

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA  
FOR THE  
TUSTIN UNIFIED SCHOOL DISTRICT**

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

**MELINDA STEBBINS,**

**A Permanent Certificated Employee,**

**Respondent.**

**OAH No. 2022020038**

**DECISION**

Pursuant to Education Code section 44944, subdivision (c)(1), the parties submitted a written statement to the Office of Administrative Hearings (OAH), stating they waived the right to convene a Commission on Professional Competence to decide this matter and stipulated to having the hearing conducted and decided by an administrative law judge (ALJ).

ALJ Deena R. Ghaly, OAH, heard this matter on June 21 through June 30, 2022 (excluding weekends), by videoconference. Attorneys Anthony P. DeMarco and Lauren Ruvalcaba, Atkinson, Andelson, Loya, Ruud, & Romo represented Complainant Maurita De La Torre, Ed.D., Chief Personnel Officer of the Tustin Unified School District (District).

Respondent Melinda Stebbins was present throughout the hearing and represented herself.

Documentary evidence and testimony was received, and argument heard. The record closed, and the matter was submitted for decision on June 30, 2022.

## **SUMMARY**

The District seeks to dismiss Respondent for: unprofessional conduct within the meaning of Education Code section 44932, subdivision (a)(2); evident unfitness for service within the meaning Education Code section 44932, subdivision (a)(6), and persistent violation or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of her employing school district within the meaning of Education Code section 44932, subdivision (a)(8).

The charges against Respondent stem from allegations that, while teaching, she frequently discussed her religious and political beliefs, surveyed students about their religious beliefs, and otherwise used class time to stray from the curriculum and proselytize about religion and politics. The District further alleged Respondent undermined its efforts to contain the COVID-19 pandemic by failing to abide by and enforce the District's mask mandate and even encouraging students to rebel against it.

Respondent asserts the charges against her are motivated by religious animus and other discriminatory motives. She maintains her class lessons fulfilled curriculum requirements, and her mention of religious or political matters were incidental to standard or District-sanctioned teaching methods or assignments. Respondent admitted to sometimes failing to enforce the mask mandate, but argued it was

inconsistently enforced throughout the school. Further, the District's disciplinary action against her violated her rights to religious expression and freedom of speech under the U.S. Constitution.

The evidence establishes Respondent repeatedly referenced controversial and polarizing issues to the detriment of her students' education and failed to adhere to applicable laws, rules, and regulations of her profession and the District. Moreover, her commitment to communicating her views with her students during class time directly conflict with the duties of her position as a teacher within a public school system. While Respondent's constitutionally protected rights to freedom of speech and religion are not "shed at the schoolhouse gate," they do not prevent the District from enforcing rules and regulations intended to promote a learning environment supportive of a diverse student community or to enforce public health measures.

Consideration of the relevant facts and applicable law establish the District proved the grounds for Respondent's dismissal as set out in the Statement of Charges. Consideration of the surrounding circumstances, including factors in mitigation and aggravation, establish dismissing Respondent from her position with the District is the only appropriate outcome.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. In a Notice of Intention to Suspend and Dismiss Respondent dated December 13, 2021, the District adopted a Statement of Charges seeking Respondent's dismissal. The District also served Respondent with a Notice of Immediate Suspension Without Pay effective December 14, 2021.

2. Respondent did not challenge her suspension without pay; however, she timely filed a Request for Hearing challenging the dismissal action, and this matter ensued.

## **Background**

3. Respondent is a permanent certificated employee of the District. She holds a single subject credential in English and has been employed as an English teacher at Foothills High School in Tustin, California since 1999. Respondent has no prior record of disciplinary action with the District.

## **Incidents Arising During the 2020-2021 School Year**

4. In response to the COVID-19 pandemic, Foothills High School transitioned to remote or hybrid learning. More than usual, parents were privy to the content of class lessons and discussions because they were broadcast on video to students at home. Foothills High School administrators received complaints from parents about the amount of time Respondent spent and emphasis she placed on communicating her religious and political beliefs to students. Parents and students also complained about Respondent's inquiries into students' religious beliefs and practices and other personal information.

5. Early in the school year, Foothills High School Principal Michelle England spoke to Respondent about the complaints and recommended she frame her lessons to avoid potentially controversial topics and keep the focus on the District's standard English curriculum. Principal England, who testified at the hearing, described the communications with Respondent as informal in tone and "more along the lines of coaching." At the time, Principal England respected and trusted Respondent as a

teacher and believed that, with some assistance, her teaching style could be improved to avoid controversy and the resulting distractions from the required curriculum.

6. Complaints continued to be lodged with the school administration, including one from a parent dated September 2, 2020, stating Respondent had asked her child what her religion was, whether the student was in a cult, and whether the student was racist. (Exh. 15.) Other complaints alleged Respondent commented unfavorably on households headed by single mothers, noting boys need strong male role models in their lives.

7. On September 4, 2020, Principal England met with Respondent and a union representative for a formal disciplinary meeting. There, Principal England more pointedly and specifically instructed Respondent to avoid discussing her personal religious views and political convictions and to avoid asking students about their religious beliefs or personal subjects. She also again directed Respondent to closely follow the standard curriculum of her subject.

8. Later in the month, Respondent directed students to access a website, Prager University (PragerU), and write about an article of their choice from that website. The website is a self-described conservative data base "focused on changing minds through the creative use of digital media." (Quoted in Exh. 8, p. A278.)

