

**BEFORE THE TEACHER STANDARDS AND PRACTICES COMMISSION
STATE OF OREGON**

IN THE MATTER OF:) **FINAL ORDER**
) **ON REMAND**
JANE ROBIN,) OAH Case No.: 1403653
Respondent)

HISTORY OF THE CASE

The Commission entered a Final Order in this case on February 20, 2015. Respondent filed a petition for judicial review challenging the Commission’s Final Order. The Commission withdrew its Final Order on November 17, 2015 for reconsideration. The case came before the Commission for reconsideration during its meeting of January 22, 2016. The Commission entered a Final Order on Reconsideration on February 8, 2016. Respondent filed an amended petition for judicial review on April 6, 2016. On April 18, 2018, the Court of Appeals reversed and remanded the Commission’s Final Order on Reconsideration. Respondent thereafter sought review to the Oregon Supreme Court, which denied review on September 13, 2018. The appellate judgment was entered on October 22, 2018, and the Commission now has jurisdiction over this matter.

On June 28, 2013, the Teacher Standards and Practices Commission (Commission) issued a Notice of Opportunity for Hearing (Notice) to Jane Robin (Respondent). On July 2, 2013, Aruna Masih, Attorney at Law, on behalf of Respondent, requested a hearing.

On April 8, 2014, the Commission referred the hearing request to the Office of Administrative Hearings (OAH). Administrative Law Judge (ALJ) Dove L. Gutman was assigned to preside at hearing.

On June 3, 2014, a prehearing telephone conference was held. ALJ Alison Greene Webster, on behalf of ALJ Gutman, presided. Senior Assistant Attorney General (AAG) Raul Ramirez represented the Commission. Jeff Van Laanen appeared on behalf of the Commission. Ms. Masih represented Respondent.

On November 12 and November 13, 2014, a hearing was held at the OAH in Salem, Oregon. ALJ Gutman presided. Mr. Ramirez represented the Commission. Ms. Masih represented Respondent. The following individuals testified: Respondent, Molly Hammans, Brian Holte, Cecilia Brands, Cheryl Linder, Peter Tromba, Ann Heron, Nancy Schaal-McHarry, Rita Verdugo, and Barbara Keyworth. The record closed on November 13, 2014.

ISSUES

1. Whether, during the 2009-2010 school year, Respondent engaged in conduct constituting gross neglect of duty by failing to hold two required Individualized Education

Program (IEP) meetings for students KR and FC-E; falsifying related IEP records for KR to make it appear compliance had been met; and misrepresenting facts to the administration and the Commission by stating that the IEP meetings had been held despite no evidence to support the assertion. ORS 342.175(1)(b); OAR 584-020-0040(4)(c), (n).

2. Whether, during the 2009-2010 school year, Respondent engaged in conduct constituting gross unfitness by failing to hold two required IEP meetings for students KR and FC-E; falsifying related IEP records for KR to make it appear compliance had been met; and misrepresenting facts to the administration and the Commission by stating that the IEP meetings had been held despite no evidence to support the assertion. ORS 342.175(1)(c); OAR 584-020-0040(5)(b).

3. Whether, during the 2009-2010 school year, Respondent engaged in conduct constituting gross neglect of duty by self-publishing a collection of student essays that contained sensitive and personal information about the students, including two instances of possible child abuse of two separate students; and failing to report the two instances of possible child abuse to DHS, law enforcement or the administration as required. ORS 342.175(1)(b); OAR 584-020-0040(4)(n), (s).

4. Whether, during the 2009-2010 school year, Respondent engaged in conduct constituting gross neglect of duty by violating school policy and failing to have her students retake the Oregon Assessment of Knowledge and Skills (OAKS) test after not meeting state and district benchmarks. ORS 342.175(1)(b); OAR 584-020-0040(4)(n).

5. Whether Respondent's educator license should be suspended or revoked. ORS 342.175(1)(b), (c); ORS 342.177(3).

EVIDENTIARY RULINGS

Exhibits A2 through A5, offered by the Commission, were admitted into evidence without objection. Respondent objected to Exhibit A1 as containing unreliable hearsay. The objection was overruled and Exhibit A1 was admitted into evidence. Exhibits R1 through R16, offered by Respondent, were admitted into evidence without objection.

The Commission adopts the ALJ's credibility determination as articulated by the ALJ below:

CREDIBILITY DETERMINATION

"A witness testifying under oath or affirmation is presumed to be truthful unless it can be demonstrated otherwise. ORS 44.370 provides, in relevant part:

A witness is presumed to speak the truth. This presumption, however, may be overcome by the manner in which the witness testified, by the character of the testimony of the witness, or by evidence affecting the character or motives of the witness, or by

contradictory evidence.

