

BEFORE A
COMMISSION ON PROFESSIONAL COMPETENCE
FOR THE JURUPA UNIFIED SCHOOL DISTRICT

In the Matter of the Dismissal of:

CHARLES BAUGH,

A Permanent Certificated Employee,

Respondent.

OAH No. 2017061013

DECISION

On October 12, 13, and 16, 2017, a Commission on Professional Competence (Commission) heard this matter in Jurupa Valley, California. The Commission consisted of the following members: Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH); Gregory Nicholas; and Michael Apffel.

Kerrie McNally, Attorney at Law with the law firm of Adams, Silva & McNally, LLP, represented complainant, Tamara Elzig, Deputy Superintendent of Personnel Services, Jurupa Unified School District (JUSD).

Carlos Perez, Attorney at Law with the law firm of Reich, Adell & Cvitan, represented respondent, Charles Baugh, who was present throughout the hearing.

The record was held open to permit the committee to deliberate and reach a decision. The record was closed and the matter submitted on October 27, 2017.

ISSUE

Did Mr. Baugh's February 16, 2017, post on a Facebook thread or choice of Halloween costume on October 30, 2015, constitute immoral conduct or evident unfitness for service, warranting his dismissal?

SUMMARY

Although Mr. Baugh could have used better judgement before posting a comment on Facebook on February 16, 2017, and in selecting a Halloween costume depicting a popular

television show character, neither incident constituted immoral conduct or evident unfitness for service. Accordingly, applicable law does not permit his dismissal.

FACTUAL FINDINGS

Procedural Background

1. Mr. Baugh is a science teacher currently assigned to Rubidoux High School (RHS).
2. On February 17, 2017, complainant placed Mr. Baugh on paid administrative leave. She provided him with written notice that he was under investigation due to “concerns that [he] may have violated school regulations, Board policies, or state laws.”
3. On May 1, 2017, complainant provided Mr. Baugh with a Draft Notice of Intent to Dismiss and Immediately Suspend Without Pay and the corresponding Statement of Charges. The letter attached to the above-referenced documents provided Mr. Baugh with information concerning his right to a *Skelly* conference.
4. On May 9, 2017, Mr. Baugh declined to participate in a *Skelly* conference, but did provide certain documentary evidence to the district to consider prior to rendering a decision on whether he should be terminated.
5. On May 11, 2017, Dave Doubravsky, the Assistant Superintendent of Educational Services for the JUSD, wrote a letter to Mr. Baugh stating that the district had considered the documentation he provided but would still be seeking termination of Mr. Baugh’s employment. On that same date, complainant provided Mr. Baugh with a letter stating she would be presenting the Notice of Intent to Dismiss and Suspend Without Pay and corresponding Statement of Charges to the District Governing Board (board) on May 15, 2017.
6. On May 15, 2017, complainant presented the Notice of Intent to Dismiss and Suspend Without Pay and corresponding Statement of Charges to the board. The board voted 4 to 1 to approve the proposed disciplinary action.
7. On May 15, 2017, complainant signed the Notice of Intent to Dismiss and Immediately Suspend Without Pay and corresponding Statement of Charges, alleging that Mr. Baugh is subject to termination for immoral conduct and evident unfitness for service, in violation of Education Code sections 44932, subdivisions (a)(1) and (a)(6).
8. The Notice of Intent to Dismiss and other jurisdictional documents were served on Mr. Baugh, who timely filed a demand for hearing on May 22, 2017.
9. Mr. Baugh subsequently filed a Motion for Immediate Reversal of Suspension (motion) with OAH, pursuant to Education Code section 44939, alleging that the Notice of

Intent to Dismiss did not set forth a sufficient basis for immediate suspension.¹ Under Education Code section 44939, subdivision (c)(1), review of a motion filed pursuant to this section is limited to a determination as to whether the facts as alleged in the Notice of Intent to Dismiss, if true, would be sufficient to constitute a basis for immediate suspension.

10. On July 11, 2017, Administrative Law Judge Adam L. Berg granted Mr. Baugh's motion. Mr. Baugh was taken off unpaid administrative leave and placed on paid administrative leave pending the outcome of the hearing.

The Protest Event

11. On February 16, 2017, a protest event called "A Day Without Immigrants" was held throughout the country. The protest event was meant for persons who were immigrants, or who supported immigrants, to stay home in order to show what impact immigrants have, economically, on society. It was a nationwide protest event and was not limited to any particular profession.

12. RHS has approximately 1,600 students. Approximately 90 percent of the students are Hispanic. According to the principal of RHS, Jose Araux, a "robocall" was made to parents prior to the protest event urging them to have their students attend school. Tamara Elzig, the Deputy Superintendent, also testified that a posting was placed on the district's website informing parents about the importance of having their students attend school on February 16, 2017. Nonetheless, about 355 students, or 22 percent of the student body, were absent on the day of the protest event. Dr. Araux conceded that there was no way of knowing precisely what the reason was for each absence, but presumably, many were attributable to the protest event.

The Facebook Thread

13. On February 16, 2017, several teachers at RHS – Geoffrey Greer, Robin Riggle, Charles Baugh, Patricia Crawford, and Allen Umbarger, posted comments on a Facebook thread started by Mr. Greer on his public Facebook page. The original post by Mr. Greer read as follows:

Well. A day without immigrants. Perhaps all the missing workers in all the various industries out there had the intended impact and sent the desired message. I don't know. As for the public school system, having my class size reduced by 50% all

¹ Education Code section 44939, subdivision (b), states, that a school district may immediately suspend a permanent employee of the school district who has been charged "with immoral conduct, conviction of a felony or of any crime involving moral turpitude, with incompetency due to mental disability, with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the School District"

day long only served to SUPPORT Trumps initiatives and prove how much better things might be without all the overcrowding.