9. On September 28, 2020, Assistant Principal Kristin Hartloff presented Respondent with a written Warning of Unprofessional Performance (September 28, 2020 Warning), informing Respondent of the parents' complaints, and notifying her that her work was unsatisfactory. Assistant Principal Hartloff stressed parents were very uncomfortable with Respondent asking about students' religious affiliations during class discussions and as part of assignments. With respect to the PragerU assignment,

Assistant Principal Hartloff wrote it violated two California Standards for the Teaching Profession (CSTP). One standard, CSTP 2: Creating and Maintaining Effective Environments for Student Learning, instructs teachers to maintain a fair and safe learning environment, including “create[ing] a . . . learning environment that promotes student learning, reflects diversity, and encourages constructive and productive interactions among students.” The other standard, CSTP 6: Developing as a Professional Educator, instructs teachers in part to “manage professional responsibilities to maintain motivation and commitment to all students.” (Exh. 68.)

10. The September 28, 2020 Warning included the following directive:

Effective immediately, you are directed to submit all lesson plans to me [for approval] . . . You will not include any [discussions of your] personal religious beliefs and/or political beliefs with your students. This means you will not write about them and share that writing with students, you will not talk about them in your meets or in the classroom or in a chat, and you will not ask personal questions to students such as their religious affiliation. You will not direct students to any political or religious websites, including PragerU. You will immediately take down all assignments that involve PragerU. from your Schoology page and you will discard any student work that involved PragerU. That work will not be included in student grades.

(Exh. 9, p A279.)

11. Respondent submitted a rebuttal to the September 28, 2020 Warning, denying directly asking students about their religion or using the word 'cult' in any circumstances in class. Respondent admitted asking a student about racism and expressed regret about her choice of words, however, she believed a written warning for the infraction was overly harsh. She also acknowledged stating she had said boys need male role models, but that this comment was not intended to be critical of single-mother households. Rather, she intended boys need male role models of some kind, not necessarily fathers; they could be teachers, coaches, or the like. Respondent further stated in her rebuttal she limited discussion of her personal beliefs, including some involving religion, to a warm-up exercise, known as "Good Things", adapted from a District training, "Capturing Kids' Hearts," is a warm-up exercise intended to help students engage with the teaching process by sharing personal ideals and experiences. Regarding an assignment calling for students to write down religious symbols of importance to them and to describe a traumatic event, Respondent maintained she told her students answering these questions was optional. (Exh. 10.)

12. Respondent told her students about the District's disciplinary warning to her by reading a letter in her classes. The letter stated she may not see them again and asked students who support her to contact District officials on her behalf. Respondent ended her classes that day with a discussion of the U.S. Constitution's Bill of Rights. Assistant Principal Hartloff logged into the Zoom application to observe her class and witnessed Respondent read her letter and lead discussions about the U.S. Constitution. At the hearing, Assistant Principal Hartloff stated she found Respondent's tone to be extremely emotional and the discussion of Respondent's personnel issues inappropriate for class.

13. Respondent's statement to her class on the Zoom conference was video recorded and admitted into evidence. In the recording, Respondent can be seen and heard and appears calm and professional with the exception of a small break in her voice toward the end of her statement. (See, Exh. 20.)

14. After receiving the September 28, 2020 Warning, Respondent went on a six-month personal leave. During the leave, school administrators continued to receive complaints about her, with parents voicing their preference that their children not be returned to her classroom. Others wrote to communicate their support for her.

15. Respondent returned from her leave on March 28, 2021. On April 2, 2021, Assistant Principal Hartloff issued a written warning to Respondent (April 2, 2021 Warning). The April 2, 2021 Warning repeated the deficiencies in the September 28, 2020 Warning as well as new issues of concern to the administration based on her rebuttal to the September 28, 2020 Warning and the classes she taught that day. According to the April 2, 2021 Warning, of particular concern to the administration were Respondent's lengthy discussions about civil rights during her September 28, 2020 class and the farewell letter she wrote, which caused many students and their parents to assume she was being fired and to write the administration expressing their concern. The April 2, 2021 warning concluded with the following directive:

Effective immediately, you are directed to refrain from any and all conversations having to do with your personal religious and/or political beliefs. You are also directed to refrain from asking students about their personal religious and/or political beliefs, whether orally or in writing. Your conversations, lessons, assignments, assessments, and all student learning taking place in your classroom on our



campus must only align with the English Language Arts  
Common Core standards and literacy skills.

(Exh. 3, Attachment B, p. A160.)

16. Respondent submitted a rebuttal to the April 2, 2021 Warning in which she disagreed with many of the characterizations about the statements attributed to her. Regarding the political speech in her classes, Respondent noted other teachers frequently used political issues as fodder for discussion and for writing assignments in other English classes, including the substitute teacher who filled in for Respondent during her leave:

During my absence, the sophomore team collaborated with the substitute for my classes on the work that was assigned to the sophomore classes. I am concerned because you found not just one, but several of these assignments to be acceptable despite the controversial and political content . . . . I was told during the meeting on 4/2/21 that political and controversial matter (*sic*) should be avoided, and suitable substitutes should be found to teach the same subjects. [Principal England] specifically stated in our meeting there was no need for politics in the English classroom.

(Exh. 12, p. 317.)

The topics the students could choose to write during the time Respondent was on leave included whether the voting age should be lowered, teen mental health, the Black Lives Matter movement, and the COVID-19 pandemic. A last choice was to write about "Other: If there's something else that interests you, just ask!" (Exh 12, p. 318.)