A determination of a witness' credibility can be based on a number of factors other than the manner of testifying, including the inherent probability of the evidence, internal inconsistencies, whether or not the evidence is corroborated, and whether human experience demonstrates that the evidence is logically incredible. *Tew v. DMV*, 179 Or App 443 (2002).

The Commission presented evidence that during the 2009-2010 school year, Respondent failed to conduct lawful Individual Education Program (IEP) meetings for students KR and FC-E. Respondent, on the other hand, testified that she did conduct the IEP meetings for both students. Thus, a credibility determination is necessary.

I begin with an overview of IEP requirements and then examine witness testimony.

Overview of Individual Education Program (IEP) requirements

An IEP is a written plan for a child's education services. School districts must have an IEP in effect for each child with a disability at the beginning of each school year. The IEP must be reviewed and updated at least once each year. *See* OARs 581-015-2200, 581-015-2220, 581-015-2225.

School districts must notify parents in writing sufficiently in advance of the IEP meeting so that one or both parents can attend the meeting. School districts must schedule the IEP meeting at a mutually agreed upon time and place. The written notice to the parents must state the purpose, time, and place of the IEP meeting, as well as who will attend. *See* OAR 581-015-2190.

IEP team members who must attend the IEP meeting include one or both parents, the child where appropriate, a regular education teacher¹ of the child, a special education teacher (or provider) of the child, a representative of the school district (who may also be another member of the team), an individual who can interpret the results (who may also be another member of the team), and other individuals with knowledge or expertise that have been invited by the parent or the school district. *See* OAR 581-015-2210.

In developing, reviewing and revising the IEP, the IEP team must consider, among other things, the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child. (*See* OAR 581-015-2205.)

The IEP must include, among other things, a statement of the child's present levels of academic achievement and functional performance; a statement of measurable annual goals; a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided; and a statement of the specific special education and related services and

¹ The "regular" education teacher was referred to as the "general" education teacher in the hearing. (*Hearing record.*)

supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child. (See OAR 581-015-2200.)

Any IEP team member may be excused from the IEP meeting if the parent and the school district consent to the excusal in writing, and the team member submits written input into the development of the IEP to the parent and the IEP team before the meeting. See OAR 581-015-2210.

The school district may hold the IEP meeting without a parent in attendance provided the school district has provided written notice of the IEP meeting, and has documented its attempts to arrange a mutually agreed on time and place for the IEP meeting. See OARs 581-015-2190, 581-015-2195.

IEP meetings may be held by alternative means, including video conferences and conference calls. See OAR 581-015-2195.

1. Whether Respondent conducted a lawful IEP meeting for student KR on 11/03/09.

Respondent. During the 2009-2010 school year, Respondent was a Special Education teacher at Monroe Middle School (MMS). Student KR was one of the students assigned to Respondent. The annual IEP for student KR was due on or about November 3, 2009.

Respondent testified that on November 3, 2009, during the parent-teacher conferences in the cafeteria at MMS, she conducted an IEP meeting with the mother of KR. Respondent also testified that she had Brian Holte, a fellow teacher at MMS, come over to her table in the cafeteria and participate in the IEP meeting as the general education teacher.

Respondent testified that she subsequently filled out and prepared the IEP document for student KR.

Brian Holte. Brian Holte is a teacher at MMS, and has been for 15 years.

Mr. Holte testified that he has no recollection of participating in an IEP meeting with Respondent and the mother of KR during the parent-teacher conferences on November 3, 2009. Mr. Holte testified that such a meeting would have stood out in his mind as “unusual.” Mr. Holte further testified that he would not have considered the meeting an “IEP meeting.”

Mr. Holte also testified that the statement he gave to Ms. Linder during the investigation was accurate.

Cheryl Linder. In 2009 and 2010, Cheryl Linder was the Educational Support Services Administrator for the Eugene 4J School District (District). In 2010, Ms. Linder investigated various allegations against Respondent, including the allegation that Respondent had failed to conduct IEP meetings for students KR and FC-E during the 2009-2010 school year.

Ms. Linder testified that, during the investigation, she spoke with the mother of KR, who denied participating in an IEP meeting with Respondent on November 3, 2009, and who denied receiving any IEP meeting notices. Ms. Linder also testified that she spoke with Mr. Holte who denied being present for an IEP meeting on November 3, 2009.

Peter Tromba. In 2009 and 2010, Peter Tromba was the Principal of MMS. In 2010, Mr. Tromba investigated various allegations against Respondent, including the allegation that Respondent had failed to conduct IEP meetings for students KR and FC-E during the 2009-2010 school year.

