WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

NGOZI METU, Applicant

vs.

RIALTO UNIFIED SCHOOL DISTRICT; Permissibly Self-Insured, administered by KEENAN & ASSOCIATES, Defendants

Adjudication Number: ADJ11299554
Pomona District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

We have considered the allegations of the applicant's in pro per Petition for Reconsideration, the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto, and the contents of the WCJ's Opinion on Decision. Based on our review of the record, and for the reasons stated in the WCJ's report, findings & opinion, and opinion on decision, which are both adopted and incorporated herein, we will grant reconsideration solely to amend the finding of injury in the form of psyche and admit Exhibit 9, which the WCJ relied on in coming to his decision, and otherwise affirm the Findings and Order.

Dr. Johnson evaluated applicant as a panel qualified medical evaluator. According to her report of September 11, 2019:

> The actual events of employment are the predominant cause (above 50%) from all other sources contributing to the psychiatric injury pursuant to Labor Code Section 3208.3. My opinion is given to within reasonable medical probability. (Joint Exhibit A3, Medical Report of Stephane Johnson, M.D., 9/11/2019 at p. 5.)

However, as explained by the WCJ in his Opinion and his Report, defendant met its burden under Labor 3208.3(h):

> No compensation under this division shall be paid by an employer for a psychiatric injury, if the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action. The burden of proof shall rest with the party asserting the issue.

Accordingly, we will amend the F&O to find that applicant sustained injury in the form of psyche. We make no changes to the WCJ's decision that applicant is not entitled to compensation for her industrial injury.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact of August 18, 2023 is **AFFIRMED** except it is **AMENDED** as follows:

FINDINGS OF FACT

1. Applicant, Ngozi Metu, sustained a cumulative trauma injury from April 1, 2014 to July 12, 2017 in the form of psyche while working as an Elementary School Teacher in Rialto, California for the Rialto Unified School District, permissibly self-insured and administered by Keenan & Associates.

3. Exhibit 9, Rialto Unified School District Certificated Bargaining Unit 5- Year Evaluation Consent Form, dated May 21, 2020 is admitted into evidence.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 13, 2023

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

NGOZI METU
LAW OFFICES OF RACHEL STANTON
MICHAEL SULLIVAN & ASSOCIATES

DLM/oo

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. o.o

REPORT AND RECOMMENDATIONS ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

1.	Applicant's Occupation:	Elementary School Teacher
	Applicant's Age:	58
	Date of Injury:	CT April 1, 2014 to July 12, 2017
	Parts of Body Injured:	Nervous system/Psyche; Stress
2.	Identity of Petitioner:	Applicant (in pro per) has filed the Petition
	Timeliness:	The Petition is timely
	Verification:	A verification is attached to the Petition
3.	Date of service of Findings and Award:	August 18, 2023

II
CONTENTIONS

1. The evidence does not justify the findings of fact;
2. The petitioner has discovered new evidence material to her that she could not, with reasonable diligence, have discovered and produced at hearing;
3. The findings of fact do not support the order, decision, or award.

III
FACTS

The Applicant, Ngozi Metu, born June 13, 1965, claimed to have sustained a cumulative trauma injury from April 1, 2014 to July 12, 2017 to her nervous system/psyche and in the form of stress while working as an Elementary School Teacher at Dunn Elementary in Rialto, California for the Rialto Unified School District. The Applicant testified that she started to experience various health issues, such as anxiety, depression, insomnia, and feeling withdrawn on or around May of 2015. (MOE/SOE June 23, 2022, pg. 7, lines 6-7.) She would eventually seek treatment for these issues.

Defendant denied liability for the alleged cumulative trauma injury on October 18, 2018.

(Defendant's Exhibit A.) The parties participated in the QME Panel process upon which Dr. Stephane Johnson served as the Psychiatric PQME. Dr. Johnson conducted an initial evaluation of the Applicant on April 15, 2019, diagnosing the Applicant with "major depressive disorder, single episode, moderate," and "anxiety NOS." (Joint Exhibit A1, pg. 21.) The Applicant identified various events/actions that contributed to the cause of her psychiatric injury. After having re-evaluated the Applicant on September 11, 2019, Dr. Johnson opined that various events/actions from Applicant's employment were the predominant cause from all other sources that contributed to the psychiatric injury. (Joint Exhibit A3, pg. 5.) Given that most of these events could be characterized as personnel actions, Dr. Johnson provided the following causation percentages:

1. The Applicant's administrative placement into to the 3rd grade by then-principal Mr. Fernando Navarrete, 10% causation;
2. The administrative comment about her accent by Mr. Navarrete, 10% causation;
3. Late classroom assignment by Mr. Navarrete, 5% causation;
4. Her placement into a 2-year evaluation cycle as a result of her final evaluation by then-assistant principal Mr. Thomas Bashaw, 10% causation;
5. The assignment of a disproportionate number of difficult students, 10% causation;
6. Increased principal scrutiny, 5% causation;
7. The "combo class" assignment, 5% causation;
8. Her final evaluation, 5% causation;
9. A formal reprimand by then-assistant principal Ms. Tina Lingenfelter regarding a complaint about the Applicant teaching Easter, 5% causation;
10. A formal reprimand by Ms. Lingenfelter regarding a complaint about Applicant inappropriately punishing a student, 5% causation;
11. Her assignment to a SWAN evaluation, 5% causation, and;
12. Her termination/resignation as an Elementary School Teacher, no percentage assigned. (*Id.*, at pgs. 6-8.)

Dr. Johnson ascribed the remaining 25% causation of injury to the Applicant's pre- existing psychiatric and psychological stressors. (*Id.*, at pg. 6.)

This matter first proceeded on the record on August 23, 2021. After lengthy Trial proceedings and an opportunity for each party to prepare post-Trial briefs, the matter was

ultimately submitted on June 21, 2023.

The undersigned WCJ issued his Findings and Order, finding that though the Applicant sustained the claimed cumulative trauma injury to her nervous system/psyche and in the form of stress, Defendant had met its burden in showing that the psychiatric injury was substantially caused by lawful, good faith, and nondiscriminatory good faith personnel actions. Specifically, the undersigned found the following actions to be considered good faith personnel actions: placement into a 2-year evaluation cycle, 10% causation; increased principal scrutiny, 5% causation; the "combo class" assignment, 5% causation; her final evaluation, 5% causation; the formal reprimand regarding the Easter incident, 5% causation; the formal reprimand regarding parent complaints as to student discipline, 5% causation; the assignment to a SWAN evaluation, 5% causation. When combined, these personnel actions consisted of 40% of the cause of the Applicant's psychiatric injury, meeting the definition of substantial cause under Labor Code section 3208.3(b)(3). As such, the undersigned ordered that the Applicant take nothing pursuant to Labor Code section 3208.3(h).

The Applicant dismissed her attorney, Ms. Rachel Stanton, on August 31, 2023. She then filed her Petition for Reconsideration on September 12, 2023. Within her Petition, she asserted that the evidence does not justify the findings of fact, that she had discovered new evidence material to her which she could not with reasonable diligence have discovered and produced at the hearing, and that the findings of fact do not support the order, decision, or award.

IV
DISCUSSION

Under Labor Code section 5900(a), a Petition for Reconsideration may only be taken from a "final" order, decision, or award. A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal. App. 3d 1171, 1180) or determines a threshold issue that is fundamental to the claim for benefits (*Maranian v. Workers' Comp. Appeal Bd.* (2000) 81 Cal. App. 4th 1068, 1070.) Pursuant to Labor Code section 5903, any person aggrieved by any final order, decision, or award may petition for reconsideration upon one or more of the following grounds:

(a) That by the order, decision, or award made and filed by the appeals board or the workers' compensation judge, the appeals board acted without or in excess of its

powers.

