

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE GOVERNING BOARD OF  
TAHOE TRUCKEE UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA**

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

**MARGUERITE SEEHEUTTER, Respondent**

**OAH No. 2022010159**

**DECISION**

Danette C. Brown, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 23 through May 26, 2022, from Sacramento, California.<sup>1</sup>

Ingrid A. Meyers, Attorney at Law, Dannis Woliver Kelly, represented the Tahoe Truckee Unified School District (District).

Marguerite Seeheutter (respondent) represented herself.

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<sup>1</sup> On May 12, 2022, the parties agreed to waive their right to a hearing before a three-person Commission on Professional Competence, and to have the hearing conducted by an ALJ sitting alone, pursuant to Education Code section 44944, subdivision (c)(1).

Oral and documentary evidence was received, the record closed and the matter was submitted for decision on May 26, 2022.

## **FACTUAL FINDINGS**

### **California Department of Public Health Order**

1. Respondent is a permanent certificated employee of the District. She is a Spanish teacher at Truckee High School, in Truckee, California. On August 21, 2021, the California Department of Public Health (CDPH) issued an order, titled "State Public Health Officer Order of August 11, 2021," (Order) requiring all public and private kindergarten through grade 12 schools to verify the COVID-19 vaccination status of all workers, maintain records of employee vaccination status, and make available records of vaccination verification to the local health jurisdiction for purposes of case investigation. The Order states:

California is currently experiencing the fastest increase in COVID-19 cases during the entire pandemic with 22.7 new cases per 100,000 per day, with case rates increasing tenfold since early June. The Delta variant, which is two times more contagious than the original virus, is currently the most common variant causing new infections in California.

Unvaccinated persons are more likely to get infected and spread the virus, which is transmitted through the air ...

Vaccination against COVID-19 is the most effective means of preventing infection with the COVID-19 virus, and subsequent transmission and outbreaks.

2. Furthermore, Section II.C. of the Order states:

Workers who are not fully vaccinated, or for whom vaccine status is unknown or documentation is not provided, must be considered unvaccinated.

Section III of the Order addressed testing requirements:

A. Asymptomatic unvaccinated or incompletely vaccinated workers are required to undergo diagnostic screening testing.

B. Workers may be tested with either antigen or molecular tests to satisfy this requirement, but unvaccinated or incompletely vaccinated workers must be tested at least once weekly with either PCR testing or antigen testing ...

C. Unvaccinated or incompletely vaccinated workers must also observe all other infection control requirements, and are not exempted from the testing requirement even if they have a medical contraindication to vaccination, since they are still potentially able to spread the illness. Previous history of COVID-19 from which the individual recovered more than 90 days earlier, or a previous positive antibody

test for COVID-19, do not waive this requirement for testing.

[¶] ... [¶]

The Order was issued pursuant to various Health and Safety Code sections, and took effect on August 12, 2021, at 12:01 a.m. All schools in the District were required to comply with the Order by October 15, 2021. The Order was signed by Tomás J. Aragón, M.D., Dr.PH., State Public Health Officer and Director. The Order became District policy requiring all District employees to submit proof of vaccination against COVID-19 or undergo weekly diagnostic testing in accordance with the Order. The District required full compliance with the proof of vaccination/testing requirement by October 15, 2021.

## **Board Policies and Regulations**

3. Board Policy 4119.21, Personnel – Professional Standards, states:

The Governing Board expects district employees to maintain the highest ethical standards, behave professionally, follow district policies and regulations, abide by state and federal laws, and exercise good judgment when interacting with students and other members of the school community. Employees shall engage in conduct that enhances the integrity of the district, advances the goals of the district's educational programs, and contributes to a positive school climate.

4. District Board Administrative Regulation 4112, Appointment and Conditions of Employment, ... states in pertinent part that certificated staff shall, among other things, "Fulfill any other requirements as specified by law, collective bargaining agreement, Board Policy or Administrative Regulation."

5. Board Policy 4000, Concepts and Roles in Personnel, states in pertinent part:

The Governing Board recognizes that the success of the district students and programs hinges on effective personnel. The Board desires to establish safe and supportive working conditions that will attract and retain staff members who are highly qualified and dedicated to the education and welfare of students. The district's personnel policies and related regulations shall be designed to ensure a supportive, positive climate and shall be consistent with collective bargaining agreements and in conformance with state and federal law and regulations.

### **Respondent's Email Inquiries Regarding Religious Exemption**

6. On Saturday, August 21, 2021, respondent emailed Carmen Ghysels, District Superintendent, stating, "I want to work normally, without wearing a mask, getting tested or vaccinated." Respondent asked who would be making the accommodations for her request, whether there was a special form to be completed, and whether there was any reason why her request would be denied. Respondent informed Ms. Ghysels that her request was "required by law to be accommodated." Ms. Ghysels responded to respondent's email that evening, thanking respondent for

her questions and stating that Joan Zappettini, the District's Director of Human Resources, would respond to respondent's email "with what protocols our District and other Districts in the state are required to follow." Ms. Ghysels copied Ms. Zappettini on her email response.

7. On Sunday, August 22, 2021, Ms. Zappettini emailed respondent, in pertinent part:

Under the new California State mandate and CDPH guidelines for vaccinations and testing, here are the answers to your questions.

1. You are not required to get the vaccination. Non-vaccinated employees will be required to do a COVID test weekly. More information on the testing process will be forthcoming.