That's what you get when you jump on some sort of bandwagon cause as an excuse to be lazy and/or get drunk. Best school day ever.

Several other individuals posted comments on Mr. Greer's Facebook thread about absences in their class, and the pleasant classroom conditions that day because of the same. Eventually, Mr. Baugh posted the following free-standing comment (i.e. not in reply to any particular post): "I had 49. Quieter classes, more productive – let's do this more often."

That single comment was the only comment posted by Mr. Baugh on the Facebook thread.

It is unknown overall, how many people continued to comment on the Facebook thread, or if the reproduction of the Facebook thread provided in the exhibits was a full and complete copy of all the comments on the thread. Nonetheless, the exhibit provided contained the comment of Mr. Baugh.

Eventually, Mr. Greer deleted the original post, as he explained, to "mitigate any further damage," and posted a public apology in its place, apologizing for the "harsh tone" and "hurtful structure" of the original post, which he understood came across in an unfortunate manner.

The Facebook Thread Goes Viral

14. It did not take long for the entire Facebook thread to "go viral." Aside from the numerous comments people made on Facebook, an individual by the name of "Marina," tweeted the link to the Facebook thread on her Twitter page. The Facebook thread and comments were shared by individual Facebook users and spread about various social media platforms. Eventually, Mr. Greer deleted the Facebook thread, as he explained, to "mitigate" any damage and apologize for the "hurtful structure" of the post. However, because the original content of the Facebook thread had been captured in screenshots and reproduced so many times, deleting the posts did nothing to stop the continuing viral spread.

In the ensuing days, the story would be covered on most local news stations as well as Univision, a Spanish language news station. Local newspapers covered the story; some of the news articles simply reported the facts of what occurred; other articles used less-neutral headlines and editorialized the articles to express the belief that the Facebook posts were racist or anti-immigrant, which certainly could have added fuel to an already out-of-control firestorm.² Daniel Brooks, the Director of Personnel for the JUSD, said his office – which

² For example, one article from the Huffington Post was simply entitled, "Riverside Teachers Put on Paid Leave Over Immigrant Protest Comments." Another article from the

usually does not receive phone calls from angry parents – received a “couple dozen” phone calls. The district and RHS received angry e-mails from students, parents, community members, individuals who had no affiliation or personal interest in the district, and some who lived across the country. The American Civil Liberties Union, Department of Justice³, Anti-Defamation League, and various immigrant organizations wrote to the district regarding their concern after learning of the comments on the Facebook thread. Some of the angry communications were directed solely towards Mr. Greer. Others were directed at all the teachers whose comments appeared on the Facebook thread. In many of the e-mail communications, it was unclear if the writers were reacting to the actual posts, the representation in the news regarding the posts, or what they had read from others regarding their opinions of what the posts contained. Nonetheless, it was not disputed that many people from all walks of life were upset for a variety of reasons about the comments contained on the Facebook thread.

The Aftermath

15. On February 17, 2017, the district had extra personnel on the RHS campus in case any problems arose. Two classrooms, one belonging to Mrs. Riggle and the other belonging to Mr. Greer, had been vandalized overnight, with messages stating “fuck you” and “fuck your opinion” spray-painted outside the front of the classrooms.

16. Jose Araux is the principal of RHS. Dr. Araux’s testimony is summarized as follows: RHS has approximately 1,578 students. Approximately 90 percent of the students are Hispanic, two percent are black, two percent are white, and the rest are “other.” Dr. Araux is aware that some of the students at the school have parents who are immigrants. Dr. Araux reviewed the comments made on the Facebook thread and said he could not believe the comments were made by his teachers and a counselor. He was “upset, angry, and hurt” and felt the comments were “racist and discriminatory.”

When Dr. Araux went to RHS on February 17, 2017, his primary goal was to ensure the “physical, psychological, and emotional well-being” of the students. That day, there were also many extra people on campus from the district to help provide support. Dr. Araux read a message over the school public address system acknowledging the reaction to the Facebook thread and letting students know that the district was committed to investigate and “take appropriate action.” He responded to over 200 e-mail complaints from parents and people across the country. Dr. Araux also set aside additional time to meet with parents, should they want to do so. RHS received many calls regarding the Facebook thread. Talking points were provided to teachers to help them deal with any situations that might arise in the classroom.

Washington Post, however, was entitled, “These California Teachers Mocked Students For Skipping School On Immigrant Boycott Day.”

³ It was never made clear in testimony whether it was the California Department of Justice or the federal Department of Justice.

A student forum was scheduled for 2:20 p.m. in the gymnasium, however, they were not able to hold the forum because there was a student walkout following lunch. Dr. Araux estimated less than 300 students left the campus. Teachers and administrators tried to get the students to go back to their classrooms, but they would not. When they approached a perimeter fence, one student went over the fence. Other students began to push on it. Dr. Araux said he made the decision to open the gate because he did not want anyone to get hurt. Some students came back to the campus, but many did not. As for the majority of students who did remain on campus, Dr. Araux made the decision to keep them in their fifth period class rather than proceed like normal, and they were eventually dismissed from fifth period.