(b) That the order, decision, or award was procured by fraud.

(c) That the evidence does not justify the findings of fact.

(d) That the petitioner has discovered new evidence material to him or her, which he or she could not, with reasonable diligence, have discovered and produced at the hearing.

(e) That the findings of fact do not support the order, decision, or award.

The Applicant, in pro per, asserts under Labor Code section 5903 that the evidence does not justify the findings of fact, that she had discovered new evidence material to her which she could not with reasonable diligence have discovered and produced at the hearing, and that the findings of fact do not support the order, decision, or award.

As a preliminary matter, the Court acknowledges that the Applicant has prepared this Petition for Reconsideration while in pro per, and that some latitude can be afforded to her as it relates to the various form requirements. However, it cannot be ignored that the Applicant violates California Code of Regulations sections 10945(b) and 10945(c)(1) by failing state with specificity the material evidence on the record relative to the various points at issue and by introducing various new exhibits labeled as Exhibits A through Z, which were not part of the original adjudication file. And while she appears to suggest that these documents are "new evidence" as contemplated under Labor Code section 5903(d), there is no indication that these documents could not have been discovered and produced at the time of hearing upon the exercise of reasonable diligence.[1] In fact, there is no reason why these documents would not have been discovered and made available prior to Trial as the Applicant appears to have been privy to them.

Accordingly, under California Code of Regulations section 10945(a), the undersigned recommends that the Petition for Reconsideration be dismissed.

Absent dismissal under California Code of Regulations section 10945(a), the undersigned continues to find that good faith personnel actions substantially caused the Applicant's psychiatric injuries.

Good Faith Personnel Actions

Because the undersigned opined that the personnel actions involving Applicant's placement into the 3rd grade, the administrative comments about her accent, and the assignment

[1] Of note, some of the additional Exhibits offered by the Applicant within her Petition, specifically those identified as Exhibits J, K, L, P, Q, T, V, and W contain various unredacted names of minors.

of a disproportionate number of difficult students were not considered to be lawful, non-discriminatory, and good faith personnel actions, they did not contribute to the substantial cause requirement under Labor Code section 3208.2(b)(3). As such, the undersigned will not address the same within this Report. Also, the undersigned opined that the incident regarding the Applicant's late classroom assignment did not contribute the substantial cause requirement as it was found not to be an actual event of employment. Thus, the incident involving late classroom assignments will not be addressed herein.

Placement into a 2-Year Evaluation Cycle

First, the Applicant experienced an escalation of her anxiety symptoms after she was advised by then-assistant principal Mr. Thomas Bashaw that she was being placed into a 2-year evaluation cycle. Applicant seemingly alleged that this was orchestrated in retaliation by then-principal Mr. Fernando Navarrete. Applicant argues that Mr. Navarrete instructed Mr. Bashaw to assign the Applicant the 2-year evaluation cycle. However, the testimony would suggest otherwise.

Mr. Bashaw testified that he was responsible for evaluating the Applicant in 2015, and that a teacher needs to score several exemplary scores in order to be assigned to the 5-year evaluation cycle. (MOE/SOE Apr 25, 2023, pg. 5, lines 11-13.) Based upon his evaluations of the Applicant throughout that academic year, Mr. Bashaw had recommended to Mr. Navarrete that the Applicant be placed under the 2-year evaluation cycle. (*Id*. at pg. 5, line 14.) However, it was ultimately the responsibility of the principal, who was Mr. Navarrete at the time, to endorse recommendations suggested by the evaluating administrator. (MOE/SOE Apr 25, 2023, pg. 6, lines 22-23.) This suggests that Mr. Bashaw provided his recommendations to Dr. Navarrete for the latter to endorse, and not the other way around.

As for the evaluation itself, the undersigned did not find any evidence that Mr. Bashaw's assessment of the Applicant in 2015 was done in an arbitrary manner as the final evaluation score was based upon his observations throughout the academic year. As aforementioned, he explained his criteria for placing teachers in a 5-year evaluation cycle, which was to see several exemplary scores. And he testified that he applied the same evaluation standards across all teachers. (*Id*., at pg. 5, lines 14-15.)

Accordingly, the undersigned continues to find that the Applicant's placement under the 2-year evaluation cycle was conducted in a lawful, good faith, and non-discriminatory manner.

Increased Principal Scrutiny

The Applicant reiterated that Mr. Navarrete started visiting her class more frequently, which were followed by write-ups.

Mr. Navarrete testified credibly and without rebuttal that he made an efforts to visit all of his teachers and classrooms throughout the week in order to get to his know students and staff better. (MOE/SOE Feb 21, 2023, pg. 5, lines 23-25.) He accomplished this by visiting all classroom in 1 of the 5 wings each day every week. (*Id*., at pg. 5, lines 22-23.; MOE/SOE Apr 6, 2023, pg. 3, lines 24-25.) This allowed him to visit all of the classrooms at least once per week. Thus, he visited all of the classrooms often, including the Applicant's classroom. (MOE/SOE Feb 21, 2023, pg. 5, lines 21-22.) The undersigned found that conducting unannounced visits across all five wings as the school principal appeared to be a lawful practice implemented in good faith, especially if recommended by the school district. (MOE/SOE Feb 21, 2023, pg. 5, line 24.)

Of note, the Applicant testified during Trial that Mr. Navarrete started conducting unannounced visits every week, sometimes twice a week. (MOE/SOE Apr 7, 2022, pg. 10, lines 19-22.) The undersigned noted that Mr. Navarrete's testimony about visiting each wing at least once a week was not inconsistent with what the Applicant had originally described as "increased principal scrutiny." However, the Applicant's now changes her characterization of the scrutiny within her Petition from "every week, sometimes twice a week" visits to "frequently[,] *many* times per week." (Petition for Reconsideration, pg. 2.) However, she does not point to any evidence on the record to support this claim.

Thus, the undersigned continues to find that Mr. Navarrete acted in a lawful, good faith, non-discriminatory manner.

The "Combo Class" Assignment

The Applicant claims that Mr. Navarrete bullied her by assigning her to a 1st-2nd grade combo class. However, there was no evidence of this allegation on the record. In fact, Mr. Navarrete reached out to the Applicant to inquire as to her classroom assignment preference, upon which she replied with absolutely indifference. (Applicant's Exhibit 5, pg. 85.)

Furthermore, the evidence clearly showed that the combo class assignment was on a rotation among other teachers, which including the Applicant. Another teacher named Ms. Garcia was assigned to the combo class in 2014-2015; a teacher named Ms. Street was assigned to the combo class in 2015-2016. (*Ibid*.) The Applicant was assigned to teach the combo class for the

upcoming 2016-2017 academic year. Thereafter, Mr. Navarrete provided assurances that the final two teachers, Mrs. Miles and Ms. Powers would be rotated in. (*Ibid*.)

The undersigned continues to find that Mr. Navarrete acted in a lawful, good faith, and non-discriminatory manner by assigning the Applicant to a combo class, especially when the Applicant exhibited complete indifference in her classroom preference.

