

**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:**

**MARY JO CORMIER,**

**A Permanent Certificated Employee,**

**Respondent.**

**OAH No. 2020090995**

**DECISION**

A Commission on Professional Competence (Commission) heard this matter by videoconference on February 5, 2021, and July 1, 6 through 8, 11 through 15, 19 through 20, and September 8, 2022. The Commission members were Vanessa Sandoval; William Briscoe; and Administrative Law Judge (ALJ) Chantal M. Sampogna, Office of Administrative Hearings, State of California, who presided.

Lee Patajo, Associate General Counsel II, and Kelly Kim, Associate General Counsel I, represented the Los Angeles Unified School District (District).

Carlos R. Perez and Alejandra Gonzalez-Bedoy, Attorneys, Law Office of Carlos R. Perez, represented respondent Mary Jo Cormier.

The parties presented testimony and documentary evidence. The record was closed and the matter was submitted for decision on September 8, 2022.

## **STATEMENT OF THE CASE**

On August 21, 2020, District brought a Statement of Charges (SOC) against Respondent and sought to dismiss her based on allegations she failed to appropriately instruct her students and utilize available resources in alignment with the educational standards adopted by the State of California, District, and John F. Kennedy High School (JFKHS), where Respondent was assigned to teach. Respondent timely filed a Request for Hearing.

## **ISSUES**

1. Whether there is cause to dismiss Respondent under Education Code section 44932 for unprofessional conduct (subd. (a)(2)), unsatisfactory performance (subd. (a)(5)), evidence unfitness to teach (subd. (a)(6)), or for persistent violation or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of District (subd. (a)(8)). (Undesignated statutory references are to the Education Code.)

2. Whether there is cause to dismiss Respondent under section 44939 for willful refusal to perform regular assignments without reasonable cause as prescribed by reasonable rules and regulations of District.

## **SUMMARY**

District seeks to dismiss Respondent, a special education teacher at JFKHS, who holds a Specialist Instruction Credential in Special Education, Severely Handicapped. Since 2015, Respondent has been assigned to teach the alternate curriculum at JFKHS to students in grades 10 through 12 with moderate to severe autism or intellectual delays (moderate to severe disabilities). Most of Respondent's students could not read and were non-verbal, while some had limited reading and speaking skills. In addition, her students often presented with a variety of symptoms and behaviors associated with autism and intellectual delay, including limited attention, echolalia, a need for repetition of any skill or content, and behaviors such as pinching others or throwing items in the classroom.

In support of its request to dismiss, District alleged 92 charges against respondent based on 14 informal and formal observations conducted during the three academic years between fall of 2017 and spring of 2020. However, District's evidence was unpersuasive. District failed to establish the administrators had the requisite knowledge or understanding of District's alternate curriculum or of the educational or service needs of Respondent's students. The administrators did not meaningfully or credibly assess Respondent's professional conduct in teaching the alternate curriculum to students with moderate to severe disabilities. The evidence demonstrated the administrators failed to utilize resources available from District to gain the knowledge and skills necessary to meaningfully evaluate Respondent and refused to consider Respondent's attempts to demonstrate how she was, in fact, complying with District requirements.

Respondent provided detailed and accurate testimony and documentary evidence demonstrating her knowledge and implementation of District's required alternate curriculum, which she used to teach her students, while modifying as necessary to meet her students' educational and special needs. Further, Respondent demonstrated a willingness to improve her teaching practice and to comply with the administrators' reasonable guidance and directives.

District failed to establish cause to dismiss Respondent. The Statement of Charges is properly dismissed.

## **FACTUAL FINDINGS**

### **Jurisdiction**

1. District hired Respondent as a special-education teacher on January 20, 2009. She became a permanent tenured employee on July 1, 2011.
2. Respondent holds a Specialist Instruction Credential in Special Education, Severely Handicapped, issued in July 1995 and scheduled to expire in October 2025. She has been assigned to JFKHS as a special education teacher since July 1, 2015.
3. On August 21, 2020, Linda Del Cueto, acting in her official capacity as Chief Human Resources Officer of District, executed the SOC.
4. On September 16, 2020, Ms. Del Cueto issued a Notice of Board of Education Intention to Dismiss and Placement on Immediate Unpaid Suspension against Respondent. On October 30, 2020, Ms. Del Cueto, acting in her official capacity, filed an Accusation against Respondent.

5. On September 21, 2020, Respondent timely submitted a Request for Hearing.

## **Background**

6. Since 2015, Respondent has taught the alternate curriculum to students at JFKHS in grades 10 through 12 with moderate to severe disabilities. The students on the alternate curriculum work towards a Certificate of Completion, and the alternate curriculum, be it addressing subjects such as English Arts, Math, Science, Social Skills, or another subject, is focused on practical skills. In contrast, the general curriculum is focused on academics. Students on the general curriculum work towards a diploma, with an ultimate goal of completion of college and a career.

7. District bases the SOC on informal and formal observations of Respondent during the three academic years between fall of 2017 and spring of 2020. The three JFKHS administrators who observed Respondent (collectively, administrators) were Principal Richard Chavez, Ed.D., (during the 2017-2018 academic year); Assistant Principal (AP) Angelica Streif (during the 2018-2019 academic year); and AP Henry Song (during the 2019-2020 academic year). Based on these observations, District found fault in Respondent's implementation of the alternate curriculum and concluded she failed to implement District's pedagogy to fidelity and willfully failed to perform regular assignments without cause.

8. The SOC charges involve Respondent's alleged failures in: (1) preparation of lesson plans and delivery to administrators; (2) effective delivery and differentiation of instruction; (3) communicating with students about the goals of the period and developing the required academic climate; and (4) compliance with written directives. Respondent admits some of the underlying factual allegations but denies others, and

she argues that even if the disputed allegations were true, her performance is not cause for dismissal under applicable law or regulations.

## **District Teaching Requirements**

9. District has adopted the LAUSD Teaching and Learning Framework (Framework) and the California Standards for the Teaching Profession (CSTP) (2009) (California Standards) as District's teaching rubric. Together, the Framework and California Standards set forth District's teaching pedagogy, or the teaching methods and practices District expects and requires all of its teachers to implement to fidelity (a standard of assessment used by the administrators).

10. District uses the "LAUSD Teaching and Learning Framework with Focus Elements for Educator Development and Support: Teachers (EDST)" (EDST Placemat) to evaluate a teacher's performance. The EDST Placemat is a one-page chart depicting all Framework focus elements. The observing administrator and teacher choose seven focus elements from the EDST Placemat, three of which are decided by District, three chosen by the teacher, and one chosen cooperatively by the administrator and teacher. The Framework, California Standards, and EDST Placemat comprise District's teaching expectations.

11. District has also adopted a policy that requires teaching the Unique Learning System (ULS) to students on the alternate curriculum. ULS is an internet-based core curriculum special education program designed for students on the alternate curriculum. ULS differentiates instruction according to student ability levels and is comprised of three levels that can accommodate learners with significant cognitive disabilities: Level 3, the independent level, for students who can read text and participate more independently in the lesson; Level 2, the supported level, for

students who require pictorial support and mild to moderate support to participate in the lesson; and Level 1, the participatory level, for students who require extensive supports to participate in the lesson.

12. The ULS is divided into monthly units and daily lessons that alternate-curriculum teachers implement through a combination of teacher-presented unit and lesson review, iPad instruction time, and related alternate curriculum packets. The ULS includes a comprehensive student assessment tool comprised of pre- and post-unit assessments of each student. The assessments identify a student's baseline skill level and progress toward mastery of lessons and mastery of Individualized Education Program (IEP) goals. Each assessment further guides the ULS's differentiated individual instruction for the student. The student's ULS information is housed in the student's ULS profile and is available to IEP team members, including parents, teachers, and administrators.

13. District has not adopted a separate or modified rubric for teaching the alternate curriculum, but rather assesses the performance of special education teachers' performance against the Framework, California Standards, and EDST Placemat. However, District has a ULS training and a ULS observation checklist available to administrators. These tools provide information about ULS and related supports available to administrators when evaluating a teacher who is teaching the alternate curriculum. In addition, District has a Moderate, Severe, and Least Restrictive Environment Program (Mod-Severe-LRE Program), which is available to provide direct support to teachers on the implementation of ULS, and to administrators assigned to determine whether a teacher teaching the alternate curriculum and implementing the ULS is meeting District's teaching expectations.

## **Rules and Regulations Governing Respondent's Regular Assignment**

14. District submitted the following rules and regulations governing Respondent's regular assignment as an alternate curriculum teacher and which set forth the requirements of respondent's job duties: Framework; California's Standards; EDST Placemat; Los Angeles Unified School Board (Board) Resolution Reaffirming the Commitment to Respectful Treatment of all Individuals; and District's Job Description for a Special Education Teacher. Though District's witnesses testified regarding JFKHS rules or policies, such as a requirement all teachers use a whiteboard configuration (WBC) adopted by JFKHS and a requirement teachers must teach students from the beginning of the period to the end of the period (bell-to-bell instruction), District did not present evidence sourcing or defining these rules.

15. Respondent submitted two additional documents further defining Respondent's assignment and the rules and regulations she must follow, and on which District relied in support of its case: the collective bargaining agreement (CBA) reached between District and the United Teachers Los Angeles; and District Policy Bulletin BUL 6049.2, "Required Curriculum and Assessment for Students Participating on the Alternate Curriculum" (ULS Bulletin), which sets forth District's ULS mandate for students on the alternate curriculum.

16. District relied on the rules and regulations presented to support the administrators' conclusions that Respondent's teaching practice was ineffective or developing and was below standard, and to support its request for dismissal.

### **TEACHING AND LEARNING FRAMEWORK**

17. The Framework is District's foundation for instructional practice and expectations for effective teaching, and it is a guide for administrators and teachers



during the teacher evaluation process. Administrators receive annual training on how to collect and analyze the evidence of a teacher's practice to ensure the evidence is appropriately aligned to the Framework, is representative of the teacher's practice, and is free of bias.

18. Though the Framework applies to all teachers, its standards and focus elements do not identify, consider, or incorporate how to apply the Framework to the alternate curriculum or to teaching students with moderate to severe disabilities. In its preface, the Framework states it highlights "researched-based strategies that have been proven to be effective in meeting the needs of our diverse learners including English Learners, Students with Special Needs and Students with Disabilities." (*Id.* at p. A655.) However, the preface indicates the Framework is designed for students on the diploma track, even if applicable to teachers teaching the alternate curriculum:

In addition, the Framework describes teaching practices that will help to prepare all students to be successful and productive 21st Century learners. This focus on 21st Century Skills not only directly aligns with the Common Core State Standards but also prepares all of our students to be college prepared and career ready.

(*Ibid.*) Neither the Framework, nor District otherwise, explained or provided examples of how to meaningfully apply the Framework and its expectation to prepare all students to be college prepared and career ready to the education of students on the alternate curriculum, whose education focuses on practical skills towards a achieving a certificate of completion, and not toward achieving a diploma, college preparation, or a career.

19. When conducting EDST evaluations, administrators must gather evidence of a teacher's practice and assess it against the Framework. The evidence is collected using three strategies: classroom observations; professional conversations; and artifacts. Classroom observations are described as "the cornerstone of EDST." (Exh. 45, p. A655.) Professional conversations include the Initial Planning Conference, the Pre-Observation Conference, and the Post-Observation Conference, which are all part of the EDST formal observation cycle and may include additional meetings where the teacher and administrator discuss evidence of the teacher's practice. Artifacts may include samples of student work, lesson plans, unit plans, sample assessments, or any other type of documentation that provides evidence of a teacher's practice for a given element in the Framework.

20. The Framework consists of five standards: Planning and Preparation (Framework Standard 1); The Classroom Environment (Framework Standard 2); Delivery of Instruction (Framework Standard 3); Additional Professional Responsibilities (Framework Standard 4); and Professional Growth (Framework Standard 5). Each standard consists of two to five components.

21. District evaluated Respondent against two Framework standards, Framework Standard 2, Classroom Environment, and Framework Standard 3, Delivery of Instruction. Within these standards, the following seven focus elements were used to evaluate her performance: Focus Element 2a3, Creating an Environment of Respect and Rapport, Academic Climate; Focus Element 2c1, Managing Classroom Procedures, Management of Routines, Procedures, and Transitions; Focus Element 2d2, Managing Student Behavior, Monitoring and Responding to Student Behavior; Focus Element 3a1, Communicating with Students, Communicating the Purpose of the Lesson; Focus Element 3b2, Communicating with Students, Using Questioning and Discussion

Techniques, Discussion Techniques and Student Participation; Focus Element 3c1, Engaging Students in Learning, Standards-Based Projects, Activities and Assignments; and Focus Element 3d3, Delivery of Instruction, Using Assessment in Instruction to Advance Student Learning, Feedback to Students. These focus elements provide the following teaching expectations.

## **Standard 2 - Classroom Environment**

22. Framework Standard 2a (Exh. 45, p. A667) addresses “Creating an Environment of Respect and Rapport” and provides the following:

Teaching depends, fundamentally, on the quality of relationships among individuals. When teachers strive to engage students in a discussion or an activity, their interactions with them speak volumes about the extent to which they value students as people.

23. Respondent chose to be assessed under Focus Element 2a3, Academic Climate. The administrator must assess this element through classroom observation. The expectation of Focus Element 2a3 is “the classroom environment is safe and supportive; risk-taking is encouraged, students freely contribute their ideas, and student mistakes are treated as learning opportunities, never with ridicule.”

24. Framework Standard 2c (Exh. 45, p. A670) addresses “Managing Classroom Procedures” and provides the following:

. . . Teachers must develop procedures for the smooth operation of the classroom and the efficient use of time. One of the marks of effective teachers is that they can take

the time required to establish routines and procedures at the outset of the school year. It is also important for teachers to manage transitions efficiently. Effective teachers make efficient use of time when managing non-instructional tasks such as taking attendance, collecting or checking homework, writing passes, etc., and are familiar with and successfully execute school emergency procedures.

25. Respondent also chose to be assessed under Focus Element 2c1, Management of Routines, Procedures, and Transitions. The administrator must assess this element through classroom observation. The expectation of Focus Element 2c1 is the class routines, procedures, and transitions are managed in such a way that there is little to no loss of instructional time.

26. Framework Standard 2d (Exh. 45, p. A672) addresses “Managing Student Behavior” and provides the following:

A key to efficient and respectful management of student behavior lies in agreed upon standards of conduct and clear consequences for overstepping boundaries. Effective teachers successfully enlist students in both setting and maintaining standards of conduct. Active participation in setting the rules of the classroom contribute to students’ feelings of safety in class. In a well-managed classroom, students themselves will be able to explain and uphold the agreed-upon standards of conduct.

27. Respondent also chose to be assessed under Focus Element 2d2, Monitoring and Responding to Student Behavior. The administrator must assess this element through classroom observation. The expectation of Focus Element 2d2 is the teacher monitors and responds to student behaviors in a way that maintains student dignity and does not disrupt learning.

### **Standard 3 - Delivery of Instruction**

28. Framework Standard 3a (Exh. 45, p. A674) addresses “Communicating with Students” and provides the following:

The presentation of a lesson impacts its outcome. In order to successfully engage students in the lesson, teachers need to clearly frame the purpose of the lesson including presenting the context. Teachers must communicate reasonable and appropriate expectations for learning, provide directions and describe procedures with clarity, model and expect the use of academic language, and use multiple strategies to explain content to meet diverse student learning needs.

29. Respondent and the observing administrator chose to assess Respondent under Focus Element 3a1, Communicating the Purpose of the Lesson. The administrator must assess this element through classroom observation. The expectation of Focus Element 3a1 is the teacher communicates the purpose of the lesson clearly to all students.

30. Framework Standard 3b (Exh. 45, p. A676) addresses “Using Questioning and Discussion Techniques” and provides the following:

Effective teachers design questions that provide cognitive challenge and engineer discussions among students to ensure all students participate. The highly effective teacher designs instruction that provides opportunities for students to develop their own cognitively challenging questions and to engage in various types of student-to-student discussions.

31. The first of District's three required focus elements was Focus Element 3b2, Discussion Techniques and Student Participation. The administrator must assess this element through classroom observation. The expectation of Focus Element 3b2 is the teacher uses techniques to ensure all students share their thinking around challenging questions.

32. Framework Standard 3c (Exh. 45, p. A677) addresses "Engaging Students in Learning" and provides the following:

Teachers engage students in active construction of understanding by creating intellectual challenges that result in new knowledge and skills. The ownership of learning transfers from the teacher to the students. Teacher's effective use of activities and assignments, grouping of students, available instructional materials, technologies and resources, and structure pacing, all contribute to a classroom where students are deeply engaged in learning and mastery of grade level content standards.

33. The second of District's three required focus elements was Focus Element 3c1, Standards-Based Projects, Activities and Assignments. The administrator must assess this element through classroom observation. The expectation of Focus Element 3c1 is the teacher provides standards-aligned learning activities that cognitively engage students in the lesson.

34. Framework Standard 3d (Exh. 45, p. A679) addresses "Using Assessment in Instruction to Advance Student Learning" and provides the following:

Assessment is an integral part of the instructional process. The design of instruction must account for a range of assessment strategies: formative and summative, formal informal, including goals and benchmarks that both teachers and students set and use. High quality assessment practice makes students and families fully aware of criteria and performance standards, informs teachers' instructional decisions, and leverages both teacher and student feedback. Further, these practices also incorporate self-assessment and reflection and teacher analysis to advance learning and inform instruction during a lesson or series of lessons.

35. The third of District's three required focus elements was Focus Element 3d3, Feedback to Students. The administrator must assess this element through classroom observation and artifacts. The expectation of Focus Element 3d3 is the teacher provides students specific and timely feedback that will move their learning forward.

## **CALIFORNIA STANDARDS FOR THE TEACHING PROFESSION (CSTP) (2009)**

36. District also submitted the California Standards that align with the Framework and EDST Placemat. District has adopted, and teachers are expected to adhere to, the California Standards. The purpose of the California Standards is “to provide a common language and a vision of the scope and complexity of the profession by which all teachers can define and develop their practice” and to support professional educators in fulfilling their professional roles and responsibilities. (Exh. 66, p. A815.)

37. The California Standards are used to prompt teacher reflection about student learning and teaching practice; to formulate professional goals to improve teaching practice in support of student learning; and to guide, monitor, and assess the progress of a teacher's practice toward professional goals. The California Standards are not set forth as regulations to control the specific actions of teachers, but rather are to be used as a guide to refine a teacher's practice.