On February 18, 2017, Dr. Araux received an e-mail from a student notifying him about a potential second student walkout planned for February 21, 2017. The student was very “disappointed” with the actions of the other students who walked off the campus on February 17, 2017, and concerned about the safety of students and staff members at RHS should the second walkout have occurred. Dr. Araux sent out an e-mail to all staff with a modified schedule for that day in order to avert a second walkout. Dr. Araux sent a notification to parents warning them of the safety concerns should a second walkout occur and also telling them that the school day would be modified on February 21, 2017. The message, however, did not encourage parents to tell their students to remain in class and refrain from participating in the second walkout. At least one media outlet reported on the planned second walkout. Nonetheless, the second walkout never occurred.

Dr. Araux has observed Mr. Baugh in the classroom and has never seen Mr. Baugh do anything to make him think Mr. Baugh is “anti-immigrant.”

17. Complainant also testified about the student walkout. She added that the students crowded the flagpole prior to walking off campus and tried to take down the American flag and replace it with a Mexican flag. The students “flooded” onto a four-laned road. Police were blocking intersections trying to anticipate where the students were going in order to keep everyone safe. Although complainant testified that she believed the student walkout was because of the Facebook thread, she provided deposition testimony on a prior date where she stated that the student’s frustration was with the Trump administration. During the student walkout, the students were chanting “fuck Trump” and “fuck your opinions.”

Complainant corroborated Dr. Araux’s testimony about the second potential walkout. She said notifications were sent to parents in order to try and avoid a difficult situation.

Complainant testified that at a February 21, 2017, board meeting, they took 37 public comments and that there was a large crowd. There were members of the media present. There were students, parents, and activist groups. There was tension in the air. People were generally unhappy. A short video was shown regarding the board meeting, but the video showed calm speakers clearly presenting their views; the video did not show a tense, angry crowd, nor did it show media present. Complainant said the media were asked to move away from the board members, and that was why they were not depicted on the video.

18. M█████ G█████, a current student at RHS, testified that the Facebook posts made her feel “insecure” because the thread referred to “us” as “lazy and drunk” and we are “actually the opposite.” Ms. G█████ never had Mr. Baugh as a teacher. She did not state specifically that Mr. Baugh’s post offended her, and agreed that the post did not state anything about immigrants.

19. R█████ A█████ is a student at RHS and testified that he had Mr. Baugh his freshman year for science and that it was a “good class.” He said he is also on the RHS soccer team and Mr. Baugh is the announcer. He likes the way that Mr. Baugh says “goal” and imitated the goal call he said Mr. Baugh uses, which sounds like the famous call used in the World Cup. Mr. A█████ said he saw the Facebook thread and felt “disappointed” because he perceived the posts to implicitly say that without “us” classroom time would be more productive. Mr. A█████ said he would no longer want to be in Mr. Baugh’s class, but if he was, he would not disrespect Mr. Baugh. He felt other students might disrespect Mr. Baugh if he were returned to the classroom. Mr. A█████ agreed that some of the posts were more offensive than others.

20. B█████ M█████ is a student at RHS and testified that she does not know Mr. Baugh personally. Ms. M█████ testified that Mr. Greer’s post made her feel “disheartened and offended” and she felt that Mr. Baugh’s post was agreeing with what Mr. G█████ said. She testified she would not want to be assigned to Mr. Baugh’s class because she feels if “someone has prejudice it will affect people” and “if you are a teacher that works with a lot of Hispanic students it is going to affect how you perceive and grade them.”

Testimony of Josh Lewis

21. Josh Lewis is the Director of Information Technology at the JUSD. His primary duty is to oversee the networks. Mr. Lewis testified about two voluntary events the district hosts, Techfest and Summerjam, held at the beginning and end of the school year, respectively. These events relate to the use of information technology in the classroom. No testimony provided showed that the events provide direction, policy, or other information concerning how teachers should interact on social media on their own time after school hours. Mr. Lewis also testified that all teachers are required to teach digital citizenship to their students. Exhibits provided showed the content of the curriculum, which generally instructs students about proper conduct online in a variety of situations. Mr. Baugh did provide the digital citizenship curriculum to his students during the 2016-2017 school year. The curriculum documents did not provide any guidance to teachers regarding their use of social media.

School District Policies

22. Multiple documents containing various policies and procedures of the district were provided. Complainant said she believed Mr. Baugh violated some of these policies. Specifically, complainant believed Mr. Baugh’s Facebook post violated Board Policy 4000, which describes personnel “concepts and roles.” However, this policy talks about what the

governing board must do, not teachers. This policy is not one that can be violated by a teacher.

Complainant also believed Mr. Baugh's Facebook post violated the Code of Ethics, contained in Board Policy 4119.21. However, the Code of Ethics speaks of teacher's responsibilities in the classroom – not activities engaged in during their personal time. Moreover, the broad language complainant referred to as being violated came from the preamble of the document, which cannot be violated.⁴

Complainant also believed Mr. Baugh's Facebook post violated Board Policy 4119.32, having to do with the duties and responsibilities of teachers. Again, this policy explains what teachers must do in the classroom and in their job as educators; nothing in the policy states what a teacher may and may not do outside the classroom with respect to social media.

