

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS AND THE
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE
RIVERSIDE UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Dismissal of:

CANDICE REED, Respondent

OAH No. 2022030360

DECISION

This matter was heard before the Commission on Professional Competence by videoconference and telephone on October 24 through 28, 2022. The Commission was comprised of the following members: Administrative Law Judge Debra D. Nye-Perkins, Janice Cloward, and Amar Samet.

Christopher D. Keeler, Attorney at Law, Fagen, Friedman & Fulfroost, LLP, represented the Riverside Unified School District (district).

Carlos R. Perez, Attorney at Law, Law Offices of Carlos Perez, represented respondent, Candice Reed.

On November 17, 2022, the Commission met to deliberate, and the matter was submitted.

PROTECTIVE SEALING ORDER

The names and images of all minor students referred to in this matter are confidential and subject to a protective sealing order. Several witnesses who testified were also minor students. The documents received as evidence in this matter that contain the name of a student have been redacted to remove the student's name. No court reporter or transcription service shall transcribe the names of the student witnesses or student names mentioned in testimony but shall instead refer to each student by their corresponding initials as set forth in the Confidential Names List marked and received into evidence under seal as Exhibit 115. To protect privacy and confidential personal information from inappropriate disclosure, a written Protective Order Sealing Confidential Records was issued. The order lists the exhibits ordered sealed and governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys may review the documents subject to the order, provided that such documents are protected from release to the public.

CASE SUMMARY

Ms. Reed was employed by the district for almost 19 years at John W. North High School ("North") where she taught Mathematics beginning in the 2002-03 school year. On October 19, 2021, during three of her math classes, Ms. Reed performed a skit where she portrayed a "little Indian boy" on a quest as a mechanism to teach a trigonometry concept. One of the three skits she performed on that day was recorded on video by a Native American student, who disseminated the video and showed the video to his father, who in turn brought it to the attention of the administrative staff of North. As a result, the school administration at North investigated. During the

investigation, the district discovered Ms. Reed had performed the same skit in her mathematics classes for many years. Additionally, the video of the skit went viral on social media and created and received international media attention resulting in multiple protests at North and the district. Ms. Reed's conduct was harmful to many students and created a divisive environment at North. The Commission found that Ms. Reed's actions constituted immoral conduct, and persistent violations or refusals to obey regulations and district policies. The Commission did not find that Ms. Reed's actions constituted evident unfitness for service. Based upon the evidence presented, the Commission concluded that the allegations were sustained and warranted Ms. Reed's dismissal from the district.

FACTUAL FINDINGS

Jurisdictional Matters

1. Ms. Reed was employed by the Riverside Unified School District as a high school teacher in the subject of Mathematics beginning in August 2002. During the time of the alleged incidents, she worked at North.

2. On October 19, 2021, Ms. Reed was placed on paid administrative leave from her position at the district.

3. Kiley K. Ybarra, the district's Assistant Superintendent of Personnel, signed the Notice of Intent to Immediately Suspend and to Dismiss; Statement of Charges on February 3, 2022, in her official capacity. The notice set forth the facts and laws on which the district was relying and sought to immediately dismiss Ms. Reed from employment with the district on the grounds of immoral conduct (Education Code section 44932, subdivision (a)(1)), evident unfitness for service (Education Code

section 44932, subdivision (a)(6)), and persistent violation or refusal to obey regulations and district policies (Education Code section 44932, subdivision (a)(8)).

4. On May 9, 2022, Ms. Ybarra signed the First Amended Notice of Intent to Immediately Suspend and to Dismiss; Statement of Charges in her official capacity. The notice set forth the facts and laws on which the district was relying and sought to immediately dismiss Ms. Reed from employment with the district on the same grounds as alleged in the February 3, 2022, Notice of Intent to Immediately Suspend and to Dismiss; Statement of Charges.

5. In the Statement of Charges as set forth in the First Amended Notice of Intent to Immediately Suspend and to Dismiss; Statement of Charges, the district alleged that on August 3, 2020, Ms. Reed had completed training provided by the district entitled "Culturally Responsive Pedagogy," and thereafter on October 19, 2021, Ms. Reed performed a "skit" in which she portrayed a "Little Indian Boy," while chanting the trigonometric mnemonic "SOH CAH TOA" wearing a headband with paper feathers, making a "tomahawk" chopping motion with her hands, yelling and stomping or dancing around the classroom, and climbing on furniture. Ms. Reed performed this same skit in three of her classes on October 19, 2021. A Native American student in one of those classes recorded about six minutes of the skit and was deeply offended by the skit. On October 19, 2021, the Native American student's father showed the video to administrators at the school site, who immediately contacted Ms. Reed and met with her. During that meeting Ms. Reed "did not seem to understand that the 'skit' was problematic." On October 20, 2021, a video clip from the Native American student's recording went "viral" after it was posted on Instagram. Thereafter, more video recordings by students of the skit were posted on social media. Video of Ms. Reed's skit was reposted several times on social media, including by an

“influencer” and has been seen hundreds of thousands of times. The videos gained local, national, and international media attention. The district noted that “it was discovered,” and publicized, that Ms. Reed had been performing this skit in her classrooms for many years, dating back to 2012. There were multiple protests at the school site and district office, comments made by the public at governing board meetings, and thousands of emails, voicemails, and telephone calls to the district, many of which demanded the dismissal of Ms. Reed as a result of the skit.

The Statement of Charges further alleges that Ms. Reed’s conduct by performing the skit has negatively affected her relationship with North students, administration, and the community; her conduct was detrimental to the mission and function of the district and wellbeing of students; her conduct, which was repeated over many years, created a hostile environment on the basis of race and ethnicity, in violation of board policies and the Education Code.

6. Ms. Reed timely appealed the suspension and dismissal action, denying that grounds for her suspension and dismissal from employment existed, and this hearing followed.

Motions in Limine

7. The parties filed motions in limine and oppositions thereto. Tentative rulings were issued on August 8, 2022, and the parties were allowed to orally argue their positions at the start of trial. After providing opportunity for oral arguments, final rulings were issued consistent with the tentative rulings.

The District's Evidence

8. The district called 13 witnesses at the hearing and provided video recordings of the October 19, 2021, skit by Ms. Reed taken by a student in her classroom, multiple videos of board meeting public comments, and voluminous documentary evidence, including news articles, emails and transcripts of voicemails received by the district and North by members of the community and public. The following factual findings are based upon the testimony of the witnesses, as well as video and documentary evidence related to that testimony.

VIDEO OF MS. REED'S SKIT ON OCTOBER 19, 2021

9. Three video recordings of Ms. Reed's October 19, 2021, skit in her classroom were received into evidence. The videos show Ms. Reed dressed in patterned pants and wearing a paper head dress with multiple paper feathers while stomping, dancing, and walking around the classroom. It also shows the use of an overhead projector that has a hand drawing of a stick figure with a headdress and feathers. She tells a story of a "Little Indian Boy" who is "out in the wilderness," and is praying to the water goddess for the "secret Indian chant," and states, "obviously this is ridiculous." During the dancing and stomping she was loudly chanting "SOH CAH." At one point she gets on top of furniture and starts stomping and chanting loudly "SOH CAH." Then she jumps off the furniture and starts screaming "SOH CAH" while hopping to the front of the classroom. Then Ms. Reed acts as if she stubbed her toe and screams that she "just hurt my TOA." Thereafter, Ms. Reed sits on her knees on top of her desk with her arms spread and up while praying in a loud singing voice to a god to "give me the secret." Ms. Reed then gets off the desk and walks to a corner of the room and states, "I just ran into the rock god," and she produces rocks that she stated the "rock god" gave to her. Ms. Reed then appears to pray to the rock god and states

that the mountain god told her "SOH," and the water goddess told her "CAH." Ms. Reed asked, "what do you have to impart upon me today?" Ms. Reed then states that the rock god told her "TOA." Then Ms. Reed starts to scream, "I can go home," and proceeds to say that she is going to "do tomahawks." She then uses her hands in a tomahawk chop motion. At that point, Ms. Reed starts to loudly chant "SOH CAH TOA" over and over while performing tomahawk chops with her hands and stomping around the classroom with her knees bent while moving both forwards and sideways. Ms. Reed then states that "eventually I get to go home, and I get all my feathers." Ms. Reed then states, "What does all this nonsense have to do with math?" She then explains the trigonometry mnemonic of "SOH CAH TOA."

10. During the videos while Ms. Reed is on top of a desk screaming and stomping, at least one student in the classroom can be seen hiding his face, putting his head on his desk, and generally appearing embarrassed. At the end of the video when Ms. Reed starts to explain the trigonometry mnemonic of "SOH CAH TOA," one student could be heard saying, "No way you did not," and Ms. Reed states, "I sure did."

