom."

31. Respondent denies that she prevented JL1 or JO from going to the bathroom. Superintendent Rios, however, persuasively testified that students in the third grade rarely have bathroom accidents; no contrary evidence was offered. The testimony of JL1, JO and Sanchez is more credible than respondent's denials. It is determined that respondent denied JL1 and JO permission to use the bathroom and that, as a result, they soiled themselves and suffered humiliation and embarrassment.

#### ISOLATION OF JC4

32. JC4 is in the fifth grade. He was in respondent's third grade class in 2011-12.

33. During the time that JC4 was in her class, respondent developed the conviction that JC4 was bullying other children. Respondent told her class not to play with him. The exact language respondent used to convey that message to her students is not completely clear. Respondent maintains that she advised her students not to play with anyone who might be "dangerous," and that she never used JC4's name. That may be true. But even respondent acknowledges that she meant JC4, and the other third grade children understood that she meant JC4: AM2 and OG, who were in JC4's class, understood that they were not to play with JC4, and that they could get into trouble with respondent if they did play with him. Respondent's isolation of JC4 caused emotional distress for JC4. In March 2012, After-School Coordinator Mary Adams found JC4 crying. When she asked him why he was crying, JC4 told her that he had lost his best friend and that he felt he was a "very bad kid because everyone says that I am one." Respondent's isolation of JC4 also caused emotional distress for JC4's friends, who wanted to play with him but were afraid they would be punished if they did.

34. Respondent's feelings toward JC4 led her to undermine a disciplinary agreement reached between JC4's mother and Superintendent Rios. Respondent referred JC4 to Rios for discipline. In a meeting with Rios and JC4's mother, respondent recommended a one-day, "in-house" suspension that JC4 would serve in another classroom. JC4's mother was adamantly opposed to sending JC4 to a higher grade for punishment. In the meeting, it was finally agreed that JC4 would lose a lunch recess, and that he would spend that time in a fifth-grade classroom. When the time came for the imposition of JC4's discipline, however, respondent took JC4 to an eighth-grade classroom. She did not consult with the superintendent before taking this action, which was contrary to the agreement reached between Rios and JC4's mother.

35. Respondent asked another student to photograph JC4 during recess in an effort to document his behavior. Rosalinda Navarro is a playground supervisor and instructional aide at Chualar Elementary School. On October 18, 2011, during the time that third graders were at recess, Navarro saw a fifth grader, AO, hiding in the bushes with a camera. Navarro asked her what she was doing, and AO said she was taking pictures of a boy who was bullying her little brother; she identified JC4 as the boy she was taking pictures of. Navarro told her that she could not do that. Children are not allowed to photograph other children on the playground. AO told her that a teacher – respondent – had asked her to do it. AO remained on the playground until the end of recess at which point Navarro saw respondent approach and heard her say to AO, "Thank you, I really appreciate you doing this." Because the incident was unusual, Navarro made a written note of it that day.

36. At hearing, respondent did not deny thanking AO, but she denied that she told AO to take pictures of JC4 and denied that she was thanking her for doing so. Respondent testified that she "has a habit of saying 'thank you' a lot." Respondent's testimony is not credible. It is determined that respondent asked AO to take pictures of JC4 during recess, to provide additional support for respondent's belief that JC4 was bullying other children.

37. Superintendent Rios testified that isolating a student from his friends, and alienating him from his classmates, was not a proper way to address respondent's concerns over JC4's behavior. His testimony on this point is credible.

38. Respondent does not acknowledge that her treatment of JC4 was improper.

*Respondent's discrimination claims*

39. Respondent believes that she is being discriminated against by parents in the community, and by Superintendent Rios, because she is of Puerto Rican descent in a community that is almost entirely Mexican-American. The only facts respondent advances to support her belief are that some parents have been antagonistic towards her, and that Superintendent Rios complimented her on her colorful handbag, which was from Puerto Rico.

Respondent's claim of discrimination is not persuasive. There is no evidence that respondent has been treated differently than any other teacher because of her heritage; Superintendent Rios did not know respondent was from Puerto Rico until her deposition was taken in 2013, and respondent herself did not raise this defense until hearing. Moreover, the facts established at hearing demonstrate legitimate reasons – unrelated to respondents' heritage – for the parents' complaints against her, and for the disciplinary action initiated by the district.

40. Respondent also asserts that she is being discriminated against because she is the union president at Chualar Elementary School, and because she filed a "Williams" complaint against the district regarding its instructional materials. Respondent's claim of discrimination is not persuasive. There is no evidence that respondent has been treated differently because of her union activities. There is, however, evidence of legitimate, nondiscriminatory reasons for the district's disciplinary action.

*Allegations relating to the 2008-09 school year*

41. Paragraphs 1 through 7 of the accusation allege that respondent engaged in various forms of misconduct during the 2008-09 school year, when she was teaching kindergarten, and paragraph 83 alleges that she was the subject of prior discipline in October 2008. The evidence established that these events occurred more than four years prior to the filing of the notice of intent to dismiss on May 4, 2013. Under Education Code 44944, subdivision (a)(5), "no decision relating to the dismissal . . . of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years" before the filing of the notice of intent. The evidence pertaining to these allegations, therefore, is disregarded and no findings are made as to the matters alleged in paragraphs 1 through 7 and 83.