## **Incidents Arising During the 2021-2022 School Year**

17. During the summer before the 2021-2022 school year, the District developed a mask mandate to help stem the spread of COVID-19 as the District schools prepared to shift back to in-class teaching. The District's mask mandate was widely circulated during assemblies, in written directives, and in posted signs throughout campus.

18. Respondent's return to the classroom the following school year in August 2021 was marked almost immediately with controversy. As witnessed by multiple administrators and students, Respondent, who was given leave to wear a variation face shield and scarf, failed to keep her face covering on and often failed to enforce the mask mandate on her students. She also started classes by shaking hands with each student as they entered the classroom, though students could opt to bump fists with Respondent instead.

19. On the first day of class, August 12, 2021, an assistant principal, CK Green noted about half the students, numbering between 15 and 18, were unmasked when he went to retrieve a student from one of Respondent's classes.

20. On August 25, 2021, a parent reported students in Respondent's class were unmasked. Various school administrators made impromptu visits to Respondent's classes over the next several days, including on August 23, 26 and 27, and September 8, 2021. Each time they found multiple students not wearing masks. School administrators repeatedly sent Respondent written directives reminding her of the mandate and her duty to enforce it. (See Exh. 3 attachments.) Principal England spoke to Respondent, instructing her "in no uncertain terms" to enforce the mask mandate.

21. School administrators also specifically directed Respondent to take a stricter line with a group of approximately eight students witnessed to habitually violate the mask mandate when in her class. On August 19, 2021, Respondent provided the students in question with the District's written COVID-19 directives, but she also included political pamphlets referencing theories of legal rights to enter businesses without masking. During the hearing, one of the students in the group, J.G., stated Respondent also encouraged the students to join the school's chapter of Turning Point USA (TPUSA), a political group for which Respondent served as the faculty advisor, and to speak out against the mask policy. Respondent denied recommending students join TPUSA or defy the mask mandate. She maintained she provided the information about whether businesses can enforce the mask mandate to give the students a full picture of the regulatory climate.

22. On August 20, 2021, administrators observed Respondent sitting with a bible on her knee while speaking to a parent. When they inquired of the parent what the discussion had been about, the parent, L.G., stated Respondent was telling her about her religion and offered her the bible as a gift. L.G. testified at the hearing and stated the conversation made her feel uncomfortable and was not solicited, as she follows her own religion. L.G., who is disabled and had experienced a period of homelessness with her two daughters, stated she spoke with Respondent because she hoped Respondent could help with transportation issues she was having in getting her children to and from school.

23. Beginning on September 10, 2021, Z.D., a student in Respondent's senior honors English class, wrote emails to school administrators reporting Respondent's conduct in class, including that Respondent expounded against vaccinations, allowed students to remain unmasked, and presided over politicized debates regarding

COVID-19 public health policies. In an email dated September 15, 2021, Z.D. wrote she was also experiencing retaliation from Respondent for disagreeing with Respondent's views: "[s]he seemed to target me and tried to correct virtually everything I had to say." (Exh. 47.) Z.D. also wrote Respondent gave very few English assignments.

24. Z.D. testified at the hearing, stating she received no more than five assignments during the first month of school compared to the approximately 20 assignments students received in other sections of the same class taught by different teachers.

25. Z.D.'s classmates, A.W. and A.P., who also testified at the hearing, corroborated Z.D.'s statements about the few English assignments Respondent gave and her routine failure to enforce the mask mandate. A.P. noted Respondent's practice of shaking students' hands in greeting at the beginning of class "didn't sit right" after the students had endured months of remote learning and many, including A.P., feared having to return to the isolation of remote learning if close contact between members of the school community caused another outbreak. A.P. also testified about the class atmosphere during periods religious and political discussions predominated, noting these discussions were "hectic, noisy, and chaotic."

26. On September 16, 2021, Maurita De La Torre, the District's chief personnel officer, issued a Notice of Unprofessional Conduct and Unsatisfactory Performance (September 16, 2021 Notice) to Respondent. The September 16, 2021 Notice listed all of the deficiencies identified in prior warnings, along with Respondent's failure to uphold the mask mandate and her persistence in discussing religion and politics in class.

27. The September 16, 2021 Notice listed several board policies school administrators determined Respondent had violated: (i) District Board Policy 4116.1, which provides: "It shall be the responsibility of every teacher to deal with potentially controversial issues in a comprehensive and scholarly manner taking care that students are given an opportunity to explore the full range of opinion. Each teacher is expected to exercise good judgment in the manner of instruction;" (ii) District Board Policy 6011, which states the Board will establish "the framework for the educational system including . . . performance standards [and] curriculum" and further states "[s]tandards shall, to the extent possible, reflect the requirements of law, and the desires of the local community." (Exh. 3, p. A143-142.) Also listed among the rules and standards with which Respondent was charged with failing to uphold were CSTP Standards 2 and 6.

28. The September 16, 2021 Notice ends with directives for Respondent to follow:

1. Ensure compliance with all COVID-19 safety protocols at all times and refrain from encouraging or directing students to violate these safety protocols.
2. Refrain from sharing your personal views about COVID-19 safety protocols with students.
3. Submit all lesson plans to Assistant Principal Kristin Hartloff each Wednesday by the conclusion of your planning period for the subsequent week. Ms. Harloff will either approve the lesson plan or return it to you with changes by Thursday afternoon. You must make all changes

and resubmit your lesson plans to Ms. Hartloff by Friday at the conclusion of your planning period.