TESTIMONY OF STUDENTS OF NORTH HIGH SCHOOL

11. ZHW is a 14-year-old student at North and is in the 10th grade. She was in the ninth grade in 2021, and she had Ms. Reed as a math teacher in first period class that year, which is one of the classes in which Ms. Reed performed the skit described above. ZHW testified that she and the class had just finished a quiz in Ms. Reed's classroom when Ms. Reed began to perform the skit. ZHW was present in the same classroom as the Native American student who recorded the videos admitted into evidence in this matter. ZHW testified that Ms. Reed's "demonstration was racist" and "had a lot of offensive stereotypes," such as playing the part of a "Little Indian Boy," talking about nature, and praying to the rock, water, and mountain gods with chanting

and dancing. ZHW testified that prior to performing the skit, Ms. Reed instructed the class to “not record the class” after they took their quiz. ZHW stated that this was the first time she had ever heard Ms. Reed explicitly instruct the class to not record her lesson. ZHW testified that the skit made her feel “uncomfortable to be a part of it” and she “did not want to go back to the class the next day.” On October 19, 2021, ZHW went to “Mr. Brown’s office,” whom she identified as an athletic director at North, and provided a written statement of what she saw in class that day. The written statement was received in evidence and mirrored ZHW’s testimony at the hearing.

12. CO is a 15-year-old 10th grade student at North High School. In 2021 he was a ninth-grade student. On October 19, 2021, he was in Ms. Reed’s second period math class, which is one of the three classes in which Ms. Reed performed the skit that day. CO testified that after taking a quiz in Ms. Reed’s class that day, Ms. Reed instructed the class to put their phones away and not to record what she was about to do, which is something she had never done before. Thereafter, Ms. Reed performed the “Little Indian Boy” skit to teach the trigonometry mnemonic “SOH CAH TOA.” CO described Ms. Reed’s “performance” of the skit as “a crude depiction of a Native American boy trying to search for something.” CO stated that Ms. Reed “began to chant and run around the room” wearing a paper headdress with paper feathers on it. She made reference to a water goddess and a secret Indian chant. CO testified that he was “shocked and disturbed” by Ms. Reed’s skit, and he thought “it was not real at first.” CO stated that he did not process what had happened until he was out of Ms. Reed’s class that day. After Ms. Reed’s class, CO spoke with friends who were also in the class and those friends all had similar reactions. During the lunch period that day, CO visited a school counselor, Mr. Keys, along with another student with initials DAP, who was not in Ms. Reed’s class but whom CO had told about Ms. Reed’s skit, in order

to inform Mr. Keys about Ms. Reed's skit. CO stated that he had a video recording of Ms. Reed's skit with him that he showed and provided a copy to Mr. Keys.

CO testified that while many students expressed to him that they were disturbed by Ms. Reed's skit, some students were not bothered by it and told him it was funny, and that CO and others were simply "overreacting and sensitive." CO stated that he did not understand how mocking another culture could be funny. CO testified that as a result of Ms. Reed's skit, there were protests at North, and he believes the incident tarnished North's reputation. CO stated that Ms. Reed's skit changed the way he thought of Ms. Reed and her class. CO said that prior to the skit, he thought Ms. Reed was a good math teacher, but after the skit he was surprised and "did not expect something like this to happen." CO believes that Ms. Reed should not continue to be employed at North because all of the negative media attention and protests that resulted from Ms. Reed's skit will get worse if she returns to North.

13. LGA is a 15-year-old student at North. On October 19, 2021, LGA was in Ms. Reed's third period math class, which is one of the classes in which Ms. Reed performed the skit. LGA testified that prior to performing the skit in her class, Ms. Reed asked the students to put their phones away and not to record her, which is something that Ms. Reed had not done before. LGA described Ms. Reed's skit as "ultimately offensive." LGA stated that Ms. Reed was playing a Native American boy who was worshiping gods, including the rock god, mountain god, and water goddess. Ms. Reed was doing a "tomahawk chop" and dancing around the room. LGA stated there were Native American students in the classroom when Ms. Reed was performing the skit, and LGA believed that Ms. Reed was "making fun of their culture." LGA was "embarrassed" by what Ms. Reed was doing, and described Ms. Reed's skit as "wrong," because it was "racist and made fun of Native Americans." LGA stated that some of her

friends who were also in Ms. Reed's class told LGA that they were uncomfortable when Ms. Reed performed the skit. LGA witnessed protests at North as a result of Ms. Reed's skit and saw Native Americans demanding that Ms. Reed be fired. Prior to the skit, LGA thought that Ms. Reed was a good math teacher. After the skit, LGA does not want Ms. Reed to return to North because she does not want her to repeat her offensive conduct. LGA stated that after Ms. Reed's skit, LGA learned through a yearbook photo that Ms. Reed had performed the skit in years past. LGA believes there are far less offensive ways to teach the trigonometry mnemonic than the skit Ms. Reed performed.

14. DAP is a 15-year-old student at North, who identifies as Native American and Indigenous. DAP never had Ms. Reed as a teacher and has not been in any of Ms. Reed's classes. However, DAP learned about Ms. Reed's skit from two other students who were in Ms. Reed's classroom during the time she performed the skit, namely CO and another student. DAP received three videos of Ms. Reed performing the skit in her classroom, and she viewed those videos on October 19, 2021. DAP was shocked when she saw Ms. Reed's actions in the video and felt embarrassed "about my culture," and very uncomfortable. DAP stated that she believed Ms. Reed was mocking Native Americans with the skit by using a paper headdress with paper feathers, dancing around and chanting, and praying to a rock god, water god, and mountain god. DAP explained that Native Americans do not believe in a rock god, water god, or mountain god. Furthermore, the headdress worn by Native Americans has a meaning within their culture and is not a costume. DAP believes that Ms. Reed's lesson is very racist and poses a danger to Native Americans by mocking their culture. DAP was aware of protests at the school as a result of Ms. Reed's skit. DAP believes that Ms. Reed should not return to North "because this is still a known thing and will be for a long time." DAP believes that Ms. Reed should be punished for "mocking an entire race of people."

15. LNA is a 15-year-old student at North. On October 19, 2021, LNA was in Ms. Reed's second period math class, which is one of the classes in which Ms. Reed performed the skit. LNA stated that prior to the skit, the students were taking a quiz and during that time LNA noticed a stick figure drawing of a little boy with a feather headdress on the overhead projector. After the quiz, Ms. Reed told the class that she would be doing "an act" about a trigonometry lesson and told the class to put away their phones, did not want to see anyone recording her, and did not want to see any recordings on social media. Thereafter, Ms. Reed put on a paper headdress with paper feathers, started to chant the words SOH CAH TOA, and went around the room "in different stations," one station each for the rock god, mountain god, and water god. LNA testified that while Ms. Reed was performing the skit, LNA "was mortified" because other students in the classroom appeared shocked. LNA stated that "it did not fully click what had happened until hours later when she saw the video on social media." LNA stated that immediately after Ms. Reed's class, several students were talking about the skit, one student told her that they thought the skit was normal because the student's sibling had Ms. Reed's class in earlier years and she performed the skit then, too. LNA was disturbed that the school had allowed Ms. Reed to perform this skit for many years because she thought it was offensive. LNA believes that the skit was racist and hurtful to Native Americans because Ms. Reed was making fun of Native Americans.

LNA testified that in 2021 she was the freshman class president, and the school's student government has a social media account on Instagram for North, which LNA was running, along with two other students, for the freshman class. As a result of Ms. Reed's skit, the student government Instagram account received a substantial amount of "hate comments" directed towards North. Most of the comments alleged that North was racist. As a result of the deluge of hate comments,

all of the school's social media account's comments sections had to be turned off "for our safety and mental health." LNA also noted that there were protests at North as a result of the skit, which LNA stated got "more and more out of hand," and directed "hate towards the students of the school." LNA felt concerned for her safety and saw more and more threats online as a result of the skit. LNA stated "there was a point where I did not want to come to school or cheer at football because I felt safer when I was away from school." LNA stated that the teachers and staff at North tried to make the students feel safe, and also conducted a number of "listening circles" with students to hear what they had to say and to "help relieve the anxiety" students had about Ms. Reed's skit and its impacts. LNA does not believe that Ms. Reed should return to her job at North because what she did "was very hurtful to a lot of people," and because if Ms. Reed returns there will be people who will cause safety concerns because they want to "get back" at the school.

TESTIMONY OF EMPLOYEES OF THE DISTRICT

16. Jodi Gonzales is currently employed as the Principal of North, a position she has held for the past three years. Prior to this position, she worked as the Vice Principal of Riverside High School, as the Assistant Principal of Ramona High School, as an Instructional Specialist at the district office, and as a Spanish teacher at Ramona High School. Ms. Gonzales has worked for a total of 19 years in an administrative role for the district. Ms. Gonzales explained that North has about 2,150 students, who are demographically about 72 percent Hispanic, 11 percent African American, and about nine percent are Caucasian with the remainder of students falling into categories of Pacific Islander, Asian, and Other. Ms. Gonzales stated that North has approximately 54 students currently who identify as Native American. About 13 percent of the students

at North, approximately 350 students, are English language learners, and about 78 percent of the students at North qualify for free or reduced cost school lunch.