### *Allegations of failure to teach ELD and related matters*

42. Some allegations in the accusation appear to relate only to complainant's theory that respondent is subject to discipline for unsatisfactory performance and unprofessional conduct. For example, paragraphs 50 through 53 allege that respondent did not properly teach English Language Development and that she was resistant to coaching. Respondent contends that, because no evaluation was attached to the 45/90-day notices issued by the district, she cannot be dismissed on the grounds of unsatisfactory performance and unprofessional conduct. This contention is addressed in Legal Conclusions 3 through 10, and therefore no factual findings are made as to these matters.

## LEGAL CONCLUSIONS

1. The standard of proof applied in making the factual findings set forth above is preponderance of the evidence. (*San Diego Unified School District v. Commission on Professional Competence* (2013) 214 Cal.App.4th 1120, 1150.)

### *Causes for dismissal asserted in the statement of charges and accusation*

2. Education Code section 44932 sets forth eleven exclusive causes upon which a permanent certificated employee can be dismissed. The statement of charges and the accusation identify four causes upon which the district seeks to dismiss respondent: "[i]mmoral or unprofessional conduct" (subd. (a)(1)), "unsatisfactory performance" (subd. (a)(4)), "[e]vident unfitness for service" (subd. (a)(5)), and "[p]ersistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the . . . governing board of the school district . . ." (subd. (a)(7)).

### *Unprofessional conduct and unsatisfactory performance*

3. With respect to an action to dismiss an employee on the ground of unprofessional conduct, Education Code section 44938, subdivision (a), provides:

The governing board of any school district shall not act upon any charges of unprofessional conduct unless at least 45 days prior to the date of the filing of the [statement of charges], the board . . . has given the employee against whom the charge is filed, written notice of the unprofessional conduct specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct . . . her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

Article 11 of Chapter 3 applies to respondent. It provides that a permanent teacher, like respondent, who has been employed by a school district for less than 10 years, shall be evaluated pursuant to district-adopted standards at least every other year.

4. With respect to an action to dismiss an employee on the ground of unsatisfactory performance, subdivision (b)(1) of Education Code section 44938 states:

The governing board of any school district shall not act upon any charges of unsatisfactory performing unless . . . [a]t least 90 days prior to the date of the filing of the [statement of charges], the board . . . has given the employee against whom the charge is filed, written notice of the unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct . . . her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

As noted above, Article 11 and its requirement for an evaluation every other year, applies to respondent.

5. The district did not attach an evaluation to the 45/90-day notices it gave respondent because it never performed the evaluation required under Article 11.

6. Citing *California Teachers Assn. v. Governing Board* (1983) 144 Cal.App.3d 27 (*Livingston*), the district argues that its failure “to adopt guidelines to assess teachers” does not mean that it lacks jurisdiction to dismiss respondent for unprofessional conduct or unsatisfactory performance. The issue here, however, is not the district’s failure to adopt guidelines to assess teachers, but the district’s failure to perform an evaluation of respondent and include it in the 45/90-day notices. *Livingston* does not concern that issue: in *Livingston*, the school district performed evaluations and included them in its 90-day notice. *Livingston* does not help the district.

7. The district argues next that the “multiple disciplinary letters and face-to-face meetings” comply with the evaluation requirement set forth in Education Code section 44660. This argument is based on the cover letters Superintendent Rios sent to respondent with each parent complaint, and his meetings with respondent that followed. (Finding 7.) Under Education Code section 44664, however, an evaluation must (among other things) be in writing, must inform the teacher that she is not performing her job satisfactorily, and make specific recommendations for improvement. The letters from Superintendent Rios do not comply with these requirements. Contrary to the district’s assertion, the letters were not disciplinary: they informed respondent that the district had received a complaint about her performance, and that it intended to investigate the complaint. The superintendent’s letters did not inform respondent that he had investigated the complaints, that he thought the matters set forth in the complaint

were true, or make specific recommendations to respondent about how to improve her performance.

8. The district did not comply with the statutory requirement that it include, in its 45/90-day notices, an evaluation of respondent's performance. The district may not dismiss respondent for unprofessional conduct or unsatisfactory performance without complying with the requirements of Education Code section 44938.

9. The charges of unprofessional conduct and unsatisfactory performance are dismissed.

#### *Persistent violation of school rules*

10. Under the district's rules, as set forth in Finding 10, it is a teacher's duty to maintain a suitable learning environment for her students. Respondent persistently violated this rule, by reason of the matters set forth in Findings 12 through 38. Cause exists to dismiss respondent from her employment pursuant to Education Code section 44932, subdivision (a)(7).

#### *Immoral conduct*

11. Immoral conduct is conduct that is "hostile to the welfare of the general public and contrary to good morals" and "includes conduct . . . showing moral indifference to the opinions of respectable members of the community, and [conduct showing an] inconsiderate attitude toward good order and the public welfare." (*Board of Education v. Weiland* (1960) 197 Cal.App.2d 808, 811, citing *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740.)