38. At hearing, District focused on the requirements of the California Standards, standards 4 and 4.1. Standard 4, Planning Instruction and Designing Learning Experiences for All Students, provides the following:

Teachers use knowledge of students' academic readiness, language proficiency, cultural background, and individual development to plan instruction. They establish and articulate goals for student learning. They develop and sequence long-term and short-term instructional plans to support student learning. Teachers plan instruction that incorporates appropriate strategies to meet the diverse



learning needs of all students. They modify and adapt instructional plans to meet the assessed learning needs of all students.

(Exh. 66, p. A825.)

39. Standard 4.1, Using knowledge of Students' Academic Readiness, Language Proficiency, Cultural Background, and Individual Development to Plan Instruction, asks "How do I use knowledge of my students' individual cognitive, social, emotional, and physical development to plan instruction and make appropriate adaptations to meet students' unique needs?" (Exh. 66, p. A615); "How do I plan lessons and units that promote access to academic content standards for all students?" (*Id.*); "How do I use knowledge of my English learners' levels of language proficiency to plan instruction that supports their subject matter learning and academic language development?" (*Id.*); and "How do I use knowledge of my students' diverse learning needs to plan instruction that supports their learning?" (*Id.*) Like the Framework, the California Standards apply to all students, but they do not directly identify, consider, or incorporate the teaching requirements of teachers teaching the alternate curriculum to students with moderate to severe disabilities.

### **BOARD RESOLUTION**

40. District submitted an excerpt from a 1988 Board Resolution that provides as follows:

The Los Angeles Unified School District reaffirms its policy that students and adults in both schools and offices should treat all persons equally and respectfully and refrain from the willful or negligent use of slurs against any person on

the basis of race, language spoken, color, sex, religion, handicap, national origin, immigration status, age, sexual orientation, or political belief . . . .

(Exh. 27, p. A568.)

### **JOB DESCRIPTION**

41. District submitted its job description for a special education teacher. Some of the essential functions of Respondent's job include the following: use information about individual students' academic strengths and needs in planning; design activities to engage students in cognitively challenging work aligned to standards; establish a classroom environment that is safe and supported; reflect on practice and student work to determine what went well and what changes could improve instruction, and use reflection to inform future instruction; and comply with IEP requirements. (Exh. 65, p. A808.)

### **COLLECTIVE BARGAINING AGREEMENT**

42. Portions of the CBA reached between District and the United Teachers Los Angeles are also relevant to the charges against Respondent. Specifically, Article IX of the CBA addresses hours, duties, and work year, and was introduced with a focus on section 4, other professional duties. Section 4 provides that in addition to classroom duties for which a teacher is credentialed, a teacher is responsible for related professional duties including instructional planning and preparing lesson plans in a format appropriate to the teacher's assignment, preparing and selecting instructional materials, and reviewing and evaluating student work. (Exh. A, p. B21.)

43. Sections 4.1 and 4.2 provide more information about the professional duty of lesson plans:

4.1 Lesson plans or evidence of planning in a format appropriate to the teacher's assignment, shall be furnished by each classroom teacher upon request from the teacher's immediate administrator. No special format for a lesson plan shall be required.

4.2 All duties required of each employee shall meet the test of reasonableness, and shall be assigned and distributed by the site administrator in a reasonable and equitable manner among the employees at the school or center.

(Exh. A, p. B22.)

## **UNIQUE LEARNING SYSTEM**

### **ULS Bulletin**

44. The ULS Bulletin, issued November 9, 2015, informs District school site administrators and special education teachers of required curriculum and assessments for students with disabilities participating on the alternate curriculum. The ULS Bulletin explains the following:

Unique Learning System is a research-based English language arts, math, science, and social studies curriculum and is specifically designed for students with moderate to severe disabilities who are participating on the alternate curriculum. Unique Learning System is a curriculum

featuring integrated, monthly thematic units that are aligned to Common Core State Standards (CCSS). Each unit contains 30 lesson plans and corresponding support activities and materials that teachers download for instructional planning and delivery. Unit lesson plans define three levels of differentiated tasks to accommodate the diversity of learners with moderate to severe disabilities. Unique Learning System provides assessments and lessons for students in K-12 and vocational programs.

(Exh. NN, p. B408.)

45. The ULS Bulletin further explains that ULS utilizes different grade bands to ensure age-appropriate instructional materials, including the High School band addressing ninth through twelfth graders; students must receive instruction based on their grade level; and teachers may add supports or modifications as needed. ULS provides teachers access to SymbolStix, a web-based, symbol search engine with over 26,000 symbols for use in development of modifications and adaptations, and for students identified as English Learners (ELs), ULS provides the *Oxford Picture Dictionary: Content Areas for Kids* and the *Oxford Picture Dictionary* as part of the additional required curricula. Though ULS is designed for students with moderate to severe disabilities, teachers may need to adapt or modify the curriculum, so it is accessible to each student.

46. ULS is a required component of daily instruction in every Kindergarten through 12th (K-12) alternate curriculum classroom. Within the first month of school alternate curriculum teachers must complete a profile for each student which includes an initial assessment that provides teachers, administrators, and IEP teams a detailed

summary of student skills and suggested instructional strategies. Teachers must update a student's profile annually and account for students' changing strengths and needs. Beginning the second month of the school year and every month thereafter alternate curriculum teachers must complete unit checkpoints which are administered as pre- and post-assessments. The ULS and related supplementary instructional materials and assessments continually generate curriculum-based data that guides the teacher's instruction and assists IEP teams in developing comprehensive levels of performance and related goals.

47. Though the ULS Bulletin states "[d]aily lesson plans must indicate the use of [ULS] for a significant portion of the instructional day" (Exh. NN, p. B409), based on the introductory language in the ULS Bulletin, i.e., each unit contains 30 lesson plans which teachers download, and the CBA, which provides a teacher is not required to prepare daily lesson plans, this portion of the ULS Bulletin is not found to impose a lesson plan requirement on alternate curriculum teachers beyond that required by the CBA or beyond the lesson plans included with the ULS.

48. District provides alternate curriculum teachers required in-person and supplemental online ULS training. District also has a training titled "Unique Learning System: An Administrative Overview" which is available for administrators and covers important components of the ULS including monitoring teachers use and generating reports of student and classroom progress.

49. Finally, District provides the ULS Observation Checklist (ULS Checklist) to administrators and teachers. The ULS Checklist is "designed to assist administrators in ensuring essential classroom elements are in place for students participating in the alternative curriculum." (Exh. NN, p. B410.) The ULS Checklist rates a teacher's implementation of the alternative curriculum as not evident, somewhat evident, or

routinely evident in various areas of assessment. Teachers can also use the ULS Checklist as a self-assessment tool.

50. The ULS Checklist's areas of assessment focus on the ULS and the students' learning abilities and needs. The areas of assessment include: a general area addressing topics such as the presence of ULS materials and team members providing consistent responses to students; opportunities and supports for and with communication or behavior; literacy and reading; writing, math, social studies and science, and life skills activities; and the completion and accuracy of student profiles and assessments. Though many of the areas of assessment are comparable to the Framework elements, they do not directly align with, or speak of, the Framework.

### **District's Mod-Severe-LRE Program**

51. James Christopher Koontz, Ed.D., testified as a percipient witness on behalf of District with respect to its Mod-Severe-LRE Program. Dr. Koontz is the coordinator of that program. His duties include training and supervising his staff members who are assigned to six local district teams that provide direct support to teachers and administrators regarding the alternate curriculum and implementing the ULS. Dr. Koontz holds an administrative services credential, a moderate-severe specialist level II credential, and a mild-moderate specialist level I credential. Dr. Koontz has 10 years' experience as a trainer of the ULS curriculum and was on the District team that reviewed the ULS Bulletin before it was adopted. He does not have experience teaching the alternate curriculum to high school students with moderate to severe disabilities.

52. Dr. Koontz affirmed the information provided in the ULS Bulletin, including the three levels of curriculum included in the ULS and how the ULS internally

differentiates the curriculum based on student assessment results and needs. Dr. Koontz explained the interplay between the ULS and a student's IEP goals by stating a student's IEP goals are not the curriculum, rather IEP goals are developed through the student's use of the ULS.

53. District expects alternate curriculum teachers to use ULS for the majority of class instruction and to modify the ULS as needed so it is delivered in a highly individualized manner because each student moves through the curriculum at their own pace. District also expects all teachers to teach to the Framework and to provide academic rigor to each student. However, District does not have guidelines for how to use the EDST Placemat when assessing an alternate curriculum teacher teaching the ULS to students with moderate to severe disabilities. District also does not provide trainings on how to apply the Framework, California Standards, or EDST Placemat when evaluating teachers teaching the alternate curriculum. Administrators can use the ULS Checklist when performing formal observations of alternate curriculum teachers, but it is not required.

54. Dr. Koontz provided examples of how a teacher might meet District's teaching expectations when teaching the ULS. For example, as to Framework standard 1d1, Planning and Preparation, Designing Coherent Instruction, Standards Based Learning Activities, a teacher teaching the ULS curriculum would satisfy this Framework standard because the ULS provides instructions for every day, though highly modified from the general education curriculum. As another example, Dr. Koontz explained that for Framework standard 3a4, Delivery of Instruction, Communicating with Students, Use of Academic Language, achieving this Framework standard teaching the alternate curriculum might sound less academic than in a general education classroom because

the teacher and students would be speaking less often and would use less words when speaking.

55. Dr. Koontz would expect if a school administration had concerns about an alternate curriculum teacher and the delivery of ULS in a classroom that the administration would contact the Mod-Severe-LRE program for support, especially if the administrators had not been trained in ULS. Dr. Koontz acknowledged that no administrators from JFKHS had ever contacted him or the Mod-Severe-LRE program for support with Respondent or with observations of Respondent's teaching of the alternate curriculum.

### **Classroom Supports**

56. Three classroom support positions provide support to District alternate curriculum teachers: paraprofessionals, Behavioral Intervention Implementation Specialists (BIIs), and Peer Buddies (PBs).

57. A paraprofessional is a District employee who is assigned to a teacher and provides daily supports during each class period, such as assistance preparing classroom materials, grading, working one-on-one or in small groups delivering instruction, or assisting students with restroom breaks.

58. BIIs are employed by non-public agencies (NPAs), not by District. BIIs must adhere to the job duties set forth by the NPA, which often include assignment to one student, monitoring and tracking the student's behaviors, such as frequency of hand movements, hitting oneself, or throwing things, and intervening to support the student if the student's behaviors become dangerous to self or others. BIIs may track this information on a piece of paper, a computer, or iPhone, and the information is



ultimately reviewed by the student's IEP team. The alternate curriculum teacher does not have authority over BIIIs.

59. PBs are general education students who are usually assigned to one student and who help their assigned students navigate through the curriculum and with interpersonal skill building. The alternate curriculum teacher is the PB's teacher and provides grades to the PBs and displays their work in the classroom. However, the alternate curriculum teachers must call in to the attendance office daily to report the PBs' attendance. Sometimes there are an excess number of PBs assigned to a class, or a student is absent, in which case the extra PB(s) may not have much to do during a period.

### **Observations and Notices of Unsatisfactory Performance**

60. During the 2017-2018 academic year, Respondent was observed by Dr. Chavez on October 12 and November 30, 2017, and January 24, 2018. Dr. Chavez issued respondent a Notice of Unsatisfactory Service (NUS) to respondent on April 10, 2019.

61. During the 2018-2019 academic year, Respondent was observed by AP Streif on September 11, November 15, and December 6, 2018, and January 30, March 11, and May 6, 2019.

62. During the 2019-2020 academic year, Respondent was observed by AP Song on September 3, October 17, and November 6, 2019, and January 27 and February 27, 2020. Dr. Chavez issued an NUS to respondent on January 30, 2020.

63. During the observations the administrators documented 18 types of deficiencies in Respondent's work performance, many of which were repeatedly documented in subsequent observations.

64. Some of the observations were informal evaluations, while others were formal evaluations. AP Song testified, and was not otherwise controverted, that the purpose and use of informal and formal evaluations are distinct. Informal evaluations are only informative and not evaluative. They are conducted early in the semester to provide an opportunity to give feedback to a teacher. District's general practice is they should not have a negative impact on the teacher and are not "high stakes." In contrast, the formal observations are evaluative and form the bases for the teacher's EDST formal evaluation rating.

### **THE ADMINISTRATORS**

65. District's case and the administrators' testimony and observations demonstrated they had a two-fold expectation of Respondent: first, she must implement the ULS to fidelity to her students with moderate to severe disabilities; and second, she must implement District's teaching expectations such that Respondent is, on any given day, visibly providing academic rigor to her students by mirroring the District's expected delivery of the general curriculum and its higher intellectual standards.

66. The administrators repeatedly concluded Respondent was not implementing the ULS to fidelity, sometimes concluding she was not implementing it at all. The administrators also often concluded Respondent was failing to adhere to District's pedagogical standard to have the highest expectations of all students because, for instance, Respondent did not challenge her students with higher-level

thinking by offering them more detailed written information about daily activities, such as a detailed daily agenda, and did not engage them in more comprehensive and abstract dialogue, failing to draw connections between the students' work tasks and the unit's overall purpose.

67. The administrators received annual trainings on how to evaluate teachers' compliance with District's teaching expectations, using District's True North Logic (TNL) platform. The training consists of watching a video of a teacher teaching, after which the administrator rates the teacher's performance level for each relevant EDST Placemat element, i.e., ineffective, developing, or effective, in the TNL platform. The TNL training does not address the ULS, its implementation, or students with moderate to severe disabilities.

68. The administrators are aware District requires alternate curriculum teachers to implement the ULS but were not familiar with the ULS itself. They have not participated in or received the ULS training available from District or other assistance with learning the many facets of ULS. They have not been trained in how ULS is delivered, how it internally differentiates curriculum based on student assessments, how it houses the information teachers regularly track regarding students' progress, or how to observe when ULS or the alternate curriculum is being implemented to fidelity.

69. The administrators did not review Respondents' students' IEPs either before or after their respective observations. They each concluded such review was not necessary. They believed it would be apparent if Respondent was implementing the ULS to fidelity while meeting District's teaching expectations, regardless of whether her students had moderate to severe disabilities and regardless of their educational service need.

## **Dr. Chavez**

70. Dr. Chavez has been employed by District for 41 years and has been the Principal of JFKHS since 2013. He holds a teaching and an administrative credential and a certificate in bilingual and professional development. His duties include school safety, parent and community engagement, technology, and supervising instruction. In addition to his work as a principal, Dr. Chavez's professional experience includes working as a teaching assistant, basketball coach, librarian, health teacher, assistant principal, and director of supervision for secondary classrooms and schools. Dr. Chavez taught some students with special needs when they were enrolled in his general education classes, but he does not have experience teaching the alternate curriculum to students with moderate to severe disabilities.

## **Assistant Principal Streif**

71. AP Streif has been employed by District for 22 years. She holds a single subject teaching credential in English, a pupil personnel services credential, and an administrative services credential. AP Streif began her current position as Counseling Coordinator with Local District North-West in August 2021. Before her current position, AP Streif was an AP at JFKHS for five years. During the 2018-2019 academic year, AP Streif oversaw JFKHS's special education department and other departments. Before 2015, AP Streif's work for District included work as an English teacher and as a counselor for District. AP Streif's experience with ULS and her expectations of alternate curriculum teachers are similar to those of Dr. Chavez. AP Streif does not have experience with students with moderate to severe disabilities or with teaching the alternate curriculum, though she noted she taught Respondent's and another alternate curriculum teacher's class for four days in 2018 during a teacher strike.

## **Assistant Principal Song**

72. AP Song has worked with District for over 19 years. He holds an administrative services credential and an education specialist instruction credential level II. AP Song recently began as Principal at Hale Middle School in Woodland Hills. Before his current position, AP song was an AP at JFKHS from approximately 2015 through the end of the 2021-2022 academic year. As an AP with JFKHS, he monitored and evaluated teachers and oversaw the special education office, magnet programs, and instructional materials.

73. Before his work at JFKHS, AP Song was the magnet coordinator at Van Nuys High School, a math teacher, and a resource teacher for students with special needs. As a resource teacher, AP Song taught second through fourth grade students with mild to moderate disabilities who were on the graduation track. AP Song does not have experience teaching the alternate curriculum or teaching students with moderate to severe disabilities. He has a basic understanding that ULS differentiates instruction generally through its SymbolStix and News2You visual support programs, but otherwise his understanding of the ULS is comparable to Dr. Chavez and AP Streif.

## **ASSISTANCE AND GUIDANCE**

74. The administrators provided Respondent multiple attachments to their conference memos during their respective observation conferences. The five attachments most often provided to Respondent and relied upon by District at hearing were: Think, Pair, Share (TPS); Depth of Knowledge (DOK) Question Stems; "Four Critical Elements of SDAIE;" "Visual Supports and Autism Spectrum Disorders;" and "Working with the Paraprofessional in your Classroom." The administrators also provided Respondent an untitled document (Autism Instructional Accommodations)

which identifies instructional methods and accommodations to be provided for student with autism; "Aiming High," a resource for teaching vocabulary to ELs; and schedules for Peer Assistance and Review (PAR) Program classes. Collectively these attachments are referred to as assistance and guidance handouts.

75. To the extent the administrators provided the assistance and guidance handouts to Respondent, the administrators had never utilized these handouts while teaching the alternate curriculum to students with moderate to severe disabilities and did not, in their conference memos or testimony, provide any practical or meaningful suggestions about how Respondent could have utilized these handouts when implementing the alternate curriculum. Rather, the content of these assistance and guidance handouts further demonstrates the administrators' lack of understanding of the ULS and of Respondent's students' educational needs and their moderate to severe disabilities.

76. The TPS handout, Exhibit 19, explains at page A402:

Think-Pair-Share (TPS) is a strategy that guides students to perform a communicative task by talking, sharing, and negotiating meaning while performing the task. To be effective, TPS needs to be taught directly, practiced consistently by students, and monitored consistently by the teacher.

77. The TPS handout further explains the TPS process. The teacher explains the process and then calls on a student to model the process: sitting knee-to-knee or side-by-side with the student, and tells the student partner), "Let's take turns sharing ideas about this picture. I'll start." The teacher talks about the picture and then poses

questions to the class, such as "What was my partner doing while I was sharing?" Students are then expected to describe the partner's behavior while the teacher was sharing. The process is repeated with different student partners.