Formal Reprimands regarding the Easter Incident and Parent Complaints as to Student Discipline

On or around April 17, 2017, a parent called Dunn Elementary to lodge a complaint about the Applicant having discussed Easter and the resurrection of Jesus in class. (MOE/SOE Apr 25, 2023, pg. 11, lines 10-11.) The assistant-principal at the time, Ms. Lingenfelter conducted an investigation and ultimately issued a written warning against the Applicant.

The school received another parent complaint on or around April 19, 2017. This time, a parent complained that the Applicant made her son stand with his nose against a wall as a form of discipline. (MOE/SOE Apr 7, 2022, pg. 17, lines 9-10.) Ms. Lingenfelter also conducted an investigation into this allegation, which also culminated into a written warning against the Applicant.

There does not appear to be any dispute that parents had called claiming that the Applicant was teaching Easter and that the Applicant utilized the aforementioned method of discipline. Accordingly, the undersigned found it objectively reasonable for the administration to conduct investigations and issue disciplinary actions based upon said investigations. The undersigned found the investigations to have been completed in a lawful, good faith, and non- discriminatory manner. Further, the resulting disciplinary written reprimands did not appear to be arbitrary.

Final Evaluation and Assignment to a SWAN Evaluation

Ms. Lingenfelter's final evaluation of the Applicant and decision to assign her to a SWAN evaluation appeared objectively reasonable and done in a lawful, good faith, non- discriminatory manner. Her decision was not arbitrary, but instead based upon her various observations of the Applicant over the course of the 2016-2017 academic year. In support of her evaluation, Ms. Lingenfelter had identified various critiques: learning environment was cluttered and appeared unorganized; all of the items posted on the walls did not appear to have been utilized by the students; the Applicant was observed at differing times sitting in front of the class without any student interaction and not effectively using the instructional time. (Applicant's Exhibit 2, pg. 28.)

And these were corroborated and memorialized throughout her notes that were offered into evidence. (Applicant's Exhibit 3, pg. 58, 59.)

Thus, the undersigned continues to find that Ms. Lingenfelter's final evaluation of the Applicant and assignment of the SWAN evaluation were lawful, good faith, and non-discriminatory personnel actions.

V

RECOMMENDATIONS

Where appropriate, it is respectfully recommended that instructions be provided as to how to best protect the identity of any minor children identified within some of the additional documents offered as exhibits by the Applicant in her Petition for Reconsideration.

Pursuant to California Code of Regulations section 10945(a), it is recommended that the Applicant's Petition for Reconsideration be dismissed.

Alternatively, for the reasons stated above, it is respectfully recommended that the Applicant's Petition for Reconsideration be denied.

DATE: September 15, 2023

Jason L. Buscaino
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

OPINION ON DECISION

The Applicant, Ngozi Metu, born June 13, 1965, claims to have sustained a cumulative trauma injury from April 1, 2014 through July 12, 2017 to her nervous system/psyche and in the form of stress while working for the Rialto Unified School District at Dunn Elementary in Rialto as an Elementary School Teacher. The Applicant filed her Application for Adjudication of Claim on or around April 30, 2018. Defendant denied liability for this alleged cumulative trauma injury on October 18, 2018. (Defendant's Exhibit A.)

The Applicant obtained her Bachelor of Arts in Liberal Studies in 1993 and her Master's Degree in Education in 2001, both from Cal Poly, Pomona. (Applicant's 1, pg. 1.) She was approved to work for the Rialto Unified School District as an Elementary School Teacher on August 13, 1998. (Applicant's Exhibit 4, pg. 62.) The Rialto School District granted her tenure on March 9, 2000. (Applicant's Exhibit 1, pg. 23.) She continued working for the Rialto Unified School District up through the 2016-2017 school year.

Starting on or around May of 2015, the Applicant asserts to have started experiencing health issues, specifically anxiety, depression, insomnia, and feeling withdrawn. (MOE/SOE June 23, 2022, pg. 7, lines 6-7.) She would eventually obtain treatment from providers Dr. Leoni and Dr. Flores. (*Id.*, pg. 7, lines 7-9.) The parties would also participate in the QME Panel process upon which Dr. Stephane Johnson was the last remaining physician to serve as the Applicant's Psychiatric PQME.

PQME Dr. Johnson conducted an initial evaluation of the Applicant on April 15, 2019. Dr. Johnson diagnosed the Applicant with "major depressive disorder, single episode, moderate," and "Anxiety NOS." (Joint Exhibit A1, pg. 21.) However, because the medical and non-medical records were not made available to Dr. Johnson for his review before the initial evaluation, he sought to re-evaluate the Applicant. (Joint Exhibit A2, pg. 5.) This re- evaluation was completed on September 11, 2019. (Joint Exhibit A3.)

In sum, Dr. Johnson found that various events of Applicant's employment were the predominant cause from all other sources that contributed to the psychiatric injury. (*Id.*, at pg. 5.) Specifically, he identified numerous work-related events to be the causative factors of the Applicant's psychiatric injury, most of which can be characterized as personnel actions to be considered under Labor Code section 3208.3(h). These work-related events and their corresponding causation percentages in contemplation of Labor Code section 3208.3(h) are as

follows:

1. The Applicant's administrative placement into to the 3rd grade by then-principal Mr. Fernando Navarrete, 10% causation;
2. The administrative comment about her accent by Mr. Navarrete, 10% causation;
3. Late classroom assignment by Mr. Navarrete, 5% causation;
4. Her placement into a 2-year evaluation cycle as a result of her final evaluation by then-assistant principal Mr. Thomas Bashaw, 10% causation;
5. The assignment of a disproportionate number of difficult students, 10% causation;
6. Increased principal scrutiny, 5% causation;
7. The "combo class" assignment, 5% causation;
8. Her final evaluation, 5% causation;
9. A formal reprimand by then-assistant principal Ms. Tina Lingenfelter regarding a complaint about the Applicant teaching Easter, 5% causation;
10. A formal reprimand by Ms. Lingenfelter regarding a complaint about Applicant inappropriately punishing a student, 5% causation;
11. Her assignment to a SWAN evaluation, 5% causation, and;
12. Her termination/resignation as an Elementary School Teacher, no percentage assigned. (*Id*., at pgs. 6-8.)

In sum, Dr. Johnson ascribed 75% of the cause of the Applicant's psychiatric injury to various events of employment that can be characterized as personnel actions. Dr. Johnson ascribed the remaining 25% to the Applicant's pre-existing psychiatric and psychological stressors. (*Id*., at pg. 6.)

He would further assign the Applicant with a GAF score of 65, which correlates to 8% Whole Person Impairment. (Joint Exhibit A1, pg. 22; Joint Exhibit A3, pgs. 4-5.) In relation to the apportionment of the psychiatric disability, Dr. Johnson found that 40% of the psychiatric impairment is due to non-work-related factors. (Joint Exhibit A3, pg. 10.)

This matter proceeded to Trial, primarily on the issues of injury AOE/COE and whether the claimed psychiatric injury was barred by the good faith personnel action defense. This matter was submitted as of June 21, 2023.

ADMISSIBILITY OF EXHIBITS

Applicant's Exhibit 9 (admitted): Rialto Unified School District Certificated Bargaining Unit 5-Year Evaluation Consent Form, dated May 21, 2020.

ISSUES

INJURY AOE/COE; GOOD FAITH PERSONNEL ACTION

In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury. (*Lab. Code*, § 3208.3(b)(1).) However, no compensation shall be paid by an employer for a psychiatric injury if the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action. (*Lab. Code*, § 3208.3(h).) "Substantial cause" means at least 35 to 40 percent of the causation from all sources combined. (*Lab. Code*, § 3208.3(b)(3).) The burden of proof as to whether compensation for a psychiatric injury should be barred based on the good faith personnel actions rests with the party asserting the issue. (*Lab. Code*, § 3208.3(h).)