4. Follow your approved lesson plans and do not deviate from the approved subject matter.
5. Refrain from sharing your personal, religious, and political beliefs with students orally or in writing at all times.
6. Refrain from asking students about their religious and political beliefs and affiliations orally or in writing at all times.
7. Ensure all classroom discussions, instructions, lessons, assignments, and assessments and all students learning in your classroom and on campus are aligned with the District's English Language Arts Common Core standards and literacy skills.
8. Refrain from directing your students to political or religious websites or organizations including PragerU and Turning Point USA, and refrain from incorporating these websites in discussions, instruction, lessons, assignments, and assessments at all times.
9. Utilize sound professional judgment and conduct yourself in a professional manner, in speech and action, at all times while interacting with students, parents, staff and administrators.

10. Ensure your performance is in alignment with the California Standards for the Teaching Profession.

11. Comply with all verbal and written directives from District and site administrators and all District rules, Board Policies, and Administrative Regulations.

(Exh. 3, p. A146.)

29. On September 22, 2021, the school held its “club rush” day, an event where student clubs set up booths to encourage membership. School rules prohibit club members from handing out paraphernalia but members of TPUSA, handed out buttons with the words “I’m Pro Choice. Pick Your Gun” and a picture of three firearms under the words. (Exh. 50.) Respondent was the faculty advisor for TPUSA. At the hearing, she denied any knowledge of the buttons or even being at the event; no evidence was presented controverting her position.

30. On September 27, 2021, Chief Personnel Officer De La Torre issued a Letter of Reprimand to Respondent. The letter stated in part: “This Letter of Reprimand is issued as a result of your failure to conduct yourself in a professional manner and refusal to perform regular assignments by spending valuable instructional time proselytizing to your students regarding your personal religious beliefs instead of providing English Language Arts instruction, in violation of repeated directives.” (Exh. 4, p. A175.) The letter also admonished Respondent for reading to her classes a lengthy personal essay she had written entitled The Importance of Truth, which was the subject of many student and parent concerns and complaints. The essay includes a long passage about Respondent’s feeling of despondency so great it caused her to question her sanity but then feeling relief when her prayers for help were answered.

Respondent ended the essay by noting the help and relief eased by her religious faith is available to anyone open to it:

I am saddened when I see people living in fear, because I know they do not have to. I understand what it is like to live in fear and it is no way to live. Since this major event in 2020, God has done so many amazing things to strengthen my faith, unbelievable things . . . I know that everything God has done for me, He can and will do for every single person who believes.

(Exh. 4, p. A178.)

The September 27, 2021 Letter of Reprimand quoted the same rules and standards referenced in the earlier writings and informed Respondent her failure to comply with directives will result in the District initiating dismissal charges.

31. After Respondent received the September 27, 2021 Letter of Reprimand, she returned to her classroom. According to multiple students who testified at the hearing, Respondent appeared visibly upset. A student recorded a portion of the class (Exh. 53) in which Respondent can be heard saying:

- I've never told a student to wear a mask or not to wear a mask; I'm not a doctor;
- If there was a shooter on campus, I would throw myself on your bodies to protect you not because I'm a good person, but because of God;
- I am to be a robot – I am not to share anything personal with you;



- A mandate is not the same as a law;
- It's like the Milgram experiment; you have no choice but to press the button;
- I have students who have migraines, mental health issues; I have no right, school has no right;
- I have the most illegal thing.

32. One of the students in the class, H.L., testified at the hearing. H.L. stated she had never been frightened in Respondent's class until that day. As she recalled, the atmosphere in the class was very tense as Respondent became increasingly upset, cried, and held a black case above her head when she made the statement about bringing "the most illegal thing" to class. H.L. feared the case held a gun, until Respondent pulled out a bible from it.

33. In addition to H.L., several other students testified at the hearing about Respondent's conduct on September 27, 2021. Their testimony was uniform in describing Respondent's distraught state, high level of emotion, and erratic behavior. Each of them described feeling fearful and concerned for their safety.

34. After class, H.L. and at least five of her classmates went to school administrators and reported Respondent's speech. The students prepared written statements of what they had witnessed. Consistent with the students' testimony at the hearing, the statements describe Respondent's tone and demeanor as highly emotional and their reactions as fearful and worried about their safety. (See Exhs. 56 & 58 – 62.)

35. After the events of September 27, 2021, the District suspended Respondent for two days. She returned to work on September 30, 2021. Assistant Principals Hartloff and CK Green witnessed Respondent greeting students at her classroom door while unmasked and allowing unmasked students into her class. Principal England contacted the District's personnel office for assistance. District Personnel Director Raphael Placentia indicated he would come to campus. Principal England went to Respondent's classroom and sat at the back for the remaining 15 minutes of class time. She observed students speaking among themselves or playing video games while Respondent sat, still unmasked, at her desk, apparently writing. Principal England also observed a collection of religious pamphlets in a corner of Respondent's classroom.

36. Once the school bell rang and class ended, Principal England informed Respondent she would need to leave school. Respondent asked whether she could gather her things; Principal England agreed and sent for boxes. Two students offered to help her collect her belongings.

37. Director Placentia arrived at Foothills High School campus, delivered a Letter of Reprimand, dated September 30, 2021, and read out the first paragraph to her. The September 30, 2021 Reprimand Letter informed Respondent she was being placed on administrative leave.

38. While being escorted out of school on September 30, 2021, Principal England photographed the religious pamphlets displayed in Respondent's class "library," an area of her classroom where reading materials could be accessed by her students. During the hearing, Principal England stated the materials clearly violated the directives in the preceding writings provided to Respondent. As depicted in Principal

England's photographs, the pamphlets are not literary or scholarly texts on religion; they are brief arguments for adopting a religious life. (See, Exh. 36.)