78. The DOK Question Stems handout provides four levels of thought prompts. Level four provides the most abstract and advanced level of prompting. As an example, one set of thought prompts provides the following: Level 1, "Can you recall [identified event]?"; Level 2, "Can you explain how [something] affected [identified event]?"; Level 3, "How is [something] related to [identified event]?"; and Level 4, "Write a thesis drawing multiple conclusions from multiple sources." (Exh. 28, p, A571.)

79. The "Four Elements of SDAIE [Specially Designed Academic Instruction in English]," handout explains the intention and process of SDAIE:

Course content is drawn from the California frameworks and the Content Standards¶ . . . ¶

Students at Beginning and Early Intermediate proficiency levels have limited comprehension in English. This limitation would necessitate teachers to rely on the use of primary language support and content-based [English Language Development] to increase access to core content for these students. This support is especially critical when teaching complex skills and abstract concepts.

The intent of SDAIE is to optimally make grade-level content accessible to ELs at the Intermediate-Advanced proficiency levels. ¶. . . ¶

Learning is facilitated in an interactive classroom that offers opportunities for students to talk with the teacher and with each other about the lesson, key concepts, and their own questions about the text. The more frequent the interaction, the greater the learning. Such discussion facilitates learning new information, negotiating meanings, and developing new concepts. ¶. . . ¶

(Exh. 19, pp. A396, A398, A399.)

80. As presented in the SDAIE handout, SDAIE is focused on the general curriculum, not the alternate curriculum. It speaks of the course content being directly derived from the Framework and California Standards, and it does not mention the alternate curriculum or ULS. The intent of SDAIE is focused on intermediate and advanced proficiency levels, and it is not meant for Respondent's students who have limited proficiency levels, such as being non-verbal and limited to three-word sentences. SDAIE also calls on students to engage in frequent interaction with each other and with the teacher regarding key concepts and to negotiate meaning. Such levels of interaction are not reasonably expected for students with moderate to severe disabilities because of the nature of their disabilities and social and communication challenges. Similarly, negotiating meaning of key concepts as provided in the SDAIE handout expects levels of abstract reasoning and communication not reasonably expected of students with moderate to severe disabilities.

81. The "Visual Supports and Autism Spectrum Disorders" handout is a four-page document that describes how visual supports, or communicating through pictures, can help individuals communicate with students with autism. Respondent reviewed the handout but understood she was already providing these visual supports



to her students through the ULS curriculum and its SymbolStix program, which directly differentiates levels of visual supports based on each students' English proficiency.

82. The "Visual Supports and Autism Spectrum Disorders" handout provides information supportive of Respondent's and the teacher Commissioners' understanding of, and teaching experiences with, students with moderate to severe autism:

Visual supports are used with children who have autism spectrum disorders (ASD) for two main purposes. They help parents communicate better with their child, and they help their child communicate better with others. ¶ . . . ¶

The main features of ASD are challenges in interacting socially, using language, and having limited interests or repetitive behaviors. Visual supports help-in all-three-areas.

First, children with ASD may not understand social cues as they interact with others in daily activities. They may not grasp social expectations, like how to start a conversation, how to respond when others make social approaches, or how to change behavior based on unspoken social rules. . . .

Second, children with ASD often find it difficult to understand and follow spoken instructions. They may not be able to express well what they want or need. . . .

Finally, some children with ASD are anxious or act out when their routines-change-or they are in unfamiliar situations.

Visuals can help them understand what to expect and will happen next and also as they reduce anxiety. Visuals can help them pay attention to important details and help them cope with change.

(Exh. 21, p. A423.)

83. District failed to establish the assistance and guidance handouts were of benefit to Respondent. The TPS, DOK Question Stems, and SDAIE handouts call on the teacher and student to engage in conversation, working towards higher level conversation, dependent on social cues, abstract thinking, and intermediate to advance English proficiency. However, the “Visual Supports and Autism Spectrum Disorders” handout provides critical information about how Respondent’s students’ autism affects their learning process, both due to their limited English and due to other communication, attention, and social cue and expectation challenges. Based on this undisputed information about the effects of autism, affirmed by Respondent’s evidence regarding her students’ capacities, and the Commissioner’s experience with students with moderate to severe disabilities, the assistance and guidance handouts provided little meaningful assistance or guidance to Respondent as a teacher teaching the alternate curriculum.

84. Like the “Visual Supports and Autism Spectrum Disorders” handout, the Autism Instructional Accommodations handout supports Respondent’s teaching practice and affirms the teacher Commissioners’ position that many of the administrators’ expectations for Respondent’s teaching pedagogy and of her students were not practical. For example, the Autism Instructional Accommodations handout provides that a teacher should ask questions that are as concrete as possible which can be answered with words or a phrase, instead of a long essay answer, and during

discussion the teacher should use speech literally, not figuratively. (Exh. 26, p. A555). Accordingly, the information in this handout further dispelled the administrators' emphasis on the TPS and DOK Question Stems handouts which, by their nature, call on the teacher to use abstract discussion techniques and to develop the students' capacity to provide lengthy answers.

85. The "Aiming High" handout focuses on teaching ELs who speak another language and are learning English and does not mention the alternate curriculum or students with moderate to severe disabilities. The "Aiming High" handout provides examples of how a teacher would ideally teach ELs. The examples provided are aimed at non-intellectually challenged students such as the following:

Teacher: The next word I'm going to teach you is "lexicon."

¶. . . ¶ A lexicon is like a dictionary. Lexicon can refer to different words that are used in a particular language like English or Spanish . . . [or] to words used by people in a certain profession, like doctors or teachers. ¶ . . . ¶ If you want to order a special coffee drink, you need to know the difference between a latte and cappuccino because these are important terms in the coffee-maker's [blank].

Students: Lexicon.

(Exh. 26, p. A540.) Other teaching examples provided in the handout call on the teacher and students to participate in high-level vocabulary instruction and abstract thinking and instructional exchanges, such as the students writing a note-taking scaffold and a lesson on cognates.

86. The "Working with the Paraprofessional in your Classroom" handout provides suggestions about how to best work with a paraprofessional to support a classroom. Some suggestions include: collaborative support during a lesson; small group instruction; one-on-one assistance; prepare materials; grade student work; proximity support for appropriate discipline; prepare bulletin boards; record grades; provide points, stickers, happy faces, etc.; keep class supplies and materials organized; assist students with composition writing; correct work; conduct daily classroom routine; restroom assistance; order supplies and materials; provide supervision during lunch, recess, breaks, etc.; and other duties as assigned by the teacher. (Exh. 26, p. A549.)

87. Per Respondent's testimony, she had a strong working relationship with the class paraprofessional with whom she had worked for five years. Though the administrators' observations depict Respondent's paraprofessional performing duties as the handout suggests, including observations of the paraprofessional grading, preparing materials, working in small groups with the students, conducting classroom routines, and providing restroom assistance, the administrators concluded Respondent was not providing clear duties to her paraprofessional or properly engaging her in classroom duties. (See Charges 16 (a-b), 26 (a-c), 70, 82 (a-c), and 89 (a-b). The administrators' conclusions were not supported by the evidence.

88. Finally, the administrators provided Respondent PAR program schedules as a form of assistance and guidance and suggested Respondent attend some courses. The PAR program does not provide classes directed at the alternate curriculum or its teachers. Nonetheless, during the semester before the academic year during which Dr. Chavez observed Respondent, Respondent took the following PAR courses: Self-Management 101, March 31, 2017; Growth Mindset 101, May 28, 2017; Self-Efficacy

101, May 28, 2017; and Social Awareness 101, May 29, 2017. In addition, on October 26 and September 20, 2017, after Dr. Chavez's October 12, 2017, observation, Respondent completed special education course titled "Community Based Instruction for Teachers and Paraprofessionals," a course which included coverage of ULS 2.0 Implementation with Fidelity.

## **UNRELIABILITY OF THE ADMINISTRATORS' OBSERVATIONS AND CONCLUSIONS**

89. Though in total the administrators performed 14 observations of Respondent, their observations and conclusions were unreliable. While the administrators often assumed Respondent was not teaching the ULS or appropriately differentiating curriculum, the District failed to establish the administrators knew enough about the ULS to be able to accurately observe its proper implementation. For instance, AP Song testified he determined Respondent was not using ULS because she did not reference the curriculum by name during her classes and determined she was not differentiating instruction based on Respondent's tone of voice, how she posed questions, and whether she used visual tools. These are not indicators that Respondent failed to implement the ULS.

90. As another example, the administrators repeatedly directed Respondent to provide lesson plans, to teach bell-to-bell instruction, and to comply with JFKHS's WBC policy by posting daily agendas and related information on the whiteboard. However, District failed to establish Respondent was required to provide lesson plans for informal observations, and the administrators acknowledged the CBA does not require lesson plans for informal observations. District also failed to submit any policy providing the requirements of bell-to-bell instruction or that it applied to the alternate

curriculum and failed to submit the JFKHS WBC policy delineating its terms or requirements.

## **Lesson Plans**

91. Teachers are required to, and Respondent did, provide lesson plans using District's lesson plan template to the observing administrators before formal observations. District's lesson plan template aligns with the Framework and California Standards as can be seen, for example, on page B86 where one of the prompts asks, "How does this lesson connect to the big idea and to the overall unit? (1a2, 1c1)," referencing the Framework's focus elements 1a2, knowledge of content related pedagogy, and 1c1, value, sequence, alignment, and clarity (see Exh. 45, p. A657).

92. Respondent submitted Exhibit Q, an example of a formal observation lesson plan she submitted to AP Song before her November 2019 formal observation. Respondent complied with the lesson plan template required for formal observations and provided comprehensive answers to all prompts, including a detailed description of each student's IEP reading goals and how she would be adjusting the lesson plan to meet each student's needs. Respondent included her strategies to help every student gain access to academic content, which included a detailed description of how she assigns PBs to one or two students and how the PBs knows his or her student's needs well and are able to "provid[e] individual attention and customized access to each lesson." (Exh. Q, p. B86.) She noted at the end of her lesson plan, "Since students' reading levels and overall abilities vary significantly depending on their current internal state, and all have very limited attention spans, lessons may need to be altered spontaneously in order to accommodate their needs at that time." (*Ibid.*)

93. The CBA does not require teachers to, and Respondent did not, provide lesson plans to the observing administrators for informal observations or on a weekly basis. The CBA only requires teachers to submit, upon request, evidence of planning. AP Song testified teacher-created lesson plans are further not necessary to implement the ULS because the ULS creates its own lesson plans, though teacher-created lesson plans may be helpful to observing administrators. However, though they were not required, the administrators repeatedly directed Respondent to have lesson plans visible and to provide weekly lesson plans to the administrators. Respondent offered to provide the administrators the respective ULS lesson plans for the classes they observed, or her own evidence of planning, but the administrators were not receptive to receiving the ULS lesson plans or evidence of planning. Respondent also asked the administrators for examples of lesson plans or evidence of planning that aligned the ULS with the Framework or that would meet their expectations, but she was not provided with any.

94. The ULS Lesson plan format supports Respondent's claim that the ULS lesson plans are detailed, and they do not align with the Framework or California Standards, and they do not align with District's lesson plan template. For example, the first day of the ULS weekly Practical English lesson plan for the November Unit "Ancient Communities" provides the following:

Standard: Standard 10 – Ask and answer questions about essential elements of a text.

Objective: To learn about Roman aqueducts and modern plumbing.

Lesson/Activity: "Ancient Rome and the Aqueducts" Read lesson 9, chapter 4 and answer comprehension questions at end of chapter. (See Unique detailed lesson plan guide attached)

Specially Designed Instruction: Each student is at a predetermined level (1-3) and accesses the lesson at that level. (See attached explanation of procedures, etc. for more details.)

(Exh. P, p. B83.)

95. Respondent also submitted Exhibits R and S, substitute lesson plans she provided to substitute teachers for two days in October 2017. These lesson plans are consistent with Respondent's testimony and her written responses to the administrators regarding her lesson planning as they show Respondent planned detailed lessons for each day. The lesson plans provided information to the substitute teacher regarding the lessons and routine of each period, the students and their abilities and needs, and the roles of the PBs, as well as unusual school activities such as trick-or-treating in the hallways.

96. AP Song testified that had Respondent provided him evidence of planning, he would have discussed it with her. However, Respondent submitted a September 11, 2019 email (Exhibit O) which she sent to AP Song and which included evidence of planning of her September 3, 2019 class. In this email, she explained that rather than developing a set overall lesson plan, she determines lessons and projects based on the ULS lessons and students' IEPs and abilities; she continually assesses student progress; and she reviews ULS materials each month and uses the ULS



planning tool for each unit and lesson. When presented with this email during hearing, AP Song had no explanation for why he did not respond to Respondent's email or consider the email as evidence of planning. Similar to this email, Respondent provided multiple written responses to Dr. Chavez's conference memos that demonstrated her evidence of planning, but these written responses were similarly disregarded.

### **Bell-to-Bell Instruction**

97. Framework Focus Element 2c1 provides the District expectations that class routines, procedures, and transitions are managed in such a way that there is little to no loss of instructional time. However, the Framework does not require bell-to-bell instruction, nor does it provide for what "no loss of instructional time" means, e.g., whether the teacher must provide instruction from the time the beginning of the period bell rings until the time when the end of the period bell rings, without breaks, pauses, or transitions, in order to meet District expectations. Further, the Framework does not account for the educational or service needs of students with moderate to severe disabilities. These students often leave and arrive at classes early to avoid crowded hallways, to allow for more time to walk to a class and use the restroom, and to reach the bus on time. Respondent dismissed them early from class for these reasons. The administrators demonstrated little to no knowledge of the reality of the schedule for students with moderate to severe disabilities, or for the necessarily modified instructional time. When asked on cross-examination about this conflict between the reality of any given day for students with moderate to severe disabilities and the administrators' expectations of bell-to-bell instruction, each administrator merely reiterated the fact that Respondent failed to teach bell-to-bell instruction.

## **Whiteboard Configuration**

98. The administrators testified to the fact that JFKHS requires its teachers to use its adopted WBC policy to help the learners, others in classroom, and visitors to the classroom understand the lesson for the day. JFKHS also adopted the WBC to aide with obtaining Western Association for Schools and Colleges, or WASC, accreditation. Adhering to the WBC includes writing on a teacher's whiteboard the daily agenda and instructional table which must include the period's objective, standard, and homework. Neither the District nor the CBA require teachers to adhere to the WBC.

99. Though the administrators testified about JFKHS's WBC policy, District did not provide a written rule or policy regarding the WBC. As presented by the administrators, the WBC policy does not consider its application or effectiveness for the alternate curriculum or for students with moderate to severe disabilities.

## **Additional Observations and Conclusions**

100. The SOC Charges and related memos contain additional critiques and unsupported conclusions of Respondent's efficacy as an alternate curriculum teacher. For example, in Charge 7, Dr. Chavez concludes Respondent's act of taking attendance for three minutes at the start of the period was one example of her not teaching a structured and engaging English Arts activity. However, he acknowledged during cross-examination that Respondent was required to take attendance and her delegation of the daily affirmation activity to students, though written in the October 2017 memo as failure to properly perform her teaching duties, was an appropriate use of time to complete her attendance duty.

101. The administrators critiqued Respondent for not using the LCD projector for the observed lessons as a mode of providing visual supports to her students.

However, the administrators did not understand the ULS was differentiating the curriculum according to students' visual learning needs. Dr. Koontz agreed visual supports should be used when teaching the alternate curriculum, though using such supports in addition to the ULS curriculum would be at the discretion of the teacher.

102. The administrators believed Respondent should have been using the DOK Question Stems in each class. Dr. Koontz agreed and believed all alternate curriculum teachers should provide academic rigor to all students, though in the alternate curriculum such rigor would be individualized. Neither the administrators nor Dr. Koontz could describe or provide examples for how an alternate curriculum teacher would utilize the DOK Question Stems when teaching the alternate curriculum to students with moderate to severe disabilities.

103. The administrators acknowledged Respondent's students generally did not demonstrate any disruptive behaviors, such as throwing items, hitting, or biting during the observed classes. The most significant behaviors they observed were interruptions, echolalia, or difficulty paying attention. Based on the teacher Commissioners' experience, Respondent's ability to conduct each class without notable behaviors of the students demonstrated Respondent's knowledge of her students' needs and the implementation of predictable academic and interpersonal routines.

### **Demeanor and Treatment of Students**

104. The administrators found Respondent difficult to work with, unwilling to follow their directives, and disrespectful in her description of students to the administrators and during class. Respondent admitted she was gruff and hasty in her

personal interactions with the administrators and in her description of her students on more than one occasion.

105. During an observation on November 30, 2017, Dr. Chavez heard Respondent say during class while taking attendance, "We are missing A■■ today. He is like having three students." (Exh. 13, p. A260.)

106. On September 24, 2018, at an observation conference with AP Streif, AP Streif provided Respondent the nearly identical feedback and handouts as Dr. Chavez in three prior conferences. Respondent abruptly left the conference and told AP Streif Respondent would need a copy of the memo for her attorney. Before leaving, Respondent admits saying something to the effect of, "How do you engage a student who is off in Never, Never Land? These students are low." (Exh. 14, p. A289.)

107. During the February 2019 conference with AP Streif, Respondent admits saying words to the effect of, "[I] have routines, folders, and structures in place in your classroom, but the students do not retain anything. They are worse than kindergartners and you cannot override that." (Exh. 16, p. 358.) Similarly, during her April 2019 conference with AP Streif, Respondent left early and stated words to the effect of, "I'm done. Just give me a copy to give to the Union." (Exh. 18, p. A385.) On May 6, 2019, Respondent began the conference with AP Streif but then left, informing AP Streif she declined to listen to her concerns.

108. At hearing, Respondent apologized for her statements regarding her students. As to her statement regarding A■■, she explained that the class knew how she cared about A■■ as well as how challenging he can be, in part because he is non-verbal and frequently eloped from class. She believes the class would have heard it as a loving though gibing remark, but she understood it would sound critical to an

outsider and it was not appropriate for her to say. Respondent explained that “low” is a term of art used to describe students on the alternate curriculum, and technically Respondent’s students had, at least at times, attention spans and cognitive abilities lower than students in kindergarten. Nonetheless, she understood that while accurate, her comments could be heard as harsh and disrespectful.

109. In regard to her statements and behaviors with the administrators, Respondent admitted she reacted to the administrators, rather than sitting through some of the conferences. She explained she was becoming increasingly frustrated and defeated by the administrators’ nearly identical feedback and directives and handouts through which it was clear they had not considered Respondent’s detailed post-conference responses. She was feeling her job was becoming threatened despite her many efforts to work with the administrators and their expectations.