Mr. Tromba testified that, during the investigation, he spoke with the mother of KR, who denied that an IEP meeting took place on November 3, 2009, and who denied receiving any IEP meeting notices. Mr. Tromba also testified that he spoke with Mr. Holte, who denied attending an IEP meeting on November 3, 2009.

Molly Hammans. In 2009 and 2010, Molly Hammans was a Special Education teacher at MMS. During the 2010-2011 school year, student KR was assigned to Ms. Hammans.

Ms. Hammans testified that on November 1, 2010, while conducting the annual IEP meeting for student KR, she was informed by both the mother of KR and Carol Welch, the occupational therapist, that the 2009 IEP meeting for KR had not taken place.

Ms. Hammans testified that she informed Ms. Linder of the allegation, and was advised to speak with the general education teacher, Mr. Holte, that Respondent had listed on the IEP document as attending the 2009 meeting.

Ms. Hammans testified that she spoke with Mr. Holte, who denied attending an IEP meeting for student KR on November 3, 2009. Ms. Hammans also testified that she was unable to find any supporting documents, such as Respondent's meeting notes, to verify that an IEP meeting had taken place on November 3, 2009.

I find, by a preponderance of the evidence that Mr. Holte and the mother of KR did not participate in an IEP meeting for student KR on November 3, 2009. I further find that Respondent did not conduct a lawful IEP meeting for student KR on November 3, 2009.

Accordingly, the testimony of Respondent will not be relied upon when it contradicts the evidence presented by the Commission.

2. Whether Respondent conducted a lawful IEP meeting for student FC-E on 6/01/10.

Respondent. During the 2009-2010 school year, student FC-E was one of the students assigned to Respondent. The annual IEP for student FC-E was due on or about June 1, 2010.

Respondent testified that she conducted an IEP meeting with the mother of FC-E by

telephone on December 1, 2009.

However, when questioned by the Commission, Respondent admitted that she did not have a general education teacher present for the phone conversation, and she did not obtain a written waiver from the mother of FC-E for the absence of the general education teacher.

Ms. Hammans. During the 2010-2011 school year, student FC-E was assigned to Ms. Hammans.

Ms. Hammans testified that in September 2010, while scheduling the annual IEP meeting for student FC-E, she became aware that there was no IEP on student FC-E for the 2009-2010 school year. Ms. Hammans testified that she informed Ms. Linder of the matter, and was advised to look through Respondent's working files and log book for evidence of the IEP, which she did.

Ms. Hammans testified that there was no evidence of the IEP in Respondent's working files. Ms. Hammans also testified that there was no evidence of the IEP in the Electronic Student Information System (ESIS or eSIS),² or in the District office.

Ms. Hammans testified that although Respondent's log book indicated that Respondent held a phone meeting with the mother of FC-E on June 1, 2010, there was no supporting documentation to verify that an IEP meeting had actually taken place on that date. Ms. Hammans testified that there were no written notes from Respondent indicating who was present for the phone meeting, what was discussed, or what goals were set for student FC-E. Ms. Hammans also testified that there was no typed or written IEP for student FC-E.

I find, by a preponderance of the evidence, that Respondent did not conduct a lawful IEP meeting for student FC-E on June 1, 2010. I further find that the testimony of Respondent will not be relied upon when it contradicts the evidence presented by the Commission.”

FINDINGS OF FACT

Background

1. During the period of 2003-2010, Respondent was employed by the Eugene 4J School District (District). Respondent obtained her Initial teaching license in October 2002. (Test. of Robin; Ex2. A1, R7.)

2. From 2003 through 2008, Respondent worked as a Special Education teacher at North Eugene High School (NEHS). Respondent initially taught under a Conditional Assignment Permit. Respondent obtained her Special Education endorsement in 2005.

While at NEHS, Respondent had a caseload of 33-40 students, and 90 minutes of prep time for her classes. Respondent also had administrative support for such things as scheduling the IEP meetings, sending out notices to parents, and typing up the IEPs. NEHS had a total of three Special Education teachers.

² ESIS was the computer system at MMS during the 2009-2010 school year. (Test. of Hammans, Linder.)

Respondent was respected by her peers and well-liked by her students. Respondent supported student growth in and out of the classroom. Respondent took part in the Black Student Union, and the Gay and Straight Alliance. Respondent was an advocate for the students at NEHS. (Test. of Robin, Keyworth; Exs. R6, R7.)

3. From 2008 through 2009, Respondent worked as a Special Education teacher at Pathfinders, a school in Eugene. Respondent had a caseload of 12 students. Respondent also had administrative support for such things as scheduling the IEP meetings, sending out notices to parents, and typing up the IEP. (Test. of Robin.)