2. Under the law, there is no religious exemption for testing or wearing of a mask. You will be required to do both.

8. On Monday, August 23, 2021, respondent responded to Ms. Zappettini's email, stating that she understood that she was not required to get vaccinated, but was still requesting a religious exemption. Respondent further stated, "I have to say I am religious and can say no to what is done to my body (covering my entire nose and mouth or any means of testing)." Respondent also stated, "It is my understanding tests and masks are under an emergency use authorization, but it is currently not a statutory law; however, Federal law-Title VII Civil Rights Act does require you and [the District] to accommodate my religious beliefs." Respondent again inquired whether the District

had a special form for her to complete, who needed to sign the religious exemption letter, and whether it needed to be notarized.

9. Ms. Zappettini responded shortly thereafter, informing respondent that “there is no exemption for face masking or testing.” She added that a medical condition could affect the face mask requirement, but not a religious reason.

10. On August 24, 2021, respondent sent a letter to Ms. Zappettini, stating that the letter was her “formal request and right (under Title VII Civil Rights Act of 1964) for an accomodation [*sic*] not to be vaccinated, wear a covering over [her] entire mouth and nose, or to undergo any testing.” Respondent “sincerely profess[ed] that Jesus Christ died and was resurrected for [her],” and that she is “set apart through salvation and belong[s] to a Body of Christ.” In support of her formal request, respondent provided numerous bible verses; a sampling is set forth below:

1 Corinthians 6:19-20 “Do you not know that your bodies are temples of the Holy Spirit, who is in you, whom you have [r]eceived from God? You are not your own; you were bought at a price. Therefore honor God with your body[.]

1 John 4:15 “Whosoever shall confess that Jesus is the Son of God, God dwelleth in Him, and He in God[.]

Philippians 2:16 “As you hold firmly to the word of life, then I will be able to boast on the day of Christ that I did not run nor did I labor in vain[.]

Respondent concluded in her letter:

I sincerely believe wearing a mask covering the body parts that God created for me to breathe freely is not a law, and is a sin. I feel fake and I feel I am lying to myself. Without violating my conscience, I am open and willing to wear a mask that will leave my nose uncovered. I am willing to call in sick if I have any flu-like symptoms.

### **District Emails Regarding Compliance with Order**

11. On September 22, 2021, Ms. Zappettini sent to those employees, including respondent, that had not yet submitted documentation of their COVID-19 status, an email titled "IMPORTANT-TIME SENSITIVE: Self Certification COVID-19 Vaccination Status Form." (Capitalization in original.) She instructed the employees to complete the District's Self-Certification of Vaccination Status Form, and to follow the directions for providing verification of their vaccination status. After completing the form, employees were instructed to bring their vaccination record to Human Resources (HR), so that HR could make a copy. If employees were not vaccinated, they were still required to complete the form and to comply with the Order requiring weekly testing. All forms were required to be completed and returned no later than Wednesday, October 6, 2021. Employees were provided with directions for Mandated Weekly Testing:

- Testing will begin on or before October 15, 2021;
- Testing will be conducted at your work site;
- You will be noticed as to when and where to test.



12. On October 4, 2021, Ms. Zappettini sent an email titled, "COURTESY REMINDER: DUE WEDNESDAY, OCTOBER 6 – IMPORTANT – TIME SENSITIVE: Self Certification COVID-19 Vaccination Status Form," reminding employees who had not yet done to so complete the District's Self-Certification of Vaccination Status Form (self-certification), and to bring their completed form and vaccine record to the District's Human Resources Department by October 6, 2021. The email contained the same information as Ms. Zappettini's September 22, 2021 email. Respondent was included in the list of employees that were sent this email.

13. On October 14, 2021, Ms. Zappettini sent an email to those employees who were testing weekly as noted in their self-certification, and those employees who did not respond to the request to complete the Self-Certification of Vaccine Status. The email provided the weekly testing protocol for the District, specifically stating that: weekly testing was mandated for all employees that were not vaccinated or did not show proof of vaccination; weekly testing was to begin on October 18, 2021; employees were required to test on their first work day of each week; and non-compliance of the testing mandate "will result being placed on unpaid leave beginning the week of October 25." Respondent was included in the list of employees that were sent this email.

14. In addition, Ms. Ghysels sent an email to all District staff on October 14, 2021, informing employees that Governor Newsom announced the Order in August 2021, requiring all public and private schools in California to verify that all employees were fully vaccinated or to take part in weekly COVID-19 testing. She reminded employees that the Order took effect on August 12, 2021, and all school districts must comply with the Order by October 15, 2021. If an unvaccinated employee did not

undergo weekly testing, “the individual would not receive compensation during the time they are excluded from work.”

15. On October 19, 2021, Ms. Zappettini emailed respondent to follow up on weekly testing that began the previous day. Ms. Zappettini informed respondent that she respected and understood respondent’s religious beliefs on vaccination and testing, but that there were only “religious exemptions for vaccines, but not for testing.” Ms. Zappettini directed respondent to report for testing, stating “Please see Logan today to test. Starting next week you will test on the first work day of each week.” Later that morning, respondent responded to Ms. Zappettini’s email, reasserting her August 24, 2021 formal request for a religious exemption, and stating:

I am exercising my Title VII right to not undergo testing, not wear a mask that fully covers my nose and mouth, and not to be vaccinated. You as my “higher ups” have the authority to honor or discriminate against my rights. It is my understanding “the State” can not [*sic*] pick and choose what my religious exemptions can be – they are what they are because of my sincerely held beliefs.

16. On October 20, 2021, Ms. Zappettini met with respondent and sent respondent an email confirming that the District respected her personal choices. However, the District’s weekly testing requirement was based on a “legal directive that the district is required to follow.” Ms. Zappettini repeated that “there is no religious exemption for testing.” She again directed respondent to begin weekly testing “starting this week.” Ms. Zappettini informed respondent that if she chose not to test, she would be “placed on unpaid leave beginning next week (October 25).”