110. Despite offering her perspective on her demeanor and remarks, Respondent regretted her behavior. She acknowledged she was short and unprofessional with the administrators and regretted that her comments about her students could be heard as disrespectful or demeaning.

### **Formal Observations**

111. On January 24, 2018, Dr. Chavez conducted a formal observation of Respondent, documented in the 2017-2018 Educator Development and Support: Teacher Evaluation Plan. (Exh. 58.) District did not present a corresponding conference memo for this observation. Dr. Chavez’s assessment included the following:

Based on discussions during conferences and evidence from observations of practice, there is little evidence to demonstrate that [Respondent uses] other forms of

assessment to monitor student growth. The primary data source is the Unique curriculum assessments. ¶ . . . ¶

The identified objectives were not met to fidelity.

[Respondent] does most of the talking and relies heavily on the Unique program to engage students. Peer buddies are the primary persons providing the individual instruction.

(Exh. 58, p. A754.) He concluded Respondent consistently demonstrated ineffective teaching practice with minimal growth throughout the year and rated her below standard.

112. On December 6, 2018, AP Streif conducted a formal observation of Respondent, documented in the 2018-2019 Educator Development and Support: Teacher Evaluation Plan (Exh. 59, pp. A761-A775). District did not present a corresponding conference memo for this observation. At hearing, AP Streif testified Respondent told AP Streif it took Respondent four days to prepare her lesson, implying this was an excessive amount of time, but noted Respondent's formal observation "hit all the points" and "it was a really good formal." AP Streif explained that nonetheless she rated Respondent as below standard because AP Streif found Respondent's teaching during her informal observations was ineffective.

113. Similarly, despite AP Song's repeated testimony that informal observations are not evaluative, he acknowledged he relied on his informal observations of Respondent when completing her 2019-2020 evaluation, for which he evaluated Respondent as below standard because Respondent did not "knock it out of the park" on her November 2019 formal observation. AP Song concluded Respondent's teaching performance was below standard because she did not submit

weekly lesson plans or implement teacher directed lesson plans during instruction, did not consistently utilize the ULS, and did not provide visual schedules or structured guidance for classroom supports. (Exh. 59, pp. A776-A791.)

### **PAR Evaluation**

114. District submitted the "Component 1 Reporting Form: Participation Year (PAR) 2018-2019" (Exh. 67) (PAR form) completed by the PAR panel which concluded Respondent did not meet established PAR goals. The letter attached to the form states the information is not to be used in her final evaluation. District did not present testimony from PAR panel members and did not present evidence supporting the bases for the PAR panel's conclusion. Accordingly, the PAR form is not probative.

### **Discipline and Directives**

115. District issued the following discipline to Respondent: April 10, 2019, NUS and Notice of Suspension (11 Days); January 30, 2020, NUS and Notice of Suspension (15 Days); and on April 13, 2018, April 25, 2019, and April 29, 2020, Respondent was rated as below standard on her Educator Development and Support: Teacher Evaluation Plans.

116. The discipline issued to Respondent carries little weight. The NUSs and the below standard evaluations were based on, and were nearly identical to, the contents of the 14 evaluations completed by the administrator. The discipline was similarly not persuasive based on the administrators' lack of knowledge of Respondent's discipline, the ULS, or of Respondent's students' educational and service needs. As to the suspensions, the administrators did not know if Respondent was required to serve either suspension, and District did not otherwise submit evidence tending to establish Respondent was so required.

## **Respondent's Evidence**

117. Respondent testified at hearing and had two witnesses testify on her behalf: C P, a father of one of Respondent's students who completed JFKHS in 2019; and Nanci Hanover, Ed.D., the JFKHS UTLA union representative during the time period at issue in the SOC. In support of her character, Respondent also presented two parent emails, a parent thank you card, and a letter from a colleague. (These documents were admitted as hearsay evidence pursuant to Government Code section 11513, subdivision (d), to supplement or explain other evidence). In addition, Respondent presented other documents in her defense, including multiple written responses she provided to administrators after respective conferences, lesson plans, and daily notebook entries (also admitted as hearsay evidence) she kept as a method of lesson planning and tracking students' progress.

### **WITNESSES**

118. Mr. P, father of M, testified at hearing. M was Respondent's student for four years between 2015 and 2019. M has autism and during her attendance at JFKHS was enrolled in Respondent's moderate-severe class and received the ULS curriculum. M is primarily non-verbal and has difficulty answering even the most basic questions. For these reasons, M's parents wanted M's education to focus on practical skills and not academia. Mr. P found Respondent was skilled at teaching the alternate curriculum to students with moderate to severe autism, including the necessary practical skills, such as safety, and socio-emotional skills, such as empathy, while working cooperatively with parents. Mr. P and his wife, M's mother, were impressed with how Respondent worked with M and helped her progress. They set safety as a learning goal and Respondent worked with M to help her learn her mother's contact information



to help her were she to become lost. At some point during her JFKHS education but during non-school hours, M[REDACTED] got lost and was located by the police. M[REDACTED] provided the police her mother's name and phone number, and M[REDACTED] was safely returned home. M[REDACTED]'s parents attribute M[REDACTED]'s safety to Respondent's excellent work with M[REDACTED].

119. Dr. Hanover taught health for District for 32 years and retired one year ago. For much of her tenure at JFKHS, she acted as the UTLA union representative, and in 2018 she helped coordinate the UTLA strike. In her role as union representative, Dr. Hanover attended many teacher conferences held after observations, for teachers teaching the general and the alternate curriculum. Dr. Hanover is familiar with the CBA lesson plan requirements which require a teacher to provide a lesson plan only for a formal observation and otherwise evidence of planning upon request. Dr. Hanover was present for some of Respondent's conferences with the administrators and knew of no basis, either in the CBA or any other District or JFKHS policy or rule, for the administrators' directives that Respondent make her lesson plans visible and provide weekly lesson plans to the administrators.

## **PARENT COMMUNICATIONS**

120. The first parent email (Exh. K) was written by C[REDACTED] D., the parent of C[REDACTED] D., on April 8, 2018, and was sent to then District Superintendent Michelle King and others. Based on his experience with Respondent as his daughter's teacher, he knew Respondent's focus was on teaching all her students how to interact in society with others and to be able to take care of themselves moving into adulthood, as well as teaching the alternate curriculum. C[REDACTED] D. saw the positive effects of Respondent's teaching on a daily basis, including in C[REDACTED] D.'s improved communication, behavior, and social and emotional regulation. For these reasons, he

insisted on C [REDACTED] D. being assigned to Respondent's class for all four of her years attending JFKHS.

121. The second parent email (Exh. L) was written by M [REDACTED] V., mother of B [REDACTED] V., sent to JFKHS informing the school she would be withdrawing B [REDACTED] V. from school because the family was moving to the Philippines. M [REDACTED] V. gave thanks to Respondent for her teaching and wrote that Respondent deserves the "highest commendation for her dedication in helping her students with academics" and the activities of daily living. M [REDACTED] V. added that Respondent helped B [REDACTED] V. make friends and that Respondent demonstrated her love for her students and her concern for their safety.

122. The thank you card (Exh. N) was written by the parent of a student named B [REDACTED]. This parent thanked Respondent for her support, caring, and comprehension of B [REDACTED] during the four years he was Respondent's student.

### **LETTER FROM COLLEAGUE**

123. Respondent also submitted an April 24, 2019, letter from her JFKHS colleague Jaymie Bell-Dean. Ms. Bell-Dean and respondent worked closely together for over five years, both teaching the alternate curriculum to students with moderate to severe disabilities. Ms. Bell-Dean affirmed Respondent's testimony that their students were on the non-diploma track and received Certificates of Completion when they completed JFKHS. She agreed with Respondent that the alternate curriculum focuses on functional academics, life skills, and social skills, and is modified as necessary to meet the students' educational and special needs, including behavioral and emotional challenges.

124. Ms. Bell-Dean found Respondent created a nurturing and supportive learning environment, her classroom was organized and inviting, and she continually displayed student work and created jobs for her students to help establish ownership of the classroom and involvement in the daily routine. Ms. Bell-Dean was familiar with Respondent's weekly affirmations she practiced daily with her students, which focused on behavior expectations often reflected in the curriculum. Finally, Ms. Bell-Dean observed Respondent seek opportunities to collaborate with other alternate curriculum teachers to learn about an incorporate their best practices, and she knew of Respondent attending relevant professional development courses after which Respondent eagerly shared what she had learned.

### **WRITTEN RESPONSES**

125. Respondent wrote comprehensive responses to the October 2017 Memo, the September and October 2019 Memos, and the January 2020 Memo. In her responses, Respondent explained the ULS, its components, and how she complies with its requirements daily. She also explained in detail her students' individual educational and service needs and how her lessons differentiated for these needs. Respondent addressed how many of the administrators' expectations, both pedagogical and practical, would only serve to overwhelm her students. Finally, Respondent offered to meet with the administrators to show them evidence of her lesson planning.

126. Respondent's responses and efforts to meet with the administrators demonstrate her attentiveness to the administrators' concerns and her efforts to clarify her compliance with her assignment as an alternate curriculum teacher. However, the administrators did not respond in kind. In their subsequent observation memos, the administrators did not reference Respondent's responses or the information she provided them, but rather repeated their conclusions, clearly uninformed by the

information Respondent had provided. Finally, despite Respondent's efforts to communicate and meet with the administrators to resolve any concerns, the administrators did not reach out to Dr. Koontz or to the Mod-Severe-LRE Program for support with providing meaningful and accurate evaluations of Respondent's teaching performance and did not meet with Respondent to review her evidence of planning.

127. The following examples are representative of Respondent's written responses and show the breadth of her knowledge of ULS and of her students. In her response to the October 2017 Memo (October 2017 response) and Dr. Chavez's conclusion she did not display knowledge of her students' individual strengths and needs, Respondent explained the ULS is designed to differentiate to meet each student's needs, and though it may have appeared the lesson was the same, each student was accessing a different level of the same lesson while using their iPads. She further informed him she completes several profiles for each student at the beginning of the year, and updates the profiles as needed, which then determines the level appropriate for each student. Finally, she explained that each student's skills are tracked and reviewed monthly to determine which skills need to be further addressed, and she keeps each student's IEP goals in individual folders along with any work samples that provide evidence of meeting their IEP goals. (Exh. D, p. B51.)

128. Also in her October 2017 response, Respondent clarified the classroom supports are clear on their job duties as they all discuss classroom expectations outside of class time and their roles and responsibilities ultimately become a part of the classroom routine. She also explained that though some classroom materials were not always immediately at hand, they were always readily available, and the practice of students waiting for materials or getting the materials themselves, builds social skills and independence and provides necessary break time between instruction.

Respondent acknowledged she did not have an updated WBC during the October 2017 observation and explained the WBC is of no use to her students or class, but she would make efforts to complete it in the future. Though the administrators continued to find fault in Respondent's WBC, she increasingly added detail to her WBC throughout the relevant time period.

129. In her October 2017 response, Respondent also explained the routines of her class including: (a) the "Do Now" activity, which teaches her students how to behave when they are together as a whole group and exposes her higher students to a daily writing and shared activity, while her less able students are helped by their PBs to ensure that they also are benefitting from the activity according to each of their IEP goals, such as by helping them to develop their writing skills with a tracing activity; (b) individual or small group lessons which require students to obtain their iPads, which can require several reminders, and once obtained the students access the ULS lesson at levels predetermined by their profiles; and (c) the students listen to and read through the lesson at their level and answer the comprehension questions. (Exh. D, pp. B51-B52.) In subsequent written responses she added that because ULS focuses on Language Arts and English, she also uses other District approved materials, such as Attainment books and the Khan program, to deliver social skills and math instruction.

130. Finally, Respondent addressed Dr. Chavez's pedagogical concerns. She wrote that his expectation that she asks open ended questions of her students was not fitting because her students are "intellectually disabled as well as autistic (which is why they are in the alternate curriculum program) and they are not able to respond to higher level DOK questions." (Exh. D, p. B52.) She explained the same held true for the TPS handout. She agreed with Dr. Chavez's discomfort with students leaving early but explained "my aides are always reminding me that the students need to leave early in

order to allow for proper supervision while they use the restroom and change for PE. They need be [sic] ahead of the crowds of other students so they don't become too anxious and/or disoriented." (*Id.*)

### **ADDITIONAL EFFORTS TO COMPLY WITH THE ADMINISTRATORS' FEEDBACK AND WRITTEN DIRECTIVES**

131. Respondent made additional efforts to comply with the administrators' feedback and written directives. As an example, Respondent submitted Exhibit AA, a letter she wrote to the NPA supervisor of her BIIs in response to the administrators' written directives to provide clear job duties to her BIIs. The details included refraining from cell phone use and only working with the assigned student and not with other students. However, the NPA supervisor told Respondent the letter and directions were not appropriate because the NPA employs the BIIs and is responsible for any oversight or directions, not District or the classroom teacher.

132. Respondent also submitted Exhibit BB, a letter she provided to Dr. Chavez which identified each of her 17 students and provided detailed information about their educational and service needs including their abilities to speak, write, or read; their ULS levels in English and math; how they learn, e.g., visually, or tactilely; any behaviors, e.g., hyperactivity, pinching, or throwing; and which students had assigned BIIs.

133. In addition, Respondent submitted Exhibit FF, a ULS Checklist she completed on September 20, 2017, with a Mod-Severe-LRE Program aide. Respondent sought support from the program because ULS had recently made some changes and Respondent wanted to increase her efficiency and comfort with ULS. Respondent's entries on the checklist demonstrate an honest reflection of her ability to implement

ULS to fidelity. For example, Respondent rated herself as not evident in evidence of varied writing activities and having social studies and science activity lessons align with current topic for the month; as somewhat evident in her communication and behavior and use of a level of prompting appropriate to meet individual student's participation levels, and in having student profile and assessments complete and up to date; and as routinely evident having ULS materials evident in multiple instructional areas of the classroom, presenting all students with communication opportunities, including verbal and nonverbal, and providing instructional math which reflects application to real life skills.

## **RESPONDENT'S ADDITIONAL EVIDENCE**

### **Respondent's Suspected Dyslexia**

134. During the October 2017 conference with Dr. Chavez, Respondent raised the issue of her suspected dyslexia and the challenges it poses when she must write extensively or contemporaneously. She explained that she has always had difficulty organizing and writing her thoughts and has found that doing so requires more time than would normally be required, for example one hour rather than minutes, and causes her stress and fatigue. A treating physician suspected she may have dyslexia, but Respondent has not been tested or diagnosed.

135. Respondent had not previously pursued testing because her difficulties had not posed an obstacle to her teaching duties and because she understood such testing to be too expensive. However, when faced with Dr. Chavez's directive to write weekly lesson plans and provide more detailed information on the whiteboard, Respondent verbally asked for an intermediary accommodation until she and Dr. Chavez could reach an agreement on the lesson plan requirement. Respondent asked

Dr. Chavez for assistance with the lesson plan and WBC writing duties, such as a speech-to-text program, to help her meet the administrators' expectations while not compromising her time with students or her health. Respondent also asked that he accept her written responses as evidence of planning and eliminate the weekly lesson plan directive. (Exh. E, pp. B54, B56.)

136. In consideration of Respondent's information and request, Dr. Chavez provided Respondent District Bulletin 4569.1, Reasonable Accommodation for Individuals with Disabilities (Exh. 15, pp. A318-A344). Though Respondent continued to struggle with the writing requirements the related written directives, and though she raised her concerns about her suspected dyslexia to the administrators during subsequent conferences, Respondent did not comply with District's reasonable accommodation process set forth in Bulletin 4569.1 and did not formally request an accommodation or obtain a diagnosis.

### **Respondent's Notebook Entries**

137. Respondent submitted Exhibit MM, notebook entries from August 20, 2019, through December 17, 2019, and January 13, 2020, through March 12, 2020, which detail these workdays. The entries are consistent with Respondent's written responses to the administrators and her testimony at hearing. The entries are notes documenting Respondent's daily lesson planning, how she differentiated curriculum, and reflection on her teaching practice. Respondent regularly identified the lesson for each day and period, students present, activities provided, implementation of classroom routine, lesson plan goals and time slots for each activity, which students would be assigned to iPads and folders at which time, her use of ULS and News2You, student behaviors, e.g., screaming and shoe throwing, and how students responded to the lessons.



## **Complaint Letter Regarding Dr. Chavez**

138. Respondent submitted Exhibit V, a letter Respondent wrote in April 2019 and submitted to District in complaint against Dr. Chavez. Dr. Hanover solicited letters from teachers based on the multiple complaints received about Dr. Chavez. Per Dr. Hanover, the letters were submitted and led to an investigation, but Dr. Hanover did not know the result of the investigation.

139. In the letter, Respondent describes Dr. Chavez's treatment of her as abusive and his assessments of her as increasingly rigid. She described how she had offered multiple times to explain and show evidence of planning for her classes to Dr. Chavez, but he would refuse to review or consider. When she did turn in detailed lesson plans early, he did not acknowledge them. She further wrote that his demands are harmful to students in that he required her to provide her students with too much information which would not benefit them academically but rather would overwhelm them, possibly triggering maladaptive behaviors and decreased attention span.

## **Respondent's Additional Testimony**

140. In addition to Respondent's testimony included in the above sections, Respondent testified regarding her experience as a teacher and during the evaluation process, and of her love of her students and teaching. Respondent's original profession was in marketing advertising. She ultimately found marketing dissatisfying and began her career as a teacher in the early 1990s with the goal of helping children. Respondent obtained her Single Subject Teaching Credential Clear in July 1990 when she was 30 years old. In July 1995 she obtained her Multiple Subject Teaching Credential Clear and her Specialist Instruction Credential in Special Education Clear.

141. Respondent's specialist credential qualifies her to teach students with moderate to severe disabilities, but her original resource special education assignment was teaching students with mild to moderate disabilities. She was reassigned through a seniority related bumping process to teach students with autism at JFKHS in 2014. Eighteen months later, she was assigned to teach the alternate curriculum to students with moderate to severe disabilities at JFKHS. Her colleague, Mr. Kidwell, taught Respondent how to teach the alternate curriculum. ULS was not in place at the time, but he trained her on the Oxford Picture Dictionary.