4. In June 2009, Respondent was transferred by the District to Monroe Middle School (MMS). (Test. of Robin; Ex. A4.)

5. In September 2009, Respondent held an Initial II teaching license, with special endorsements in Language Arts, Social Studies, and Special Education. (Ex. R8.)

6. During the 2009-2010 school year, Respondent worked as a Special Education teacher at MMS. Respondent had a caseload of 47 students, and 50 minutes of prep time for classes. Respondent had less administrative support at MMS, and was ultimately responsible for scheduling the IEP meetings, sending out notices to parents, and typing up the IEPs.³

Respondent taught 6th and 7th grade Language Arts and Social Studies, as well as a Language Arts support class.

Respondent's 7th grade class contained students with ADHD, autism, behavioral problems, and learning disabilities. The class contained four students that functioned at a lower grade level, one student that had a "no contact" order with two others in the same class, and one student who was designated as a "risk of violence to self or others," and required 1:1 supervision at all times.

Respondent described the students in her 7th grade class as "overly defiant," "off task," "feral," and "at risk." Respondent opined that the female students made the class a "hostile environment," and the male students made the class a "constant battle."

Respondent and the 7th grade class were not a good fit. Respondent had a holistic management style in the classroom, which was ineffective at controlling the 7th grade class. Respondent struggled to develop a curriculum for the students with differing grade levels. Respondent was "over her head."

Nancy Schaal-McHarry and Ashley Reed were the instructional assistants (IAs) assigned to help Respondent in the classroom. Ms. Schaal-McHarry described the students in the 7th grade class as some of the most "difficult" she had ever experienced.

³ Nora Haggerty, an instructional assistant and IEP scheduler at MMS, assisted the Special Education teachers in scheduling the IEP meetings and sending out the notices to the parents. (Test. of Robin, Hammans; Ex. R9.)

Rita Marie Verdugo was the IA assigned to the student that required 1:1 supervision at all times. Ms. Verdugo described the 7th grade class as “difficult” and “unruly.” Respondent and the IAs were often brought to tears at the end of the day after dealing with the 7th grade class.

At some point during the fall 2009, Respondent developed acute anxiety and was placed on part-time disability leave by her physician. In November and December 2009, Respondent worked part-time at MMS. On or about January 1, 2010, Respondent returned to full-time work at MMS.

In January 2010, the District hired a behavioral specialist to implement changes in Respondent’s 7th grade class. The behavioral specialist initially observed the class to identify the problems. The behavioral specialist then implemented a more structured management style and teaching approach, which worked well with the students. The behavioral specialist taught Respondent and the IAs how to set up systems and procedures in the classroom, including a reward system for appropriate behaviors. The 7th grade class dramatically improved. (Test. of Robin, Schaal-McHarry, Verdugo, Tromba; Ex. A1.)

7. During the period of 2009-2011, Molly Hammans worked as a Special Education teacher at MMS. Ms. Hammans taught 7th and 8th grade. (Test. of Hammans; Ex. A1.)

8. Respondent and Ms. Hammans both received training on the federal and state requirements for IEPs. As the Special Education teachers at MMS, Respondent and Ms. Hammans were required to conduct annual IEP meetings for students on IEPs. Respondent and Ms. Hammans were ultimately responsible for notifying the parents in advance of the upcoming IEP meetings; obtaining written waivers from the parents when required; conducting the IEP meetings with the appropriate IEP team members present; typing up the IEPs and entering the updated information into ESIS;⁴ finalizing the IEPs;⁵ and sending a copy of the finalized IEPs to the parents and service providers of each student. (Test. of Robin, Hammans, Ex. A1 at 5.)

Individualized Education Program

9. An IEP is a written plan for a child’s education services. School districts must have an IEP in effect for each child with a disability at the beginning of each school year. The IEP must be reviewed and updated at least once each year, but may be conducted more frequently if requested. (See OARs 581-015-2200, 581-015-2220, 581-015-2225.)

10. School districts must notify parents in writing sufficiently in advance of the IEP meeting so that one or both parents can attend the meeting. School districts must schedule the IEP meeting at a mutually agreed upon time and place. The written notice to the parents must

⁴ Staff logged into ESIS by using their login name and password. ESIS was the data warehouse. It contained the forms needed for IEPs (including notices), and it stored the updated IEP data after the teacher typed the IEP. ESIS also kept an electronic record of when teachers logged into the system to enter data, and when IEPs were finalized. (Test. of Hammans.)

⁵ Finalizing an IEP document in ESIS required the teacher to push a button. If the teacher did not push the button, the IEP document was considered written but not finalized. (Test. of Hammans.)

state the purpose, time, and place of the IEP meeting, as well as who will attend. (See OAR 581-015-2190.)