Ms. Gonzales first learned about Ms. Reed's October 19, 2021, skit from the Assistant Principal of North, Eric Johnson, who brought it to her attention at almost noon on October 19, 2021. Mr. Johnson learned about the skit from Mr. Keys, who received the information from the complaints of CO and DAP. After learning of the skit, Ms. Gonzales and Mr. Johnson went to Mr. Keys to obtain the names of CO and DAP so they could speak to them. After the lunch break, Ms. Gonzales came back to her office to find a parent, Robert Perez, waiting for her. Mr. Perez informed Ms. Gonzales that his son is in Ms. Reed's class and recorded the skit, which Mr. Perez described as racist. Mr. Perez showed Ms. Gonzales the skit on the phone belonging to the student. Mr. Perez had stopped to see Ms. Gonzales on his way to work and had to leave to go to work. Ms. Gonzales asked Mr. Perez to stop by the school after work so they could continue their conversation about Ms. Reed's skit. Ms. Gonzales then contacted a student who had been in Ms. Reed's first period class and asked the student what happened. The student told Ms. Gonzales about Ms. Reed's skit and had a copy of a video recording of the skit on the student's phone. Ms. Gonzales obtained a copy of that video from the student. Ms. Gonzales then called the district's Assistant Director of Personnel to explain the situation with Ms. Reed's skit. The Assistant Director of Personnel instructed Ms. Gonzales to send him a copy of the video by email and to go to Ms. Reed's classroom to make sure she was not performing the skit. Ms. Gonzales explained that at this time it was the sixth period class. After she sent the email with the video to the Assistant Director of Personnel, the Superintendent of Personnel, Ms. Ybarra, called Ms. Gonzales and informed her that she, the Assistant Director of Personnel, and the Riverside City Teacher Association (RCTA) President, Laura Boling, would be coming to North that day to meet with Ms. Reed.

While those listed district employees were driving to North for the meeting with Ms. Reed, Ms. Gonzales went to Ms. Reed's classroom to tell her to go to Ms. Gonzales's office for the meeting. When Ms. Gonzales saw Ms. Reed, she told her that the district had concerns regarding instruction in classes that day. Ms. Gonzales testified that Ms. Reed immediately looked at the ceiling, sighed, and said "SOH CAH TOA." Ms. Gonzales stated that she took Ms. Reed's reaction to mean that she was frustrated that Ms. Gonzales was speaking to her about the lesson. Ms. Gonzales walked Ms. Reed to Ms. Gonzales's office for the meeting. While waiting for the others to arrive, Ms. Reed began to explain the SOH CAH TOA lesson to Ms. Gonzales and told her, "I have been doing that lesson ever since I started working here." Ms. Gonzales told Ms. Reed to stop talking and wait for the others to arrive to discuss the issue. After the others arrived and the meeting started, Ms. Ybarra led the meeting and explained to Ms. Reed that the district was concerned about the skit she did in class that day, and that Ms. Reed would be placed on administrative leave while the district investigated. Ms. Reed responded by asking if that was really necessary and, "Is this that serious?" According to Ms. Gonzales, Ms. Reed did not seem to understand the seriousness of the situation or the reason she was being placed on leave. Ms. Gonzales stated the meeting lasted about 15 minutes, and she told everyone in her office she was expecting a parent to arrive for a meeting, and they all needed to be gone before the parent arrived.

Mr. Robert Perez came back to Ms. Gonzales's office at 4:30 p.m. after he got off from work, and they continued their conversation regarding Ms. Reed's skit. According to Ms. Gonzalez, Mr. Perez was upset and stated that his son was also very upset. Mr. Perez and his family identify as Native American. Mr. Perez asked Ms. Gonzales what the district was going to do about having "a racist teacher" on campus, and that his son took the video while he was in Ms. Reed's class. Ms. Gonzales told Mr. Perez that

his son “could get in trouble for recording the video of Ms. Reed without her knowledge.” Mr. Perez responded by telling Ms. Gonzales, “If that is the way the district was going to deal with it then he would sue the district.” Ms. Gonzales clarified that she had no intention of “sweeping the matter under the rug.”

Ms. Gonzales also interviewed Mr. Perez’s son, IP, the next morning during first period. According to Ms. Gonzales, IP told her that Ms. Reed had a drawing of a stick figure of an Indian boy on the overhead projector and she did a skit portraying a Native American, which upset him very much because he felt he was being humiliated. IP took the video of Ms. Reed during the skit. Ms. Gonzales explained that on October 20, 2021, she and the Assistant Principals, Mr. Johnson and Mr. Brown, began to interview the students who were in Ms. Reed’s classrooms the day before. Ms. Gonzales stated that the three of them had been given questions on a form from the district’s Personnel Department for the students so that they would all be asked the same questions. Mr. Johnson and Mr. Brown took notes on those forms to record the student’s answers to the questions. All of those forms were received in evidence. Most of the students indicated that the skit Ms. Reed performed was inappropriate, disrespectful, and made them feel uncomfortable or embarrassed.

On October 20, 2021, Ms. Gonzales learned that the recorded video of Ms. Reed performing the skit in her classroom had been posted to social media and had “gone viral.” Ms. Gonzales looked up the social media posting on Instagram and saw that the video had been viewed “many times” and there were over 20,000 comments to the video. Ms. Gonzales began receiving telephone calls, voice mails, and emails from people outside of the district about the viral video of Ms. Reed’s skit. Ms. Gonzales stated that she stopped counting the number of voice mails and emails she received after she received about 7,000 or so. Additionally, on October 21, 2021, people from

the community gathered in front of North on the sidewalk with flags and signs protesting the video. Ms. Gonzales reached out to the district to request additional resources of school officers and Riverside Police Department as a result of the protest because she was concerned about student and staff safety. The students of North also wanted to participate in the protest and were planning on walking out of school at noon to join the protesters. Ms. Gonzales was very concerned about students leaving campus for the protest because the district cannot control the students' safety if they leave campus. As a result, Ms. Gonzales met with students from the student government and a multicultural council teacher to get the message to all students that if they wanted to join the protest at noon, they were free to do so but to please not leave campus and stay on school grounds. Ms. Gonzales stated that her strategy was successful and at noon about 100 students walked out in protest and met on the school grounds on "the hill" to form a "unity circle" to meet and share their thoughts.

As a result of the video going viral, Ms. Gonzales received emails and phone calls from the public "nonstop" for the next two weeks. Ms. Gonzales stated that she had to devote all of her time for the next two weeks "all day, every day" dealing with the fallout from the viral video of Ms. Reed's skit. Ms. Gonzales also participated in two unity circles with classes in those weeks that followed the skit, and another unity circle was conducted by teachers at North. Ms. Gonzales stated that the time she spent on the issue of Ms. Reed's skit became less and less until December 2021 when the calls and emails again started pouring in until about February 2022.

Ms. Gonzales testified that Ms. Reed's skit impacted the students at North in a negative way, including Ms. Gonzales's daughter who was in Ms. Reed's first period math class on October 19, 2021. The school prides itself on diversity, inclusivity, and openness, but when the video of Ms. Reed's skit went viral, a lot of students were hurt,

upset, and angry because the video negated those values. Ms. Gonzales also believes that Ms. Reed's skit had a negative impact on the school's reputation as shown by the plethora of emails and voicemails she received from the community. Ms. Gonzales's own daughter also suffered as a result of the skit and reading comments on social media about it.

Ms. Gonzales stated that she has serious concerns about Ms. Reed returning to North because "she disgraced our culture," "damaged the school," "ridiculed students," and caused harm to the students and staff of the school. Ms. Gonzales does not believe that the community or the students will welcome Ms. Reed back to North. If Ms. Reed is welcomed back to North, Ms. Gonzales is concerned about what message that will send, specifically that Ms. Reed's skit was okay, when in fact it was not. Additionally, Ms. Gonzales is concerned that Ms. Reed will "do something like this again" because Ms. Reed "did not take the time to understand our diverse community and student body." According to Ms. Gonzales, Ms. Reed has never apologized to the students or to North for the skit.

Ms. Gonzales also testified that while she has worked at North for the past six years, she never learned that Ms. Reed had been using the skit as a lesson in previous years. Ms. Gonzales explained that the North yearbook is created by the students in a specialized class just for that purpose with the oversight of a teacher. It is designed and published by the students with the supervision of a teacher. No member of the school administration oversees the yearbook or reviews it. Ms. Gonzales did not learn that Ms. Reed was pictured in the school's yearbook wearing a headdress from the SOH CAH TOA lesson until after the video of her skit when viral and Ms. Gonzales read comments on social media about the yearbook. After learning this, Ms. Gonzales reviewed the yearbooks from previous years and saw the 2012 yearbook had the

photo of Ms. Reed wearing a headdress on a page with other photographs of teachers teaching lessons. Prior to October 2021, Ms. Gonzales had never known about Ms. Reed's SOH CAH TOA skit.

17. Kyley Ybarra is currently employed by the district as an Assistant Superintendent of Personnel, a position she has held for the past seven years. Her current job duties include employee discipline in the district. Prior to this position she worked for the district in many roles including as the Director of Certificated Personnel, Principal of both elementary and middle schools in the district, and teacher for fourth to sixth grade special day class and general education. Ms. Ybarra has a bachelor's degree in psychology and a master's degree in counseling. She holds a multiple subject and clear pupil services teaching credentials, as well as a clear administrative credential.