Complainant also believed Mr. Baugh's Facebook post violated Board Policy 5000, having to do with concepts and roles of teachers. Again, like Board Policy 4000, this policy sets forth responsibilities of the governing board and explains the commitment of the governing board to students. It cannot be violated by teachers.

Complainant also believed that Mr. Baugh's Facebook post violated Board Policy 5145.3, concerning harassment and discrimination. This policy applies to activities on campus as well as off campus that create a hostile environment at the school. It is unclear, however, how Mr. Baugh's single Facebook post violated this policy given that his comment merely stated how many absences he had and did not disparage any student or contain any racially inappropriate or discriminatory language. It is also unclear how the comment could be construed as being racially motivated, given that the students who participated in the protest event were Hispanic; but those who remained were also predominantly Hispanic.

Complainant confirmed on cross-examination that the district has no policies, procedures, or guidance regarding teachers' use of social media outside of their employment.

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⁴ The Code of Ethics contains a clause at the end stating that the code governs the profession and any violations will be considered "unprofessional." The clause goes on to say that in order to constitute grounds for discipline, the violation must endanger students, evidence malice, indicate serious incompetency, bad judgement, or a pattern of bad judgement." Interestingly, complainant stated the Code of Ethics was violated, but did not charge Mrs. Riggle with unprofessional conduct. A reasonable inference, then, can be drawn that the district did not believe Mr. Baugh did anything that constituted a danger to students, and his conduct did not involve provable malice, bad judgement, or a pattern of bad judgement.

Mr. Baugh's October 2015 Halloween Costume

23. Mr. Baugh did not dispute that on October 30, 2015, he came to school dressed as Walter White, a character from the popular television show "Breaking Bad." Mr. Baugh testified that he came dressed as that character because he looks identical to the character. Mr. Baugh is correct – based on courtroom observations and a photograph provided of Mr. Baugh when he was dressed as Walter White, he does look identical to that character. Mr. Baugh testified that because the character was a high school science teacher, he believed the costume to be "clever and funny." The character is also a drug dealer; Mr. Baugh brought blue rock candy to school to simulate methamphetamine, which the television character manufactured. He handed the candy out to teachers and staff, but did not hand the candy out to students. Students may have been in a position to see him, but no students testified that they observed Mr. Baugh handing out the rock candy. Mr. Baugh said his students loved his costume. Dr. Araux testified that when Mr. Baugh was told to go home and change because it was felt that his costume was inappropriate, he agreed to do so.

24. Mr. Baugh was never formally disciplined for his choice of Halloween costume on that date, and no similar incidents have occurred.

Evidence Presented by Mr. Baugh

CHARACTER WITNESSES

25. J. F. [REDACTED] was a RHS student who graduated in 2010. Mr. F. [REDACTED] had Mr. Baugh for drama in his junior and senior year. He said they put on two plays during those years. Mr. F. [REDACTED] said Mr. Baugh was a "great teacher." Mr. F. [REDACTED] said he never said or did anything offensive or inappropriate about immigrants. Mr. F. [REDACTED] noted that most of his classes when he attended RHS were filled with Hispanic students. Mr. F. [REDACTED] said Mr. Baugh really cares about students. He added that if the students needed anything, Mr. Baugh was always there for them on a personal basis. Mr. F. [REDACTED] has stayed in contact with Mr. Baugh since graduating in 2010.

26. L. G. [REDACTED] is a former student of RHS who graduated in 2013. She had Mr. Baugh as a teacher for geophysical science and theater. Ms. G. [REDACTED] testified that Mr. Baugh was very nice, knew of some personal problems she was having at home, and if she needed help, he would help her. She has kept in touch with Mr. Baugh following graduation. In the time she has known Mr. Baugh, she has not heard him say anything racist. She said he is passionate about his work and loves teaching students. Ms. G. [REDACTED] said Mr. Baugh made things better in class and made high school memorable for her.

27. E. J. [REDACTED] is a former student of RHS who graduated in 2010. Ms. J. [REDACTED] was the valedictorian. She was in the after school theater club, which had Mr. Baugh as the advisor. She also had Mr. Baugh for drama class. Ms. J. [REDACTED] said Mr. Baugh was a great teacher and he was there for all his students, even if the problems were personal. Ms. J. [REDACTED] said Mr. Baugh made everyone feel as if they had a place at RHS. Mr. Baugh

never expressed an opinion about immigrants. She has maintained contact with Mr. Baugh and wanted to testify on his behalf because it is the right thing to do. Mr. Baugh “really cared” about his program and has a passion for teaching. Ms. J. [REDACTED] said Mr. Baugh “really cares about kids” and about “engaging students.” She sees him as a role model and said he is the “kind of teacher [she] hopes every kid can have.”

28. Douglas Morrill is a friend who has known Mr. Baugh since the seventh grade. Mr. Morrill is now retired. Prior to retiring, he served as a sworn police officer with the Garden Grove Police Department for 31 years and then as a sworn investigator for a county agency for 11 years. Mr. Morrill and Mr. Baugh ride motorcycles together, meet for lunch, and generally socialize with each other. Mr. Morrill described Mr. Baugh as an honest person and said Mr. Baugh has never made any comments that he felt were inappropriate. Mr. Baugh has never said anything to indicate that he does not like immigrants; Mr. Morrill has never known Mr. Baugh to disparage anyone regarding culture or race.