39. Assistant Principal Hartloff reviewed Respondent's entries in the school's assignment case system, Schoology. She noted there were very few entries and virtually no "major assignments" as of September 30, 2021, Respondent's last day at Foothills High School. Assistant Principal Hartloff also examined Respondent's entries into the Aeries system, a database for keeping track of grades. Consistent with Z.D. and other students' testimony, Assistant Principal Hartloff concluded, given that nearly two months had passed since school began, Respondent was not on track to have her classes meet all the English curriculum requirements.

### **Additional Student Witnesses**

40. A.P.(2), an incoming junior at Foothills High School, transferred out of Respondent's honors class during the 2020-2021 school year to avoid the "constant talk of religion," Respondent's offers of prayers for the students, and her inquiries in students' religious beliefs.

41. Not all of Respondent's students remember her classes as overly consumed with religion and politics. B. A., one of the students in Respondent's 6<sup>th</sup> period honors English class during the 2021-2022 school year, remembered Respondent mentioning religion only "every now and then." She characterized Respondent's presentation at the September 27, 2021 class, however, as a "rant" and noted Respondent did not always follow COVID-19 prevention policies, including offering her bare hand to shake as students filed into her classroom.

## Respondent's testimony

42. Respondent testified at the hearing. As an overriding issue, Respondent maintained the District's actions against her stemmed from religious and political animus and that, to the extent she made mistakes, the District's response was excessive and more severe than its actions in similar situations when the alleged transgressor more closely adhered to the District's secular, liberal-leaning outlook. Moreover, because of this animus, school administrators' interventions were essentially a sham, and her dismissal a foregone conclusion.

By way of example, Respondent noted the substitute teacher who had filled in for Respondent, identified as Ms. Phillips, had given a lecture on the novel *To Kill a Mockingbird* based on the "white savior" theory, which was considered a controversial teaching approach. Because, however, the white savior theory is aligned with left-leaning politics, the substitute teacher, Ms. Phillips received only informal corrective instruction from school administrators, very different from the harsh consequences Respondent experienced.

43. Regarding allegations Respondent failed to teach in accordance with the approved curriculum, Respondent countered that, to the contrary, her teaching style and content were consistent with District-sanctioned objectives. She spoke of her faith at the beginning of class consistent with the Capturing Kids' Hearts method. Respondent read her personal statement, The Importance of Truth, to mirror skills required during a class section on writing effective college essays which require going beyond superficial self-descriptions. Political discussions about COVID-19, vaccination requirements, and related topics stemmed from the "CNN10" news summaries with which many Foothills High School teachers started class. Regarding discussions with her classes about the personnel actions she was experiencing, Respondent stated

these too were in the service of a pedagogical purpose. Anticipating she may not return to the school, she wanted to present a cohesive narrative – a beginning, a middle, and an end – of her presence in the students' lives.

44. Respondent further denied falling behind in teaching the approved curriculum. She stated the relatively few substantive assignments she made at the outset of both the 2020-2021 and 2021-2022 school years reflected her standard practice of starting the year slowly to build rapport with her students. Because she only taught a few weeks at the outset of each year, she had not yet fully ramped up to pace; however, this was an approach she had used for the many preceding years of her tenure at Foothills High School, and it had never been the source of criticism or disciplinary action.

45. Respondent asserted some of the specific allegations were false or presented out of context. As noted above, Respondent denied having any involvement in the buttons depicting guns handed out by the TPUSA club, calling any student a racist, using the word 'cult' in class, or making disparaging remarks about single-parent families.

46. Respondent alleged the District's enforcement of the mask mandate was selective, and arbitrary. She also noted some of the very administrators testifying against her routinely removed their masks during school, essentially failing to hold themselves to the standards they accused her of violating.

47. Respondent further argued her civil rights are being violated by the District in violation of the federal civil rights law and the U.S. Constitution. According to Respondent, District officials and school administrators wanted to remove Respondent from the start because of her religious and political convictions and

engaged in a progressive intervention process without any sincere intent to help her correct her ways.

### **District Evidence Relevant to Respondent's Defenses**

48. During her testimony, Principal England stated her initial discussions with Respondent were not about Respondent's religious views in particular. Rather, they were about how references to polarizing subjects such as religion in the context of public school teaching can offend and alienate some students, as the student body comes from a wide variety of religious and secular backgrounds. Her initial coaching focused on avoiding discussion topics likely to be controversial generally; however, when Respondent's teaching methods remained unchanged, Principal England decided nuanced directives were not working and therefore specifically directed Respondent to avoid whole categories of subjects, including religion and politics.

49. Principal England disagreed that standard teaching conventions such as the Capturing Kids' Hearts exercise or other similar pedagogical methods require teachers to expose their most private thoughts. Principal England recalled discussing the Capturing Kids' Hearts exercise with Respondent and expressly noting it is more effective when teachers sincerely share some aspects of themselves but nothing too private or intimate. According to Principal England, teachers should be accessible yet maintain professional distance. Principal England further stated all teachers, regardless of religious or political viewpoints, were counseled and corrected when their teachings crossed into demagoguery or were exceptionally polarizing. In the case of Ms. Phillips, she responded to the administration's concerns and modified her lessons so no further disciplinary action was required.

50. Regarding Respondent's argument that the District's progressive intervention process was essentially a sham, Principal England stated she always takes into consideration teachers' vulnerability to disgruntled students and parents and seeks to protect them from false allegations. In Respondent's case, Principal England became convinced of the veracity of the complaints because of their similarity despite coming from various grade levels and class sections. Principal England also observed Respondent in the classroom before determining formal discipline against her had to be pursued.