Ms. Ybarra learned about Ms. Reed's skit on October 19, 2021, from the district's Assistant Director of Personnel who told her, "There is a situation at North High School, and you need to watch the video." After she watched the video of the skit sent to her, Ms. Ybarra shared the video with the Superintendent and Assistant Superintendent of Instruction and informed them she would go to North to have a conversation with Ms. Reed. Ms. Ybarra testified that when she first saw the video, she thought that Ms. Reed was under the influence of drugs or alcohol, but the more she watched the video she realized Ms. Reed was not under the influence of drugs or alcohol, but the skit was a planned lesson. Ms. Ybarra contacted Laura Boling, Riverside City Teachers Association (RCTA) President, after seeing the video to ask her to go with Ms. Ybarra to meet with Ms. Reed so that Ms. Reed would have a representative from the teacher's union present. Ms. Ybarra, Ms. Boling, and others met at North with Ms. Reed on October 19, 2021, and Ms. Ybarra asked Ms. Reed

about the SOH CAH TOA skit. According to Ms. Ybarra, Ms. Reed did not think that the lesson could be perceived as offensive, and Ms. Reed seemed almost annoyed at Ms. Ybarra being there to speak with her. Ms. Reed told Ms. Ybarra she had taught the lesson for years. Ms. Ybarra testified that Ms. Reed seemed to have no understanding or “sense of connection” as to how the video or the lesson could be offensive or harmful. At the meeting, Ms. Ybarra placed Ms. Reed on administrative leave and provided her with a letter by hand regarding that administrative leave. According to Ms. Ybarra, Ms. Reed did not seem to understand why she was placed on administrative leave, and repeatedly questioned the necessity of doing so.

The district conducted an investigation of the incident, which included an interview of Ms. Reed, which took place in December 2021. Ms. Ybarra interviewed Ms. Reed, and Michelle Cortez, Director of Personnel, took notes during the interview on a form that contained the questions Ms. Ybarra asked Ms. Reed. Additionally, a union representative was present at the interview of Ms. Reed. During the interview, Ms. Reed informed Ms. Ybarra that she had taught the skit for many years since she started teaching and the skit was the same as when she started, but she would “feed off the student’s comments and elaborate when needed” for entertainment effect. Ms. Reed admitted that she did not teach the skit in the year 2020 because the class was done by videoconference and the performance needed “to be in person.” Ms. Ybarra noted that the lessons given virtually in 2020 were all recorded, and those recordings could be accessed by parents. Ms. Reed told Ms. Ybarra that she obtained the skit from her master teacher named Kristy O’Rourke. When asked why she used the skit, Ms. Reed stated “simply because the students enjoy it.” Ms. Reed admitted that she asked students not to record her classroom instruction on October 19, 2021, and she said she did so because “I don’t mind being expressive for my students, but I don’t want to be super expressive for the world.” With regard to her request to students not

to record the skit, Ms. Reed stated, "I was wise in saying [not to record the lesson] but what happened still happened." Ms. Reed denied that the skit was racist and denied it was culturally insensitive. After seeing the video posted on social media, Ms. Reed still believed that she would "be fine" because she "was not malicious in any way," and she "was having fun with [her] students," with "no ill intent." Ms. Reed told Ms. Ybarra during the interview that she believed she could simply have a conversation with her students and have a staff meeting regarding the issue of the skit in order for her to return to North as a teacher. Ms. Reed also admitted during this questioning that she had completed the "culturally responsive training" provided by the district prior to the October 19, 2021, skit. District documentation demonstrating that Ms. Reed had completed that training on August 10, 2020, was received in evidence.

Ms. Ybarra testified that the video of Ms. Reed's skit went viral on social media, and Ms. Ybarra saw the video on numerous national news stations and in newspapers. Multiple news articles regarding the skit were received in evidence. Additionally, Ms. Ybarra witnessed protests at North, as well as at the district office regarding the skit. There were multiple protests at the district officer over Ms. Reed's skit. Ms. Ybarra also addressed the public comments regarding the skit made at district board meetings. Multiple videos of those board meeting comments were received in evidence.

After the investigation of Ms. Reed's skit, the district board recommended the immediate suspension and dismissal of Ms. Reed, and notification was given to Ms. Reed in a January 6, 2022, letter of that recommendation. Thereafter, a "*Skelly* meeting¹" took place on January 27, 2022, where the Statement of Charges were

¹ In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that in order to satisfy due process, an agency considering

provided to Ms. Reed, and Ms. Reed read a written statement. The written statement was received in evidence. Ms. Ybarra's role at the *Skelly* meeting was to act as the *Skelly* officer, a neutral party who hears the case and makes a determination and recommendation to the district board on whether to move forward with the charges. Ms. Ybarra presented the final version of the Statement of Charges against Ms. Reed at the February 23, 2022, to the district board, who approved those charges in closed session.

Ms. Ybarra testified that she does not believe Ms. Reed can return to North or to any other school in the district because the district has a "loss of confidence" in Ms. Reed, there has been "a ton" of media attention to this matter, which the district is still addressing, and because Ms. Reed's actions were racist and had a "huge negative impact" on the district and school. Ms. Ybarra believes in progressive discipline, but in this case the only appropriate discipline is dismissal.

18. Renee Hill is currently employed by the district as Superintendent of Schools, a position she has held for the past two years. Prior to this position, she worked for the district as the Chief Academic Officer. Ms. Hill was retired from 2017 to 2020, and prior to her retirement she worked for 20 years for the district as both a

disciplinary action against a public employee must accord the employee certain "pre-removal safeguards," including "notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." The Supreme Court's directive gave rise to an administrative procedure known as a *Skelly* hearing, in which an employee has the opportunity to respond to the charges upon which the proposed discipline is based.

teacher and in administrative roles. Ms. Hill holds both teaching credentials and administrative credentials. Her current duties include to oversee and direct the work of the district in all aspects and to interact with the community. Ms. Hill acts as the chief executive officer of the district and only reports to the board of the district.

Ms. Hill first became aware of Ms. Reed's skit on October 19, 2021, when it was brought to her attention by Ms. Ybarra. On October 21, 2021, the district had a meeting of the district board and at all board meetings there is a public comment portion to the meeting. During the October 21, 2021, district board meeting, the public comments focused on Ms. Reed, the skit, and its effect on North. Ms. Hill stated that the tone of those comments was critical of the district and Ms. Reed, and the commenters were angry and hurt. Ms. Hill stated that she also received thousands of phone calls, voicemails, and emails from the public regarding Ms. Reed's skit, most of which expressed anger and criticism of Ms. Reed and the district regarding the skit. Ms. Hill testified that the main phone system for the district was "flooded" with telephone calls regarding Ms. Reed's skit to the point where the system could not handle the number of phone calls incoming. As a result, the district had to hire extra people to handle all the calls, and the district created a log of voicemails related to the matter. Ms. Hill stated that the sheer number of telephone calls received impacted the district's ability to do other business. Additionally, the district received thousands of emails regarding Ms. Reed's skit, and initially the district had an automated email response to the emails received. Thereafter, the district did respond to some of those emails individually. Ms. Hill stated that all of this community feedback caused her to have concern for the safety of students of the district, school employees, and herself because many of the messages received were "menacing" and on some occasions people would push their way into the district building and refuse to leave until they spoke to Ms. Hill. Protests happened at North and at the district offices and many

students expressed their concern to Ms. Hill for their safety. If the students wore gear from North, they would be approached by members of the public and asked about the incident.

Ms. Hill went to North and spoke to students on October 25, 2021, as part of a listening session. Ms. Hill also had other listening sessions regarding Ms. Reed's skit. During those listening sessions she met with two classes, namely the student government class and the multicultural council class. She stated that she discussed with the students how they can return to the theme they had selected for that year, which was unity and reconnection. Ms. Hill did not meet specifically with parents from North, but she did meet with members of the community, including with her community advisory group as well as with leaders of the Native American community. Ms. Hill also took part in a joint meeting of the district governing board, State assembly members, and the public to give people a chance to speak and to figure out a way that the district could repair relationships with the community moving forward. Ms. Hill testified that Ms. Reed's skit affected students, staff, and the entire district community. She stated that the impact of that skit was felt nationwide, and also internationally. Ms. Hill received emails from all over the world. Ms. Hill spent hundreds of hours of her time dealing with these issues that resulted from Ms. Reed's skit.

Ms. Hill testified that the recommendation for dismissal of Ms. Reed was taken to the district board on February 3, 2022, and she supported the decision to dismiss Ms. Reed. Ms. Hill explained that she supported the dismissal of Ms. Reed because her actions in performing the skit were "far afield from district values, expectations, and the expected interactions between teachers and students." Ms. Hill also considered the

impact Ms. Reed's skit had on the students, district, and community in her decision to support Ms. Reed's dismissal.

19. Jacqueline Perez is currently employed by the district as the Superintendent of Equity, Access, and Community Engagement, a position she has held for the past two-and-a-half years. Ms. Perez has worked for the district for the past six years in various capacities. Prior to working for the district, Ms. Perez was an Assistant Superintendent at another school district and has worked in school administration for 27 years. Prior to working in school administration, Ms. Perez worked as a high school teacher for biology and science. She holds a single subject teaching credential for biological sciences and an administrative credential. Ms. Perez has a bachelor's degree in biology, a master's degree in education administration, and a doctorate degree in educational leadership. Ms. Perez's responsibilities in her current position include oversight of all district-wide equity efforts.