When analyzing the good faith personnel action defense, the Appeals Board in *Rolda v. Pitney Bowes, Inc.,* (2001) 66 Cal. Comp. Cases 241 (en banc) provided the following multistep analysis: First, the WCJ must determine whether the alleged psychiatric injury involved actual events of employment. If so, there must be competent medical evidence that establishes the required percentage of industrial causation as contemplated under Labor Code section 3208.3(b)(1). Then the WCJ must decide whether any of the actual events of employment were personnel actions, and if so, whether any such personnel actions were lawful, nondiscriminatory, in good faith. If lawful, nondiscriminatory, good faith personnel actions exists, competent medical evidence is necessary to determine whether or not the personnel action or actions are a substantial cause of the psychiatric injury.

A personnel action is conduct either by or attributable to management including such things as done by one who has the authority to review, criticize, demote, or discipline an employee. *Larch v. Contra Costa County* (*Fleming)* (1998), 63 Cal. Comp. Cases 831, 835.) This may include but are not necessarily limited to transfers, demotions, layoffs, performance evaluations, and disciplinary actions such as warnings, suspensions, and terminations of employment. (*Ibid.*) It is unnecessary that a personnel action have a direct or immediate effect on the employment status.

(*Id*. at pg. 834.)

When determining whether a personnel action was done in good faith, the employer must believe that he or she is acting in good faith and actually be acting in good faith, as a reasonable outside observer would see it. (*City of Oakland v. WCAB (Gullet)* (2002) 99 Cal.App.4th 261, 267). Any analysis of the good faith issue must look at the totality of the circumstances, not a rigid standard, in determining whether the action was taken in good faith. (*Ibid*.) To be in good faith, the personnel action must be done in a manner that is lacking outrageous conduct, is honest and with a sincere purpose, is without an intent to mislead, deceive, or defraud, and is without collusion or unlawful design. (*Ibid*.)

An act is lawful if it is authorized, sanctioned, or at any rate not forbidden, by law." (*Larch, supra*, 63 Cal. Comp. Cases at 838 and *Stockman v. State of California/Department of Corrections* (1998) 63 Cal. Comp. Cases 1042, 1043-45, both quoting Black's Law Dictionary.)

Finally, whether an action is nondiscriminatory depends on whether the employer treated the Applicant differently from other employees similarly situated without justification. (*Larch, supra*, 63 Cal. Comp. Cases at 838.)

This Court is tasked with determining whether all of the events of employment identified by the Applicant and Dr. Johnson as the causative factors of Applicant's psychiatric injury were actual events of employment that can be considered lawful, nondiscriminatory, and good faith personnel actions.

Administrative Placement to the 3rd Grade / Administrative Comment about her Accent

PQME Dr. Johnson identified two separate actions relating to the Applicant's accent that contributed to the cause of Applicant's psychiatric injury. First, Dr. Johnson identified then-principal Mr. Navarrete's decision to assign the Applicant to the 3rd grade (partly due to the Applicant's accent) to have constituted 10% of the cause of Applicant's psychiatric injury. (Joint Exhibit A3, pg. 6.) Second, Dr. Johnson identified Mr. Navarrete's direct comments to the Applicant about her accent to have constituted another 10% of the cause of Applicant's psychiatric injury. (*Ibid*.)

During one of his visits to the Applicant's classroom sometime during the 2014-2015 academic year, Mr. Navarrete noticed that the Applicant had mispronounced a word. He would later advise her to take care in pronouncing words because of her accent, especially to 1st graders

who are typically learning new words. (MOE/SOE Feb 2, 2023, pg. 6, lines 13-16.) Toward the end of that school year, the Applicant was advised by Mr. Navarrete that she was being assigned to teach a 3rd grade class for the following academic year. (MOH/SOE Apr 7, 2022, pg. 4, lines 23-24.) The Applicant viewed this as a negative incident as she never taught the 3rd grade, and asserted that she never listed the 3rd grade as one of her class preferences. (*Id*., at pg. 4, lines 21-22, 24-25.) She met with Mr. Navarrete on or around May 18, 2015 to discuss her 3rd grade assignment. (*Id*., at pg. 4, lines 18-19.) During this meeting, the Applicant learned that Mr. Navarrete's decision to move the Applicant from a 1st grade class to a 3rd grade class was because of her foreign accent, her tone of voice, and parents' complaints. (Applicant's Exhibit 5, pg. 81; MOE/SOE Apr 7, 2022, pg. 5, lines 19-21; MOE/SOE Feb 21, 2023, pg. 10, lines 3-4.) It is noted that the Applicant was qualified to teach the 3rd grade. (MOE/SOE June 23, 20233, pg. 9, line 23.) Nonetheless, she believed that Mr. Navarrete targeted her by assigning her to the 3rd grade.

The actions of commenting on Applicant's accent and assigning the Applicant to the 3rd grade can be considered personnel actions under *Larch* as they involve a review/criticism of the Applicant by an authoritative figure and subsequent denial of preferred classroom assignment.

There is no dispute that Mr. Navarrete encouraged her to take care in pronouncing words due to her accent. (MOE/SOE Feb 21, 2023, pg. 8, lines 11-12.) And while Mr. Navarrete claimed that the Applicant's accent had nothing to do with this decision to move the Applicant to the 3rd grade, Applicant's subsequent unrefuted email sent on May 18, 2015 after her meeting with him would suggest otherwise. (Applicant's Exhibit 5, pg. 81; MOE/SOE Feb 21, 2023, pg. 10, lines 4-5.) Mr. Navarrete's intentions regarding comments as to Applicant's accent may have been done in subjective good faith and with a sincere purpose, particularly in light of his own personal history of having an accent. (*Id*., at pg. 6, lines 16-18.) However, because the comments and the decision (at least in part) to assign the Applicant to the third grade was based upon her accent, this Court finds that Mr. Navarrete treated her differently from the other teachers similarly situated; specifically, the Applicant was treated differently because of her accent.

Therefore, these actions cannot be considered lawful, non-discriminatory, and good faith personnel actions.

<u>Late Classroom Assignment</u>

Dr. Johnson identified the Applicant's late classroom assignment to have constituted 5%

of the cause of the psychiatric injury. (Joint Exhibit A3, pg. 6.) The Applicant complained to Dr. Johnson that Mr. Navarrete retaliated against her by not confirming her classroom assignment for the following academic year until about two to three days prior to the start of the same. (Joint Exhibit A1, pg. 4.) This led to stress, anxiety, and apprehension. (*Id*., at pg. 5.)

As aforementioned, Mr. Navarrete had initially assigned the Applicant to the 3rd grade for the 2015-2016 academic year.[1] The Applicant met with Mr. Navarrete on or around May 18, 2015 to discuss the reasons for her 3rd grade assignment. (Applicant's Exhibit 5, pg. 81.) During this meeting, Mr. Navarrete refused to change the Applicant's 3rd grade assignment. (MOE/SOE Apr 7, pg. 6, lines 8-9.) Accordingly, the Applicant then emailed her union representative, detailing her conversation with Mr. Navarrete. (*Id*., at pg. 6, lines 9-12.) Her union representative called her the following day, which would have been May 19, 2015, to confirm the details regarding her meeting with Mr. Navarrete. (*Ibid*.)