17. On October 24, 2021, Ms. Zappettini sent respondent an email memorializing their in-person conversation on October 20, 2021. Ms. Zappettini informed respondent of the state mandate that went into effect on October 15, 2021, requiring respondent to either get the COVID-19 vaccine, or test weekly for COVID-19. Ms. Zappettini acknowledged respondent's August 24, 2021 letter requesting a religious exemption from testing, and reminded respondent that there were no religious exemptions for testing. Ms. Zappettini also reminded respondent that she needed to see the District's testing lead, Logan Mallonee, to test. At their meeting on October 20, 2021, Ms. Zappettini again shared with respondent that there was no religious exemption for COVID-19 testing and directed respondent to test. Ms. Zappettini went to Truckee High School on October 22, 2021 to touch bases with respondent, but respondent had been absent for two days. Ms. Zappettini then called respondent and left a message, but did not hear from respondent. Respondent was again directed to appear for work the following Monday and test, or if she chose not to, she would remain at home, off of work.

If respondent chose to remain off of work, she would be placed on paid administrative leave that Monday, and interactive meeting would be set up, and if respondent continued to refuse testing, she would remain on paid administrative leave until Wednesday, November 3, 2021. On that day, the school board would take action to place respondent on unpaid administrative leave pending termination for insubordination for failing to follow the mandate.

18. On October 25, 2021, respondent sent Ms. Zappettini an email stating that the District had the responsibility to address her August 24, 2021 formal request for a religious exemption within 30 days, and the District had not yet done so. Respondent further asserted that she believed her "exemption under federal law had

been honored.” She again asserted that a religious exemption is her “right under federal law,” and that “one, two or twenty mandates does not control [her] sincerely held beliefs.”

## **Letter of Reprimand**

19. On October 27, 2021, respondent received a Letter of Reprimand informing her that refusing to follow the District’s directive of the state COVID-19 mandate violates the Education Code, and her actions were insubordinate, a persistent violation of or refusal to obey the school laws of the state or reasonable regulations, willful refusal to perform regular assignments without reasonable cause, and evident unfitness for service. The District directed respondent to comply with the state COVID-19 testing mandate and to report to the Testing Lead at Truckee High School for testing. Respondent’s failure to comply with the District’s directive “will result in a recommendation for an unpaid suspension and termination.”

## **Notices of Intent to Dismiss and Immediate Unpaid Suspension**

20. On November 12, 2021, the District served respondent with a Notice of Intent to Dismiss, unless she demanded a hearing as set forth in the Education Code. The District also served respondent with a Notice of Immediate Unpaid Suspension pursuant to Education Code section 44939 for her willful refusal to perform regular assignments without cause. Respondent timely requested a hearing.

## **Amended Statement of Charges for Dismissal and Immediate Suspension**

21. On November 9, 2021, Ms. Ghysels, in her official capacity, signed and thereafter filed a Statement of Charges for Dismissal and Immediate Suspension

against respondent. An Amended Statement of Charges was filed on February 22, 2022. The District alleged that respondent's conduct violated health and safety orders, requirements, and directives, and put the health of her coworkers at risk. In addition, respondent undermined the District's goals, failed to meet the District's fundamental expectations of its certificated employees, demonstrated unfitness to teach, and showed persistent violation of or refusal to obey the school laws of the state, and regulations. She also showed willful refusal to perform her regular school assignments without reasonable cause, and committed an act of dishonesty. Ms. Ghysels recommended that respondent be immediately suspended without pay and subsequently dismissed from her employment with the District.

## **District's Witnesses**

### **CARMEN GHYSELS, SUPERINTENDENT AND CHIEF LEARNING OFFICER**

22. Ms. Ghysels is the Superintendent and Chief Learning Officer for the District. She oversees all of the District's operations. She seldomly interacted with respondent, but was aware of the many communications between respondent and Ms. Zappettini set forth above. The District was required to follow the Order. Failure to do so would have potentially placed the District at risk of losing its liability insurance coverage if the District compromised the health and safety of students and staff. All schools were to verify the vaccination status of all workers, and if anyone refused to show proof of vaccination or test weekly, "there would be sanctions from the state level to force us to comply." "Whatever the [CDPH] mandated, that became our policy ever since the mandate began."

23. Ms. Ghysels set forth the general expectations of District employees. Employees are expected to act professionally and in a competent manner, and to

follow any mandates, recommendations, Board policies and procedures, District Directives, and their professional contract for employment.

24. Ms. Ghysels asserted that the District sent to its employees consistent communications explaining the Order, and what was required of the District and each employee. This information was shared at Board meetings, on the District's website, through emails from Jeff Santos, Executive Director of Student Services, as well as Ms. Zappettini, the District's HR Director.

25. Ms. Ghysels acknowledged receipt of respondent's email of August 21, 2021, inquiring about a religious exemption from wearing a mask, testing, and getting vaccinated. She referred respondent's email to Ms. Zappettini for a response. Ms. Ghysels added that there are religious exemptions for vaccines, but not for testing. Testing was mandated by the state, and it was not something that the District could choose to ignore. Ms. Ghysels informed all District employees by email of the state mandate, and "absolutely expected staff to read [her October 14, 2021] email."