Ms. Perez testified that the district implemented a training course on culturally responsive pedagogy for teachers to increase their understanding of culturally responsive pedagogy in teaching. Ms. Perez explained that culturally responsive pedagogy is a way to deliver instruction and teaching to students in a way that is respectful and honors the student's cultural background to provide a safe learning environment for the student. She stated that the training was given to teachers in the district in 2020, and it was voluntary training, not mandatory. Documents received in evidence demonstrate that Ms. Reed took this culturally responsive pedagogy class in August 2020, prior to teaching the skit on October 19, 2021. Ms. Perez was surprised to learn that Ms. Reed had taken that course but still taught the skit. Ms. Perez noted that Ms. Reed completed the training voluntarily.

Ms. Perez was involved in the district's response to Ms. Reed's skit. Specifically, she assisted with the immediate support of the principal, students, and staff through the event. Ms. Perez set up coaching for the principal and teachers to work collaboratively. Ms. Perez also gave training to student leaders at North regarding social media. Ms. Perez explained that the district has an outside consultant that has established equity teams and goals. The equity teams consist of teachers, students, and administrators, who build capacity to work through inequities they observe at the school. With regard to student leaders and their use of social media for the school, the district selected four students to monitor comments on social media accounts. Additionally, the district provided student leaders with key statements they could use for the media onslaught that took place after the skit.

Ms. Perez stated that one of the biggest district initiatives after Ms. Reed's skit was to establish a Native American initiative as a direct response to give support to Native American students and families directly affected. Ms. Perez's role is to implement the different components of the Native American initiative, which is comprised of local tribal leaders, a Native American stakeholder group to connect to community members, a parent group, and a student group. Ms. Perez also set up listening sessions for the community in the aftermath of Ms. Reed's skit. Ms. Perez testified that she participated in many listening groups regarding Ms. Reed's skit and stated that "there was a lot of hurt and need for repair of relationships." Ms. Perez stated that "lack of professionalism" was something that "came to the surface often." Ms. Perez testified that immediately after Ms. Reed's skit, most of Ms. Perez's time for many months was spent on dealing with the aftermath. The initiatives created as a result of Ms. Reed's skit are ongoing and may last throughout her career.

Ms. Perez attended district board meetings after Ms. Reed's skit and stated that she "has never experienced anything like" the community input at those meetings. Specifically, she stated, "the hurt and impact it had on our community and on our indigenous families was hard to experience." Ms. Perez received thousands of emails and voicemails after Ms. Reed's skit, "about 98 percent of which were negative, angry, hateful, and disgusted."

Ms. Perez stated that she did not believe Ms. Reed should return to the district because "the experience and trauma" experienced by the students and teachers "is not repairable." Ms. Perez stated that if Ms. Reed was allowed to return to teaching at the district, the district would have difficulty building trust with the community. Ms. Perez noted that the district formally apologized for Ms. Reed's skit at a July 2022 district governing board meeting where the president verbally stated the apology.

TESTIMONY OF COMMUNITY MEMBERS

20. Zara Hurtado was previously employed by the district as a bilingual aide and tutor, and later as a classroom teacher. Ms. Hurtado is currently working as a teacher in another school district. Ms. Hurtado is a member of the Native American Indigenous Education Coalition, which was formed by families of students attending school in the district and others who became aware of issues at the district after Ms. Reed's skit video was circulated. Ms. Hurtado first learned of Ms. Reed's skit through the video being posted on social media. In February 2022, Ms. Hurtado participated in public comments to the district board regarding Ms. Reed's skit, video of which was received in evidence. Ms. Hurtado testified at the hearing consistently with her comments to the district board. Specifically, she stated that Ms. Reed's behaviors in the classroom are not acceptable and have no place in the school curriculum, and harm students. Ms. Hurtado stated that Ms. Reed's behavior "made fun of Native

American culture” and had “a long-lasting impact,” as well as caused a “distrust of other teachers.” Ms. Hurtado also sent emails to Ms. Hill regarding Ms. Reed’s skit to let her know that family members of students still felt as though the district had not done enough to make amends for Ms. Reed’s skit, and had not issued a formal apology after Ms. Reed’s conduct in the classroom. Ms. Hurtado also took part in one protest at the district offices regarding Ms. Reed’s skit.

Ms. Hurtado supports the dismissal of Ms. Reed and communicated that opinion to the district during district governing board meetings. Ms. Hurtado stated that if the district brought Ms. Reed back to the classroom, it would “show Native families that their feelings did not matter at all.” If Ms. Reed were to return to the classroom in the district, Ms. Hurtado anticipates further protests at the district and the school as a result. She stated, “The community has not forgotten what happened.” The video of Ms. Reed’s skit gave Ms. Hurtado feelings of anger, disgust, and confusion as to how that can happen in a classroom. Ms. Hurtado explained that seeing Ms. Reed mock Native American culture “was astounding.”

21. Georgia Sorrell is a resident of Riverside and has two sons who attend North. Ms. Sorrell and both of her sons identify as Native American. Ms. Sorrell’s oldest son was in Ms. Reed’s math classroom in a different year than in 2021. Ms. Sorrell’s youngest son has never been in Ms. Reed’s math class, but he saw the video of Ms. Reed’s skit while he was attending North. Ms. Sorrell first saw the video of Ms. Reed’s skit when Ms. Sorrell’s sister shared it with her and Ms. Sorrell’s two sons. Ms. Sorrell was shocked when she saw the video. She testified that her oldest son, who is now in college, had been in Ms. Reed’s math class when she did a “similar skit” using the SOH CAH TOA mnemonic and made reference to an “Indian boy,” but nothing to the extent that was shown in the video of Ms. Reed’s skit on social media. Specifically, her older

son told her that Ms. Reed just used a white board, but she did not “dress up” or “move or dance around” like she did in the video. Ms. Sorrell was concerned about her younger son who saw the video because “the imagery used in this fashion (meaning her dress and dancing)” was “like a caricature.” Ms. Sorrell explained that as Native Americans, they see such caricatures of Native American cultures in sports mascots and other inappropriate ways, and Ms. Reed’s skit was also inappropriate.

In January or February of 2022, Ms. Sorrell met with Ms. Hill after Ms. Hill reached out to her. Ms. Hill asked Ms. Sorrell for her feedback on how she and her sons reacted to the video of Ms. Reed’s skit. Ms. Sorrell and her oldest son attended the meeting with Ms. Hill and conveyed the same information she provided in the hearing regarding her reaction. Ms. Sorrell does not believe that Ms. Reed should return to North because her skit was “not appropriate,” particularly coming from an educator.

TESTIMONY OF STEPHANIE FRYBERG, PH.D.

22. Dr. Stephanie Fryberg is currently a University Diversity and Social Transformation Professor at the University of Michigan, Department of Psychology, a position she has held since 2019. She is also the founding Director of Research for Indigenous Social Action and Equity (RISAE). Dr. Fryberg received her Ph.D. degree in Social Psychology from Stanford University in 2002. The title of her dissertation for her Ph.D. degree was “‘Really? You don’t look like an American Indian’; Social Representations and Social Group Identities.” She received her master’s degree in Psychology from Stanford University in 1999. She obtained her bachelor’s degree in Psychology in 1994 from Kenyon College. Dr. Fryberg has taught in classroom settings for three years, and she has worked as an intervention specialist to create identity safety in classrooms. Dr. Fryberg’s research work focuses on bias and prejudice

towards indigenous people. She currently runs the leading center in the country for the collection of data related to studies in schools of indigenous people. Her research is focused on how to create identity safe classrooms at multiple levels of the education system, including working with teachers and students to examine the factors that create identity safety. Dr. Fryberg conducts both experimental and survey studies of students, including exposing students to different situations or stereotypes and comparing that to a control group. Dr. Fryberg testified on behalf of the district as an expert witness on bias in the classroom.

23. In preparation for her testimony, Dr. Fryberg reviewed documents provided to her by the district regarding this case, including all documents produced as exhibits, the videos of Ms. Reed's skit, teaching standards in California, California Education Code sections, and the *Morrison* Factors.² Dr. Fryberg testified that research and studies have demonstrated that Native American students when exposed to stereotypes of Native Americans, like Disney's "Pocahontas" or sports mascots utilizing Native American imagery, considered to be "positive imagery," the Native American students experience a decrease in self-esteem, community worth, and future goals. Dr. Fryberg stated that those "positive images" of Native Americans decreased feelings of self-worth more than the negative stereotypes, such as Native Americans being associated with high drug and alcohol use, and higher incidents of suicide. Dr. Fryberg testified that the negative images and stereotypes of Native Americans increase stress, anxiety, suicidal ideation, and decrease other psychological wellbeing measures in Native American students. The studies show that all of these negative effects of

² The seminal case for teacher dismissals is *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, which sets forth factors for analysis in teacher dismissal cases.

stereotypes of Native Americans affects school outcomes for Native American students in a negative way.

Dr. Fryberg also explained the term “invisibility,” which is cultural omission or psychological invisibility or when you look at the world and don’t see yourself or your culture. Research and studies show that 87 percent of mentions of Native Americans in school curriculum depict Native Americans only in a pre-1900 context as if Native Americans are only historical and don’t currently exist, which increases apathy towards Native Americans.