29. Terri Spencer is the librarian at RHS. She recalled February 17, 2017, when some of the students walked off campus. She said the walkout was not peaceful. As she and other teachers tried to get the students to go back to class, many told the authority figures to “fuck off” because it was still their lunchtime. Some students went to the flagpole and tried to remove the American flag and replace it with a Mexican flag. After that, the “mob” made their way towards the parking lot. Ms. Spencer said there has not been another walkout of that magnitude since that date. She recalled that within the first few weeks after the student walkout, people wanted teachers fired. However, after time passed, she feels a majority of the students want him to come back. She does not think Mr. Baugh did anything wrong and feels that he and the other teachers would be “welcomed back.”

MR. BAUGH’S MOST RECENT EVALUATIONS

30. Mr. Baugh submitted two evaluations. Both evaluations show he met or exceeded standards in all areas and were completed by his superiors at RHS. Some of the commentary on his evaluations are as follows:

Mr. Baugh creates a physical environment that engages all students. . . . He maintains order in his classroom by reminding students of appropriate behavior expectations, class routines, and is consistent upholding classroom rules.

Mr. Baugh addresses his students’ varied learning needs by planning for activities that support an array of learning modality preferences. He values his students’ backgrounds and interests by creating class discussion opportunities that are engaging and interesting. . . .

Mr. Baugh connects learning goals to students’ prior knowledge, life experience and interests. . . . He creates

frequent opportunities for classroom discussions and allows for students to ask questions related to topics that are of particular interest to them. These activities promote autonomy, interaction, and choice. . . .

Mr. Baugh promotes a climate of fairness and respect.

Mr. Baugh draws on and values students' backgrounds, interests and developmental needs.

LETTER FROM GEORGE MONGE

31. Mr. Monge is an Advanced Placement Government & Politics teacher who is the head of the Social Studies Department at RHS. Mr. Monge wrote a letter, on behalf of the teachers and staff of RHS, dated May 4, 2017, to the JUSD administration. Pertinent excerpts from his letter are:

[T]he district may have some legitimate concerns regarding the potential for future disruption to the learning environment. But those of us who were interacting and communicating with our students in the immediate aftermath and the time since the incident are less worried about that potentiality.

On the very next day, many of our students were speaking of the need to maintain our unity as a school community. In the days that followed, multiple student groups communicated to teachers and School administration their desire to offer forgiveness to these teachers to help expedite our healing process. A sentiment which was frequently expressed by students, was the idea that within a family, you may have a member that says or does something wrong, But you don't kick them out of the family - instead you counsel and you coach them and you continue to work with them, so that mistakes are aren't repeated. This process all starts with some level of forgiveness. We would also know that such a position if taken, would be consistent with the philosophy behind PBIS, which is the district's mandated student discipline program.

On the issue of disruption, the absence of these teachers has greatly disrupted the learning environment and effectiveness within many of our most important programs such as AVID, FFA, Guidance and AP. Our students have attempted to maintain their progress while working with a series of mostly inexperienced substitutes. In response to the situation students have gathered hundreds of signatures on petitions (see attached

pages) requesting the return of these teachers and the students have communicated these views with school administration.

Over the course of their careers, these teachers have made enormous contributions to our school, established strongly positive relations with our students and are considered valuable and vital members of the wider Rubidoux community. Within this group of educators are multiple teacher of the year recipients, teachers who have earned statewide recognition and awards for their work with our students, they have inspired students and have helped hundreds, perhaps thousands of students earned admission to universities and gained meaningful careers.

We know Charles Baugh, Patricia Crawford, Rhonda Fuller, Jeff Greer, Robin Riggle and Allen Umbarger. We know them to be caring and courageous educators that have devoted their lives to the students of this community. These educators are immensely talented and the impact of their permanent loss to our students and programs would be devastating.

We hope that you will take our thoughts into consideration. . . .

MR. BAUGH'S TESTIMONY

32. Mr. Baugh's testimony is summarized as follows:

Mr. Baugh holds an Associate of Arts degree in Theater Arts, a Bachelor of Arts in Liberal Studies, and a Master of Arts in Earth Science. He has spent 20 years in the teaching profession; 10 of those years have been at RHS. Mr. Baugh is also a veteran of the United States Army and served three years in Vietnam.

Mr. Baugh is employed as a science teacher, but has taught drama in the past. Currently he has an earth science credential but has also held a supplemental drama credential.

Mr. Baugh said that his classes were much quieter than normal on February 16, 2017. He knew it was the date of the protest event. When he got to campus that day he could see the difference from a normal day. Because of the absences, he changed his lesson for the day because on February 16, 2017, he had a mandatory test preparation that the students needed to complete in order to be ready for a test at the end of the week. He changed the lesson because the students who were missing would not have been permitted to make up the work that day – and would have missed the test preparation.

When he got home from school that day, he saw Mr. Greer's Facebook post and the thread that contained comments from other teachers. He saw that another teacher, Robin Riggle, had posted that she had 50 absences that day and that it was a pleasant day. Mr. Baugh said his post regarding quieter classrooms was in direct response to Mrs. Riggle's post. After he added his comment, he got off Facebook and made dinner.

The next morning, Mr. Baugh found out the Facebook thread went viral. Complainant placed him on administrative leave and told him to "turn over his keys." He said that interaction was "not even five minutes." Mr. Baugh said he has not returned to campus since February 17, 2017, but was permitted to enter his classroom to retrieve personal belongings, or what was left of them, after the school year ended.