26. Respondent repeatedly refused to comply with the Order, and as of November 9, 2021, she still refused to be vaccinated or test weekly for COVID-19. The District filed a Statement of Charges, then filed an Amended Statement of Charges to include an act of dishonesty by respondent. Specifically, on November 10, 2021, respondent secretly recorded her telephone conversation with Ms. Zappettini without Ms. Zappettini's consent. The District learned of the secret recording when respondent sent the recording to the District's legal counsel to show that her religious accommodations were not being met. Ms. Ghysels asserted that secretly recording staff is not acceptable by any employee, and violates the District's code of conduct for professionalism.

27. Ms. Ghysels was involved in the District's decision to dismiss respondent. She did not recommend a lesser form of discipline because respondent repeatedly refused to test, even after she was issued a Letter of Reprimand. Moreover, respondent's failure to follow the District's directives, policies, and procedures, and the state mandate, demonstrates evidenced unfitness for service. Ms. Ghysel believes that respondent should not continue her employment with the District because her actions placed the health and welfare of others at risk. Her conduct "equates to willful refusal to comply with the laws of the state." Ms. Ghysel added that the District did not treat any other non-complying employee differently.

**JEFF SANTOS, EXECUTIVE DIRECTOR OF STUDENT SERVICES**

28. Jeff Santos has worked for the District as its Executive Director of Student Services for the past three years. He oversees special education and health services, and "work[s] with HR in anything COVID-related as it relates to employees." Mr. Santos assisted with developing COVID protocols for the District at the start of the 2021-2022 school year. He received guidelines from the Department of Public Health, and updated the District's employee handbook accordingly, six or seven times. If there was change in the handbook, he sent an email to District employees highlighting the updates in the handbook, and would also send a recorded voice mail with the updated highlights. The email updates consisted of "anything related to masking, quarantines, timelines, employee vaccination, direct exposure, student athletics vaccination requirements, testing and testing options.

29. Mr. Santos confirmed that the Order applied to the District, as it was addressed to all school districts, specifically kindergarten through grade 12 schools. He also confirmed that if the District failed to follow the state mandate, the District would

lose its liability insurance, place District families at risk, and subject the District to litigation.

30. On October 15, 2021, Mr. Santos sent an email to all employees in the District, including respondent, informing them of changes to the employee handbook regarding testing requirements. Employees had the option of taking an antigen or molecular (PCR) test. The District offered the antigen test at school sites, or employees “could get a PCR test in town.” Mr. Santos did not recall respondent asking questions about this email, and she did not contact Mr. Santos about her unwillingness to test for COVID-19. Mr. Santos’ expectation was that respondent would read this email.

31. On October 26, 2021, Mr. Santos sent another email to all employees in the District, including respondent, informing them of updates to the employee handbook. The updates included adding that employees were not exempt from the testing requirement if they had COVID-19 within the past 90 days, weekly testing was a safe, non-invasive procedure, and employees had the option to test at school or in town. Mr. Santos’ expectation was that respondent would read this email. Mr. Santos added that respondent inquired about a saliva test, but such test was not available at the District.

### **JOAN ZAPPETTINI, DIRECTOR OF HR**

32. Ms. Zappettini testified consistently with the contents of her emails described above. She added that she interacted with respondent approximately eight to 10 times because respondent “continued to be out of compliance” with the state mandate on COVID-19. The general expectations of all employees in the District are to be professional and to follow District mandates, procedures, directives, and District beliefs which are in the District’s vision statement.



33. Ms. Zappettini confirmed that the District did not have an option when following the Order. The District was mandated by law to follow the order, and failure to do so would subject the District to sanctions such as funding, and posed liability risks for the District. Mr. Santos “took care of logistics,” and Ms. Zappettini set up the District’s testing centers and maintained documentation related to proof of vaccination and testing. Despite respondent’s claims to the contrary, Ms. Zappettini responded to respondent’s questions in her August 22, 2021 email inquiring about a religious exemption to the Order. Ms. Zappettini informed respondent that there was no religious exemption for testing or mask wearing, based upon a three-hour training session on the mandate provided by legal counsel for the District’s liability insurance carrier. The training included testing documentation, to whom the Order applied, and what to do if an employee refused to comply.

34. As of October 20, 2021, respondent still did not provide her vaccination status to the District, nor did she comply with Ms. Zappettini’s September 22, October 4, or October 14, 2021, emails regarding completion of the self-certification forms. Ms. Zappettini told respondent she would be placed on leave if she did not comply, and the District did not have a choice in following the Order.

35. On October 27, 2021, Ms. Zappettini had an interactive meeting with respondent, her union representative, and her pastor. They discussed the state mandate and District requirements. Respondent was again informed that as an unvaccinated employee, she was required to test weekly and she had not complied as of that date. Saliva tests were not available for any school district in California. She was again told that there was no religious exemption for testing or masking. Respondent spoke extensively about her religious beliefs and quoted from the bible.

36. Regarding respondent's secret recording of Ms. Zappettini during their conversation on November 10, 2021, Ms. Zappettini did not know she was being recorded, and only learned later from the District's counsel about the recording when respondent provided it to the District.

37. Ms. Zappettini does not believe that respondent should continue to be an employee of the District. Respondent's continued refusal to comply with the District's policy carrying out the Order placed the health and welfare of others at risk. Ms. Zappettini believes that respondent's refusal to test or vaccinate is a willful refusal of the District's policy and state mandate. Ms. Zappettini asserted that the District did not treat respondent any differently than anyone else.

#### **LOGAN MALLONEE, TRUCKEE HIGH SCHOOL PRINCIPAL**

38. Truckee High School has 850 enrolled students, and 75 to 80 classified employees. As principal, Ms. Mallonee supervises employees and completes employee evaluations. She ensures that the District's policies and procedures are followed. Ms. Mallonee sends weekly emails to staff, which include staff weekly reminders. She expects employees to read all emails, because that is the primary mode of communication. If a teacher does not understand her emails, the expectation is that a teacher would contact Ms. Mallonee to discuss it. Ms. Mallonee directly supervised respondent.