24. Dr. Fryberg stated that the video of Ms. Reed’s skit depicting a Native American boy provides much stronger stereotypes of Native Americans than those her research utilizes and is very damaging to Native American students. Specifically, the use of the feather headdress, tomahawk chop, sitting with her legs crossed, and the dancing and chanting exhibited by Ms. Reed in that video is a level of mockery that is much stronger than what Dr. Fryberg would expose students to in her research. She stated that Ms. Reed was “really taking a group’s identity and using it to represent Native Americans in a way that is tremendously adverse.” Dr. Fryberg would never expose Native American students to such mockery because it would do harm to the students. Dr. Fryberg stated that Ms. Reed’s actions in the skit shows a “level of bias regarding what she is describing Native Americans as looking and sounding like.” Dr. Fryberg understands that Ms. Reed was trying to teach the students the mnemonic SOH CAH TOA for a trigonometry lesson, but the chant used by Ms. Reed depicted in the way that she did it “was associating Native Americans as simple-minded and uncivilized.” The actions of Ms. Reed shows a bias, racism, and dehumanizes the Native American group by depicting them as less civilized and simple-minded.

Dr. Fryberg also interviewed two students from North, specifically CO and DAP, and she also read written statements made by other students who were in Ms. Reed's classes when she performed the skit. Dr. Fryberg explained that many of the Native American students in Ms. Reed's class felt "utterly humiliated" by the skit, which is exactly what Dr. Fryberg would expect based on her research. Dr. Fryberg also explained that many of the Native American students who expressed anger or concern regarding Ms. Reed's skit were accused by other students of being "too sensitive" or "taking it too far" because those students thought that the Native American students should not care about the skit. However, Dr. Fryberg explained that the Native American's identity was being mocked, and when a group identity is criticized in such a way, particularly a group largely omitted from other representation like Native Americans, telling those Native American students that they are "too sensitive" is just another micro-aggression towards them.

With regard to Non-Native American students, Dr. Fryberg explained that Ms. Reed's skit also has negative impacts on those students. Specifically, her research shows that such depictions as in Ms. Reed's skit shape the way Non-Native American students think about Native Americans. Her research shows that such depictions increase the amount of apathy Non-Native American students have towards serious issues facing Native Americans, such as violence against Native American women, and increases the view that Native American people are only "people of the past" or only historical figures. The more that viewpoint is endorsed, the more it minimizes the racism Native Americans experience, and the more it increases the apathy Non-Native Americans have towards that racism. Ms. Reed's skit "taps into" that monolithic representation of Native Americans and contributes to societal ills as a result.

Dr. Fryberg is aware that Ms. Reed taught the “Indian boy” skit in years prior to 2021 going back at least until 2012. Dr. Fryberg was struck by the fact that the skit had not been brought to the attention of school administration or the public prior to 2021. She stated she believes that “this speaks to the way we minimize these types of situations.” Dr. Fryberg believes that in 2021, and particularly since 2020, which she described as the “year of racial awakening,” there has been a much larger focus on systemic racism in this country. Prior to 2020, there was much less focus on systemic racism. As a result, Dr. Fryberg can understand why Ms. Reed’s skit was “swept under the rug” prior to 2020. Dr. Fryberg states that research supports this “racial awakening,” particularly for younger people, since 2020 when George Floyd was murdered by police officers, and his death was shown in the media. Dr. Fryberg believes that part of the reason Ms. Reed’s skit became more of “an issue” in 2021, rather than a decade ago, was because students are more sensitive to those issues now. However, Dr. Fryberg was careful to explain that while students are more culturally sensitive or aware today, Ms. Reed’s skit taught in 2012 would likely have a more harmful effect on Native American students in 2012 because having cultural awareness provides some protective properties to students and back in 2012 there was less cultural awareness and, thus, less protective properties.

25. Dr. Fryberg testified that people have an individual responsibility to be aware of cultural issues, but that school districts also should be providing some training regarding cultural awareness. Dr. Fryberg provides professional training to school districts teaching teachers to engage with students in culturally relevant ways. Dr. Fryberg reviewed the “Culturally Responsible Pedagogy” course that Ms. Reed took on August 10, 2020, and she stated that this training course is very consistent with the current research and literature on culture.

26. Dr. Fryberg opined that Ms. Reed's skit was "an extreme situation" with how it mocked Native Americans, and the skit had a very negative effect on Native American students, in particular, but also on Non-Native American students. She explained that Native American students, for whom the skit spoke to their group identity, were more vocal about how they were hurt. Dr. Fryberg acknowledged that for Non-Native American students, for whom the stereotypes in the skit was not part of their identity, may feel differently about the skit than how the Native American students feel.

Ms. Reed's Evidence

27. Ms. Reed presented testimony from nine witnesses at the hearing. Those witnesses included herself, other teachers in the district, two students from North and two character witnesses. The following factual findings are based on the testimony of those witnesses and supporting documents received in evidence.

TESTIMONY OF MS. REED

28. Candice Reed received her bachelor's degree in Liberal Studies with a minor in Mathematics from California Baptist College in 1997. She received her master's degree in Education Research from California Baptist College in 2002. In 2003 she obtained her single subject teaching credential in mathematics. Ms. Reed does not hold any other teaching credentials. Ms. Reed was first employed as a teacher in 1998 in the Corona-Norco Unified School District as a substitute teacher. She first worked as a full-time as a teacher in the 1999-2000 school year for the Corona-Norco Unified School District. Thereafter, she moved out of state to work in photography for about a year-and-a-half. In September 2001 she moved back to California and started working as a substitute teacher for the district at both North and a middle school. Ms. Reed

first started working full-time as a mathematics teacher at North for the 2002-2003 school year and has worked in that position ever since until she was placed on leave by the district on October 19, 2021. During the entire time she worked at North, Ms. Reed taught mathematics, initially teaching Algebra I, Geometry, Algebra II and honors pre-Algebra. More recently Ms. Reed taught Math I, Math II, and Math II accelerated.

29. Ms. Reed described her teaching style as being "direct, not overly expressive, but detailed." Ms. Reed stated that she likes to find the easiest way to get things across to students. During her 19 years at North, Ms. Reed received formal evaluations only about five or six times, but she had many informal evaluations. Ms. Reed stated that all of her informal and formal evaluation results were "meets or exceeds expectations." Prior to being placed on leave on October 19, 2021, Ms. Reed had never received any discipline as a teacher and never been the subject of allegations or investigations. Ms. Reed testified that she may have had the occasional complaint from parents or students regarding homework or a requested extension of time for work, but never any significant complaints regarding her teaching.

30. Ms. Reed described the events of October 19, 2021. Ms. Reed explained that each school day had a total of six classes or periods. The first three periods that day were her Math II accelerated classes and the last two periods that day were her Math I classes. For her first three morning classes, she started those classes by reviewing homework, then administering a test or quiz, and finally performing the "SOH CAH TOA skit." Ms. Reed stated that the skit lasted for about 10 to 12 minutes total, and thereafter the class was dismissed. With regard to her last two classes that day, Ms. Reed "did an assessment" for the entirety of each of those classes and did not provide any instruction that day for those classes.

With regard to the first three classes on October 19, 2021, Ms. Reed stated that with the skit she was trying to convey to the students the SOH CAH TOA mnemonic as a mechanism to remember the trigonometric ratios. Ms. Reed obtained the skit from another teacher in about 2008 to 2011 when that other teacher was a math coach, who came to Ms. Reed's classroom, created slides, and "acted [the skit] out" for Ms. Reed during the "period preparation." On cross-examination Ms. Reed stated that she obtained the skit from this teacher in 2003. Ms. Reed stated she has performed this skit as a lesson "several times," but she was unsure exactly how many times. She explained that the skit "takes a lot of energy," and as a result, she did not perform the skit during times when she was pregnant or after one pregnancy when she had health issues because of the energy requirement. During the times she did teach with the skit, she only performed the skit once per year for any of the years she used it. She explained that there may have been times when she was not assigned this particular curriculum for the trigonometric ratios, and if that was the case, she did not perform the skit those years, either. Ms. Reed stated that the skit was meant to be "over the top" to "shock" the students, be "flamboyant and boisterous" so that the students would remember the mnemonic.

Ms. Reed stated she gave the skit lesson generally the same way each time she performed it over the years with the outline of the story remaining the same, namely starting with the mountain, then water, then rock. However, she would change "maybe the type of dance [she] did" if there was a popular dance at the time. Ms. Reed stated that she also changed the props she used each time based upon suggestions she received from students. Ms. Reed admitted that she did not use the headdress each year she performed the skit, and she only used a headdress on two occasions, including on October 19, 2021. Ms. Reed stated that the photograph of her wearing a headdress in the 2012 yearbook came about because students brought that headdress

to her to wear for the photo, so she did. Wearing the headdress in the photo for the 2012 yearbook was the reason Ms. Reed began using the headdress for her skit in class on those two occasions.

Ms. Reed explained the SOH CAH TOA skit as being about a little boy who climbed a mountain and asked the mountain god about finding a "secret Indian chant." On the mountain the boy finds the first part of the chant – SOH – and then the boy dances around. Then the boy goes to a second location of a pond or stream and asks a water goddess for the next part of the chant and is given – CAH – and the boy "runs around chanting SOH CAH." Then the third location the boy goes to is a rock and the boy cries out, "Oh rock god – I hit my toe" and "oh my TOA" because his toe hurts. The boy talks to the rock god, who tells him he already knows the chant. The boy then figures out the "secret Indian chant" of "SOH CAH TOA." Ms. Reed then will explain what "SOH CAH TOA" means in trigonometry. She stated that the entire skit was a "super goofy" way for the students to remember the mnemonic of SOH CAH TOA.