11. IEP team members who must attend the IEP meeting include one or both parents, the child where appropriate, a regular education teacher of the child, a special education teacher (or provider) of the child, a representative of the school district (who may also be another member of the team), an individual who can interpret the results (who may also be another member of the team), and other individuals with knowledge or expertise that have been invited by the parent or the school district. (See OAR 581-015-2210.)

12. In developing, reviewing and revising the IEP, the IEP team must consider, among other things, the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child. (See OAR 581-015-2205.)

13. The IEP must include, among other things, a statement of the child's present levels of academic achievement and functional performance, a statement of measurable annual goals, a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided; and a statement of the specific special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child. (See OAR 581-015-2200.)

14. Any IEP team member may be excused from the IEP meeting if the parent and the school district consent to the excusal in writing, and the team member submits written input into the development of the IEP to the parent and the IEP team before the meeting. (See OAR 581-015-2210.)

15. The school district may hold the IEP meeting without a parent in attendance provided the school district has provided written notice of the IEP meeting, and has documented its attempts to arrange a mutually agreed on time and place for the IEP meeting. (See OARs 581-015-2190, 581-015-2195.)

16. IEP meetings may be held by alternative means, including video conferences and conference calls. (See OAR 581-015-2195.)

Respondent's behavior at MMS

Inappropriate behavior with staff and students

17. On September 11, 2009, Respondent yelled at an IA in front of students. Respondent later grabbed the IA by the arms in the hallway. The IA asked Respondent not to yell at her again. Respondent told the IA that "this has happened before and I can't guarantee it won't happen again." (Ex. A1 at 34-37.)

18. On October 20, 2009, during 5th period, Respondent scolded student 1 and lightly smacked her in the upper arm. Respondent also grabbed the shoulders of student 2 and directed him back to his seat. At some point during that period, Respondent took a female student into an adjacent classroom and asked the assistant to watch the student because Respondent was ready to “throttle her.” (Ex. A1 at 34-37.)

19. On October 21, 2009, during 5th period, Respondent told student 3 to “shut up” and that she looked “handicapped.” Respondent also forcefully slammed student 3’s binder when the student was misbehaving. (Ex. A1 at 34-37.)

20. On November 3, 2009, during 5th period, Respondent grabbed student 3’s chin. Student 3 pulled away from Respondent. Respondent told student 3 to go to the office. (Ex. A1 at 34-37.)

21. Peter Tromba, Principal of MMS, and Katherine Kiraly, Assistant Principal of MMS, were notified of Respondent’s inappropriate behaviors with students and staff. Mr. Tromba and Ms. Kiraly spoke with the individuals involved. Mr. Tromba met with Respondent to discuss the allegations on October 21 and November 12, 2009. (Ex. A1 at 34-37.)

22. On March 5, 2010, Mr. Tromba sent Respondent a written Notice of Suspension (Notice). In the Notice, Mr. Tromba informed Respondent that she was going to be suspended for two days without pay for the inappropriate behaviors she had exhibited with students and staff on September 11, October 20, October 21, and November 3, 2009. Mr. Tromba also notified Respondent that the two days of suspension would be charged by converting two days of leave that Respondent had taken on 1/22/10 and 1/25/10 into unpaid leave.⁶ (Ex. A1 at 34-37.)

Failing to conduct a lawful IEP for student KR

23. During the 2009-2010 school year, student KR was one of the students assigned to Respondent. The annual IEP for student KR was due on or about November 3, 2009. (Ex. A1 at 7-8, 16.)

24. On the evening of November 3, 2009, MMS held parent-teacher conferences in the school cafeteria. Each teacher sat at a designated table in the cafeteria and met with parents for a short period of time.

The mother of student KR attended the parent-teacher conferences and met with KR’s teachers. The mother of KR did not participate in an IEP meeting with Respondent on November 3, 2009. The mother of KR did not receive a notice scheduling an IEP meeting with Respondent for the date of November 3, 2009.

Brian Holte, a teacher at MMS, conducted parent-teacher conferences at his table in the school cafeteria. Each conference lasted approximately 10 minutes in length. Mr. Holte was

⁶ During the hearing, Respondent testified that she was notified of the suspension on November 3, 2009, and that she served the suspension in the fall of 2009. However, Respondent’s testimony is contradicted by the written Notice of Suspension that was issued to Respondent on March 5, 2010. (Ex. A1 at 34-37.)

fully scheduled for the entire evening. Mr. Holte did not participate in an IEP meeting for student KR with Respondent on November 3, 2009. (Test. of Tromba, Linder, Hammans, Holte; Ex. A1 at 6-7.)