142. Respondent explained the stress she first felt from the language contained in the October 2017 memo which warned her were she not to improve her teaching performance, it may lead to the issuance of a Below Standard Evaluation or discipline such as a Notice of Unsatisfactory Service or dismissal from District. (Exh. 12, p. A255.) This stress continued when the administrators would not consider her evidence of planning and would not provide her examples of, for instance, completed lesson plans or WBCs which would meet their expectations while integrating the reality of ULS and accurately depicting what was happening in her classroom. Because it was apparent to her the administrators were not considering her written responses or understanding the alternate curriculum, Respondent did not know what she could do to improve her evaluations.

143. Respondent loves her job teaching the alternate curriculum to students with moderate to severe disabilities as well as her colleagues and the supportive teachers at JFKHS. She always tried to be a good teacher and tried to respond to the administrators' directives as realistically and as best she could. She explained her students are trees and not forests, and the required curriculum must be modified for each student to meet their educational and service needs. Respondent became tearful

during her testimony, stating that the hardest part of this process was that soon after the Covid-19 restrictions which required District learning to go remote beginning mid-March 2020, she was suspended and was not allowed to keep her commitment to her students or say goodbye. Respondent wants to return to JFKHS to teach the alternate curriculum to students with moderate to severe disabilities and to return to the teaching community at JFKHS.

## **Charges**

144. The charges contained in the SOC are based on the observations conducted by the administrators as documented and testified to at hearing. The four general areas of deficiencies, relating to lesson plans, delivery and differentiation of instruction, communication and academic climate, and compliance with written directives, are further organized below into 18 types of alleged deficiencies in Respondent's work performance.

145. Some of the charges allege Respondent failed to comply with written directives. The SOC organizes the written directive charges by observation date. Many of these written directive charges contain multiple alleged violations within each charge, e.g., Charge 39, relating to the November 15, 2018, observation alleges Respondent failed to follow written directives regarding lesson plans and regarding delivering standards-based lessons. The written directive allegations are addressed below per alleged deficiency type, and not per charge or observation date. As such, some written directive charge numbers repeat, though each issue alleged is addressed only once. In addition, many of the written directive charges contained inaccurate information which is also addressed below.

146. In consideration of the evidence presented, District failed to establish each of the 92 charges by a preponderance of the evidence. For many of the charges, District failed to establish the administrators had the requisite knowledge or familiarity with the ULS, with the requirements for teaching the alternate curriculum to students with moderate to severe disabilities, or with Respondent's students' educational or service needs, to determine whether Respondent was implementing the ULS to fidelity or was otherwise meeting District's teaching expectations for an alternate curriculum teacher teaching students with moderate to severe disabilities. In other words, and for these reasons, the administrators' conclusions and District's evidence often lacked both foundation and merit.

## **PREPARATION OF LESSON PLANS AND DELIVERY TO ADMINISTRATORS**

### **Visible Lesson Plans: Charges 1, 19, 29, 50, 58, and 65**

147. Charge 1 (Exh. 1, p. A2) of the SOC, arising from Dr. Chavez's observation on October 12, 2017, alleges the following:

On or about October 12, 2017, during Period 1 Alternate Curriculum English Language Arts class, [Respondent] did not have her lesson plans visible or available to use or for the administrator to review.

148. This charge was repeated in the following observations: AP Streif's September 11 and November 15, 2018, observations (Charges 19 and 29) and March 11 and May 6, 2019, observations (Charges 50 and 58); and AP Song's September 3, 2019, observation (Charge 65). The observations noted were informal observations. The administrators acknowledged Respondent had her lesson plans available for all

three formal observations on January 24, 2018, December 6, 2018, and November 6, 2019.

149. Though District established Respondent did not have lesson plans visible or available for the administrators to use on the dates alleged in Charges 1, 19, 29, 50, 58, and 65, District failed to establish any applicable rules or regulations required Respondent to have lesson plans visible or available on the dates alleged, which were dates of informal observations. Accordingly, District failed to establish Charges 1, 19, 29, 50, 58, or 65 by a preponderance of the evidence.

150. The administrators acknowledged written lesson plans are only required for formal observations. Nonetheless, District argued Respondent was required to have written lesson plans available to administrators during informal observations and was required to provide weekly written lesson plans to administrators because written lesson plans were purportedly appropriate to Respondent's assignment and the administrators' requests were reasonable. District's arguments are without merit.

151. The CBA provides "lesson plans or evidence of planning in a format appropriate to the teacher's assignment, shall be furnished by each classroom teacher upon request from the teacher's immediate administrator. No special format for a lesson plan shall be required." (Exh. A, p. B22.) The CBA also provides all duties required of each employee must meet the test of reasonableness and must be assigned and distributed by the site administrator in a reasonable and equitable manner among the employees at the school. (*Id.* at p. B21.)

152. Respondent established that during and after the observation conferences she repeatedly demonstrated evidence of planning both in her oral description of the classes to the administrators as well as in her written responses to

the observations. Contrary to the CBA, the administrators refused to accept Respondent's evidence of planning as satisfactory.

153. District adopted the ULS and the ULS prepares lesson plans for teachers for all lessons in each unit. District did not establish any other type of lesson plan was required for Respondent's assignment on a daily basis or upon an informal observation. The administrators opined Respondent was required to have lesson plans available that demonstrated Respondent's lessons were in line with District's teaching expectations. The administrators only provided Respondent a template of a blank District lesson plan modeled after the Framework and EDST Placement. The administrators did not submit to Respondent, and District did not present at hearing, any sample of District's lesson plan template that incorporated the ULS required curriculum into the Framework and California Standards rubric. Nor could the administrators articulate how Respondent might have completed District's lesson plan template for her alternate curriculum classes to their satisfaction.

154. In consideration of the CBA, the ULS, and evidence presented at hearing, District failed to establish the lesson plan requirements alleged in Charges 1, 19, 29, 50, 58, and 65 were required or reasonable. Similarly, District failed to demonstrate such a requirement was made of JFKHS's other alternate curriculum teachers, thereby failing to demonstrate such a request or demand was equitable.

### **Submission of Less Plans: Charges 40, 49, 57, 64, and 74**

155. Charge 40 (Exh. 1, p. A15) of the SOC, relating to AP Streif's observation on January 30, 2019, alleges the following:

On or about January 30, 2019, during Period 3 Alternate Curriculum Practical Math B class, [Respondent] did not

submit any lesson plans or have them visible or available for her to use or for the administrator to review.

156. The portion of this charge alleging that respondent did not submit lesson plans to the observing administrator, was repeated in the following observations: AP Streif's March 11 and May 6, 2019, observations (Charges 49 and 57); and AP Song's September 3 and October 14, 2019, observations (Charges 64 and 74). In these charges, the administrators found Respondent had not provided lessons to the administrators at the start of each week.

157. As provided in Factual Finding 154, Respondent was not required to have her lesson plan available for review on January 30, 2019, and District failed to establish this portion of Charge 40 constitutes a violation.

158. District failed to establish Charges 40, 49, 57, 64, or 74 by a preponderance of the evidence. Respondent did not submit lesson plans to the designated administrator at the start of the weeks designated in these. However, for the reasons provided in Factual Findings 150 through 154, District failed to establish that any applicable rules or regulations required Respondent to submit lesson plans to the administrators on a weekly or other bases. Accordingly, Respondent's failure to do so does not constitute a violation.

**Lesson Plan - Written Directive: Charges 28, 39, 48, 55, 56, 63, 72, 73, 75, and 83**

159. Charges 28, 39, 48, 55, 56, 63, 72, 73, 75, and 83 allege Respondent failed to comply with written directives provided in conference memos directing Respondent to submit lesson plans for the upcoming week either beginning by a certain date and time or generally at the beginning of each week (Lesson Plan written directive). As with

the underlying charges alleging Respondent failed to submit lesson plans, District failed to establish the Lesson Plan written directives were required, reasonable, or equitable. As such, District failed to establish Lesson Plan written directive element of Charges 28, 39, 48, 55, 56, 63, 72, 73, 75, or 83 by a preponderance of the evidence.

160. As with many of the written directive charges, the charges related to the Lesson Plan written directives had inaccurate information. The first inaccuracy is found in Charge 28 which provides the following:

On or about September 24, 2018, [Respondent] willfully refused to comply with the directive provided to her orally on September 12, 2018, when she attended a conference with Mr. Henry Song, Assistant Principal, John F. Kennedy High School, and was directed to "submit complete detailed weekly lesson plans to me no later than 8:00 a.m. on the first day of each work week." . . . .

Contrary to the allegations, the record does not contain evidence of a September 12, 2018, conference with AP Song. The record shows AP Song had a conference with Respondent on September 12, 2019, after a September 3, 2019, observation, and shows AP Streif had a conference with Respondent on September 24, 2018, after the September 11, 2018, observation. District failed to request amendments to Charge 28. For these additional reasons, District failed to establish Charge 28.

161. The SOC has additional Lesson Plan written directive inaccuracies. Charge 39 provides the following:

On or about November 15, 2018, [Respondent] willfully refused to comply with the directives provided to her orally



on January 9, 2018 and September 24, 2018, when she attended a conferences [sic] with [Dr. Chavez and AP Streif] and was directed to . . . (2) "Submit complete detailed weekly lesson plans to me no later than 8:00 a.m. on the first day of each workweek" and memorialized in writing in the conference memoranda provided to [Respondent] on January 12, 2018 and September 27, 2018.

Though Charge 39 states Respondent was provided this written directive on January 12 and September 27, 2018, the January 2018 Memo did not contain this directive. (Exh. 13, p. A261.)

## **EFFECTIVE DELIVERY AND DIFFERENTIATION OF INSTRUCTION**

### **Differentiation of Activities: Charge 3 (a-b)**

162. Charge 3 (Exh. 1, p. A2) of the SOC, relating to Dr. Chavez's observation on October 12, 2017, alleges the following:

On or about October 12, 2017, [Respondent] did not display knowledge and awareness of the individual students' strengths, academic needs, and learning modalities when she planned the same undifferentiated activities for the students in her class.

a. [Respondent] did not differentiate instruction to meet the needs of the eight (8) students in her class that have Individualized Education Program (IEP) plans.

b. [Respondent] did not differentiate instruction to meet the needs of the one student who is identified as Long-Term English Learner (LTEL).

163. District failed to establish Charge 3 by a preponderance of the evidence. The evidence presented in support of this charge lacked both foundation and merit. District did not establish he had the knowledge or familiarity with ULS or with Respondent's students' educational or service needs to be able to determine whether Respondent differentiated activities appropriately to meet her students' special needs or their IEP or LTEL goals. Contrary to Dr. Chavez's unsupported conclusions, Respondent, through her testimony and evidence, including her written responses to observations and her daily notebook entries, established her in-depth knowledge of her students' individual strengths, academic needs, and learning modalities and her many efforts to communicate these to Dr. Chavez.

**Structured and Engaging Standards Based Lessons Utilizing ULS: Charges 7 (a-d), 12, 21 (a-c), 31, 42 (a-c), 53 (a-b), 61 (a-c), 69 (a-d), 78 (a-b), and 85 (a-b)**

164. Charge 7 (Exh. 1, p. A3), relating to Dr. Chavez's observation on October 12, 2017, alleges the following:

On or about October 12, 2017, [Respondent] did not deliver a structured and engaging English Language Arts activity utilizing the *Unique Learning System* to teach a specific standards-based reading and comprehension skills that included direct teaching and guided practice to the eight

students in the classroom. [Respondent] had the students engage in a series of disconnected activities.

a. From approximately 8:20 a.m. to approximately 8:23 a.m., [Respondent] took attendance while a student led the class in the daily affirmation that she had written on the whiteboard, words to the effect of, "Today I will be a good listener and follow directions."

For approximately ten minutes, from approximately 8:23 a.m. to approximately 8:33 a.m., [Respondent] reviewed the comprehension activity from the prior day.

i. [Respondent] asked each student to provide an example of speed from the prior day's activity. Each student gave her an answer independently or with the support of either one of the adults in the classroom or a Peer Buddy.

ii. [Respondent] recorded each student's response on the whiteboard under "What are some examples of speed?"

iii. [Respondent] requested that the students write any new answers in their notebooks.

c. At approximately 8:33 a.m., [Respondent] stood in the front of the classroom and asked the students to get an iPad from the back of the classroom.

i. As of 8:38 a.m., three students still did not have an iPad. [Respondent] reminded the students to get one.

ii. [Respondent] did not utilize an LCD projector to display the *Unique Learning System* on-line assignment for the visual learners in the classroom.

d. From approximately 8:41 a.m. to approximately 9:07 a.m., [Respondent] did not provide specific directions to the adults or Peer Buddies to meet the individual needs of the students, when the students, with the assistance of the other adults or Peer Buddies in the classroom, utilized the iPad to complete an activity on-line from the *Unique Learning System* curriculum.

165. District failed to establish Charge 7 by a preponderance of the evidence. Charge 7, as with the other charges in this category, are the administrators' detailed accounts of Respondent's activities during the classes observed. However, the evidence presented in support of these charges lacked both foundation and merit. Further, contrary to Dr. Chavez's conclusion in Charge 7, his observations demonstrate Respondent referring back to previous lessons, engaging students, and utilizing PBs, all evidence of Respondent meeting District's teaching expectations. As to Dr. Chavez's notation Respondent was taking attendance during class, he acknowledged during his testimony that there was nothing wrong with her taking attendance, and in fact it was required.

166. Charge 78 (Exh. 1, pp. A28-A29), relating to AP Song's observation on October 17, 2019, similarly alleges Respondent did not deliver a structured and engaging social skills activity on showing empathy aligned to the ULS October unit titled, High School Science Fair, when she:

a. Read aloud the "self-talk story," from the Explore Social Skills book section. She read over each step, and asked questions about the students and their families, but did not clearly explain how the questions related to the step she read.

i. She asked the students to look at the picture that showed a student with his head down on the desk, depicting step 1, *I know when I need to show empathy*, and she asked, using words to the effect of, "Is he happy or sad?" When the students inconsistently responded, she simply continued reading and did not ensure that the students understood the cues for determining when a peer is sad. ¶ . . . ¶

b. Showed the video that accompanied the book, and called the Peer Buddies up to model a happy or sad moment. It was unclear how depicting a happy moment would help model the skill, showing empathy. They chose to depict a sad moment.

i. As they role-played, she did not ask the class to refer to the six steps and determine if they could identify each of them in the role play. Once they finished, she simply asked, "Is she happy?" to which one of the students replied, "Yes."

ii. Next, she asked Student C [REDACTED] D. and another Peer Buddy to conduct a role play. However, she did not focus on showing empathy, and instead helped C [REDACTED] work on

her greeting skills when she said, "Show us how we greet A [REDACTED]." When C [REDACTED] responded, "Hi A [REDACTED]," with your prompting, A [REDACTED] simply responded, "How are you?"

iii. She then asked Student J [REDACTED] G. to role play with another Peer Buddy, and J [REDACTED], who has echolalia, simply repeated what she said. She did not post any sentence starters to help her respond to the Peer Buddy, who placed her head on her desk, and pretended to be sad.

167. District failed to establish Charge 78 by a preponderance of the evidence. Similar to Charge 7, the evidence presented in support of Charge 78 lacked both foundation and merit. As an example, District did not establish AP Song had the knowledge or familiarity with the ULS or with Respondents' students' educational and service needs to determine whether the students understood the lesson being presented or were capable of receiving a more rigorous lesson. District did not establish the lesson called, or the students were ready, for more rigorous curriculum at the pace expected by AP Song.

168. Contrary to AP Song's conclusion in Charge 78, his observations demonstrated Respondent meeting District teaching expectations: Respondent appropriately used PBs, who appropriately modeled and interacted with the students; both Respondent and the PBs skillfully adjusted the curriculum expectations to the realities of teaching the alternate curriculum, e.g., under Respondent's lead, the lesson adjusted for J [REDACTED] G.'s echolalia and C [REDACTED] D.'s need to practice her social greetings. Respondent's flexibility and adaptation of the curriculum is consistent with the ULS Bulletin, with which Dr. Koontz agreed, which provides the alternate curriculum "may require additional adaptations or modifications for some learners.

Teachers should continue to modify the curriculum so that it is accessible for each student in their class while continuing to use age-appropriate lessons and assessments.” (Exh. NN, p. B410.)

169. Charges 7 and 78 were substantively repeated in Charges 12, 21 (a-c), 31, 42 (a-c), 53 (a-b), 61 (a-c), 69 (a-d), and 85 (a-b). However, as with Charges 7 and 78, the evidence presented in support of these charges lacked both foundation and merit and Districted failed to establish these charges by a preponderance of the evidence.

170. In summary, the remaining allegations in this category included the following: Respondent instructed students to work on the lesson on the iPads during which she circulated the classroom checking in with the PBs, but not with the students (Charge 12, November 30, 2017 observation); Respondent did not discuss the unit before directing students to complete the assignment on the iPads (Charge 21, September 11, 2018 observation); Respondent told AP Streif she was not presenting a lesson that day, instead the students would be making Thanksgiving Day cards (Charge 31, November 15, 2018); Respondent informed AP Streif she would be completing IEPs during the class (Charge 42, January 30, 2019 observation); Respondent did not identify a goal at the beginning of the lesson or review a learning goal or objective at the end of class (Charge 53, March 11, 2109 observation); Respondent, on the first day of the unit, did not explain the name of the unit or review the unit overview statement and did not use classroom technology, or other realia, to help with student understanding (Charge 69, September 3, 2019); and Respondent told students they were going to learn about tools but did not clearly connect the purpose of this activity, and provided only praise or correction as feedback (Charge 85; November 6, 2019 observation).

171. District failed to establish these observations demonstrated Respondents' failure to meet District's teaching expectations. For example, based on the teacher Commissioners' experience, completing IEPs during class time is not a daily experience but is not uncommon and is part and parcel of being an alternate curriculum teacher. Further, an optimal time to work on IEPs if necessary, during class time would be during math instruction, as Respondent did, which is most often a highly individualized activity completed by the students on the iPad or with packets, and not during group instruction.

172. Two of the observations warrant additional explanation as they further demonstrate the administrators' misplaced expectations. During the November 15, 2018, observation, Respondent was frank with AP Streif that the Thanksgiving Day card activity would not constitute a lesson. Earlier that morning, one of Respondent's students had significant disruptive physical behaviors at the school talent show, which required Respondent and other adults to resolve, and which required her to write an incident report. The time she had planned to spend preparing the Thanksgiving Day card materials and class she instead spent addressing the incident. Rather than offering Respondent support given her earlier morning or leaving and returning another day for an informal observation, AP Streif stayed and completed an informal observation of Respondent. Among other conclusions drawn, AP Streif found Respondent was unprepared for the lesson.