On October 19, 2021, after the third class in which Ms. Reed performed the skit, Ms. Reed was not approached by any school administrator until after the school day was over and she was sitting in her classroom preparing for the next day. Ms. Gonzales came to Ms. Reed's classroom after that school day and asked her to come to Ms. Gonzales's office to discuss "an incident that happened in [Ms. Reed's] class that day." Ms. Reed testified that she thought about the events of the day and assumed that "the incident" was the SOH CAH TOA lesson. Ms. Reed asked Ms. Gonzales if it was about the SOH CAH TOA lesson and walked to Ms. Gonzales's office. When she arrived at Ms. Gonzales's office, Ms. Reed then realized that she was not just meeting with Ms. Gonzales, but also with members of the personnel department, including Ms. Ybarra,

and the president of the teacher's union. Ms. Reed stated that the meeting was very short, about 15 minutes, and she was handed a letter to read, which placed her on administrative leave. After Ms. Reed read the letter, Ms. Ybarra asked her if she had any questions, and Ms. Reed asked her how long the investigation would take, and if Ms. Reed would be allowed to leave lesson plans for her students. Ms. Reed left this meeting with the understanding that she could not speak to students, parents, or colleagues. Ms. Reed testified that after the meeting, she really did not understand what the complaint was that required investigation. Ms. Reed was immediately placed on leave on October 19, 2021, and she did not return to the district until December 2021 when she met with Ms. Ybarra and others from the district.

31. In mid-December 2021 Ms. Reed met at the district offices with Ms. Ybarra, a teacher's union representative, and others. Ms. Reed explained that she understood the purpose of the meeting was for Ms. Reed to provide her version of events and "to discuss where [she] might be placed" within the district as a teacher. The December 2021 meeting lasted about two-and-one-half hours and was very formal in nature with Ms. Ybarra asking Ms. Reed questions. Ms. Reed stated that she was instructed by Ms. Ybarra to wait until the question was finished before providing an answer, and once Ms. Reed started to provide an answer she could not "take a break" during the answer. Ms. Reed felt as if she was being interrogated at a police station. Ms. Ybarra asked her a lot of questions about the skit, as well as whether Ms. Reed wanted to return to North, to which Ms. Reed replied, "Yes." Ms. Ybarra asked Ms. Reed what she thought she needed to do to go back to North, and Ms. Reed responded, "as a starting point she would need to have a conversation with the students and staff to make some recommendations of what they were feeling and what they would need to feel comfortable" with Ms. Reed's return. Ms. Reed testified that she was thinking of "something like a unity circle" with the students as a

mechanism for the conversation. Ms. Reed stated that she needed to know how the students felt and “what they needed” or “what the community of North High School needed.” In the December 2021 meeting, Ms. Ybarra asked her if “there is anything else you want to add” and Ms. Reed “felt speechless” and did not “know how to put all of [her] thoughts into words.” Ms. Reed described the December 2021 meeting as negative.

32. Ms. Reed was aware of at least one protest at North and one protest at the district office regarding her skit. She also read some newspaper articles and online news articles regarding the skit. Ms. Reed stated that she does not participate in social media, other than on Facebook strictly for family photos. Ms. Reed does not engage with other social media. During the time after she was placed on administrative leave, Ms. Reed did not speak to anyone about the skit and felt isolated. Ms. Reed was aware that the video of her skit went viral and that “a lot of people were angry” about it. However, she stated that “it seemed that it was the outside world and not the inside world of North High School” that was angry about the skit. Between October 2021 and December 2021, there was a protest at Ms. Reed’s home, which happened late at night when she and her husband and children were sleeping. Ms. Reed stated that the protest at her home was menacing and threatening because the protesters stated that they would hunt her down and kill her. Ms. Reed stated that initially she did not have an understanding as to why the public was upset by the video of her skit. Ms. Reed said it took a while for her “to start building that understanding,” and she “started seeing progress toward” that understanding after she did some research.

33. Ms. Reed next met with the district on January 27, 2022, at the *Skelly* meeting along with her attorneys, union representative, Ms. Ybarra, and others. Ms. Reed stated that she wanted to go to this meeting so that she could give an apology

and make a statement. Ms. Reed wanted the district, students, families, and Native American tribal council to know how sorry she was for her actions. She also wanted to tell them what she had been working on and had learned from the experience. Ms. Reed wrote a letter, which she read out loud at the *Skelly* meeting, containing her apology and statement she wanted to give. The letter was received in evidence. In the letter Ms. Reed wrote that she is "sincerely sorry for the negative impact that the [SOH CAH TOA skit] has created for the Native American community, the North high [sic] community and Riverside Unified as a whole." In the letter Ms. Reed wrote that she would like to communicate with students and families to apologize and "begin the process of reconciliation." Ms. Reed has wanted to apologize to her students, their families, and the community since the October 19, 2021, skit, but has not been able to do so.

Ms. Reed testified that at this *Skelly* meeting she understood why her skit was a problem. Specifically, she stated, "from the research I did the number one thing was the headdress and that was incredibly offensive." She understands now that the headdress is only for indigenous people and is reserved for "sacred things" and "only a select few indigenous people are eligible to wear a headdress."

34. Ms. Reed testified that she had no ill-intent when she performed the skit, and no intent to attack any student. She stated she had no intent to be malicious or mocking of any student. She wishes she had realized at the time she gave the skit that students were offended. She would not have done the lesson if she thought it would hurt students. After she was placed on leave, Ms. Reed spent some time "evaluating her teaching practices" to see if there was "anything that could be a problem" or where she may "inadvertently be biased."

35. After the *Skelly* meeting, Ms. Reed did further research regarding indigenous cultures and historical events related to the oppression of indigenous cultures. Ms. Reed stated that after completing this research, it “clicked” with her that her skit caused such outrage because “this group of people had been so oppressed and had their culture stolen from them,” and that “what [she] did represented that.” After the *Skelly* meeting, Ms. Reed also learned that there had been multiple protests at the district offices regarding her skit, and that there had been thousands of voicemails and emails to the district about her skit, all of which “ate up” significant time for the district. Ms. Reed stated this was devastating to learn. Through the process of discovery leading to this hearing, Ms. Reed reviewed multiple emails to the district from various people, including from Native American people. One email was from a Native American person located in Michigan. Ms. Reed reached out to this person in the summer of 2022 because she believed he would be willing to talk to her “based on the tone” of his email. Ms. Reed discussed various issues with this individual related to indigenous people and learned from the conversation. She stated that she learned from him “that the headdress was the singular most offensive thing that I did.” She also learned from him that intention is what matters most, and that because she did not have malicious intent that she is capable of learning and changing. Ms. Reed testified that she believes she can avoid teaching the SOH CAH TOA lesson in the future because she has learned that “if it is not my culture, I should not use it.”

36. Ms. Reed testified that the only training she had undergone from the district regarding cultural inclusion and diversity was the August 10, 2020, training discussed above, which she stated was limited. Ms. Reed loves teaching and believes it has been the best gift of her life. She can’t imagine not being able to teach again. Ms. Reed loves the district community and has children who attend the district schools. She stated she has learned a lot from this experience and has grown immensely.

TESTIMONY OF TEACHERS FROM NORTH HIGH SCHOOL

37. Jesse William Paulos is currently employed as a math/AVID teacher in the district at Riverside Virtual School, a position he has held since January 2022. Prior to this position, Mr. Paulos worked as a math teacher at the district at North from 2013 to January 2022. During the time he was at North, he worked directly with Ms. Reed. Mr. Paulos also worked as a teacher for the district at King High School from 2007 to 2013. Mr. Paulos received his bachelor's degree and teaching credentials in 2007 from University of California Riverside (UCR). He received his master's degree in counseling and psychology in 2012 from UCR. Mr. Paulos is a 2003 graduate of North. Mr. Paulos testified that he left his job at North in 2022 because of a "triggering factor" of a physical and verbal altercation with a student in October 2021, where he "felt he was not supported by the school administration." On cross-examination Mr. Paulos admitted that the physical and verbal altercation arose from Mr. Paulos making "a cry baby bitch" face to a student after the student called him a "cry baby bitch." Mr. Paulos stated that he made the face to the student while the student was driving past him in a golf cart, and the student came to his class "with the intention of fighting."