25. In January 2010, the mother of KR met with Respondent. (Ex. A1 at 6.)

26. Sometime in February 2010, Respondent logged into ESIS and entered IEP information on student KR. In the IEP document that she prepared, Respondent falsely asserted that she held an annual IEP meeting for KR on November 3, 2009; that the mother of KR attended the IEP meeting; and that Brian Holte attended the IEP meeting as the regular education teacher. Respondent did not finalize the IEP document or distribute copies to the parent and service providers of KR. (Test. of Linder, Hammans; Ex. A1 at 6-8, 16-23.)

27. There is no evidence in student KR's records of any IEP meeting notices being sent to the mother of KR.⁷ (Ex. A1 at 8.)

28. Failing to conduct an annual IEP meeting and failing to finalize an IEP document violates a student's due process rights, and prevents the student's teachers from having the information necessary to serve the student correctly. (Ex. A1 at 7-9.)

Failing to conduct a lawful IEP for student FC-E

29. During the 2009-2010 school year, student FC-E was one of the students assigned to Respondent. The annual IEP for student FC-E was due on or about June 1, 2010. (Ex. A1 at 9.)

30. On June 1, 2010, Respondent contacted the mother of FC-E by telephone. Respondent did not take any notes of the phone conversation. Respondent did not have any IEP team members present for the phone conversation. Respondent did not obtain a written waiver from the mother of FC-E for the absence of the IEP team members, including the general education teacher. Respondent did not enter any IEP information on student FC-E in ESIS. Respondent did not prepare or finalize an IEP document on student FC-E for the 2009-2010 school year. (Test. of Hammans, Linder, Robin; Ex. A1 at 9-10.)

31. There is no documentary evidence in Respondent's working files of an IEP meeting for student FC-E taking place on June 1, 2010. There is no evidence in student FC-E's records of any IEP meeting notices being sent to the mother of FC-E. (Ex. A1 at 9-10.)

32. The District reported student FC-E "out of compliance" on its annual Oregon Department of Education census report. The District was unable to receive funding for services that were delivered to student FC-E during the 2009-2010 school year. (Test. of Hammans, Linder; Ex. A1 at 9-10.)

Publishing student essays and failing to report child abuse

⁷ When a Notice of Team Meeting (the notice scheduling the IEP meeting) was prepared in ESIS, it was printed out and sent to the parent, and a copy of the Notice was placed in the student's record/file. (Test. of Hammans.)

33. Respondent is a mandatory reporter of child abuse. At the first staff meeting at MMS, all of the staff, including Respondent, were informed of their obligation to report child abuse. (Test. of Robin; Ex. A at 11.)

34. During the 2009-2010 school year, Respondent assigned a writing exercise to the students in her 7th grade class. The assignment consisted of writing memoirs or short stories based on a series of prompts from a book. Respondent edited the students' writings. (Test. of Robin; Ex. A1 at 11-12.)

35. At the end of the year, Respondent placed a collection of the students' writings in a book that was sent home with all of the students in the 7th grade class. The students chose the writing that they wanted published. The students were aware that their writings would be shared with others. (Test. of Robin.) In one of the published writings, a student wrote:

Changes.

7. I have been through a lot. Changes most of all. I've moved lost friends, and people. I had to move because my parents split up. I have lost one friend and one family member. They both shot them selves. That's why i'm so messed up! Laugh out loud.

Have I ever been Embarrassed?

8. I have never been Embarrassed. As you can tell, I haven't. I just lied. Laugh out loud. Well, when I got suspeded because i throw a flashlight at my friend []. I was scared to come back to school. Because everybody would make fun of me. I got through it though.

What scared me as a kid?

9. I was always scared of my dad when he had parties. He would get drunk and take it out on my. He would ground me; tell me to do everything in the house that was already done. He would hit my Butt with a belt. Now I live with my mom, I have the bestest friend down the street. At The Brewer Apartments. I love my life after me and my mom moved out. That is the only stuff I remember.

Impacts in my life!

10. I have lost a friend, family member, and animals. I lost my friend [] he shot himself. My moms step brother, I call him uncle Scott. He also shot himself because of depression. All the animals I have lost died, or got hit by a car. I have cried so much this passed year. I learned that people can make really bad choices. My uncle and [] made a really bad choice!

(Ex. A1 at 28; emphasis in original.) In another published writing, a student wrote:

One time when I was eight, I was at my foster parents house. [] and my sister [] and some other girl, I can't remember her name and I snuck some candy from the kitchen cabinet. The funny thing is we were all crowded into the cabinet with the door closed. It was really crowded. We were hiding but then we were caught. The wicked foster parents made us eat all the candy until it was gone. It took us a couple of hours to eat the huge pile of candy.

First [] threw up. They told her to eat her vomit, but she didn't. Then my sister and the other girl gave up eating the candy. I ended up eating all of the candy by myself. On the next day the other girl threw up and on the day after that it was my sister. I never threw up.