Mr. Baugh said he loves teaching science. He has never been accused of being racist and has never expressed any anti-immigrant sentiments. He feels immigrants are simply trying to get a better life by attending school and he would never do anything to interfere with that. Mr. Baugh has even taken trips to Peru and Mexico to work with kids and build houses for families living in poverty. He has brought his professional telescope to orphanages in Tijuana because many of the children have never seen the moon through a telescope. Mr. Baugh said seeing them experience looking at the sky through a telescope for the first time "makes it all worthwhile."

Mr. Baugh does not think he should be terminated because he is a "very good teacher with enthusiasm," a role model, and his comment on Facebook was misconstrued. It was not his intent to say anything anti-immigrant. He believes the district and administration, by their actions, did not give him or the other teachers any support. He said if there were social media rules he would follow whatever rule or policy he is directed to follow. Mr. Baugh said if he had known all that happened would occur he never would have posted anything on Facebook.

LEGAL CONCLUSIONS

Burden and Standard of Proof

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

2. "Preponderance of the evidence means evidence that has more convincing force than that opposed to it." [Citations.] (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325) The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Ibid.*, italics emphasis in original.)

Applicable Law

3. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44932, 44934, and 44944.)

4. When a school board recommends dismissal for cause, a Commission on Professional Competence may only vote for or against the dismissal; the Commission may not dispose of a charge *seeking* dismissal by imposing probation or an alternative sanction. (Ed. Code, § 44944, subs. (c)(1)-(3).)

5. A permanent certificated teacher may not be dismissed except for, among other things, immoral conduct or evident unfitness for service. (Ed. Code, § 44932, subs. (a)(1) and (a)(6).)

Applicable Case Law

6. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 235, the 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 delineated the following criteria to determine whether a teacher’s conduct indicates that he or she is not fit to teach: (1) the likelihood that 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 teacher; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct in question; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the recurrence of the conduct in question; and (8) the extent to which disciplinary action may inflict an adverse impact or have a chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Id.*, at pp. 229-230.)

7. In *Board of Education v. Jack M.* (1970) 19 Cal.3d 691, the Supreme Court detailed the process to be considered in determining fitness to teach. In addition to the *Morrison* factors, the court provided additional factors that may be considered to determine if there is a nexus between the conduct and a teacher’s fitness to teach: (1) likelihood of recurrence of the questioned conduct; (2) the extenuating or aggravating circumstances, if any; (3) the effect of notoriety and publicity; (4) impairment of teachers’ and students’ relationships; (5) disruption of educational process; (6) motive; (7) proximity or remoteness in time of conduct. (*Id.*, at fn. 5.)

IMMORAL CONDUCT

8. There is broad discretion in determining what constitutes immoral conduct in the context of teacher disciplinary matters. (*California Teachers Association v. State of California* (1999) 20 Cal.4th 327.) Immoral conduct has been defined by the courts as follows:

[T]hat which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as wilful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Palo Verde etc. School Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 972, citing *Bd. of Education of San Francisco Unified School Dist. v. Weiland*, 179 Cal. App. 2d 808, 811.)

Immoral conduct alone cannot serve as a basis to terminate a teacher unless the conduct indicates the teacher is also unfit to teach. (*Palo Verde, supra*, at p. 972.)

EVIDENT UNFITNESS FOR SERVICE

9. Unfitness for service means “not fit; not adapted to a purpose, unsuitable; incapable; incompetent; and physically or mentally unsound.” (*Palo Verde, supra*, at p. 972.) As a threshold matter, the *Morrison* criteria are examined to ascertain whether the conduct in question indicates is related to the teacher’s fitness to teach. In reaching a conclusion that grounds exist to dismiss a certificated employee on the basis of evident unfitness for service, not all *Morrison* factors need be examined, only the pertinent ones. (*Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384.) In this sense, the purpose of examining the *Morrison* criteria is to establish a nexus between the proven conduct and fitness to teach.

However, even if the *Morrison* analysis shows a nexus between the conduct and fitness to teach, it must also be determined that the alleged conduct shows *evident* unfitness for service. (*Morrison, supra*, at p. 1445 [emphasis added].) “Evident unfitness for service” means clearly not fit for teaching, ordinarily by reason of *temperamental defects or inadequacies*; it connotes *fixed character trait*, presumably not remediable merely on receipt of notice that one’s conduct fails to meet expectations of the school district. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 [emphasis added].)

Evaluation and Conclusion

10. The district focused its case almost entirely on the viral nature of the posts, and how various people – from school administrators to community members – “felt” about the thread and the ensuing disruption on campus the day after the Facebook thread went viral. There was also evidence to the contrary, both by way of character testimony, e-mails, the letter from Mr. Monge, and other letters in the submitted exhibits, that showed support for the teachers who commented on Mr. Greer’s Facebook thread. The evidence definitely showed that reasonable minds may differ as to the nature of Mr. Baugh’s post. However, reaching a decision in this matter does not mean looking at how many people felt his

comment was inappropriate versus how many people did not. Nor does it require determining which version has more supporters. Rather, the question in this case is whether Mr. Baugh's single Facebook comment on Mr. Greer's Facebook thread on February 16, 2017, and his choice of Halloween costume on October 30, 2015, constituted immoral conduct or evident unfitness for service, warranting his dismissal. For the reasons discussed below, a preponderance of the evidence did not establish that Mr. Baugh's conduct on either occasion constituted immoral conduct or evident unfitness for service.