She alleged to have never received a response from either Mr. Navarrete or her union representative; thus, she started preparing for the next academic year as a 3rd grade teacher. (*Id*., at pg. 6, lines 12-13.) She started packing up her 1st grade materials and vacated her classroom. (*Id*., at pg. 6, lines 16-17; Joint Exhibit A1, pg. 4.) Mr. Navarrete would ultimately acquiesce and return the Applicant back to a 1st grade assignment for the 2015-2016 academic year. (MOE/SOE Feb 21, 2023, pg. 11, lines 15-17.) The Applicant alleged that Mr. Navarrete did not inform her of his decision to keep her in the 1st grade until two or three days immediately prior to the start of the next academic year, which according to her history to Dr. Johnson was the catalyst that resulted in stress, anxiety, and depression. (Joint Exhibit A1, pg. 4.) Conversely, though Mr. Navarrete could not recall exactly when he informed the Applicant of his decision to keep her in the first grade, he testified that he communicated such decision to the Applicant before the end of the school year.

However, the Court is not convinced that her union representative and/or Mr. Navarrete would not have advised her of her classroom assignment sooner than two or three days prior to the start of the next academic year. This is especially in light of Mr. Navarrete having recognized the steps needed for teachers to create a class curriculum. (MOE/SOE Feb 21, 2023, pg. 11, lines 13-

[1] There is a slight discrepancy in Dr. Johnson's reporting as it relates to the specific year(s) these personnel actions took place; e.g. Dr. Johnson memorializes that the late classroom assignment was for the Applicant's 2014-2015 school year. However, the record confirms that this placement was contemplated for the Applicant's 2015-2016 academic year. The Court finds these minor date discrepancies to be *de minimis*.

14.) And it would not be reasonable for the Applicant to wait until two or three days before the start of the new academic year (which typically starts in August) to ascertain her new classroom assignment, especially if it was for a new grade level that she had not previously taught.

As such, the Court is not convinced that the Applicant in fact received a late classroom assignment. Thus, the Court cannot find the alleged late classroom assignment to be an actual event of employment contributing to the cause of Applicant's psychiatric injury.

<u>Placement into a 2-Year Evaluation Cycle</u>

The Applicant was scheduled for a formal evaluation during the 2014-2015 academic year. Depending on the results of the evaluation, a teacher is placed in either a 2-year evaluation cycle or a 5-year evaluation cycle. Prior to the 2014-2015 evaluation, the Applicant testified that she was under the 5-year evaluation cycle, which meant that she would be re- evaluated again after 5 years. Then-assistant principal, Mr. Thomas Bashaw, had conducted the Applicant's evaluation in 2014-2015. Out of the 6 total Standards upon which teachers are evaluated upon, Mr. Bashaw provided 5 Satisfactory ratings and one Exemplary rating. (Applicant's Exhibit 2, pg. 53.) Based upon these ratings, he ultimately recommended that she be placed in the 2-year evaluation cycle.

The Applicant claimed that the 2-year evaluation cycle is designed for beginning teachers and problematic employees. (Joint Exhibit A3, pg. 7.) As she was a tenured teacher, she certainly viewed this as a demotion, and reported to Dr. Johnson that this placement escalated her symptoms of anxiety. (*Ibid*.) Dr. Johnson identified the Applicant's placement into the 2-year evaluation cycle to have constituted 10% of the cause of the psychiatric injury. (*Ibid*.) The actions of conducting a formal evaluation and placing the Applicant in a corresponding evaluation cycle can be considered personnel actions under *Larch*.

While Mr. Bashaw conducted the observations throughout the academic year and provided his recommendations to place the Applicant under the 2-year evaluation cycle, Mr. Navarrete ultimately needed to endorse the recommendations. (MOE/SOE Apr 25, 2023, pg. 6, lines 22-23.) The Applicant's suggested that her assignment to the 2-year evaluation cycle was retaliatory as it came after she had complained to Mr. Navarrete about her assignment to the 3rd grade, after communicating her complaints about this assignment to her union, and after the school district instructed Mr. Navarrete to keep the Applicant in the 1st grade. (MOE/SOE Apr 7, 2022, pg. 7, lines 18-20.) However, the Applicant did not meet with Mr. Navarrete to complain about her 3rd

grade assignment until May 18, 2015, which was the same date of her final evaluation by Mr. Bashaw. (Applicant's Exhibit 5, pg. 81; Applicant's Exhibit 2, pgs. 49, 52.) Subsequent to her meeting with Mr. Navarrete, she initiated contact with her union representative. And while there was no consensus as to when the school district instructed Mr. Navarrete to keep the Applicant in the 1st grade, the record makes it clear that this occurred after receiving her May 18, 2015 final evaluation from Mr. Bashaw. Thus, the Court is not convinced that Mr. Bashaw acted in a retaliatory manner.

Applicant further suggested that Mr. Bashaw did not act appropriately when assigning her to a 2-year evaluation cycle by failing to provide her with notice of the same given that she was previously placed in the 5-year cycle by the prior evaluator. The Applicant relies upon her 5-year Evaluation Consent Form dating back to May 2010, which was completed by her and the prior administrator/evaluator, Ms. Elizabeth Curtiss. (Applicant's Exhibit 9.) Of significance, this form indicates, "Should *the* evaluator withdraw consent, notice and the reason(s) for return to the two year evaluation cycle shall be provided in writing to the unit member." (*Emphasis added.*) The Applicant interprets this language to mean that any subsequent evaluator, such as Mr. Bashaw, who is conducting a new evaluation must provide her with written notice if he intends to place her in the 2-year evaluation cycle.

However, Mr. Bashaw testified that the approval for the 5-year evaluation cycle is typically good for that 5-year term only; and once the 5-year cycle is finished, the teachers needed to be re-evaluated anew for a new 5-year cycle. (MOE/SOE Apr 25, 2022, pg. 5, lines 21-23.) This was Mr. Navarrete's understanding as well, noting that the cycles were to be determined on a term-by-term basis. (*Id.* at pg. 4, lines 6-9.) Mr. Navarrete further noted that the language in the 5-year Evaluation Consent Form allowed an administrator to withdraw consent if the teacher was performing poorly during that 5-year cycle. (*Id*., at pg. 4, lines 11- 12.)

This is bolstered by the fact that the administrators are apparently not apprised of the teachers' latest evaluation cycle. Both Mr. Navarrete and Mr. Bashaw testified that the school district sends a list at the beginning of each year that contains only the names of teachers that are scheduled for formal evaluations that year; this list does not delineate whether the teachers were previously under the 2-year or the 5-year cycle. (*Id*., at pg. 3, lines 8-11; pg. 6, lines 18- 19.) And absent this knowledge, the evaluating administrator would not know if he/she is moving a teacher from the 5-year cycle to the 2-year cycle, especially if it is a different evaluating administrator

from before as was the case here.

The Court notes that the Applicant seemingly suggested that Mr. Bashaw's final overall performance rating of Satisfactory was not justified, noting that some of the information on the evaluation was incorrect. Specifically, the Applicant explained that about one-third of her absences were medically-related and that many teachers had trouble inputting data into the Illuminate system. (MOE/SOE Apr 7, 2022, pg. 8, lines 4-7.) However, Mr. Bashaw explained that these two factors were recommendations for next year, and that his final assessment was not based solely upon those two factors but upon the totality of his observations throughout the year. (MOE/SOE Apr 25, 2023, pg. 8, lines 23-25; pg. 9, lines 4-6.)