(Ex. A1 at 30.) In a third published writing, a student wrote:

1. My very first memory is of me sitting on the couch. My dad was sitting in a chair. I don't think we were doing anything.
2. When I was little I lived watching Barney and Bob the Builder. I remember watching barney and when I got bored I would climb the entertainment center. It fell on me. My favorite toys were The Rescue Heros.
3. I'm not a very violent person but I like beating up on my older sister. I have never won.
4. When I was little I wanted to be a soccer player, playing for The manchester United. But now I want to be a sports broadcaster for a hockey team.
5. I have always loved to ride my bike. When I was little I rode my bike around the block all the time.
6. Elementary school is boring. I was pretty quiet and bored.
7. When I was little they did not have iPods since they hadn't been invented yet. They did not have digital cameras yet either.
8. When I was little I was afraid of Ronald MacDonald and of the dark. I still am.
9. In my spare time I like to play hockey in my back yard. I am

never very bad, but sometimes I am.

10. My first crush was []. I started liking her in the third grade. [] hates me. She found out in the fifth grade. I made the mistake of telling []. [] told everybody including []. Everybody wanted me to talk to her. In the sixth grade [] got sick of me so she wrote a harassment form on me.

11. A happy moment was when I was told I got to run camera two.

(Ex. A1 at 31.)

36. Respondent did not notify law enforcement, the local office of the Department of Human Services, or the administration regarding any of the information disclosed in the student writings. (Test. of Robin; Ex. A1 at 10-11.)

37. Respondent did not send out a communication to the parents about the publication. Respondent did not receive permission from the parents or the administrator before publishing the collection of student writings. (Ex. A1 at 10-11.)

38. On July 14, 2010, Cheryl Linder, the Educational Support Services Administrator for the District, met with a parent of one of the students from Respondent's 7th grade class, who raised concerns regarding the publication. (Ex. A1 at 10.)

Failing to retest students on the OAKS test

39. At the beginning of the 2009-2010 school year, all of the staff at MMS, including Respondent, were informed of the school's expectations (and building requirement) that students failing to meet the benchmark or performance standard on the OAKS test would be tested a second time and possibly a third time. (Test. of Tromba; Ex. A1 at 12.)

40. During the 2009-2010 school year, Cecilia Brands was the testing coordinator for MMS. Ms. Brands prepared an OAKS testing schedule with input from the teachers, who were responsible for administering the test to their students. Ms. Brands scheduled almost all of the students for two rounds of testing.⁸ Respondent was scheduled to initially test her students during February 17 through February 19, 2010, and to retest her students during April 6 through April 9, 2010. (Test. of Brands; Ex. A1 at 12-13.)

41. On or about February 17, 2010, Respondent administered the first round of OAKS testing to her 6th grade class.⁹ Sometime after February 17, 2010, Respondent administered the first round of OAKS testing to her 7th grade class.¹⁰ Nearly all of Respondent's students failed to

⁸ Some of the teachers asked for three rounds of testing. (Test. of Brands; Ex. A5.)

⁹ Ms. Brands assisted Respondent with the first round of testing of the 6th grade class. (Test. of Brands.)

¹⁰ Ms. Brands rescheduled Respondent's 7th grade class for their first round of testing. (*Id.*)

meet the benchmark or performance standard on the test.¹¹ (Test. of Brands; Exs. A1 at 12-13, 32-33, A5.)

42. During the last part of March 2010, Ms. Brand reminded Respondent of the second round of OAKS testing that was scheduled for April 6 through April 9, 2010. Respondent told Ms. Brand that she could not test her students during that period of time. Ms. Brand rescheduled the second round of OAKS testing for Respondent and sent out a reminder to Respondent regarding the new testing schedule. (Test. of Brands, Robin; Ex. A1 at 12-13, 32-33.)

43. Respondent did not retest her students on the OAKS test before the end of the school year. Respondent's actions negatively affected her students and MMS as follows: Respondent's students were not given the opportunity to improve their test scores, to meet the performance standards, or to excel and be eligible for additional opportunities in school; and MMS failed to make Adequate Yearly Progress for the 2009-2010 school year. (Test. of Brands, Tromba, Robin; Ex. A1 at 12-13, 32-33.)

Additional information

44. In 2010, Mr. Tromba and Ms. Linder were notified of the various allegations against Respondent. Mr. Tromba and Ms. Linder conducted an investigation into the allegations. (Test. of Tromba, Linder; Ex. A1.)