51. Assistant Principal Hartloff stated during her testimony she reviewed Respondent's rebuttal and did not find support for her defenses. For instance, regarding the allegation Respondent intrusively asked students to disclose their religions and traumatic events they experienced as part of an assignment, Respondent maintained she made the questions optional. Assistant Principal Hartloff reviewed the written instructions for the assignment and did not find they reflected Respondent's representation. The instructions, which were attached to Respondent's rebuttal, require students to complete a "graphic organizer" grid. The grid is a number of questions, including one calling for students to list accidents or traumatic event and another calling them to list "religious symbols or experiences." The instructions at the top of the assignment page do not make answering any questions optional (see, Exh. 10, p. A289), however, during her testimony, Respondent stated she told her students answering the questions was optional.

52. Assistant Principal Hartloff stated she reviewed Respondent's entries in the Schoology and Aeries databases before determining Respondent was not on pace for completing the required curriculum.

53. Regarding enforcement of the mask mandate, school administrators testified it was not perfectly adhered to at all times, particularly during faculty meetings when students were not present. Teachers were not always able to keep students masked at all times; however, Respondent was observed to be herself in violation of the mask mandate while teaching and to be actively supporting some students' failure to adhere to it.

## **Factual Analysis**

54. The factual allegations in the Statement of Charges are a compilation of the allegations set out in each of the disciplinary memoranda issued to Respondent between September 28, 2020 and September 30, 2021. They are addressed at Factual Findings 4 through 37 and are generally uncontroverted.

55. As noted at Factual Findings 11 and 29, Respondent denied some charges. Specifically, Respondent denied directly surveying students about their religious affiliations, ever using the word cult, having any knowledge or involvement in the incident when members of the TPUSA club distributed buttons depicting guns, or making disparaging remarks about single-parent families.

56. Respondent testified throughout the hearing in a straightforward and candid manner, freely admitting to many of the allegations made against her. The District's evidence about the allegations Respondent expressly denied is limited to hearsay statements from parents and teachers. Under these circumstances, her denials are credited.

57. Less persuasive are Respondent's arguments that the religious and political discussions were incidental to standard English class assignments and that they did not interfere with the normal progression called for by the required



curriculum. Respondent's conduct as described by her students and even herself do not have the standard hallmarks of pedagogical discourse, organized debate, and consideration of opposing viewpoints consistent with effective classroom teaching, particularly for the diverse student body typical of a public school setting. Additionally, Assistant Principal Hartloff's analysis of completed teaching assignments demonstrating Respondent assigned and graded very few traditional English assignments during the periods she was in the classroom is also credited. It is corroborated by the multiple students who testified about Respondent's classroom conditions.

## **LEGAL CONCLUSIONS**

### **General Provisions**

1. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44932, 44934, and 44944.)
2. Grounds for dismissal are limited to an enumerated list, including those alleged against Respondent in the instant action: unprofessional conduct; evident unfitness for service; and persistent refusal to obey school laws. (Ed. Code, § 44932, subd. (a).)
3. A particular act or omission may constitute more than one cause for removal under the Education Code. (*Tarquin v. Commission on Professional Competence* (1978) 84 Cal.App.3d 251, 260.)
4. In the absence of any statutory authority to the contrary, Complainant bears the burden of proof. (Evid. Code, § 500.) The standard of proof in a teacher

disciplinary proceeding is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.)

## **Causes for Dismissal**

### **UNPROFESSIONAL CONDUCT AND EVIDENT UNFITNESS FOR SERVICE**

5. In the context of teacher dismissal proceedings, "unprofessional conduct" is conduct that "violates the rules or ethical code of a profession or . . . is unbecoming a member of a profession in good standing." (*Board of Education of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 533 (citation omitted), overruled on another ground in *Berkiaris v. Board of Education* (1972) 6 Cal.3d 575, 588, fn.7.) Continual insubordination and refusal to recognize superiors' authority has been held to constitute unprofessional conduct. (*Id.* at p. 552) as has "disruption or impairment of discipline or the teaching process." (*Board of Trustees of the Lassen Union High School District v. Owens* (1962) 206 Cal.App.2d 147, 157.)

6. The preponderance of the evidence established Respondent engaged in continual insubordination and refusal to recognize superiors' authority by failing to avoid discussing controversial topics in class and to abide by and enforce the mask mandate (Factual Findings 8, 12, 18-21, 23-25, 30, & 35,) and the result, including her classes falling behind on curriculum objectives and, in some instances becoming upset or frightened, disrupted and impaired the teaching process (Factual Findings 23-25, 31-34, & 39-41,).

7. "Evident unfitness for service" means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444-1445.) Evident unfitness for service

requires that unfitness be attributable to a defect in temperament which “connotes a fixed character trait, presumably not remedial upon receipt of notice that one’s conduct fails to meet the expectation of the employing school district. (*Id.* at p. 1444.)

8. In word and deed, Respondent demonstrated an unwavering commitment to sharing her personal religious and political beliefs with students and to substitute her convictions about public health measures over the District’s decisions and she did so despite the adverse impact it had on instruction and students’ well-being. (See e.g., Factual Findings 31-34.) This commitment is part of Respondent’s character, and she is unlikely change regardless of the expectations of her employing school district. As such, this character trait meets or exceeds the “presumably not remedial” element of the evident unfitness for service charge.