As such, this Court finds that the Mr. Bashaw's evaluation resulting in the placement of the Applicant into the 2-year evaluation cycle was a lawful, good faith, non-discriminatory personnel action.

Assignment of Disproportionate Number of Difficult Students

Dr. Johnson identified the Applicant's assignment of a disproportionate number of difficult students to have constituted 10% of the cause of the psychiatric injury. (Joint Exhibit A3, pg. 7.) The Applicant reported to Dr. Johnson that one-third of her students were notoriously difficult, unruly, and associated with disciplinary problems. (*Ibid*.) She asserted that the number of difficult students she had that year were out of proportion to the percentage assigned to other teachers. (*Ibid*.) This caused the Applicant chronic stress, apprehension, and depression. (*Ibid*.)

The assignment of the Applicant's students for her 1st grade class during the 2015-2016 academic year can be considered a personnel action under *Larch*. According to the Applicant, all teachers typically fill out placement cards describing their students for purposes of student placement/assignments in preparation of the following academic year. (MOE/SOE, Apr 7, 2022, pg. 8, lines 18-19.) Then, teachers in the same grade level would hold a meeting where they try to evenly distribute what they have identified to be the behaviorally, academically, and/or socially troubled students for the next school year to avoid having them all concentrated (or stacked) in one class. (*Id*., at pg. 8, lines 19-21.)

But when the 2015-2016 school year commenced, the Applicant noticed that her students were "so out of control" that she could not teach no more than five minutes without having to

address students for interruptions or behavioral issues. (*Id*., at pg. 8, lines 9-12.) Thus, the Applicant secured copies of the 1st grade placement cards that were completed by the Kindergarten teachers in preparation of the 2015-2016 1st grade classroom assignments. Based upon these placement cards, the Applicant asserted that she was assigned a disproportionate amount of students that were identified as being below grade level and/or having unsatisfactory behavior, among other things. (Applicant's Exhibit 8.) Applicant believed that Mr. Navarrete "stacked" her class with a disproportionate amount of troubled students deliberately. (*Id*., at pg. 10, lines 5-6.) And this is particularly poignant given that this assignment occurred shortly after the Applicant complained about Mr. Navarrete assigning her to the 3rd grade. However, Mr. Navarrete denied having played any role in "stacking" the Applicant's classroom with a disproportionate number of difficult students compared to her peers. He testified that while he did have the final say in the classroom assignments, he typically allowed the teachers to make the classroom stacks as it was teachers who knew the students best. (MOE/SOE Feb 21, 2023, pg. 6, lines 23-25.) And he provided a reasonable explanation as it relates to the Applicant's classroom make-up during the 2015-2016 academic year.

Mr. Navarrete indicated that this particular school year had "hard" kids throughout the entire school, that all teachers that year had hard students, and that many students in this particular Rialto community were dealing with various familial issues such as homelessness, foster issues, and drugs. (*Id*., at pg. 6-10.) This was corroborated by fellow Dunn Elementary School teacher Valerie De La Torre, who testified that it would not have been unusual for the Applicant to have 11 "tough" students that year, acknowledging that that particular academic year was tough. (*Id*., at pg. 4, lines 17-18.) The explanations provided by Mr. Navarrete and corroborated by Mr. Torres suggests that the classroom assignments for the 2015-2016 academic year were done in a lawful, good faith, and non-discriminatory manner. And the Applicant did not offer any evidence, testimonial or otherwise, that would challenge Mr. Navarrete and Ms. Torres' explanations as it relates to the proportion of difficult students, e.g. evidence that would show that other 1st grade teachers had disproportionately less difficult students that year, which would have suggested that the Applicant was singled out or treated differently. Evidence of her peers' classroom makeup could have bolstered Applicant's argument that she was disproportionately treated.

However, the Court acknowledges that the Applicant was assigned two students, both of which the Kindergarten teachers had recommended be separated (identified under pages 101 and

104 within Applicant's Exhibit 8 with the minor students' names redacted). This action appears related to the Applicant's complaints of disproportionate stacking of difficult students as outlined within Dr. Johnson's report.

The placement of these two conflicting students in the Applicant's classroom makes Mr. Navarrete's explanation appear pretextual, especially in light of the his testimony that he would only make changes to the student assignments if there is some indication that certain students needed to be separated, among other things. (*Id*., at pg. 7, lines 2-3; Applicant's Exhibit 5, pg. 85.) Mr. Navarrete quite simply testified that he could not explain how these students were placed together, and that it was not brought to his attention until the Applicant lodged a complaint. (MOE/SOE Apr 6, 2023, pg. 3, lines 20-22.) While the Kindergarten teachers could have had a reasonable, good faith explanation for placing these conflicting students together (e.g. one or both of these students could not be placed in any of the other classes), it appears clear that Mr. Navarrete at the very least failed to review the placement cards given that he was completely oblivious to this assignment. And Mr. Navarrete's failure to review the placement cards for any conflicting assignments does not meet the objective reasonableness standard.

Accordingly, the assignment of a disproportionate number of difficult students in the Applicant's 2015-2016 class cannot be considered a lawful, non-discriminatory, good faith personnel action.

Increased Principal Scrutiny

The Applicant further complained that the Mr. Navarrete started to "drop into her class unannounced[,] making nitpicking comments." (Joint Exhibit A1, pg. 5.) This seemed to have arisen during her 2015-2016 academic year, which was after she complained about her assignment to the 3rd grade and after securing copies of her classroom's placement cards. She further alleged that Mr. Navarrete's increased scrutiny was beyond the regular supervision given to other teachers, suggesting that she was being singled out. (Joint Exhibit A3, pg. 7.) She testified that Mr. Navarrete started conducting unannounced visits every week, sometimes twice a week, which she noted as being unusual especially in light of the fact that she was not scheduled for a formal evaluation that year. (MOE/SOE Apr 7, 2022, pg. 10, lines 19-22.) She claimed that the scrutiny deepened her anxiety, apprehension, and fear of the workplace. (Joint Exhibit A3, pg. 7.) Dr. Johnson identified this perceived increased principal scrutiny to have constituted 5% of the cause

of the psychiatric injury. (*Ibid*.)

On the other hand, Mr. Navarrete testified that as an administrator, he made an effort to visit all of his teachers and classrooms throughout the week in order to get to know his students and staff better. (MOE/SOE Feb 21, 2023, pg. 5, lines 23-25.) He would accomplish this by visiting all classroom in 1 of the 5 wings each day every week. (*Id*., at pg. 5, lines 22-23.; MOE/SOE Apr 6, 2023, pg. 3, lines 24-25.) Thus, he visited all of the classrooms often, including the Applicant's classroom. (MOE/SOE Feb 21, 2023, pg. 5, lines 21-22.) He characterized these visits as being "unannounced visits," which did not require prior notice to staff. (*Id*., at pg. 6, lines 2-3.) Of significance, he did not believe that he visited the Applicant's classroom more than the other teachers. (*Id*., at pg. 5, line 25; pg. 6, line 1; MOE/SOE Apr 6, 2023, at pg. 4, lines 2-3.) There was no evidence provided that would rebut Mr. Navarrete's practice of conducting unannounced visits every week.

These unannounced visits, similar to observations and evaluations, would qualify as personnel actions under *Larch*. Mr. Navarrete's testimony regarding his weekly routine of conducting announced visits as an administrator is not inconsistent with what the Applicant perceived as increased scrutiny. Conducting unannounced visits across all five wings as the school principal appears be a lawful practice implemented in good faith, especially if the school district encouraged the same. (MOE/SOE Feb 21, 2023, pg. 5, line 24.) And while the Applicant claimed that Mr. Navarrete visited and scrutinized her more than the other teachers, there is no evidence on the record that would corroborate the same.