It is humiliating and degrading to deny a third-grade student permission to go to the bathroom immediately upon the student's request, to say nothing of the physical discomfort, anxiety and embarrassment it causes the student. Isolating a student from his friends, even if that student is a suspected bully, causes that student to feel shame and humiliation; it is emotionally damaging to the student and to his friends. In doing these things, respondent demonstrated indifference to the physical and emotional well-being of her students. Her conduct was immoral. Cause exists, by reason of the matters set forth in Findings 28-38, to dismiss respondent pursuant to Education Code section 44932, subdivision (a)(1).

#### *Evident unfitness for service*

12. The term "evident unfitness for service" means

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

(*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.)

13. Respondent falls squarely within the definition of evident unfitness. She is authoritarian and harsh with her students, verbally and physically, to the point of being mean. These are temperamental traits or inadequacies that are not remediable upon notice. Over the past four years, respondent has been made aware of many complaints about the way she treats students. Her conduct has not changed. Even today, after hearing the testimony of her students, respondent denies that her conduct was improper and advances unpersuasive semantic distinctions to justify her conduct. Cause exists, by reason of the matters set forth in Findings 12 through 38, and Legal Conclusions 10 and 11, to dismiss respondent pursuant to Education Code section 44932, subdivision (a)(5).

*Application of the Morrison factors*

14. A teacher cannot be dismissed for immoral conduct or evident unfitness for service unless her conduct demonstrates that she is unfit to teach under the factors established by the California Supreme Court in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence, supra*, 2 Cal.App.4th at p. 1445; *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208, 220, fn. 12.) The factors are: (1) the likelihood that respondent's conduct may have adversely affected students or fellow teachers; (2) the degree of any expected adversity; (3) the proximity or remoteness in time of the conduct; (4) the type of teaching certificate held by respondent; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of recurrence of the conduct; and (8) the extent to which disciplinary action may inflict an adverse impact or chilling effect on the constitutional rights of respondent or other teachers. Only the pertinent factors must be addressed. (*West Valley-Mission Community College District v. Conception* (1993) 16 Cal.App.4th 1766, 1777.) The *Morrison* factors may be applied to all of the charges in the aggregate. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence, supra*, 2 Cal.App.4th at 1456-1457.)

Findings 12 through 38 establish the following:

LIKELIHOOD OF ADVERSE EFFECT ON STUDENTS AND TEACHERS

Respondent's conduct has in fact had an adverse effect on her students.

DEGREE OF ADVERSITY

The adverse effects of respondent's conduct have been serious. Respondent's conduct has made students afraid of her; distracted them from their work; made them not want to go to school; humiliated and embarrassed them; and hurt them physically and emotionally.

PROXIMITY IN TIME

Respondent's conduct continued to the 2012-13 school year.

#### TYPE OF TEACHING CERTIFICATE

Respondent has a multiple subject credential, which allows her to teach the youngest and most vulnerable students.

#### EXTENUATING/AGGRAVATING CIRCUMSTANCES

There are no extenuating circumstances. That respondent's conduct has persisted over the past four years, and that her students were in the second or third grade, are aggravating circumstances.

#### PRAISEWORTHINESS/BLAMEWORTHINESS OF RESPONDENT'S CONDUCT

Yelling at students, using physical force to get them to follow instructions, denying young students the right to go to the bathroom immediately upon their request, and isolating a student from his friends do not advance legitimate educational or behavioral goals. Respondent's conduct in doing these things is entirely blameworthy.

#### LIKELIHOOD OF RECURRENCE

Respondent's conduct has persisted over the past four years. She does not believe she has done anything wrong. It is all but certain that her misconduct will recur if she returns to the classroom.

#### CHILLING EFFECT ON THE EXERCISE OF RESPONDENT'S CONSTITUTIONAL RIGHTS, OR THE RIGHTS OF OTHER TEACHERS

This factor does not apply to respondent's case. None of respondent's conduct involves the exercise of any constitutional rights.

Application of the *Morrison* factors establishes that respondent is unfit to teach.

#### *Discipline*

15. Cause for dismissal having been established, the ultimate issue is whether dismissal is warranted. There is no question but that dismissal is the appropriate action. Respondent has demonstrated that she is temperamentally unfit to teach. Over the past four years, respondent maintained a harsh learning environment that was harmful to her students and their educational experience. There is no reason to believe that respondent's conduct would change if she were allowed to return to the classroom. The district's conclusion that respondent's conduct warrants dismissal is fully supported by the evidence, and it is reasonable.

ORDER

Respondent Virginia Roach is dismissed from employment with the Chualar Union Elementary School District.

DATED: \_\_\_\_\_

\_\_\_\_\_  
KELLY MAXWELL  
Commission Member

DATED: \_\_\_\_\_

\_\_\_\_\_  
BEATRICE ROWAN  
Commission Member

DATED: \_\_\_\_\_

\_\_\_\_\_  
DAVID L. BENJAMIN  
Chair, Commission on Professional Competence  
Administrative Law Judge  
Office of Administrative Hearings