173. Similarly, AP Song's expectations of Respondent's September 3, 2019, class were misplaced. Though AP Song knew this was picture day, and noted so in his observation, he expected Respondent to teach a comprehensive class. Twenty minutes of the 41-minute period were allotted for walking to and from the picture location and completing pictures. As it was still early in the school year and the first day of the ULS



September unit, Respondent used the time available to distribute classroom assignments, such as which student is responsible for turning on the lights. Distributing these assignments is an integral part of teaching the alternate curriculum, establishing practical skills and independence in the students, and a foundational tool for establishing classroom routines for the semester. Nonetheless, rather than using the 21 minutes remaining on classroom assignments, AP Song expected Respondent to, among other things, review the unit overview statement and use classroom technology to help with student understanding. AP Song dismissed the classroom assignment activity as unimportant, a time during which he determined the students were sitting idly at their desks.

**Structured and Engaging Standards Based Lesson Utilizing  
ULS - Written Directive: Charges 27, 39, 48, 55, 63, 72, 83,  
90**

174. On January 12, 2018, Dr. Chavez provided Respondent an Interoffice Correspondence (January 2018 Memo) memorializing his January 9, 2018, conference with Respondent during which they discussed Dr. Chavez's November 30, 2017, observation. In the January 2018 Memo, Dr. Chavez issued a written directive (Standards-Based Lesson written directive) to Respondent to deliver teacher directed, standards-based lessons each day. (Charge 27) (Exh. 13, p. A261.) This written directive was repeated in the September and December 2018 Memos, and in the February, April, May, and September 2019 Memos. (Charges 39, 48, 55, 63, 72, and 83, respectively.) Contrary to the allegations in Charge 90, this written directive was not included in the October 2019 Memo.

175. District failed to establish the Standards-Based Lesson written directive elements in Charges 27, 39, 48, 55, 63, 72, 83, or 90 by a preponderance of the

evidence. District failed to establish on any of the dates alleged in these charges that Respondent failed to deliver teacher directed, standards-based lessons.

**Intentional, Differentiated, Instructional Strategies:  
Charges 8 (a-c), 15, 25 (a-b), 38 (a-b), 62, and 86 (a-b)**

176. Charge 8 (Exh. 1, p. A5) of the SOC, relating to Dr. Chavez's observation on October 12, 2017, alleges the following:

On or about October 12, 2017, [Respondent] did not use intentional, differentiated instructional strategies to engage and support student learning and promote student participation. [Respondent] did not model and incorporate instructional strategies to engage students in the classroom discussion, with the support of the additional four adults and the five Peer Buddies in the classroom.

a. [Respondent] did not model and incorporate instructional strategies to engage students in the classroom discussion, with the support of the additional four adults and the five Peer Buddies in the classroom.

b. [Respondent] did not utilize *I Do, We Do, You Do* to model a skill or lead the students through small group instruction.

c. [Respondent] did not provide opportunities to teach and incorporate the vocabulary component of the *Unique Learning System*.

177. Charge 8 was substantively repeated in Charges 15, 25 (a-b), 38 (a-b), 62, and 86 (a-b). In these additional charges, the administrators alleged, among other things, Respondent did not implement intentional, differentiated instructional strategies, as stated in the students' IEPs, and did not implement discussion strategies to ensure that the students had an opportunity to improve their English oral language development.

178. District failed to establish Charges 8 (a-c), 15, 25 (a-b), 38 (a-b), 62, or 86 (a-b) by a preponderance of the evidence. The evidence presented in support of these charges lacked both foundation and merit.

179. As Dr. Koontz and Respondent explained, and as the Commissioners are well aware, an alternate curriculum teacher presents the ULS curriculum gradually and with much repetition, and the students receive this information verbally and through technology, such as iPads. How this delivery may look on any given day is affected by where each student is at with the curriculum, IEP services and goals, and behaviors. Contrary to these charges, Respondent established through her testimony and written responses that she used intentional, differentiated, instructional strategies to engage and support her students' learning.

## **RESPONDENT FAILED TO COMMUNICATE WITH STUDENTS ABOUT THE GOALS OF THE CLASS AND DEVELOPING THE REQUIRED ACADEMIC CLIMATE**

### **Identification of Expected Instructional Outcomes: Charges 2 (a-b), 10, 20 (a-c), 32, and 44**

180. Charge 2 (Exh. 1, p. A2), relating to Dr. Chavez's observation on October 12, 2017, alleges the following:

On or about October 12, 2017, [Respondent] did not identify the expected instructional outcomes of the English Language Arts activity.

a. [Respondent] did not write the standard for the Unique Learning System curriculum.

b. [Respondent] did not write out an objective, essential question or big idea for her to introduce and for the students to view and know what they would learn.

181. Charge 2 was substantively repeated in Charges 10, 20, 32, and 44. The administrators alleged among other things that Respondent did not identify a specific learning goal or instructional objective and without explanation or discussion, wrote the unrelated learning objective of "To make the students aware of the meaning of Thanksgiving" on the whiteboard (Charge 32), and she failed to identify a specific Math learning goal or instructional objective (Charge 44).

182. District failed to establish Charges 2 (a-b), 10, 20 (a-c), 32, or 44 by a preponderance of the evidence. The evidence presented in support of these charges lacked both foundation and merit. For example, the allegations such as "did not write the standard" for the ULS (Charge 2a) or failure to identify a specific math goal (Charge 44) are not practical, meaningful, or reasonable requirements for an alternate curriculum teacher. These charges demonstrate the administrators' lack of understanding that ULS differentiates and individually provides information to each student regarding a lesson's objective and that on any given day, each of Respondent's students had their own specific math goal. Further, based on the teacher

Commissioners' experiences, writing the instructional outcomes as expected would hold little to no meaning for students on the alternate curriculum.

**Daily Schedule and Agenda: Charges 4, 11, 51, 59, 66 (a-b), 76 (a-b), and 84**

183. Charge 4 (Exh. 1, p. A3) of the SOC, relating to Dr. Chavez's observation on October 12, 2017, alleges the following:

On or about October 12, 2017, [Respondent] did not review or provide specific details to the students about the Daily Agenda that she wrote on the whiteboard.

[Charge 4 then includes a depiction of the whiteboard as follows]

English Periods 1 & 2:

Affirmation - Do Now

Unique - Chapter 4 - Lesson 9 "What is Distance?"

When finished - go through vocabulary / site words

Do Lesson 6 - Life Skills Application "Bicycle Safety"

184. This charge was substantively repeated in the following observations for which the SOC depicts Respondent's WBC on the respective days: Dr. Chavez's November 30, 2017, observation (Charge 11); AP Streif's March 11, 2019, observation (Charge 51); AP Streif's May 6, 2019, observation (Charge 59); AP Song's September 3,

2019, observation (Charge 66); AP Song's October 14, 2019, observation (Charge 76); and AP Song's November 6, 2019, observation (Charge 84).

185. District failed to establish Charges 4, 11, 51, 59, 66 (a-b), 76 (a-b), or 84 by a preponderance of the evidence. As provided in the respective charges, on each of the days in question Respondent posted some level of schedule and daily agenda. District did not present any rule or regulation showing a standard or requirement by which Respondent was required to post, review, or discuss a daily agenda with her students more so than she did on the days in question. Further, as is consistent with the Commissioner's experience, the evidence, such as the autism related assistance and guidance handouts and Respondent's testimony, established that more detailed daily agenda information would likely have had no beneficial effect on Respondent's students or on the delivery of the respective lessons.

### **Daily Schedule and Agenda – Written Directive: Charge 90**

186. On October 30, 2019, AP Song provided Respondent an Interoffice Correspondence (Revised November 4, 2019) (October 2019 Memo) memorializing his October 29, 2019, conference with Respondent during which they discussed AP Song's October 17, 2019, observation of Respondent's Period 6 Social Communication Skills class. In the October 2019 Memo, AP Song issued a written directive to Respondent to "Prepare and post a Daily Agenda or visual schedule, including timeframes, in the classroom before the class period begins and review it thoroughly with the students." (Daily Agenda written directive.) (Exh. 22, p. A449.) Respondent was provided a similar oral directive on January 9, 2018, and September 12 and October 29, 2019.

187. Charge 90 alleges Respondent violated the Daily Agenda written directive on November 6, 2019. However, District failed to establish by a

preponderance of the evidence that on November 6, 2019, during her formal observation, respondent failed to comply with the Daily Agenda written directive. Per AP Song's November 2019 Memo, on November 6, 2019, Respondent did post the Agenda and Do Now on the front whiteboard. The only mention in the November 2019 Memo of the daily agenda and Respondent's only alleged related error was that she covered it when she used the projector and did not refer to it for the remainder of the class. (Exh. 24, p. A466.) The Daily Agenda written directive did not prohibit Respondent from using an LCD projector that might block the daily agenda and did not tell Respondent to refer back to the daily agenda during the remainder of the class. Further, Respondent's use of the projector demonstrated her compliance with other directions from the administrators to utilize classroom technology. Accordingly, District failed to establish the Daily Agenda written directive element of Charge 90.

**Whiteboard Configuration: Charges 5, 17, 30, 41 (a-b), 52 (a-b), 60, and 67**

188. Charge 5 (Exh. 1, p. A3) of the SOC, relating to Dr. Chavez's observation on October 12, 2017, alleges the following:

On or about October 12, 2017, [Respondent] did not write the correct week or fill out any information, including the Focus, Objective, Standard or Homework, for any of her classes on the chart that she posted on the entire whiteboard in the back of the classroom. [The chart depicted in Charge 5 shows a chart or table with columns for the individual periods and rows for the focus, objective, standard, and framework, with no information written in the respective boxes.]

189. Charge 5 was substantively repeated in the following observations: Dr. Chavez's November 30, 2017, observation (Charge 17); AP Streif's November 15, 2018, observation (Charge 30); AP Streif's January 30, 2019, observation (Charge 41); AP Streif's March 11, 2019, observation (Charge 52) (Exh. 1, pp. A18-A19); AP Streif's May 6, 2019, observation (Charge 60); and AP Song's September 3, 2019, observation (Charge 67). These charges included findings by the administrators that respondent misspelled words and had the wrong date and class period listed. For example, Charge 17 provides, "[Respondent] did not correctly record the date on the whiteboard, when she incorrectly wrote the date by including an apostrophe, as 11/30/'17." (Exh. 1, p. A8.)

190. District established the allegations in Charges 5, 17, 30, 41 (a-b), 52 (a-b), 60, and 67 by a preponderance of the evidence. Respondent did not dispute the alleged contents, or lack thereof, of the WBC on the dates in question. On some occasions the whiteboard was blank, and on others it was partially completed or substantially completed. However, similar to the lesson plan charges, District failed to establish by a preponderance of the evidence the content alleged in these charges is grounds for dismissal.

191. District did not present any written rule or regulation showing a standard or requirement by which Respondent was required to post information, or what would constitute complete information. Though the administrators testified the WBC was a JFKHS rule, the rule was not presented and as such it could not be determined what Respondent was required to do and what, if any, modifications to the rule existed, e.g., whether a completed WBC would be required for unusual days, such as when student behavior requires an incident report (November 15, 2018, observation), or picture day (September 3, 2019, observation); or whether it would be required when the lesson



does not lend itself to the WBC, for example if the delivery of instruction would be highly individualized such that a WBC depicting each student's lesson would be overwhelming to write and read. Finally, similar to the instructional outcome and daily agenda charges, based on the teacher Commissioners' experiences, writing the expected detailed information on the whiteboard would have little to no meaning for the students on the alternate curriculum.

### **Instructional Materials: Charges 6 (a-b), 34 (a-b), and 87**

192. Charge 6 (Exh. 1, p. A3) of the SOC, relating to Dr. Chavez's observation on October 12, 2017, alleges the following:

On or about October 12, 2017, [Respondent] did not have instructional materials prepared in advance for the English Language Arts activity.

a. When student R [REDACTED] L. finished the on-line activity, she asked Mr. John Cowden, the Non-Public Agency (NPA) Behavioral Intervention Implementation (BII), to go over the site words with her.

Mr. Cowden stated that R [REDACTED] L. did not have any site words, so [Respondent] had to retrieve a packet of site words from the closet in the back of the classroom.

193. This charge was substantively repeated in the following observations: AP Streif's November 15, 2018, observation (Charge 34) [relating to unprepared Thanksgiving Day card materials]; and AP Song's November 6, 2019, observation

(Charge 87) [relating to AP Song's conclusion Respondent did not have iPads prepared in advance].

194. District failed to establish Charges 6, 34, or 57 by a preponderance of the evidence. As presented by Respondent in her testimony and her written response to Dr. Chavez's October 2017 observation, R [REDACTED] L. had been absent from the previous day's class because she had received pullout speech therapy. Due to the absence, R [REDACTED] L.'s site words had been put away, and when needed, Respondent retrieved them. Per the Commissioner's experience, such an act is commonplace in an alternate curriculum classroom and allows for transition time between activities and develops practical skill expectations for students. As to AP Streif's November 15, 2018, observation, and as has previously been addressed, that morning a student's behavior resulted in an incident report. Respondent was frank with AP Streif as to her lack of preparedness, to no fault of her own. As to AP Song's November 6, 2019, observation, Respondent explained the iPads are not 'prepared' in advance, but rather are kept in a technology tub, and part of the students' responsibilities are to retrieve iPads from the tub and to independently log in. Respondent had the number of iPads distributed to her by the alternate curriculum program ready and available for her students.

### **Use of Instructional Time: Charges 9 (a-c), 43, and 68**

195. Charge 9 (Exh. 1, p. A5) of the SOC, relating to Dr. Chavez's observation on October 12, 2017, alleges the following:

On or about October 12, 2017, [Respondent] did not maximize the use of instructional time, when, at approximately 9:07 a.m., without direction from her, the

students began to walk out of the classroom followed by the adult assistants.

a. [Respondent] stated, using words to the effect of, "It's a little bit early, but I guess it is okay."

b. By approximately 9:11 a.m., all the students had left the classroom and only the Peer Buddies remained.

c. At approximately 9:13 a.m., the class period ended.

196. This charge was substantively repeated in the following observations: AP Streif's January 30, 2019, observation (Charge 43) [alleging Respondent did not maximize the use of instructional time for a total of approximately 33 minutes, and it took approximately nine minutes to begin the independent Math activity while Respondent instructed the students to get their Math folders and retrieve an iPad while she searched for calculators]; and AP Song's September 3, 2019 observation (Charge 68) [when Respondent used ten minutes to assign a weekly classroom job to each of the students and allegedly sat idly at their desks].

197. District failed to establish Charges 9, 43, or 68 by a preponderance of the evidence. Rather, these charges again demonstrate the administrators' lack of understanding or appreciation of Respondent's students' educational and service needs.

198. As Respondent testified and as the teacher Commissioners are aware, it is common practice for students with moderate to severe disabilities to leave the classroom early to avoid crowded hallways, to have enough time to use the restroom, and to timely arrive to classes or to the bus. As to Charge 43, before beginning

instruction, Respondent conducted a mandatory shelter in place drill, and then appropriately delivered individualized math work to her students while she worked on IEPs. Though not a daily or even common occurrence of alternate curriculum teachers during instruction time, completing IEPs during class is a realistic and required practice at times for any alternate curriculum teacher.

199. As to Charge 68, the day in question was picture day. As provided in Factual Finding 173, twenty minutes of the period was used to walk to and from pictures; Respondent used the remaining portion to assign classroom jobs; and contrary to AP Song's depiction, during these assignments Respondent's students were not sitting "idly" at their desks. (Exh. 1, p. A24.)

### **Bell-to-Bell Instruction: Charges 13, 23, 37, 47, and 54**

200. Charge 13 (Exh. 1, p. A7) of the SOC, relating to Dr. Chavez's observation on October 12, 2017, alleges the following:

On or about November 30, 2017, [Respondent] did not provide bell-to-bell instruction, when the students sat idly at their desks from approximately 10:08 a.m. to approximately 10:13 a.m., waiting for the class period to end.

201. This charge was substantively repeated in the following observations: AP Streif's September 11, 2018, observation (Charge 23); AP Streif's November 15, 2018, observation (Charge 37); AP Streif's January 30, 2019, observation (Charge 47); and AP Streif's March 11, 2019, observation (Charge 54).

202. As to AP Streif's November 15, 2018, observation (Charge 37) (Exh. 13, p. A332), AP Streif inaccurately documented her bell-to-bell observations of Respondent's period 5 Social Communication Skills class, the Thanksgiving Day card lesson, which began at 12:55 p.m. and ended at 1:49 p.m. AP Streif supported her conclusion by noting Respondent's students sat idly for seven minutes beginning at 9:42 a.m., until she dismissed the class. At hearing, AP Streif acknowledged the error and testified generally to her observations of the class, but she could not provide any more specific information about the bell-to-bell instruction on that day. She merely clarified when the class would have actually ended. Accordingly, the supporting documentation and testimony of Charge 37 is not credited.

203. District failed to establish Charges 13, 23, 37, 47, or 54 by a preponderance of the evidence. Foundationally, District failed to establish the terms or requirements of bell-to-bell instruction or that there was no allowance for alternate curriculum teacher to release students with moderate to severe disabilities early from class. District did not submit a written rule defining bell-to-bell instruction or its terms. Respondent presented credible evidence, which was consistent with the teacher Commissioners' own experiences, of releasing students with moderate to severe disabilities before the end of a period. As provided in Factual Findings 97 and 198, students with moderate to severe disabilities leave early to, for instance, avoid crowded hallways and ensure they reach their next class on time. At the hearing, the administrators did not contest this fact but still found fault in Respondent's practice.

### **Bell-to-Bell Instruction – Written Directive: Charges 63, 72, 83, and 90**

204. The Charges relating to Respondent's alleged failure to follow written directives to provide bell-to-bell instruction (Bell-to-Bell written directives) were

flawed, alleging dates the administrators provided this written directive to Respondent which were unsupported by the evidence.

205. Charge 63 reads as follows:

On or about May 6, 2019 . . . [Respondent] willfully refused to comply with the directives provided to her orally on January 9, 2018, September 24, 2018, December 4, 2018, and February 11, 2019 when she attended conferences with [the administrators] and was directed to “. . . (4) Effective immediately, provide bell-to-bell instruction for each class that you teach,” and memorialized in writing in the conference memoranda provided to [Respondent] on January 12, 2018, September 27, 2018, December 5, 2018, February 14, 2019, and April 5, 2019.