As such, this Court finds that the perceived increased scrutiny by Mr. Navarrete was a lawful, good faith, non-discriminatory personnel action.

<u>The "Combo Class" Assignment</u>

Dr. Johnson identified the Applicant's assignment to a 1st-2nd grade combo class by Mr. Navarrete to have contributed to 5% of the cause of Applicant's psychiatric disability. (Joint Exhibit A3, pg. 7.) The Applicant reported that the assignment to this combo class deepened her sense of anxiety, apprehensive, and sensation of being overwhelmed and targeted. (*Ibid*.)

It was noted that the Applicant was qualified to teach a combo class. (MOE/SOE June 23, 2022, page. 8, lines 13-14.) However, a combo class of 1st and 2nd graders meant that she would be keeping some of the same behaviorally challenging students that she had the year prior.

(MOE/SOE Apr 7, 2022, pg. 12, lines 9-10.) Mr. Navarrete's decision to assign the Applicant to a combo class be considered a personnel action under *Larch*.

Of note, the Applicant testified that she was not aware of any other teachers in her grade level assigned to combo classes. (MOE/SOE June 23, 2022, pg. 8, lines 14-15.) However, this is misleading as she was apprised of the fact that the combo class assignment was being rotated between various teachers. In an email dated April 6, 2016, Mr. Navarrete explained to the Applicant that the combo class was a rotating assignment. (Applicant's Exhibit 5, pg. 85.) Another teacher named Ms. Garcia was assigned to the combo class in 2014-2015; a teacher named Ms. Street was assigned to the combo class in 2015-2016. (*Ibid*.) The Applicant was assigned to teach the combo class for the upcoming 2016-2017 academic year. Thereafter, Mr. Navarrete provided assurances that the final two teachers, Mrs. Miles and Ms. Powers would be rotated in. (*Ibid*.)

Accordingly, Mr. Navarrete's assignment of the Applicant to the combo class for the 2016-2017 academic year appears to have been done fairly, in good faith, and in a manner that is lacking outrageous conduct. There was no evidence presented that shows that Mr. Navarrete treated the Applicant differently from Ms. Garcia, Ms. Street, Mrs. Miles, or Ms. Powers when assigning the combo class. In fact, when Mr. Navarrete asked the Applicant what her grade preference was for the 2016-2017 academic year, she purportedly responded, "It doesn't matter," exhibiting her indifference with her next classroom assignment. (*Ibid*.)

As such, this Court finds that the action of assigning the Applicant to combo class was a lawful, good faith, non-discriminatory personnel action.

<u>Formal Reprimand regarding the Easter Incident</u>

On or April 17, 2017, personnel at Dunn Elementary received call from a parent complaining about the Applicant having discussed Easter and the resurrection of Jesus in class. (MOE/SOE Apr 25, 2023, pg. 11, lines 10-11.) The then-assistant principal Ms. Lingenfelter was tasked with conducting an investigation into the parent's complaint, which included student interviews. Based upon her investigation, Ms. Lingenfelter concluded that the Applicant violated California Education Code 51511. (Applicant's Exhibit 5, pg. 73.) This culminated into the

issuance of a Letter of Warning dated May 1, 2017[2] (*Ibid.*)

The Applicant reported to Dr. Johnson that this incident furthered her depression, anxiety, and fear of the workplace. (Joint Exhibit A1, pg. 8.) Dr. Johnson identified this Letter of Warning to have contributed to 5% of the cause of Applicant's psychiatric disability. (*Ibid.*) The Applicant did not dispute having had a classroom discussion about Easter when a student inquired about it. She characterized this Easter discussion as merely addressing the student's question, not actively teaching religion. (MOE/SOE Apr 7, 2022, pg. 16, lines 5-6.) While she does not characterize this incident as her "teaching" about Easter, she in fact testified that she used the student's inquiry as a "teaching opportunity." (*Id.*, at pg. 17, lines 1- 4.) Alternatively, Ms. Lingenfelter deduced based upon her investigation that the Applicant's Easter discussions went beyond what was permitted in the Education Code as some students recollected the Applicant saying things such as "what one need[s] to do to go to heaven to be reunited with grandparents" and "only those who believe go to heaven and that one must be good to go to heaven to see their grandparents again." (MOE/SOE May 22, 2023, pg. 5, lines 19-20, 24-25.)

Ms. Lingenfelter believed that she was acting in good faith when she conducted her investigation and issued the warning letter. (MOE/SOE Apr 25, 2023, pg. 13, lines 11-13.) She believed that she had exercised her due diligence in investigating the claim, which included consulting the District's Personnel Services for guidance to ensure the proper procedures were followed. (*Ibid.*) Regardless of whether the Applicant in fact stated what the students had described and whether these discussions can be characterized as "teaching" religion or not, the Court finds that it was objectively reasonable for the administration, specifically Ms. Lingenfelter, to conduct an investigation after a parent calls the school lodging a serious complaint. (See *Northrop Grumman Corp (Graves)* (2002) 67 Cal. Comp. Cases 1415, 1427-28 [the employer's investigation of a claim of racial discrimination was deemed to have been conducted in good faith where there was no evidence of an arbitrary or unlawful motive to investigate and no evidence of an intent to mislead, deceive or defraud, or of collusion or unlawful design by the employer].)

The Court further notes that the Applicant questioned the legitimacy of Ms. Lingenfelter's investigation and conclusion. The Applicant suggested that some of the students Ms. Lingenfelter had interviewed regarding this incident were not credible, particularly the complaining parents'

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[2] The Applicant has characterized her discipline as a "Written Reprimand." However, the Memorandum dated May 1, 2017 contained in Applicant's Exhibit 5, pg. 73 characterized the action as a "Letter of Warning."

child who had mental capacity issues and another student known for having behavioral issues. (MOE/SOE Apr 16, 2023, pg. 15, lines 16-18.) However, it is not the Court's task to determine whether Ms. Lingenfelter assessed the student witnesses' credibility correctly, especially in light of the fact that these minors were not present during the Trial proceedings to defend themselves from the Applicant's criticisms. Ms. Lingenfelter was the person best positioned to make determinations as to the veracity of the students' accounts given that she was the investigating administrator. And Ms. Lingenfelter testified that the students she interviewed provided generally consistent accounts, thereby finding the parent's complaint to be overall credible. (MOE/SOE May 22, 2023, pg. 5, lines 11-13.) Accordingly, the Court finds Ms. Lingenfelter's resulting disciplinary action to also be objectively reasonable.

As such, this Court finds that the investigation of the Easter incident that culminated in a Written Warning was a lawful, good faith, non-discriminatory personnel action.

Formal Reprimand regarding Parent Complaints as to Student Discipline

On April 19 2017, personnel at Dunn Elementary received another complaint from a parent who claimed that the Applicant used an inappropriate method of discipline on her son. (Applicant's Exhibit 5, pg. 64.) Specifically, the parent alleged that the Applicant had her son stand with his nose against a wall as a form of discipline. (MOE/SOE Apr 7, 2022, pg. 17, lines 9-10.) The Applicant summarily denied this allegation. (*Id*., at pg. 18, line 23.) Ms. Lingenfelter commenced an investigation into this complaint, which included interviews of students and adult aides. As a result of this investigation, Ms. Lingenfelter concluded that the
Applicant violated District Board Policy, which culminated into a Letter of Warning dated May 22, 2017.[3] (*Ibid*.) The Applicant reported to Dr. Johnson that this incident escalated her depression, anxiety, and anxiety attacks. (Joint Exhibit A3, pg. 8.)