45. During the 2010-2011 school year, Respondent was on leave from MMS. (Test. of Robin.)

46. On March 29, 2011, Mr. Tromba and Ms. Linder met with and interviewed Respondent regarding the allegations.¹²

When questioned about the IEP meeting for student KR, Respondent asserted that she conducted an ad-hoc IEP meeting on November 3, 2009, in the midst of conferences; that she met with KR's mother for a conference, and then called over a regular education teacher – Brian Holte – to give input necessary to complete the IEP; and that KR's mother was aware that this unconventional meeting was an IEP.

When questioned about the IEP meeting for student FC-E, Respondent asserted that she conducted the IEP meeting by phone. (Exs. A1, R12.)

47. On August 19, 2011, after concluding their investigation, Mr. Tromba and Ms. Linder issued a letter to Superintendent Sheldon Berman, recommending termination of Respondent's employment with the District. The letter stated, in pertinent part:

INTRODUCTION

¹¹ The testing results indicate that only a small number of students actually met the performance standard. (Ex. A1 at 32-33.)

¹² Christine Nesbit and Jeff Jackson were also present in the meeting. (Ex. R12.)

During the 2009-2010 school year, Jane Robin worked as a Special Education teacher at Monroe Middle School in the 4J school district. She taught 6th and 7th grade Language Arts and Social Studies as well as a Language Arts support class. She was responsible for a special education caseload of students as well. These responsibilities include coordinating and conducting annual Individual Education Plan (IEP) reviews, communication with parents and staff, collaboration with colleagues, specially designed instruction related to goal areas, monitoring progress toward goals, student assessments, and all associated paperwork related to special education.

During the 2010-2011 school year, we received reports that there were problems with practices and procedures that Ms. Robin had been responsible for in the prior year. These problems included claims that:

1. Ms. Robin had attested to meetings happening that had not happened, falsifying an IEP.
2. Ms. Robin had not completed an IEP as required and she failed to communicate goal areas of a student's IEP, with the effect that the student did not receive the services.
3. Ms. Robin failed to report two instances of child abuse in violation of her obligation as a mandatory reporter.
4. Ms. Robin distributed a book of student writing that revealed personal and sensitive student information.
5. Ms. Robin did not have eligible students retested for the state OAKS test, in violation of district and building testing protocol.

Because of the serious nature of these allegations, we conducted an investigation that included interviews with staff, parents and Ms. Robin. This document describes the evidence collected and sets forth our conclusions about each of the allegations, and in its totality describes the bases upon which we recommend termination.

INVESTIGATION AND FINDINGS

1. Falsification of an IEP for Student KR

On November 1, 2010, a Monroe Middle School special education teacher, Molly Hammans, held an IEP meeting for Student KR.

This was an annual IEP review. During this meeting, she was informed by both the parent for KR and Carol Welch (an Occupational Therapist for the District) that the previous IEP review due in 2009 was not held. The 2009 IEP review was Ms. Robin's responsibility to schedule and conduct.

Ms. Hammans checked eSIS for evidence of the IEP and discovered that an IEP for KR for 2009 had been recorded in the District's student information system (eSIS). A copy of the eSIS record is attached as Attachment 1. The document states that the IEP meeting for KR had been held on November 3, 2009, and lists the parent, Carol Welch¹³ and Brian Holte (a Monroe Middle School language arts teacher) as attendees. All of these individuals said at the November 1, 2010 IEP meeting that they never attended the 2009 IEP meeting. The parent told Ms. Hammans that she had asked several times for a meeting during 2009 and finally met with Ms. Robbins [sic] in January of 2010, two months after the IEP was due.

Ms. Hammans reported the issue to Ms. Linder who began an investigation to determine if the meeting had been held as described by Ms. Robin in the IEP document. On November 8, 2010, Ms. Linder met with Brian Holte (the language arts teacher at Monroe) to ask about his participation in the 2009 IEP. Mr. Holte was asked if he recalled participating in the IEP meeting. He had no recollection of the meeting and said, "That since he sits on less than 10 meetings per year, he would have remembered if he was present."

Ms. Linder contacted Ruth Mann and Gunawan Darmadi in the Computer Information Services department (CIS) to have them determine when the IEP had been entered into the electronic system. CIS was able to determine that the IEP information was entered into eSIS in February 2010 by Ms. Robin, but was not finalized. ***. We conclude that Ms. Robin had written a draft document but had never formalized the document and had not sent it to the parent or to other service providers.

On March 29, 2011, Ms. Robin was asked about KR's IEP. With regard to the document – wherein she attests to having an IEP meeting with KR's mother on November 3, 2009 – Ms. Robin stated that on that day was the Monroe Middle School parent conferences and that she conducted an ad-hoc IEP meeting in the midst of conferences. (Parent conferences are held with over 20 teachers and hundreds of parents in the cafeteria). She said that

¹³ The document does not list Carol Welch as attending. (Ex. A1 at 16.)