39. At the start of the 2020-2021 school year, the District had COVID-19 protocols in place, including wearing masks, social distancing, and desk spacing. The expectation was that all employees would follow all of the District's protocols and directives. Ms. Mallonee stated that the Order applied to all employees at Truckee High School, and that if employees were not vaccinated, they were required to test

weekly. Ms. Mallonee was responsible for administering the test and providing the results to the District. She confirmed that respondent did not comply with the District's directive to test weekly. She also recalled seeing an email on District policy addressing religious exemptions applicable to vaccination, but not testing.

### **JEFFREY MURPHY, TRUCKEE HIGH SCHOOL ADMINISTRATIVE SECRETARY**

40. Mr. Murphy is the secretary to the Principal and Vice Principal of Truckee High School. He considers respondent a colleague and a friend. They share the same faith. Mr. Murphy is aware of and understands the COVID-19 protocols at the District, and the District mandates requiring proof of vaccination, or weekly testing for unvaccinated employees. He received Mr. Santos's emails on COVID-19 protocols and updates to the employee handbook. The emails were clear and he understood the protocols. Mr. Murphy also received an email from Mr. Santos informing all employees about the Order. Mr. Murphy read all emails from Mr. Santos and did not ignore them, because part of his job is to be informed of all information disseminated by the District. Mr. Murphy had no problems complying with the District's policy and directives carrying out the Order. He did not see anything about religious exemptions in the Order.

## **Respondent's Evidence**

### **RESPONDENT'S TESTIMONY**

41. Respondent has taught at Truckee High School for 26 years and has enjoyed it. She has served as the campus Christian Club Advisor for 12 years. She described herself as a "yes person," meaning that if she is asked to perform extra tasks or assignments, she will do so. Respondent has been a practicing Christian for 20 years, and her conduct is governed by the Holy Bible.

42. Respondent contracted COVID-19 in December 2020. She conducted her own research about COVID-19, and found that people were getting sick or dying from the COVID-19 vaccine. She believed she was immune from COVID-19 after contracting it. She believes that her body is not her own in accordance with passages from the bible, stating “[m]y physical body does not belong to me; my body is not my own.” Respondent conceded that she read the Order, but did not see anything in the Order addressing religious exemptions. Respondent believed this was so because religious freedoms are protected under the Constitution.

Respondent believed that the Order was only a recommendation providing guidance, not a mandate, because she saw the words “temporary” and “limited” in the Order. Furthermore, she saw the word “eligible” and believed she was ineligible to comply with the Order due to her sincerely held religious beliefs. Based on her strong personal religious conviction, respondent chose not to comply with the state mandate and District policy carrying out the Order.

43. On August 23, 2021, respondent emailed Ms. Ghysel and Ms. Zappettini regarding her religious exemption inquiry. Respondent sought clarification of Mr. Santos’s emails because the employee handbook was changed frequently, and respondent did not find an actual law in the handbook regarding religious exemptions. She knew that there were protections for religious practice in the workplace, and believed that Ms. Zappettini was not knowledgeable and was speculating when she informed respondent that there was a religious exemption for vaccinations, but not for weekly testing. Respondent believed that Ms. Zappettini’s response did not apply to her because she knew the law and read the employee handbook. After a lot of prayer, respondent submitted her formal request for a religious exemption on August 24, 2021.

44. Respondent assumed that her formal request for a religious exemption had been granted because she heard nothing further from the District. She did not read and deleted all COVID-related emails from the District. She did not believe she was irresponsible in doing so. She asserted that 56 days went by, before receiving a personal email from Ms. Zappettini regarding weekly testing. Respondent was “blown away” because so much time had passed with no response. Respondent felt betrayed by the District. She only wanted the District to respect and honor her request for a religious exemption.

45. During the interactive meeting with Ms. Zappettini on October 27, 2021, respondent asked Ms. Zappettini to approve and sign her formal request for a religious exemption. Ms. Zappettini refused. Respondent asked Ms. Zappettini to seriously consider her decision not to sign. Ms. Zappettini told respondent she had a choice to test weekly, but respondent believed she did not have a choice due to her strong convictions. Respondent was surprised that she was facing dismissal from her employment based on her religious beliefs.

46. Regarding the Amended Statement of Charges, respondent did not believe that she was putting everyone around her at risk and was unsafe. She continued to believe that Ms. Zappettini was incorrect, had no knowledge, did not know what she was talking about, and was speculating about the dangers of COVID-19, stating that there is “no proof that unvaccinated and untested people [are deemed] unsafe.” Respondent conceded that she is not a COVID-19 expert, and did not consult with an attorney about complying with the Order. She also understood that as a teacher in the District, she must follow District policies and regulations.

Regarding her secret recording of her conversation with Ms. Zappettini on November 10, 2021, respondent claimed that doing so was her “note taking system,”

because she has a bad memory. On February 17, 2022, she emailed the secret recording to the District's counsel to be transparent and forthcoming. Respondent asserted that she has not refused or undermined the District in any way that shows she is insubordinate, unprofessional, and unethical.

### **PASTOR JAMES STARK**

47. James Stark is a Pastor at Deerfield Community Church in Truckee, California, and is respondent's spiritual counselor. He was present at a meeting at the District Office on October 27, 2021, the day that respondent received the Letter of Reprimand. He observed the conversation between respondent and Ms. Zappettini and did not participate in the discussion of the state mandate. Pastor Stark did not read the Amended Statement of Charges, or know of the charges contained therein.