### **PERSISTENT VIOLATION OF, OR REFUSAL TO, OBEY LAWS OR RULES**

9. As a third cause for dismissal, the District charged Respondent with persistent violation of, or refusal to, obey laws in violation of Education Code section 44932, subdivision (a)(7). In this context, “persistent” means refusing to relent, continuing, especially in the face of opposition . . . stubborn, persevering . . . constantly repeated.” (*Governing Board of the Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 82; see also, *San Dierguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.)

10. Respondent’s many transgressions in the face of repeated directives and calls for correction regarding both the content of her lessons and her stance toward the mask mandate established her persistent violation of, or refusal to, obey laws or rules. (Factual Findings 5, 9, 10, 15, 26, 27, 28, & 30.)

## ***Morrison Factors***

11. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, the California Supreme Court held that “an individual can be removed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher.” The court concluded that a teacher’s conduct cannot abstractly be characterized as among others, “unprofessional,” unless the conduct indicated that a teacher is unfit to teach.” (*Id.* at p. 229.) The Court then listed factors, since codified at California Code of Regulations, title 5, section 80302, to consider in analyzing whether cause for teacher dismissal. Thus, evidence of these factors must be established as part of determining whether there are sufficient grounds to sustain a teacher dismissal. The factors and their application to the instant matter follow:

(i) The likelihood that the conduct may have adversely affected students or fellow teachers: Respondent’s conduct adversely affected students. Multiple students testified about the chaotic discussions, alienation, health concerns, and even fear of violence they experienced in Respondent’s classroom. The recordings in her classroom, particularly the one made on September 27, 2021, reflect Respondent had lost her ability to maintain a professional demeanor to a degree likely to have traumatized her students. Most concerning, Respondent’s conduct resulted in students losing teaching time and opportunity, as well as the benefits of the health-related protections of the mask mandate as determined by the District. (Factual Findings 23-25, 31-34, 39-41.)

(ii) The degree of such adversity anticipated. Albeit misguidedly, there is indication Respondent believed she was acting in her students’ interest and she did not anticipate the adversity they bore. (See, e.g., Factual Finding 11.)

(iii) The proximity or remoteness in time of the conduct. Respondent's conduct occurred very recently, within approximately the last two years. (Factual Findings 4-38.)

(iv) The type of teaching certificate held by the party involved. Respondent taught English, a subject requiring critical and abstract thinking. Respondent's propensity to preach and proselytize are inconsistent with the subject matter generally and with the English curriculum taught at Foothills High School.

(v) The extenuating or aggravating circumstances, if any, surrounding the conduct. California Code of Regulation, title 5, section 80300, subdivisions (b) and (m) provide definitions for aggravating and mitigating factors, respectively. Their application goes to the degree of discipline necessary to adequately protect the public, students, or the profession.

Aggravating factors include: (1) a prior record of adverse action; (2) multiple acts of wrongdoing; (3) that the misconduct was surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators; (4) that the misconduct significantly harmed a child entrusted to the care of a credential holder or applicant, significantly harmed the public or the educational system; (5) that the holder or applicant demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders; or (6) that the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source.

Here, there are several aggravating factors: Respondent received multiple warnings and disciplinary notices as well as periods of suspension and these constitute prior adverse action; she engaged in multiple acts of wrongdoing; her students were denied normal education experiences and were sometimes frightened

by her conduct; and in class discussions, she speaks of “not returning” and later more explicitly that she will be fired but that she must follow her conscience, indicating indifference to the consequences of her misconduct. (Factual Findings 8, 12, 18-21, 23-25, 29, & 30-34, & 39-41.)

Mitigating factors include: (1) absence of any prior record of adverse action; (2) lack of harm to the person who is the object of the misconduct; (3) emotional or physical difficulties not caused by illegal conduct and no longer at issue; (4) a demonstration of good character of the applicant; (5) objective action taken by the applicant or holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing; (6) the proximity or remoteness in time relative to the seriousness of the misconduct; or (7) the nature and extent of subsequent rehabilitation.

Because Respondent is convinced of the correctness of her acts and the importance of her religious beliefs over other duties, none of these factors in mitigation apply. Respondent may be of good character; she appears sincere in her beliefs and in her concern for the religious development of her students, and in her political disagreements over the District’s mask mandate. These attributes are misplaced and even detrimental in a public school setting where, to the extent her beliefs informed both her teaching and her involvement with the public health measures the District chose to keep the student safe, they clashed with District objectives to serve the educational needs of a diverse student population and keep them safe during the COVID-19 pandemic.

(vi) The praiseworthiness or blameworthiness of the motives resulting in the conduct. Respondent’s beliefs and moral struggles about them may not be blameworthy; however, they are not praiseworthy either. As an experienced teacher,

her own education and understanding of the boundaries between private conduct and official duty should have guided her to more appropriate and professional conduct.

(vii) The likelihood of the recurrence of the questioned conduct. Given the strength of Respondent's convictions, the likelihood of recurrence of the conduct in question is great. In addition, progressive disciplinary intervention did not halt the questioned conduct, which is further evidence it is likely to recur.

(viii) 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. At first glance, the District's emphasis on controlling Respondent's discussions of religion and politics and the resulting consequences when she resisted may cause other public school teachers to fear their own speech and beliefs could endanger their jobs. As described in greater detail in the section below, however, teachers' constitutional rights are protected. They are subject to some limitations outside the classroom and more so, in the classroom. The boundaries are clear and any teacher who takes the time to understand the necessary distinctions between protected rights to engage in private conduct and public employee obligations will not be negatively impacted or "chilled" by the instant case.