EVIDENT UNFITNESS FOR SERVICE

11. Once the Facebook thread was discovered, it went viral. Parents, students, teachers, immigrant groups, civil rights organizations, and community members became upset about the overall content of the Facebook thread. The incident also gained widespread media attention. Eventually, Mr. Greer deleted the original post, as he explained it, to "mitigate any further damage," and posted a public apology in its place, apologizing for the "harsh tone" and "hurtful structure" of the original post, which he understood came across in an unfortunate manner.

Shortly after the Facebook thread went viral, the district began receiving e-mails and phone calls from a variety of individuals expressing their anger about the Facebook thread. Two classrooms were vandalized.

On February 17, 2017, the day after the Facebook thread went viral. The district ensured there was a large presence of administrators and teachers on the RHS campus to alleviate any potential problems. Counselors were made available to students and staff. Talking points were distributed to staff in order to allay any potential problems. Nonetheless, school district operations were interrupted by a student walkout from regularly scheduled classes after lunch. During the walkout, several hundred RHS students left the campus without permission. They blocked streets and almost damaged a school gate. They tried to replace the American flag with a Mexican flag. They pushed on a perimeter gate with such force that administrators felt they had no choice but to open the gates to let the students into the street to continue their march. A majority of the students who comprised the approximately 1,600 total student body at RHS, however, remained on campus and did not partake in the disruption. Most certainly, the reaction to the Facebook thread affected both the school and the district's ability to provide educational services on February 17, 2017.

However, the impact of the conduct alone does not determine whether a teacher is unfit to teach. Rather, what matters is whether the conduct meets the legal criteria for evident unfitness for service. As a threshold matter, the factors mentioned in *Morrison* and *Jack M.* must be considered to determine whether there is a nexus between the conduct and fitness to teach.

There was a lot of notoriety surrounding this incident and there was an impact on the students because of the *overall* Facebook thread – which Mr. Baugh was a part of. Mr. Baugh's

comment could be construed as adversely affecting students and teachers to the extent that his comment was contained in a Facebook thread that contained other questionable comments directed against immigrants. Teachers and district personnel were also affected because they had to modify their schedules to tend to the problems that arose following the Facebook incident. Given the demographics of the district, Mr. Baugh should have anticipated some backlash about commenting on a Facebook thread that contained arguably insensitive remarks about immigrants, or at least against persons participating in the protest event. There were no aggravating circumstances or bad motives; to the contrary, Mr. Baugh's credible testimony established he did not intend to say anything other than what the conditions were like in his class that day. Mr. Baugh is a science teacher; political issues are unlikely to arise in his class. Mr. Baugh's testimony showed he learned from this incident, and had he known of the repercussions that would follow, he would not have posted his comment on the Facebook thread. Enough of the criteria in *Morrison* and *Jack M.* are satisfied to show a nexus between Mr. Baugh's conduct (the posting of a Facebook comment) and fitness to teach.

However, the analysis does not stop after finding a relationship between the conduct and fitness to teach. *Evident* unfitness for service must be demonstrated – and here, it was not. Mr. Baugh has been teaching for over 20 years. He acts as the announcer for the school soccer games and football games. He has had no formal discipline his entire career.⁵ R█████ A█████ said Mr. Baugh's class was a "good class." M█████ G█████ said she liked the way he taught science class. J█████ F█████ described Mr. Baugh as a "great teacher." L█████ G█████ noted Mr. Baugh's passion for teaching and that he made high school memorable for her. E█████ J█████ described Mr. Baugh as the kind of teacher every student should have. None of his students ever heard him say anything inappropriate concerning immigrants. To the contrary, his most recent evaluations stated that he promotes a "climate of fairness and respect" and "draws on and values students' backgrounds, interests and developmental needs." His evaluations contained glowing commentary and show Mr. Baugh either met or exceeded the professional standards of a teacher. There was no evidence that Mr. Baugh has treated any group of students differently than other students at any time in his career, or otherwise engaged in discrimination or maltreatment of students in his classroom.

Mr. Baugh made a single post on a Facebook thread, which did contain some other arguably derogatory comments. His comment, however, was made on his personal time, on his personal computer, on his private Facebook account, after school hours. His comment did not disparage any student. It did not comment on any student activities. It did not comment on student race. It did not express agreement with any inappropriate comments. His comment did not contain strong language or other questionable material that showed an inappropriate temperament, an undesirable character trait, corruption, depravity, moral

⁵ The district attempted to raise what it alleged were examples of poor judgement that were not alleged in the Statement of Charges and fell outside the scope of the four-year rule set forth in Education Code section 44944, subdivision (b)(2)(A), in order to show a pattern of poor judgement. Respondent objected based on the four-year rule. The objection was sustained and questioning regarding anything that pre-dated the Statement of Charges by four years was not permitted.

indignation for any class of persons, or contain any material that suggest Mr. Baugh is unfit to teach science or drama. Nothing in his comment expressed racism or discrimination.⁶

Simply put, while several of the factors set forth in *Morrison* and *Jack M.* arguably may have been satisfied, thus establishing a nexus between the comments and the fitness to teach, ultimately, a preponderance of the evidence did not establish that Mr. Baugh's single comment on the Facebook thread were attributable to a temperamental defect, inadequacy, or a fixed character trait not remediable merely on receipt of notice that one's conduct fails to meet expectations of the school district. In other words, he was not shown to be unfit, not adapted to a purpose, unsuitable, incapable, incompetent, or physically or mentally unsound to continue teaching. Thus, his comment did not constitute evident unfitness for service.