### **GABRIEL DEIRO**

48. Gabriel Deiro is a former student of respondent's Spanish class and the campus Christian Club at Truckee High School. He and respondent attend the same church. He recalled church members asking him via a group chat to attend a November 9, 2021 board meeting to support respondent. He prayed with respondent at the meeting, and recalled addressing the board that night regarding her dismissal. Mr. Deiro believes that the Order was "a mandate but it wasn't law," and there are "more substantial laws protecting [respondent] versus the mandate forcing [respondent] to follow the regulations." He claimed that "there are no laws on COVID but there are mandates," and that respondent's "religious exemption should honor that situation." Mr. Deiro conceded that he is not lawyer, nor is he an expert on COVID-19. He did not read the Amended Statement of Charges, or know of the charges contained therein.

## **Analysis**

49. A teacher is an educator that must engage in conduct that enhances the integrity of the District, advances the goals of the District's educational programs, and contributes to a positive school climate. A teacher must always maintain the highest level of ethics, judgment, and professionalism in their position as an educator and in complying with District and Board policies and regulations. A teacher is in a position of trust with students, parents, administrators, and the teaching community.

### **PERSISTENT VIOLATION/REFUSAL TO OBEY RULES REGARDING EMPLOYMENT**

50. The evidence established that respondent engaged in a persistent violation of or refusal to obey the District and Board's policies, procedures, and regulations, District directives, state mandate, and Order regarding COVID-19 proof of vaccination and weekly testing. District employees were subject to the Order, and Ms. Ghysels credibly testified that the mandates in the Order became District policy. The evidence established that Mr. Santos sent emails to all District employees on October 15 and 26, 2021, informing employees of changes to the employee handbook regarding testing requirements and testing locations. The handbook updates stated that there were no exemptions from the testing requirements even if an employee had COVID-19 within the past 90 days. There were no other exemptions provided in the updates. Respondent admitted that she did not read and deleted these emails because she believed she was exempt based on her religious beliefs.

51. The evidence also established that the Order was a legal mandate requiring all school districts to comply, or face sanctions and the potential loss of liability insurance. Respondent's belief that the Order merely contained recommendations and guidelines was not persuasive.

52. Respondent's claim that Ms. Zappettini was not knowledgeable and was speculating when she informed respondent that there was a religious exemption for vaccinations, but not for weekly testing, was not persuasive and unsupported by the evidence. Ms. Zappettini testified credibly that she completed a three-hour training session on the mandate provided by legal counsel for the District's liability insurance carrier. From that training, Ms. Zappettini was informed that no religious exemption existed for weekly testing.

53. Despite Ms. Zappettini's numerous emails to respondent addressing respondent's religious exemption inquiries, and attempting to seek respondent's compliance of the mandate, respondent consistently refused to obey the District's directives and state mandate, evidence by the credible testimony of Ms. Ghysels, Ms. Zappettini, and Ms. Mallonee. In addition, Mr. Murphy, a colleague and person of the same faith as respondent, testified credibly that there were no religious exemptions set forth in the Order, and further confirmed that he read all of Mr. Santos's emails updating the employee handbook regarding COVID-19 protocols, the emails were clear, and he had no problems complying with the District's policy and directives carrying out the Order.

54. In addition, the District alleged that respondent violated Penal Code section 632.7, which makes it a crime to intentionally record a telephone conversation without the consent of all parties to the communication. Although the requisite elements of a Penal Code section 632.7 violation appear to have been met, the violation is criminal in nature and a finding in this regard is left to the criminal court. However, the evidence established, by respondent's own admission, that she recorded her conversation with Ms. Zappettini without her consent. Respondent's claim that she



recorded the conversation because that was her way of taking notes due to her bad memory, was not persuasive.

### **PERSISTENT VIOLATION/REFUSAL TO PERFORM REGULAR ASSIGNMENTS WITHOUT REASONABLE CAUSE**

55. The evidence established that respondent refused to provide the District with proof of vaccination or weekly testing on September 22, October 4, October 14, October 20, October 24, and October 27, 2021. Respondent continued to willfully refuse to perform regular assignments, as set forth in the emails on these dates, without reasonable cause.

### **DISHONESTY**

56. The evidence established that respondent's secret recording of her phone conversation with Ms. Zappettini on November 10, 2021, without her consent, was dishonest. As stated above, respondent's claim that she recorded the conversation in lieu of taking notes due to a bad memory was not persuasive. Respondent claimed that she provided the recording to the District in an effort to be forthcoming and transparent, but she was not so when she decided to record Ms. Ms. Zappettini in secret.

### **MORRISON CRITERIA**

57. Education Code sections 44932 and 44944 create the statutory framework for this proceeding. The statutes give discretion to both the District and the Commission. The District has the right to determine when to seek disciplinary action against a teacher and what discipline to seek. The Commission, however, is not bound by the District's choice. It has broad discretion in disciplinary matters. Its role is not

limited to determining whether charged conduct in fact occurred, but it must also decide whether that conduct demonstrates unfitness to teach when measured against the criteria set forth in *Morrison v. State Board of Education (Morrison)* (1969) 1 Cal.3d 214, 229-30. (*Fontana Unified School Dist. v. Burman (Fontana)* (1988) 45 Cal.3d 208, 219-22.) In exercising its discretion in this matter, the Commission determines whether dismissal is warranted by the facts established at the hearing.