However, of the dates listed, Respondent was only provided this written directive on April 5, 2019, as codified in the April 2019 Memo (Exh. 18, p. A388.) She was provided the Bell-to-Bell oral directive on all of the dates listed in Charge 63.

206. Charges 72, 83, and 90 refer to observations conducted on September 3, October 17, and November 6, 2019, respectively. These charges repeat the content of Charge 63, but they inaccurately allege additional dates Respondent was allegedly provided the Bell-to-Bell written directives, though she was not. Charge 72 alleges Respondent was provided this written directive in the May 2019 Memo, though the May 2019 Memo did not direct Respondent to provide bell-to-bell instruction, nor was it discussed at the May 15, 2019, conference (Exh. 19, p. A394). Charge 83 alleges Respondent was provided the written directive in the September 2019 Memo, though

the September 2019 Memo did not direct Respondent to provide bell-to-bell instruction, nor was it discussed at the September 12, 2019, conference. (Exh. 21, p. A421.) Finally, Charge 90 alleges Respondent was provided this written directive in the October 2019 Memo, though the October 2019 Memo did not direct Respondent to provide bell-to bell-instruction, nor was it discussed at the October 29, 2019, conference. (Exh. 22, p. A449.)

207. District failed to establish the Bell-to-Bell written directive element of Charges 63, 72, 83, or 90 by a preponderance of the evidence. Initially, District inaccurately alleged dates Respondent was provided this written directive. Further, no evidence was presented that on the dates alleged in Charges 63, 72, 83, and 90, that Respondent actually failed to provide bell-to-bell instruction; the corresponding observation memos, Exhibits 19, 21, 22, and 24 do not allege any underlying facts to support the allegation that Respondent did not provide bell-to-bell instruction on the dates in question. For these reasons, District did not establish any foundational facts to support the allegations in Charges 63, 72, 83, and 90. Finally, though the administrators testified Respondent was required to teach-bell to-bell instruction, as provided in Factual Finding 203, District failed to establish the terms or requirements of bell-to-bell instruction or that alternate curriculum teachers were not allowed to release students with moderate to severe disabilities early from class.

### **Wait Time: Charges 14 (a-b), 81 (a-c)**

208. Charge 14 (Exh. 1, p. A7) of the SOC, relating to Dr. Chavez's observation on November 30, 2017, alleges the following:

On or about November 30, 2017, [Respondent] did not provide opportunities for students to answer questions in complete sentences.

a. [Respondent] asked, words to the effect of, "What is this unit about?" When no one responded, she answered her own question, when she stated, using words to the effect of, "It is about people who gave us things that we use today."

b. [Respondent] did not provide wait time for the students to answer, when she asked a series of questions in rapid succession. The students did not have an opportunity to reply to the following questions when she asked using words to the effect of:

i. "What does plumbing help us do?"

ii. "What do you use plumbing for?"

iii. "Where do you get water in your house?"

iv. "What happens when the plumbing shuts off?"

209. Charge 14 was substantively repeated in the following observation: AP Song's October 17, 2019, observation (Charge 81) which alleges Respondent did not utilize intentional engagement strategies to help the students participate in the question-and-answer sequence when she asked a question and provided minimal wait time before she restated the question or answered it herself.



210. District failed to establish Charges 14 or 81 by a preponderance of the evidence. Administrators did not consistently testify to any expected wait time and did not establish they had knowledge of how to use wait time when teaching the alternate curriculum to students who are primarily non-verbal. AP Song estimated a 5 to 15 second wait time was appropriate but acknowledged he did not track Respondent's wait time, but rather tracked the number of questions Respondent had asked.

211. Respondent clarified in her testimony that sometimes she asks rhetorical questions as a means of refamiliarizing the students to the unit discussed on previous days. Other times, her wait time is affected by students' facial and other responses to her questions, based on which she gauges their level of attention and whether she needs to move on with the lesson. Respondent's explanation was consistent with the teacher Commissioners' experiences using wait time when teaching the alternate curriculum to students with moderate to severe disabilities. Respondent's explanation was sound and the allegations in Charges 14 and 81 do not reflect an inappropriate use of wait time or a failure to provide the students an opportunity to answer the questions.

**Classroom Supports: Charges 16 (a-b), 26 (a-c), 70, 82 (a-c), and 89 (a-b)**

212. Charge 16 (Exh. 1, p. A8) of the SOC, relating to Dr. Chavez's observation on November 30, 2017, alleges the following:

On or about November 30, 2017, [Respondent] did not plan activities that utilized the Special Education Paraprofessional and the BIIIs to engage them in supporting the students in standards-based learning.

a. Special Education Paraprofessional, Sandra Salcido, sat at the small round table and only interacted with the two students twice during the class period.

b. BII's Jamie Medellin and Alfredo O'Campo both entered the classroom at approximately 9:40 a.m., sat down at a small round table but did not begin to provide instructional or behavioral support to the students until approximately 9:50 a.m.

213. Charge 16 was substantively repeated in the following observations: AP Streif's September 11, 2018, observation (Charge 26) [alleging Respondent did not provide clearly defined duties to the paraprofessional, who filed papers for 22 minutes, and to the BII's who directly interacted with their student only two or four times, respectively]; AP Song's September 3, 2019, observation (Charge 70) [referencing a period of time when the paraprofessionals and PBs did not interact with students while Respondent assigned classroom job responsibilities]; AP Song's October 17, 2019, observation (Charge 82) [referencing the paraprofessional who was completing paperwork, a BII checking email, and PBs not paired directly to students]; and AP Song's November 6, 2019, observation (Charge 89) [referencing a PB who left the room alone and a BII and adult aide not providing direct support or instruction to students].

214. District failed to establish Charges 16 (a-b), 26 (a-c), 70, 82 (a-c), or 89 (a-b) by a preponderance of the evidence. The administrators could not clearly testify as to the duties of the paraprofessional, PBs, or BII's, but rather testified about these roles and responsibilities as if they were interchangeable, though they are distinct. (See Factual Findings 56-59, 86.) Further, the conduct portrayed in Charges 16, 26, 70, 82,

and 89 are activities within the respective common duties of the paraprofessional, PBs, and BIIIs and do not demonstrate a failure to engage them in classroom activities. For example, the “Working with the Paraprofessional in your Classroom” provides a paraprofessional may at times work with one or two students at a time, or file paperwork; BIIIs’ responsibilities with their assigned students are dictated by the NPA, not Respondent or by the administrators’ expectations; sometimes there were more PBs than students so not every PB could be assigned to a student at all times; and there was no basis for AP Song’s expectation that while Respondent was assigning classroom activities the PBs should have been interacting with their assigned student.

### **Classroom Supports – Written Directive: Charge 90**

215. In the October 2019 Memo, AP Song issued a written directive to Respondent to provide a list of duties and assignments for the paraprofessional, the PBs, and the BIIIs to ensure they supported student learning and engagement throughout the instructional period (Classroom Support written directive). (Exh. 22, p. A449.)

216. Charge 90 (Exh. 1, pp. A34-A35) provides as follows:

On or about November 6, 2019 . . . [Respondent] willfully refused to comply with the directives provided to her orally on January 9, 2018, September 24, 2018, December 4, 2018, February 11, 2019, September 12, 2019 and October 29, 2019 when she attended a conferences [sic] with [the administrators] and was directed to “. . . (5) Provide a list of duties and assignments for the Special Education Paraprofessionals, the Peer Buddies, as well as the BII

provider to ensure that they support students' learning and engagement throughout the instructional period, . . .," and memorialized in writing in the conference memoranda provided to Ms. Cormier on January 12, 2018, September 27, 2018, December 5, 2018, February 14, 2019, April 5, 2019, May 17, 2019, September 13, 2019 and October 30, 2019 (Revised November 4, 2019).

Contrary to the allegation, Respondent only received the Classroom Support written directive on October 29, 2019, as memorialized in the October 2019 Memo, and only received the oral directive on January 9 and September 24, 2018, and October 29, 2019, and not on the additional dates listed.

217. District failed to establish the Classroom Support written directive element of Charge 90 by a preponderance of the evidence. AP Song observed Respondent initially provide guidance to the PBs to support the students, but then left them to work with their students, and observed the BII and paraprofessional did not directly support Respondent's instruction. Despite AP Song's conclusion otherwise, the activities performed by the classroom supports on November 6, 2019, were consistent with the classroom supports' respective duties. (See Factual Finding 214.) The PBs were familiar with their duties and assigned students, and the paraprofessional and BII have multiple job duties, not all of which require them to directly support Respondent's instruction.

### **Academic Climate: Charges 18 and 71**

218. Charge 18 (Exh. 1, p. A8) of the SOC, relating to Dr. Chavez's observation on November 30, 2017, alleges the following:

On or about November 30, 2017, [Respondent] did not create an academic climate that was positive and respectful when, at approximately 9:39 a.m., she stated aloud, to no one in particular, using words to the effect of, "We are missing A■■ today. He is like having three students." [Respondent] proceeded to mark him absent.

219. This charge was substantively repeated in AP Song's September 3, 2019, observation (Charge 71) (Exh. 1, p. A26):

On or about September 3, 2019 . . . [Respondent] did not create an academic climate that was positive and respectful when, at approximately 8:17 a.m., in front of the entire class, she loudly discussed student M■■ T.'s cognitive ability to handle one of the classroom jobs, with his [BII], who was seated across the classroom.

220. District failed to establish Charges 18 or 71 by a preponderance of the evidence. As written, these allegations do not establish Respondent's statements failed to create an academic climate that was positive and respectful. Further, the allegations were vague, and the administrators' testimony did not bolster or sufficiently supplement the charges. At the hearing, Respondent apologized for her statements and understood how, to an outside observer, her statements could be heard as harsh and disrespectful. (See Factual Finding 108.) Nonetheless, Respondent's statements are not evidence of Respondent failing to provide an academic climate that was positive and respectful.

### **Classroom Technology: Charge 22 (a-b)**

221. Charge 22 (Exh. 1, p. A10) of the SOC, relating to AP Streif's observation on September 11, 2018, alleges Respondent did not effectively utilize the classroom technology for the lesson to promote cognitive engagement of all the students because Respondent did not: (1) utilize the LCD projector in the classroom to display the ULS on-line assignment to provide support for the visual learners; or (2) ensure she had enough iPads in her classroom for each of her six students to complete the assigned task independently.

222. District failed to establish Charge 22 by a preponderance of the evidence. District failed to establish the use of the LCD projector would have supported Respondent's visual learners with the lesson or promoted their cognitive engagement. AP Streif had little to no knowledge of how the ULS already promoted cognitive engagement and supported visual learners within its internal three-levels of differentiation. AP Streif made no effort to review Respondent's entries into the students' ULS profiles or to review the Students' IEPs to determine whether these conclusions about Respondent's teaching were founded. As to the iPad availability, AP Streif acknowledged she was unaware of the alternate curriculum iPad distributions policies which limited Respondent to four student iPads and one teacher iPad, therefore preventing Respondent from having an iPad for all six students.

### **Academic Language: Charge 24 (a-c)**

223. Charge 24 (Exh. 1, p. A10) of the SOC, relating to AP Streif's observation on September 11, 2018, alleges Respondent "did not post, review, or encourage the students to incorporate the academic language into the classroom activities from the Unique Learning System Unit 1 titled Living with Rules and Laws": Respondent did not

review the Unit 1 vocabulary words, though she had included the review of vocabulary words on the WBC; did not review the unit vocabulary words when students began their ULS iPad work; and when J. G. completed the iPad work, Respondent obtained J. G.'s vocabulary words and provided them to a PB to review with J. G., rather than reviewing them with J. G., herself.

224. District failed to establish Charge 24 by a preponderance of the evidence. During class, Respondent distributed differentiated lesson packets to her students which incorporated the unit's academic language. The ULS identifies and reviews the vocabulary words with each student at the appropriate level. The additional vocabulary words further differentiated J. G.'s instruction and were appropriate for J. G., who was at a higher level than her peers. District failed to establish any error in Respondent's choice to have the PB review the vocabulary words with J. G. Rather, Respondent's actions were consistent with the administrators' directions to delegate duties to the PBs.

### **Presentation of Lesson: Charge 33**

225. Charge 33 (Exh. 1, p. A13) of the SOC, relating to AP Streif's observation on November 15, 2018, alleges the following:

On or about November 15, 2018, [Respondent] did not provide any directions, procedures, or a model of a Thanksgiving Day card for the students to reference. She stated, using words to the effect of, "Come and get colored construction paper and take out your crayons and markers to make your cards."

226. District failed to establish Charge 33 by a preponderance of the evidence. On the date in question, Respondent was honest with her students and with AP Streif about not having an opportunity to print out the Thanksgiving Day pictures she had planned to prepare. As stated in Factual Finding 172, earlier this day Respondent spent much of the morning focused on another student who demonstrated significant disruptive physical behaviors at the school talent show. The event was stressful and time consuming, requiring Respondent to deescalate the student and complete an incident report, interrupting her time to prepare for the class. Nonetheless, Respondent obtained the materials and based on her instructions, the students participated in the activity by coloring, for example, turkeys and leaves, on cards, which some students completed, and others did not.

### **Feedback: Charge 35 (a-b)**

227. Charge 35 (Exh. 1, p. A14) of the SOC, relating to AP Streif's observation on November 15, 2018, alleges the following relating to the Thanksgiving Day card lesson: AP Streif observed Respondent did not interact with the students until approximately 1:26 p.m., approximately 26 minutes after the activity began, and did not provide appropriate feedback when she used words to the effect of, "Nice job," "You are getting better coloring between the lines," and "I like the way you colored the turkey." Per the contents of Charge 34 (*Id.*), Respondent spent these 26 minutes preparing materials.

228. As provided in Factual Findings 172 and 226, Respondent was not able to prepare the materials ahead of time due to the talent show incident earlier that morning and the strike meeting she attended at lunch. Respondent acknowledged she spent some time during the beginning of the period preparing materials, and she therefore was not interacting with students. Based on the teacher Commissioners'



experiences, such obstacles to preparing for a class are not uncommon when teaching students with moderate to severe disabilities and being flexible and persevering as Respondent did is the goal and standard. District did not establish what other feedback to the students was expected. Based on the teacher Commissioners' experiences, Respondent's feedback was appropriate for her students and not lacking, and further it developed a positive academic climate, as it was supportive and commented directly on the students' artwork, the lesson at hand.

### **Reference to Objective: Charges 36, 46, 79, and 88**

229. Charge 36 (Exh. 1, p. A14) of the SOC, relating to AP Streif's observation on November 15, 2018, alleges the following:

On or about November 15, 2018, [Respondent] did not refer back to the learning objective that she had written on the board, *To make the students aware of the meaning of Thanksgiving*, when the ELA activity ended at approximately 1:41 p.m. [Respondent] stated, using words to the effect of, "Put your cards in your communication folder for Mom or Dad or someone at home. If you are not done, you will have time to finish them tomorrow."

230. Charge 36 was substantively repeated in the following observations: AP Streif's January 30, 2019, observation (Charge 46); AP Song's October 17, 2019, observation (Charge 79); and AP Song's November 6, 2019, observation (Charge 88). These charges also alleged Respondent did not provide a closing activity or any structure to determine if the students had met the learning goals.

231. District failed to establish Charges 36, 46, 79, or 88 by a preponderance of the evidence. As has been addressed in previous sections, each of Respondents' students has individual learning objectives and the ULS differentiates the curriculum to meet their learning needs. This differentiation is delivered through the ULS curriculum and includes framing out the learning goals and referring back to learning objectives at the end of a lesson. Respondent implemented the ULS throughout the observations and on the days in question.

232. District failed to establish that in addition to implementing the ULS, Respondent had an additional responsibility when implementing the alternate curriculum to verbally refer back to an objective or provide a closing activity at the end of the class period. Further, the administrators acknowledged they did not review the students' IEPs and did not know the ULS internally monitored and reported each student's progress on their learning goals.

### **Student Learning and Understanding: Charges 45, 80 (a-c)**

233. Charge 45 (Exh. 1, p. A17) of the SOC, relating to AP Streif's observation on January 30, 2019, alleges the following:

On or about January 30, 2019, [Respondent] did not monitor student learning or check for student understanding of their independent Math activity when she remained seated at the classroom computer during the entire approximate 24-minute activity, as she completed IEPs. Both the Special Education Paraprofessionals and the Peer Buddies worked with the individual students, but [Respondent] did not.

234. Charge 45 was substantively repeated in AP Song's October 17, 2019, observation (Charge 80). AP Song observed Respondent did not circulate the classroom to monitor the students as they followed along in their social skills book during a social skills lesson on empathy and concluded she did not interact with them in a meaningful way. AP Song also observed Respondent had set the student desks in rows facing Respondent while she stood at the front of the room for the majority of class and, if a student was not paying attention, she called out the students' name, or asked the PBs or BII to get their attention, which they did successfully.

235. District failed to establish Charges 45 or 80 by a preponderance of the evidence. The charges and supportive testimony of APs Streif and Song further demonstrate the administrators' lack of understanding of the ULS, students with moderate to severe disabilities, Respondents regular charting of students' progress in the ULS and on IEP goals, and the distribution of duties between Respondent and her classroom supports.

236. As to AP Streif's January 30, 2019, observation, on this day Respondent informed AP Streif she would be completing IEPs during a portion of the class time. Completing IEPs during class is not violative of any applicable rule and is a realistic occurrence in the professional day of an alternate curriculum teacher. In addition, the Math curriculum, be it through ULS or supplemental materials, such as Khan academy, are differentiated and individualized for each student, and Respondent regularly, if not daily, reviewed, scored, and charted the students' work into each student's ULS profile. Respondent's use of paraprofessionals and BIIs on January 30, 2019, was appropriate and, notably, what the administrators had directed Respondent to do on other occasions. (Exh. 21, p. A419.)

237. As to AP Song's October 2019 observation, AP Song's conclusions about Respondent's teaching performance were without merit or support. As described in Exhibit 22, on October 17, 2019, Respondent was actively leading the empathy lesson, which included reading to the students and leading a role play in which the students and PBs engaged. AP Song's noted observations did not demonstrate Respondent failed to check for student learning and did not otherwise demonstrate ineffective teaching.