12. Similarly, a preponderance of the evidence did not establish that Mr. Baugh's choice of Halloween costume on October 30, 2015, constituted evident unfitness for service.

In looking at the factors set forth in *Morrison* and *Jack M.*, there is not a nexus between Mr. Baugh's choice of Halloween costume and his fitness to teach. Although there was a likelihood that the conduct may have adversely affected students or fellow teachers because it glorified a character that was known for illicit drug activity, no evidence showed that any students were exposed to Mr. Baugh handing out the rock candy. Although Mr. Baugh should have anticipated that his costume on a high-school campus would not be well-received, it appeared that the only people who did not like his costume were the administrators; the students were familiar with the character and liked his costume. There were also no extenuating or aggravating circumstances and Mr. Baugh's testimony did not establish any improper motive. The costume did not interrupt the educational process, did not achieve notoriety or publicity, did not impair teachers' and students' relationships, and did not disrupt the educational process. Even if the *Morrison* and *Jack M.* factors did show a nexus between the conduct and fitness to teach, however, the conduct still did not constitute *evident* unfitness for service for the reasons discussed below.

The Walter White character Mr. Baugh depicted was notorious in popular culture at the time and easily identifiable based on his appearance. Mr. Baugh is the spitting image of the character, which people on campus had pointed out to him. Although he had rock candy that simulated an illicit drug, he passed the candy out to other adults, and there was no evidence that the rock candy was ever seen by students. There was no evidence that it was inappropriate for a RHS teacher to dress up for Halloween, or that he violated any district policy by wearing a costume. Although dressing up as a character who is a drug dealer reflected questionable judgment on Mr. Baugh's part, the fact that Mr. Baugh physically

⁶ Merriam-Webster defines "racism" as "a belief that race is the primary determinant of human traits and capacities and that racial differences produce an inherent superiority of a particular race." Merriam-Webster defines "discrimination" as "the act of making or perceiving a difference." Despite the characterization of Mr. Baugh's single comment about class size on February 16, 2017, by several witnesses as "racist" and "discriminatory," the plain language of the comment contained no racist or discriminatory language.

resembled the character and was also a high school science teacher provides some explanation for why Mr. Baugh thought the costume was appropriate. When told to go home and change because the school felt it was promoting drug use, Mr. Baugh did. In sum, a preponderance of the evidence did not establish that the conduct surrounding his choice of costume was attributable to a temperamental defect, inadequacy, or a fixed character trait not remediable merely on receipt of notice that one's conduct fails to meet expectations of the school district.

IMMORAL CONDUCT

13. A preponderance of the evidence also did not establish that Mr. Baugh's comments constituted immoral conduct. Again, while he may have used poor judgement in participating in a Facebook thread that contained other questionable comments, for the same reasons discussed above, his decision to post his single comment about conditions in his classroom on February 16, 2017, was not flagrant, shameless, inconsistent with public decency, or reflective of a moral indifference to the opinions of others.

14. Similarly, a preponderance of the evidence did not establish that Mr. Baugh's choice of Halloween costume on October 30, 2013, constituted immoral conduct. Certainly, given the impressionable youthful population present in Mr. Baugh's place of employment, choosing to portray a character that violates the law was not in keeping with the good judgement expected of professional educators. Mr. Baugh thought the costume was clever and creative, and it was – for a Halloween party or some location other than a high school campus. Notwithstanding his questionable judgement, however, Mr. Baugh's conduct surrounding his choice of costume was not flagrant, shameless, inconsistent with public decency, or reflective of a moral indifference to the opinions of others, and that is what must be proven to sustain a charge of immoral conduct.

Conclusion

15. The academic environment brings students and teachers together from a variety of personal, professional, and political backgrounds. Inevitably, students will have classes with teachers who may disagree with them personally, politically, and professionally. Given the diverse and multicultural population of any school district, and the unique position a teacher holds in society, it is important for teachers to be cognizant of the impact their personal speech outside the classroom may have on the population they serve. With respect to social media, teachers need to use discretion and good judgment should they decide to engage in social media interactions. The same principle applies to a choice of Halloween costume, should a teacher decide to partake in on-campus Halloween festivities.

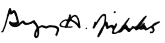
The choice the district gave the Commission was to dismiss Mr. Baugh from his employment or dismiss the charges entirely. There was no room to choose a suspension or other remedial measure. Given that a preponderance of the evidence did not establish that Mr. Baugh's conduct was either immoral or rendered him evidently unfit to serve, cause does

not exist to dismiss Mr. Baugh pursuant to Education Code sections 44932, subdivisions (a)(1) or (a)(6).

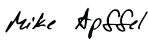
ORDER

The Statement of Charges against Charles Baugh is dismissed.


DATED: November 16, 2017

DocuSigned by:

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GREGORY NICHOLAS
Science/STEM Coordinator and Certificated
Science Teacher and Administrator
Riverside County Office of Education

DATED: November 16, 2017

DocuSigned by:

F2B38114BF2E4A6
MICHAEL APFFEL
Teacher on Special Assignment/Certificated
Science Teacher
Hemet Unified School District

DATED: November 16, 2017

DocuSigned by:

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KIMBERLY J. BELVEDERE
Administrative Law Judge
Office of Administrative Hearings