58. Before a decision can be made as to whether respondent's conduct was immoral (Ed. Code, § 44932, subd. (a)(1)), dishonest (Ed. Code, § 44932, subd. (a)(4)), constituted evident unfitness for service (Ed. Code, § 44932, subd. (a)(6)), and/or was a persistent violation of or refusal to obey the school laws of the State or reasonable regulations prescribed for the government of the public schools by the State Board or by the governing board of the school district employing him (Ed. Code, § 44932, subd. (a)(8)), the Commission must determine whether respondent's conduct demonstrated he was unfit to teach using the *Morrison* criteria. (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 696.) The *Morrison* criteria are: (1) the likelihood the conduct may have adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of the conduct; (4) the type of teaching certificate held by the party involved; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct; (6) the likelihood of the recurrence of the questioned conduct; and (7) the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Morrison v. State Board of Education, supra*, 1 Cal.3d at p. 229.)

## **LIKELIHOOD CONDUCT MAY HAVE ADVERSELY AFFECTED STUDENTS OR TEACHERS**

59. Respondent's persistent violation and refusal to obey the rules regarding her employment and perform regular assignments without reasonable cause, and her dishonesty, have created a very high likelihood that her conduct may have adversely affected students or teachers. She violated Health and Safety orders set forth in the Order, placed District employees and students at risk of contracting COVID-19, and undermined the authority of the District to carry out the provisions of the Order.

## **THE DEGREE OF THE ADVERSE EFFECT**

60. Respondent failed to acknowledge and appreciate how her conduct affected District employees and students. Rather, she focused on how the Order affected her. The District was required to comply with the Order or face sanctions; its intent was not to restrict respondent's religious freedoms. Respondent created the risk that she could have passed on the COVID-19 virus to others without knowing it. Respondent's conduct will have a severe and lasting adverse effect on District employees and students. In addition, her secret recording of her conversation with Ms. Zappettini was unprofessional, undermined the integrity of the District, and created a negative school climate.

District and school administrators aware of respondent's conduct may result in them questioning their own ability to protect students and ensure their safety if respondent is permitted to return to school. Respondent's behavior will also have a significant adverse effect on the teaching community, as students and parents will question the amount of trust and faith they should have in educators.

## **PROXIMITY OR REMOTENESS IN TIME OF THE CONDUCT**

61. The conduct at issue took place last year, in 2021. The conduct at issue is not remote in time.

## **TYPE OF TEACHING CREDENTIAL**

62. Respondent is a single-subject credentialed teacher with over 26 years of teaching experience.

## **EXTENUATING AND AGGRAVATING CIRCUMSTANCES**

63. Respondent is a credentialed teacher. She is responsible for complying with District policy and the Order, to avoid placing the health of co-workers and students at risk. She is expected to read her emails, not ignore and delete them. She is expected to maintain high ethical standards, abide by state and federal laws, and exercise good judgment. She is expected to be trustworthy. Respondent repeatedly demonstrated that she cannot abide by the policies and directives of the District, and cannot be trusted to maintain the integrity of her own disciplinary matter.

She demonstrated a lack of good judgment and regard for others. Her continued persistent violation of District policy and the state mandate is deeply concerning and calls into question her ability to follow District directives. She has shown she lacks judgment, professionalism, and inability to recognize the dangers she posed to the health and safety of District employees and students.

## **LIKELIHOOD OF RECURRENCE**

64. The likelihood of recurrence is high. Respondent's repeated and persistent violation and refusal to obey the rules regarding her employment and

perform regular assignments without reasonable cause, and her dishonesty, do not provide the District with any assurances that she will change her outlook on the District's proof of vaccination/testing requirement. Respondent's lack of insight into her own conduct and failure to take responsibility for her actions increases the likelihood of recurrence of her misconduct.

### **ADVERSE IMPACT OF CHILLING EFFECT UPON THE CONSTITUTIONAL RIGHTS OF THE TEACHER INVOLVED OR OTHER TEACHERS**

65. There was no evidence that dismissing respondent would inflict an adverse impact or chilling effect upon the constitutional rights of respondent or other teachers.

### **CONCLUSION**

66. After considering the *Morrison* criteria outlined above, the evidence established that respondent is unfit to teach.

### **Causes of Action**

#### **DISHONESTY**

67. Dishonesty indicates a lack of honesty; a disposition to lie, cheat, or steal (www.dictionary.com); or to deceive. (*Midway School District of Kern County v. Griffeath* (1946) 29 Cal.2d 13, 18.) "Dishonesty necessarily includes the element of bad faith." (*Small v. Smith* (1971) 16 Cal.App.3d 450, 456.) "[I]t means fraud, deception, betrayal, faithlessness; an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray." (*Ibid.*) "Dishonest conduct may range from the smallest fib to the most flagrant lie. Not every impropriety will constitute immoral or

unprofessional conduct, and not every falsehood will constitute 'dishonesty' as a ground for discipline." (*Fontana Unified School Dist. v. Burman (Fontana)* (1998) 45 Cal.3d 208, 220, fn. 12.)

68. The District alleges respondent was dishonest with the District when she secretly recorded her conversation with Ms. Zappettini on November 10, 2021, without her consent. By her own admission, respondent did so for the purpose of taking notes. The evidence established that respondent was dishonest.