Unlike the aforementioned incident involving Easter, the Applicant denied having disciplined the complaining parent's child in the manner alleged. Thus, Ms. Lingenfelter's investigation required some level of fact finding. All of the students Ms. Lingenfelter interviewed confirmed that the Applicant had previously used the form of the punishment at question. (MOE/SOE, May 22, 2023, pg. 6, lines 8-9.) In addition to the students, Ms. Lingenfelter testified

[3] The Applicant similarly characterized this means of discipline as a Letter of Reprimand. However the Memorandum dated May 22, 2017 also characterized this as a Letter of Warning.

to having also interviewed two bilingual aides and a health aide. (*Id*., at pg. 6 line 15.) While it was noted that the two adult bilingual student aides reported to Ms. Lingenfelter that they never witnessed this form of punishment, these bilingual aides were only present in the Applicant's classroom for limited periods of time, specifically less than an hour. (*Id*., at pg. 6, lines 16-17.) Meanwhile, a health aide who was present in the classroom with his/her student the entire time confirmed that the Applicant had used the form of discipline in question on at least two occasions. (*Id*. at pg. 6 lines 18-19.) Finding the complaining parent and the corroborating witnesses to be credible, Ms. Lingenfelter had concluded that the complained-of discipline occurred.

She again believed that she acted in good faith, exercising her due diligence by consulting District's Personnel Services again for guidance. (MOE/SOE, Apr 25, 2023, pg. 13, lines 6-8). Regardless of whether Ms. Lingenfelter's assessment of the witnesses' credibility and her ultimate findings were correct, the Court finds that she acted objectively reasonable by investigating this complaint and taking disciplinary action.

Final Evaluation / Assignment to a SWAN Evaluation

Based upon Applicant's history, Dr. Johnson identified two separate actions relating to the Applicant's final 2-year evaluation cycle as a teacher at Dunn Elementary that contributed to the cause of Applicant's psychiatric injury. First, Dr. Johnson indicated that the Applicant's final evaluation (conducted by Ms. Lingenfelter) during the 2-year evaluation cycle, which included negative feedback, constituted 5% of the cause of the Applicant's psychiatric injury. (Joint Exhibit A3, pg. 8.) Then, Dr. Johnson identified that the final rating of the evaluation, Satisfactory with Assistance Needed (hereinafter "SWAN"), constituted another 5% of the cause of Applicant's psychiatric injury. (Joint Exhibit A3, pg. 8.)

The Applicant was scheduled for another formal evaluation for the 2016-2017 academic year. The then-assistant principal Dr. Jenise Busch stated the Applicant's evaluation on August 31, 2016 with the Pre-Evaluation Agreement. (Applicant's Exhibit 2, pg. 29; MOH/SOE Apr 25, 2023, pg. 10, lines 25.) After Dr. Busch vacated her position as the assistant principal, Ms. Lingenfelter took over the duties of conducting the teachers' evaluations that year, including but not limited to the Applicant. (*Id*., at pg. 11, lines 1-2.) As part of the evaluation process, Ms. Lingenfelter conducted formal and informal evaluations and observations. (*Ibid*.) Based upon her various observations of the Applicant over the course of the 2016-2017 academic year, Ms.

Lingenfelter provided a final performance rating of SWAN. (Applicant's Exhibit 2, pg. 27.) This escalated the Applicant's depression, low self-esteem, and lack of confidence. (Joint Exhibit A3, pg. 8.)

An overall rating of SWAN meant that the Applicant met expectations in most Standards. (Applicant's Exhibit 2, pg. 26.) And Ms. Lingenfelter provided Satisfactory scores in all Standards except Standard 2, Creating and Maintaining Effective Environments for Student Learning. (*Id*., at pg. 28.) She provided the Applicant with a SWAN as to Standard 2, bringing her overall score to a SWAN. In support of the SWAN rating, Ms. Lingenfelter identified a number of critiques, which include the following: learning environment was cluttered and appeared unorganized; all of the items posted on the walls did not appear to have been utilized by the students; the Applicant was observed at differing times sitting in front of the class without any student interaction and not effectively using the instructional time. (Applicant's Exhibit 2, pg. 28.)

Applicant suggested that this Final Evaluation was unusual as she claimed that Ms. Lingenfelter's never mentioned any problems to her after the scheduled observations. However, Ms. Lingenfelter noted within her October 20, 2016 Observation Summary Form that there was zero white space in the Applicant's classroom, which the Applicant viewed as a negative comment. (Applicant's Exhibit 3, pg. 55; MOE/SOE Apr 7, 2022, pg. 14, lines 11- 12.) Ms. Lingenfelter further memorialized within her anecdotal notes from her April 6, 2017 and April 17, 2017 Observation Summary Forms critiques about the Applicant not effectively using her instruction time: "4 students were just sitting around not reading;" "5 students were not looking at [the Applicant] and looking down or picking at the carpet;" "Another student was standing away from the carpet group;" "One student this entire lesson sat at his desk quietly with no work or pencil in front of him" and "[the Applicant] had not acknowledged this student sitting there." (Applicant's Exhibit 3, pg. 58, 59.) There was no evidence on the record that would rebut what Ms. Lingenfelter observed and memorialized in these Observation Summary Forms.

Accordingly, Ms. Lingenfelter's final critiques of the Applicant within her Final Evaluation Document were not arbitrary and appear to be reasonably based upon actual observations and evaluations. The evaluation and subsequent SWAN rating by Ms. Lingenfelter appears to have been conduct in good faith, noting that she exercised her professional judgment, which may vary between administrators. (MOE/SOE Apr 25, 2023, pg. 14, line 13.) And absent evidence of any outrageous conduct, this Court finds that Ms. Lingenfelter's final evaluation and SWAN rating of

to be objectively reasonable in light of the totality of the circumstances.

Accordingly, this Court finds that these action were lawful, good faith, non- discriminatory.

Substantial Cause

Of the 11 personnel actions discussed above, the Court considers only 10 of them to be actual events of employment. Based on the substantial reporting from PQME. Dr. Johnson, these 10 personnel actions predominantly caused the Applicant's psychiatric injury under Labor Code section 3208.3(b)(1). And under *Rolda*, this Court finds that the following 7 personnel actions were conducted in a lawful, good faith, and nondiscriminatory manner:

1. Placement into a 2-year evaluation cycle, 10% causation;
2. Increased principal scrutiny, 5% causation;
3. The "combo class" assignment, 5% causation;
4. Final evaluation by Ms. Lingenfelter, 5% causation;
5. Formal reprimand (written warning) regarding complaint about Easter, 5% causation;
6. Formal reprimand (written warning) regarding complaint about student discipline, 5% causation;
7. Assignment to a SWAN evaluation, 5% causation;

And these personnel actions combined equal to 40% causation of Applicant's psychiatric injury, meeting the definition of substantial cause under Labor Code sections 3208.3(b)(3).

As such, in accordance with Labor Code section 3208(h), the Applicant is not entitled to any compensation and shall take nothing. All other issues are hereby deemed moot.

DATE: August 18, 2023

JASON L. BUSCAINO
WORKERS' COMPENSATION JUDGE