## **Affirmative Defenses**

12. Respondent asserted the disciplinary proceeding brought against her is motivated by the District's animus toward her because she is Christian and has become associated with conservative-leaning political views, in violation of her right to free speech under the U.S. Constitution. Respondent's proffered evidence in support of her claim is what she views as disparate and more lenient treatment of another teacher, Ms. Phillips, who used the term "white savior" while presenting a lesson on the

book *To Kill a Mockingbird*. School administrators took issue with the term, which is associated with more left-leaning or progressive political views, and reprimanded Ms. Phillips. Unlike Respondent, however, Ms. Phillips was not the subject of further disciplinary action. In her rebuttal to the April 2, 2021 Warning, Respondent also pointed out other teachers were allowed to give assignments based on political issues.

13. Where a district's motivation in disciplining a teacher "is to silence a public employee's lawful protected speech, that would invalidate a disciplinary action." (*Thorbrough v. Western Placer Unified School District* (2013) 223 Cal.App.4th 169; *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575; see also, *Tinker v. Des Moines Independent Community School District* (1969) 393 U.S. 503, 506 ["First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."]).

14. In the case of public school teachers and other public officials, however, not all otherwise protected speech is lawful. This is especially the case when the speech occurs in the course of official duties. (See, *Garcetti v. Ceballos* (2006) 547 U.S. 410.)

15. For public school teachers, whatever the circumstances of where and how the speech occurred, a central issue in determining whether it is considered protected speech under the U.S. Constitution is whether it is disruptive to school operations.

16. The seminal case setting out the proper analysis is *Pickering v. Board of Education* (1968) 391 U.S. 563. In *Pickering*, the issue involved speech outside the classroom. A teacher sent a local newspaper a letter critical of his employing school's



governing board. The board determined his actions were detrimental and disruptive to the school and dismissed him. In the majority opinion, the Supreme Court held that analysis of such cases requires “a balance between the interest of the teacher, as a citizen, in commenting on matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” (*Pickering, supra*, at p. 568.)

17. Here, Respondent’s speech and exercise of religious expression were occurring in the classroom and in the course of teaching, and therefore are subject to heightened control and less protection than private speech. The District’s interests and obligations to create curricula appropriate for its diverse student body and to impose public health measures consistent with safest practices as they were known at the time are given wider latitude. Therefore, Respondent’s belief that she had unfettered right to speak out about her views in class is incorrect.

### **Limitations on Teachers’ Expressions of Religious Beliefs**

18. Similar to free speech considerations in the classroom, courts have consistently upheld restrictions on religious expression in elementary and secondary schools especially because their attendance is compulsory, therefore they are a captive audience. Even the recent United States Supreme Court case, *Kennedy v. Bremerton School District* (June 27, 2022), \_\_ U.S. \_\_, 142 S.Ct. 2407, a case Respondent relied upon, only extended the Constitution’s free speech and free exercises clauses to “quiet personal prayer” at high school football games. “The contested exercises before us does not involve leading prayers with the team or before any other captive audience.” (*Kennedy, supra* at p. 2422). This case would not support, for example, Respondent’s reading in the classroom of her personal essay, *The Importance of Truth*, where she openly advocates for engaging in religious activity while teaching.

## **Discrimination Based on Religious Animus**

19. Respondent further argued that, even to the extent she made mistakes, because of Respondent's religious and political affiliations, the District's response was harsher than other similar cases. This was not, however, supported by the evidence presented. Respondent relied primarily on a single instance of teacher speech deemed over-politicized by school administrators, namely, Ms. Phillips discussion of the "white savior" concept when analyzing *To Kill a Mockingbird*. As Principal England explained during her testimony, Ms. Phillips was corrected because school administrators deemed the concept of "white savior" too controversial and politicized for the class. Ms. Phillips was not subject to further discipline because she incorporated the correction into her ongoing work and there were no further similar incidents. This is very different from Respondent's case where, despite supervisors' repeat attempts to correct Respondent, she defied their directives.

20. Moreover, even if there was evidence the District's actions were influenced by discriminatory animus, the dismissal may be upheld unless the District would not have proceeded with the adverse employment action but for its improper motive. (*Williams v. City of Los Angeles* (1988) 47 Cal.3d 195, 205 [citations omitted].) Particularly considering Respondent's repeat violations of the emergency public health measures established by the District, the evidence supports a finding that it would have proceeded with the disciplinary proceeding against Respondent regardless of motives or influence. It is common knowledge that these health measures were compulsory on all school districts. There was never a choice except to abide by them.

## Disposition

21. The Commission (or an administrative law judge acting in its stead) is vested with discretion not to dismiss an employee even if grounds for discipline exist. (See *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 209.)

22. Whether school administrators have lost confidence and trust in an educator's capacity and willingness to properly serve in her role are factors that may be considered in determining whether to uphold a district's dismissal decision. (*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1460.)

23. In Respondent's case, the extent of the misconduct and her struggle between her personal convictions and the strictures of public education employment leave any resolution of this matter short of dismissal untenable. Respondent can no longer fit into the constraints of her job and its requirements. The District, in turn, is not required to bend or change its rules to accommodate her. For the good of the students, they must part ways.

## ORDER

Respondent Melinda Stebbins is dismissed as a permanent certificated employee of the Tustin Unified School District.

DATE: 09/30/2022

Deena R. Ghaly  
Deena R. Ghaly (Sep 30, 2022 11:52 PDT)

DEENA R. GHALY

Administrative Law Judge

Office of Administrative Hearings