### **PERSISTENT VIOLATIONS**

69. The school district board has the right to adopt rules governing the conduct of its employees and to require the employees to observe the rules. However, a single violation of a school board's rules is not of itself cause for the dismissal of a permanent teacher under subdivision (a)(8) of section 44932. (*Governing Board of the Oakdale Union School Dist. v. Seaman (Seaman)* (1972) 28 Cal.App.3d 77, 84.) The Legislature, apparently to allow an opportunity for correction, has decreed that a single violation is insufficient to warrant dismissal; "it is the persistent disregard" of school rules that subdivision (a)(8) is designed to regulate. (*Board of Ed. of Richmond School Dist. v. Mathews* (1957) 149 Cal.App.2d 265, 272.) As such, the District must establish that an employee's refusal to follow the laws or regulations was "persistent," i.e., "stubborn and continuing." (*San Dieguito Union High School Dist. v. Commission On Professional Competence* (1985) 174 Cal.App.3d 1176, 1183.) Isolated incidents or incidents involving an issue unresolved over a period of time are not generally considered "persistent." (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.) The word "persistent" is defined by lexicographers as "refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . .

constantly repeated." (*Seaman, supra*, 28 Cal.App.3d at 82.) In other judicial decisions, the word has been interpreted to mean "continuing or constant." (*Ibid.*)

70. Here, the District met its burden of establishing respondent violated the Order, the District's corresponding policy reflecting the Order, Board Policy 4119.21 (Professional Standards), District Board Administrative Regulation 4112 (Appointment and Conditions of Employment), and Board Policy 4000 (Concepts and Roles in Personnel). She repeatedly refused to comply with the Order and the District's directives requesting she do so.

### **EVIDENT UNFITNESS FOR SERVICE**

71. Evident unfitness for service means:

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

(*Woodland Joint Unified School Dist. v. Commission on Professional Competence (Woodland)* (1992) 2 Cal.App.4th 1429, 1444.) The *Morrison* criteria must be analyzed as a threshold matter to determine if the conduct indicates unfitness for service. (*Id.* at p. 1445.) If the *Morrison* criteria are met, the next step is to determine if the teacher's unfitness is "'evident'; i.e., whether the offensive conduct is caused by a defect in temperament." (*Ibid.*)

72. Respondent engaged in repeated and willful refusal to obey the rules governing her employment and perform regular assignments without reasonable cause. The District conceded that respondent is free to exercise her religious freedoms, but must also comply with District and Board policies, directives, regulations, state and federal law. Respondent lacked good judgment when she secretly recorded her conversation with Ms. Zappettini without her consent. Respondent's conduct displayed a fixed character trait inconsistent with the tenets of teaching. Given the above, a preponderance of the evidence established that respondent's conduct was a persistent violation of or refusal to obey the rules governing her employment, to perform regular assignments without reasonable cause, committed an act of dishonesty, and involved an evident unfitness for service.

73. Finally, all arguments and evidence presented to support respondent's asserted affirmative defenses have been considered and are rejected.

## **LEGAL CONCLUSIONS**

1. A permanent employee may be dismissed for cause. (Ed. Code, § 44934.) Causes include: dishonesty, persistent violation of Board policy, and evident unfitness for service. (Ed. Code, §§ 44932, subds. (a)(1), (4), (6), & (8).)

2. A permanent employee served with a Notice of Dismissal is entitled to a due process hearing. (Ed. Code, § 44934.) Education Code section 44944 establishes the right to a hearing, the process for selecting the three-member CPC, and sets forth the CPC's authority to issue a final decision. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) A preponderance



of the evidence means that the evidence on one side of an issue outweighs, preponderates over, and is more than the evidence on the other side of the issue, not necessarily in number of witnesses or quantity, but in the convincing effect the evidence has on those to whom it is addressed. In other words, the term refers to evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

## **Causes for Discipline**

3. A trier of fact may consider the totality of the offensive conduct, evaluating facts in the aggregate. (*Woodland, supra*, 2 Cal.App.4th at p. 1456-1457.) When a camel's back is broken, the trier of fact need not weigh each straw in its load to see which one could have done the deed. Second, causes can be consolidated. "It is true that a particular act or omission on the part of a teacher may constitute more than one of the causes for his removal specified in Education Code section 13403, [now 44932]." (*Tarquin v. Commission on Professional Competence* (1978) 84 Cal.App.3d 251, 260.) "Acts that are unprofessional conduct may at the same time be evidence of evident unfitness, i.e. a fixed character trait or temperamental defect which renders the teacher incapable of avoiding acts that are unprofessional." (*Ibid.*) "Unprofessional conduct," as used in section 44932, subdivision (a), has been viewed broadly as 'conduct such as to indicate unfitness to teach.'" (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

4. Based upon the Factual Findings as a whole, cause exists to dismiss respondent under Education Code section 44932 for persistent violations of Board policy, dishonesty, and an evident unfitness for service based upon her refusal to comply with the Order, state mandate, and District directives, policies, and regulations. (Evid. Code, § 44932, subds. (a)(4), (6), and (8).)

## Discipline

5. Here, the Commission has only two choices: to dismiss or not to dismiss. (Ed. Code, § 44932, subd. (a).) "The commission shall not have the power to dispose of [a] charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension . . . shall be available only in a suspension proceeding authorized pursuant to subdivision (b) of Section 44932 or Section 44933." (*Fontana, supra*, 45 Cal.3d at p. 216.)

6. Based upon the Factual Findings as a whole, the District proved, by a preponderance of the evidence, that respondent violated sections 44932, subdivisions (a)(4), (6), and (8), and the conduct supports dismissal of respondent.

## ORDER

The Tahoe Truckee Unified School District dismissal of respondent Marguerite Seehuetter from her employment as a teacher at Truckee High School is UPHELD. Respondent's appeal of her dismissal from employment with the Tahoe Truckee Unified School District is DENIED.

DATE: June 29, 2022

*Danette C. Brown*

DANETTE C. BROWN

Administrative Law Judge

Office of Administrative Hearings