**Student Learning and Understanding – Written Directive:  
Charges 72, 83, and 90**

238. Charge 72 (Exh. 1, p. A26-A27) provides as follows:

On or about September 3, 2019 . . . [Respondent] willfully refused to comply with the directives provided to her orally on January 9, 2018, September 24, 2018, December 4, 2018, and February 11, 2019 when she attended conferences with [the administrators], and was directed to ". . . (5) Effective immediately, closely monitor student work to check for student understanding, student engagement, and the progress and completion of the assigned task," and memorialized in writing in the conference memoranda provided to [Respondent] on January 12, 2018, September 27, 2018, December 5, 2018, February 14, 2019, April 5, 2019 and May 17, 2019.

(Monitor and Check written directive.) Contrary to the allegation, of the six memos identified in charge 72, Respondent was only provided the Monitor and Check written

directive in the May 2019 Memo and was only provided the related oral directive at the May 2019 conference. (Exh. 19, p. A394.)

239. Charges 83 and 90 are nearly identical to charge 72 but add that Respondent violated the written directive again on October 17 and November 6, 2019, respectively. They also add that the Monitor and Check written directive was provided to Respondent orally on September 12 and October 29, 2019, and that it was memorialized in the September and October 2019 Memos. However, the September 2019 and October 2019 Memos contain no such oral or written directives. (Exh. 21, p. A421; Exh. 22, p. A449.)

240. District failed to establish the Monitor and Check written directive element of Charges 72 or 90 by a preponderance of the evidence because District failed to establish that on September 3 or November 6, 2019, Respondent failed to monitor student learning or check for student understanding. The September and November 2019 Memos (Exhs. 21 & 24) do not include any observations noting such failures and do not note that AP Song and Respondent discussed the topic during the respective conferences.

241. District failed to establish Charge 83 by a preponderance of evidence. Charge 83 refers to the October 17, 2019, observation, and Respondent's alleged failure to monitor student learning and check for understanding during that class. However, the underlying conduct of Charge 83 is found in Charge 80. In Factual Finding 234, 235, and 237 it was determined Respondent did not fail to monitor student learning and check for understanding on October 17, 2019, and that District failed to establish Charge 80 by a preponderance of the evidence.

### **Communicate Objective: Charge 77 (a-b)**

242. Charge 77 (Exh. 1, p. A17) of the SOC, relating to AP Song's observation on October 17, 2019, alleges Respondent did not clearly communicate the objective of the activities to give the students a context for learning about important social communication skills when she: (a) began the lesson by telling the students they would be learning about peer relationships and empathy; and (b) though she posted the objective "To practice important social relationships and situations" on the back bulletin board, she did not read it aloud, or state it in student-friendly language.

243. District failed to establish Charge 77 by a preponderance of the evidence. As described in Charge 77, Respondent began the lesson by telling the students the objective of the class, to learn about peer relationships and empathy. As provided in Charge 78 and Factual Finding 166-168, on this day Respondent followed the ULS curriculum and provided a thorough class, reading the story, posing questions to the students, playing a video, and leading a role play. District did not establish Respondent was required to read the objective posted on the back bulletin board to properly communicate the objective of the lesson.

### **Subject Matter – Written Directive: Charges 63, 72, 83, and 90**

244. As with many of the written directives, Charges 63, 72, 83, and 90 had inaccurate information. Charge 63 provides as follows:

On or about May 6, 2019, . . . [Respondent] willfully refused to comply with the directives provided to her orally on January 9, 2018, September 24, 2018, December 4, 2018, and February 11, 2019 when she attended conferences with

[the administrators], and was directed to “. . . (3) Effective immediately, teach the assigned subject matter for each of your classes . . .” and memorialized in writing in the conference memoranda provided to [Respondent] on January 12, 2018, September 27, 2018, December 5, 2018, February 14, 2019, and April 5, 2019.

(Assigned Subject Matter written directive.) Charges 72, 83, and 90 are nearly identical to Charge 63 but add that on September 3, October 17, and November 6, 2019, Respondent further violated the Assigned Subject Matter oral directive provided on September 12 and October 29, 2019, and the written directive provided in the April, May, September, and October 2019 Memos.

245. District failed to establish the Assigned Subject Matter written directive element of Charges 63, 72, 83, or 90 by a preponderance of the evidence. Contrary to these allegations, Respondent was not provided the Assigned Subject Matter directive orally on January 9, September 24, or December 4, 2018, or on February 11, 2019, and it was not a written directive provided in either the January, February, or December 4, 2018, Memos or in the February, May, September, or October 2019 Memos. (Exhs. 19, p. A394, 21, p. A421, and 22, p. A449.) The Assigned Subject Matter directive was only provided to Respondent orally during the April 2019 conference and in writing in the April 2019 Memo. (Exh. 18, p. A388.)

246. The basis for the April 2019 Assigned Subject Matter written directive was that on March 11, 2019, Respondent taught a Social Living Skills lesson though the class assigned to her period 6 was Practical Science B. Respondent testified at hearing that her period 6 class was a social skills class and not a science class. To her recollection, the class had been assigned as a science class at the beginning of the

semester, and possibly remained on JFKHS's master schedule as a science class at the time of the observation, but Respondent had, and continued to throughout the semester, taught a social skills class during her period 6.

247. During her testimony, AP Streif demonstrated limited knowledge of the topics to which she testified, including the alternate curriculum and its processes, the ULS, or that the alternate curriculum program limited the number of student iPads distributed to four iPads per class. In contrast, Respondent provided credited testimony, including her testimony regarding the ULS and alternate curriculum processes. AP Streif presented as a less credible witness. Accordingly, Respondent's testimony regarding her class subject matter is credited. For these reasons, District failed to establish the underlying basis for the Assigned Subject Matter written directive which alleged that on March 11, 2019, Respondent failed to teach the assigned subject matter.

248. As to Charge 63, which alleges Respondent violated the Assigned Subject Matter written directive on May 6, 2019, District did not present evidence supporting this allegation. This class was a Practical Math B class and Respondent delivered math instruction. Exhibit 19 shows, and Respondent acknowledged, that on that date she delegated instruction to her classroom supports, but there was no evidence Respondent failed to teach the assigned subject matter.

### **Display Student Work - Written Directive to Display Student Work in the Classroom: Charge 83**

249. Charge 83 also provides as follows:

On or about October 17, 2019 . . . , [Respondent] willfully  
refused to comply with the directives provided to her orally



on January 9, 2018, September 24, 2018, December 4, 2018, February 11, 2019 and September 12, 2019 when she attended a conferences [sic] with [the administrators] and was directed to “. . . (6) Effective immediately, display student work in the classroom” and memorialized in writing in the conference memoranda provided to Ms. Cormier on January 12, 2018, September 27, 2018, December 5, 2018, February 14, 2019, April 5, 2019, May 17, 2019, and September 13, 2019.

(Display Student Work written directive.)

250. District failed to establish the Display Student Work written directive element of Charge 83 by a preponderance of the evidence. Contrary to the allegations contained in Charge 83, Respondent was not provided a directive orally on January 9, September 24, or December 4, 2018, or on February 11, 2019, to display student work and it was not a written directive provided in either the January, February, or December 2018 Memos, or the February 2019 Memos. It was also not a written directive in the April or May 2019 Memos.

251. Respondent was only provided the Display Student Work oral and written directive on September 12, 2019, and in the September 2019 Memo. (Exh. 21, p. A421.) AP Song issued the Display Student Work written directive because on September 3, 2019, Respondent had no student work displayed. However, as was established in testimony and as is consistent with the teacher Commissioners’ experiences, the ULS curriculum during the month of August is introductory and does not include the lesson plan units. September 3 was the first day of the September 2019 unit instruction and

Respondent did not have work to display. Accordingly, the underlying Display Student Work written directive is without merit.

252. On October 17, 2019, during Respondent's Social Communication Skills class, AP Song observed Respondent had displayed "essays written and signed by the Peer Buddies and [her] students on the Social Contracts bulletin board." AP Song also observed Respondent's English bulletin boards and found Respondent had posted several "It's My Right" posters, but he could not determine how much of that work was completed by the alternate curriculum students rather than the Peer Buddies. (Exh. 22, p. A447.) Nonetheless, on October 17, 2019, Respondent had student work displayed for both her Social Communication Skills and English classes. Accordingly, District failed to establish Charge 83 by a preponderance of the evidence.

### **ALLEGED VIOLATIONS OF REASONABLE RULES AND REGULATIONS**

253. In Charge 91, District alleges Respondent's conduct violated the reasonable rules of District including, but not limited to:

- a. Respectful Treatment of All Individuals
- b. Reasonable Accommodations for Individuals with Disabilities
- c. Code of Conduct with Students
- d. Employee Code of Ethics
- e. Board Resolution Reaffirming Respectful Treatment of All Persons

(Exh. 1, p. A35.) District failed to establish Charge 91 by a preponderance of the evidence.

254. District only submitted an excerpt of the "Board Resolution Reaffirms Respectful Treatment of All Persons" (Exh. 21, p. A433) which provides, as found in Factual Finding 40, the following:

The Los Angeles Unified School District reaffirms its policy that students and adults in both schools and offices should treat all persons equally and respectfully and refrain from the willful or negligent use of slurs against any person on the basis of race, language spoken, color, sex, religion, handicap, national origin, immigration status, age, sexual orientation, or political belief.

District failed to establish by a preponderance of the evidence Respondent violated this excerpt of the resolution. District did not submit other policies or regulations related to the respectful treatment of all individuals.

255. District submitted District Bulletin 4569.1, Reasonable Accommodation for Individuals with Disabilities (Exh. 15, pp. A318-A344). However, though Respondent failed to formally request an accommodation for her suspected dyslexia, District failed to establish Respondent violated the requirements of this bulletin as she was not required to formally request an accommodation.

256. District failed to submit District's Code of Conduct with Students, or its Employee Code of Ethics. Accordingly, District failed to lay a foundation Respondent's conduct violated these rules or regulations.

## **ALLEGED CAUSE FOR DISMISSAL**

257. As District failed to establish Charges 1 through 91 by a preponderance of the evidence, contrary to Charge 92, these charges do not separately, or in any combination, support Respondent's dismissal from District.

## **LEGAL CONCLUSIONS**

### **Legal Standards**

1. Upon a written statement of charges formulated by the governing board of the school district, charging there exists cause, as specified in section 44932 or 44933, for the dismissal of a permanent employee of the school district, the governing board of the school district may, upon majority vote, give notice to the permanent employee of its intention to dismiss him or her at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article. (§ 44934, subd. (b).)

2. Similarly, the governing board of the school district charging a permanent employee of the school district with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, may, if it deems that action necessary, immediately suspend the employee from his or her duties and give notice to him or her of his or her suspension, and that 30 days after service of the notice of dismissal, he or she will be dismissed, unless he or she demands a hearing. (§ 44949, subd. (b).)

3. Such notice of the governing board of the school district to an employee of its intention to dismiss, together with written statement of charges, is sufficient to initiate a hearing under section 11503 of the Government Code. (§ 44934, subd. (e).)

### **Standard and Burden of Proof**

4. 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, 1038-1040.) 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.)

### **The Commission on Professional Competence**

5. When a public school district seeks to dismiss a permanent employee, such as Respondent, for immoral conduct or evident unfitness for service, a Commission on Professional Competence (Commission) must hold a hearing to determine whether the charged conduct occurred and, if it did, what the proper remedy should be. (§ 44944, subd. (c)(1); *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 220 (*Burman*).)

6. Section 44944 provides the following pertaining to the decision of the Commission:

(d)(1) The decision of the [Commission] shall be made by a majority vote, and the commission shall prepare a written decision containing findings of fact, determinations of issues, and a disposition that shall be, solely, one of the following:

(A) That the employee should be dismissed.

(B) That the employee should be suspended for a specific period of time without pay.

(C) That the employee should not be dismissed or suspended.

(2) The decision of the [Commission] that the employee should not be dismissed or suspended shall not be based on nonsubstantive procedural errors committed by the school district or governing board of the school district unless the errors are prejudicial errors. ¶ . . . ¶

## **Causes of Dismissal**

7. Section 44932, subdivision (a), provides a permanent employee must not be dismissed except for one or more of the following causes:

(2) Unprofessional conduct. ¶ . . . ¶

(5) Unsatisfactory performance.

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

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

8. Section 44949, subdivision (b), provides a permanent employee is subject to immediate suspension and to dismissal if he or she willfully refuses to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district. (§ 44939, subd. (b).)

### ***Morrison* Factors**

9. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229 (*Morrison*) the court outlined seven factors for consideration "to determine whether the unprofessional conduct demonstrated unfitness to teach: . . . '[1] the likelihood that the conduct may have adversely affected students or fellow teachers, [and] the degree of such adversity anticipated, [2] the proximity or remoteness in time of the conduct, [3] the type of teaching certificate held by the party involved, [4] the extenuating or aggravating circumstances, if any, surrounding the conduct, [5] the praiseworthiness or blameworthiness of the motives resulting in the conduct, [6] the likelihood of the recurrence of the questioned conduct, and [7] the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.'" (*Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 474, citing *Morrison, supra*, 1 Cal.3d at pp. 229-330.)

10. The *Morrison* factors "'are relevant to the extent that they assist the board in determining whether the teacher's fitness to teach, i.e., in determining whether the teacher's future classroom performance and overall impact on his [or her] students are likely to meet the [school district's] standards.'" (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1462.)

11. Evident unfitness for service under section 44932, subdivision (a)(6), 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.*) On this cause for discipline, the criteria for unfitness in *Morrison* "must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service. [Citation.] If the *Morrison* criteria indicate unfitness to teach, the next step is to determine whether the 'unfitness' is 'evident'; i.e., whether the offensive conduct is caused by a defect in temperament." (*Woodland, supra*, 2 Cal.App.4th at p. 1445.)

## **Analysis**

12. District failed to establish cause to dismiss Respondent from District. District failed to establish the 92 charges contained in the SOC by a preponderance of the evidence. District did not present credible and reliable evidence in support of the charges.

13. Contrary to District's assertions, a teacher teaching the alternate curriculum to students with moderate to severe disabilities while meeting District's teaching expectations as provided in the Framework, California Standards, EDST Placement, and while implementing the ULS, would look and sound different than a teacher meeting District's teaching expectations while teaching the general education curriculum. As established by the evidence, such differences might include limited dialogue, utilizing concrete words and concepts; limited writing instructions and information; modifying lesson plans in the moment as necessary for student's



educational needs and behavior regulation; students appearing to be completing the same iPad exercise though the ULS system has differentiated instruction according to each student's profile, performance, and IEP; and the students leaving the classroom before the end of the period.

14. District did not establish the evaluations the administrators conducted, or the conclusions the administrators drew about Respondent's teaching performance, were meaningful or accurate. Based on the evidence presented, the administrators lacked the necessary knowledge of the ULS, Respondent's discipline, and of Respondent's students' needs to perceive Respondent's appropriate implementation of the ULS and prevented them from providing credible and reliable assessments of Respondent's teaching performance.

15. Further discrediting their assessments, the administrators failed to access the substantive information in each student's ULS profile, or in Respondent's many written and verbal responses to the administrators, to better inform their observations and conclusions. In addition, contrary to policy, the administrators relied heavily on Respondent's informal evaluations to rate her as below standard, and District relied heavily on these informal evaluations as cause for Respondent's dismissal, despite the fact that informal evaluations are not to be used to evaluate a teacher but are only to be used to provide feedback.

16. Contrary to District's assertion, based on the evidence presented, Respondent met District's teaching expectations as provided in the Framework, California Standards, and the EDST Placemat, while implementing the ULS as required. Respondent provided a safe and supportive environment (Focus Element 2a3); provided instruction with little loss of instruction time (Focus Element 2c1); monitored and responded to student behavior while maintaining student dignity (Focus Element

2d2); communicated the purpose of the lesson clearly (Focus Element 3a1); led classes in which students shared their thinking (Focus Element 3b2); taught standards-aligned learning activities that cognitively engage students in the lesson (Focus Element 3c1); and she provided specific and timely feedback to students (Focus Element 3d3). The evidence further established Respondent used her knowledge of her students' individual cognitive, social, emotional, and physical development to plan instruction and to make appropriate adaptations to meet her students' unique needs. (California Standard 4.1.) (Factual Findings 9-257.) As District failed to establish cause to dismiss Respondent, the Morrison factors will not be assessed.

## **SECTION 44932**

17. Based on the above, cause does not exist under section 44932, subdivision (a)(2), (5), (6), or (8) to dismiss Respondent. District failed to establish by a preponderance of the evidence Respondent engaged in unprofessional conduct or unsatisfactory performance, that Respondent is unfit to teach, or that Respondent engaged in persistent violation or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of District. Rather, the evidence established Respondent complied with District's requirement to teach the ULS and did so in a way that met her students' needs and appropriately utilized the supports and resources available to her, including the paraprofessionals, BIIIs, and PBs, and the technology available to her. (Factual Findings 9-257.)

## **SECTION 44949**

18. Cause does not exist under section 44949, subdivision (b), to dismiss Respondent. District failed to establish by a preponderance of the evidence

Respondent willfully refused to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district.

19. The written directive charges contained multiple inaccuracies and misrepresented Respondent, portraying her as if she had repeatedly and on multiple occasions violated multiple written directives, though most often the respective written directive was provided only once or twice. On all occasions, District failed to establish the underlying charges or the alleged violations of the written directives. Respondent did persistently refuse to comply with certain written directives, such as the Lesson Plan written directive. However, the evidence established these written directives were unfounded and without merit. Regardless, the evidence established Respondent performed her regular assignment and, on the occasions when she failed to comply with written directives, the evidence established she had reasonable cause, e.g., there was no rule requiring her to perform as directed by the administrators or the written directive was not reasonable or equitable. (Factual Findings 14-59, 117-143, 159-161, 174-175, 186-187, 204-207, 215-217, 238-241, & 244-256.)

## **Conclusion**

20. District failed to establish cause for Respondent's dismissal. Accordingly, dismissal of the Statement of Charges is warranted.


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## ORDER

The Statement of Charges is dismissed.

DATE: 12/09/2022

  
\_\_\_\_\_  
Vanessa Sandoval (Dec 9, 2022 11:47 PST)

VANESSA SANDOVAL

Commission Member


DATE: 12/10/2022

  
\_\_\_\_\_  
William Briscoe (Dec 10, 2022 15:39 PST)

WILLIAM BRISCO

Commission Member

DATE: 12/10/2022

  
\_\_\_\_\_  
Chantal Sampogna (Dec 10, 2022 16:36 PST)

CHANTAL M. SAMPOGNA

Administrative Law Judge

Office of Administrative Hearings