During the time he worked at North as a math teacher, he taught the same classes as Ms. Reed, namely Math I and Math II. His classroom was directly across the hallway from Ms. Reed's classroom. They saw each other often in staff meetings, and he collaborated with Ms. Reed by writing common assessments together, writing math final examinations together, discussing best practices, and shared ideas on how to teach lessons. Mr. Paulos testified he has a younger sister that also graduated from North and took a math class from Ms. Reed, who his sister described as her favorite teacher. Mr. Paulos also observed Ms. Reed teaching during the time he worked at North, and specifically did so in 2015 or 2016, and he observed Ms. Reed perform the

SOH CAH TOA skit that went viral as part of his observations. Mr. Paulos stated that the observations of other teachers “was part of a push to have teachers observe their colleagues to create a community of shared ideas.” Mr. Paulo stated that he had been teaching for about eight years when he observed this SOH CAH TOA skit from Ms. Reed, and that after observing this skit he did not bring the same skit into his classroom. However, he did “bring a story about Chief SOH CAH TOA into a lesson” in his class and he has taught that lesson in 2016, 2017 and 2018. The last time he taught the lesson was in 2018. He stated that he had seen the same lesson taught by another teacher at King High School and the teachers discussed it in collaboration. However, Mr. Paulo stated that “after this backlash” he would no longer teach that lesson because of fear of backlash.

Mr. Paulo testified that based on his observations, Ms. Reed’s rapport with her students was good and her students responded well to her. He stated that Ms. Reed made significant contributions to the math department at North. She offered valuable insights, and she has made contributions to the curriculum and academics. He said she brought “a lot of wisdom and resources” to the math department.

Mr. Paulo became aware of the viral video of Ms. Reed’s skit a few of days after it happened. After he watched the video, his opinion was that the video “was unfair to Ms. Reed in the way the video was edited.” He stated that he knew the point she was trying to make, the educational goal of that lesson, and he thought that goal was misrepresented through the video. Mr. Paulo made comments publicly regarding his opinion at the district board meeting on January 13, 2022. His intention in making those comments was to “stand up and speak out” because he “was raised to say something if you see something wrong.” He hoped the district would see that Ms. Reed is a brilliant teacher and has been a valuable asset to the district for 20 years. On

cross-examination, Mr. Paulo acknowledged that he knew that there were people who were upset by the skit, and there was a public outcry as a result. However, that "did not give him pause for a moment" because he believes making a statement on behalf of Ms. Reed "was the right thing to do." Mr. Paulo testified that he did not see Ms. Reed's skit as being culturally insensitive at all. While he acknowledged that others "may see it that way," he knows that Ms. Reed had no intention to be racist or culturally insensitive and that is what matters. Mr. Paulo stated, "I don't know what is culturally insensitive anymore, we just stick to very bland lessons to avoid any potential for stepping into any culturally insensitive areas."

38. Emmanuela Alina Herrera currently works as an education advisor for State Oak Charter school. Ms. Herrera was employed by the district at North as a math teacher (and for two years as a math instructional coach) from August 2012 to May 2022. Ms. Herrera received her bachelor's degree in political science from UCR in 2008, her master's degree in political science from the University of California Davis (UCD) in 2010, and her teaching credential from UCR in 2012.

Ms. Herrera met Ms. Reed during the first week that Ms. Herrera worked as a student teacher at North because Ms. Herrera observed Ms. Reed teaching. In 2011, when Ms. Herrera was a student teacher, she observed Ms. Reed give a geometry lesson where Ms. Reed had her students create a paper cube and take notes on the side of the cube. In 2011 Ms. Herrera also observed Ms. Reed teach a class where she was teaching her students a "proportional project." Ms. Herrera stated that she would watch Ms. Reed's classes whenever she could. Ms. Reed told her then that she likes to give her students different ways to process information. Ms. Herrera testified that Ms. Reed was trying to find new ways to engage her students and was creative in instructional approaches.

From 2012 to 2022, Ms. Herrera worked closely with Ms. Reed and collaborated with her to create daily lessons, create projects, and write assignments for students. When the school transitioned to a common core curriculum, Ms. Herrera and Ms. Reed both taught the Math II class, which was a new course. Ms. Herrera worked closely with Ms. Reed to implement that course. Ms. Herrera described Ms. Reed as a team player and great co-worker with whom she had a very positive relationship.

Ms. Herrera became aware of the viral video of Ms. Reed's skit but only saw the first minute or two of the video. She testified that she did not watch the entire video because "it was hard to watch." In the video, Ms. Herrera saw Ms. Reed teaching a trigonometry lesson wearing a headdress made of paper, telling a story, and walking around the class chanting SOH CAH TOA. Ms. Herrera stated that it was hard to watch because she assumed that there would be "students who would be uncomfortable with the lesson." She assumed that because of the "stereotype it was making of Native Americans." Ms. Herrera stated that she understood how the skit could be offensive to students in the class, but that she understood that Ms. Reed had no malice in the lesson or her approach to it. Ms. Herrera explained that Ms. Reed was performing the skit out of her desire to help students remember the material. Ms. Herrera stated that Ms. Reed had a great rapport with her students, and she made herself available to tutor her students outside of class. Ms. Herrera believes that Ms. Reed is a good teacher. Prior to October 2021, Ms. Herrera never observed Ms. Reed to act inappropriately with any student or to treat students differently.

39. Richard Edward Davis, Jr., is retired from the district. He worked from 1981 to 2015 for the district with those entire 35 years spent working at North. Mr. Davis began working at North as a teacher, then as a student advisor, a.k.a. counselor, and then as an administrator for 20 years. Mr. Davis became an administrator at North

in 1995. Mr. Davis was an administrator of North when Ms. Reed was hired as a math teacher. He oversaw the math department, and attended math department meetings and break-out groups. If there was an issue with a student in the math department, Mr. Davis would attend any meetings addressing those issues. Mr. Davis testified that he did not recall observing Ms. Reed's classes, but he is sure that he did so as part of his job. Mr. Davis does not recall if he ever gave a formal evaluation of Ms. Reed, but if he did, then based on his experience, he knows it would have been a positive review. Mr. Davis observed Ms. Reed in her classroom on several occasions in an informal setting because Mr. Davis would typically walk in classrooms unannounced. During those visits Mr. Davis never observed any issue with Ms. Reed. Mr. Davis has a great admiration of Ms. Reed as a teacher and believes she is fair and has great expertise.

Mr. Davis is aware of the video of Ms. Reed's skit that went viral, and he has seen "a little of" that video. Prior to seeing the video, Mr. Davis had never seen Ms. Reed perform that skit and never observed her teach that lesson. Mr. Davis stated that sometime, either in the 1990s or at least before 2010, he did observe another teacher performing a similar skit with SOH CAH TOA and chanting with the same story. When Mr. Davis first saw the video of Ms. Reed's skit, he was surprised because Ms. Reed "is very reserved and I thought it was outside of her comfort zone." Despite the video, Mr. Davis believes that Ms. Reed is fit to teach and can connect with students on all levels.

40. Donald Dwane Phelps is currently employed by the district as a full-time math teacher and softball coach at North, a position he has held for the past 28 years. Mr. Phelps holds a single subject clear teaching credential for math. Two of Mr. Phelps's three children graduated from North. In addition to teaching, for the past ten years Mr. Phelps has worked as a teacher's union site representative for North (site

representative). His duties as a site representative include attending meetings with teachers and administrators and taking notes.

Mr. Phelps has known Ms. Reed since she started working at North. Two of Mr. Phelps's children had Ms. Reed as a math teacher during the time they attended North. Mr. Phelps never had any concerns or complaints about Ms. Reed during the time she taught his children. Mr. Phelps testified that he can't recall ever observing Ms. Reed's class, but he is aware that he likely did so because the math teachers did observe other teachers in the past. As Ms. Reed's colleague, Mr. Phelps did interact with Ms. Reed. Specifically, Ms. Reed taught the math class that fed into Mr. Phelps's class the next year. Accordingly, Ms. Reed was responsible for making sure those students had the requisite knowledge to progress to Mr. Phelps's class. Mr. Phelps and Ms. Reed shared strategies and ideas for teaching, and they met weekly with the other math teachers for math department meetings. Mr. Phelps stated that North has about 11 or 12 math teachers in the math department. Mr. Phelps described Ms. Reed as very professional as a teacher, and very caring towards students.

Mr. Phelps is familiar with the mnemonic SOH CAH TOA that is used to teach trigonometric ratios. He stated that this mnemonic has been in use longer than he has been alive. Mr. Phelps is also familiar with this mnemonic in the context of a story of a little Indian boy, which he stated has also been around a long time. Mr. Phelps learned the mnemonic SOH CAH TOA through that same little Indian boy story when he was a student. He stated he knows that the little Indian boy story has been used as a teaching mechanism at North and generally over the years, and he stated that there are variations on the story. He stated that he has seen the teaching mechanism in math textbooks dating back to the 1970s. Mr. Phelps testified that if you go to

YouTube you can find many videos of people using that little Indian boy story to teach SOH CAH TOA.

Mr. Phelps is aware of the viral video of Ms. Reed's skit. However, prior to that video going viral, Mr. Phelps was aware that Ms. Reed performed that skit in her math classroom for many years. He stated that every year when his students would come into his class, the skit was a topic of conversation. Mr. Phelps told those students that he "is not as outgoing as Ms. Reed in telling stories" and that he would not tell stories in his class. Mr. Phelps described himself as a very straightforward teacher and "not theatric." Mr. Phelps testified that his own children, who were in Ms. Reed's class, had come home to tell him about that skit at the time they saw it in the years 2017 and 2021. Mr. Phelps had never seen Ms. Reed perform the skit prior to seeing the viral video. Mr. Phelps recalls occasions when Ms. Reed would walk by his classroom and tell him that "today is SOH CAH TOA day," and Mr. Phelps would respond, "Go get them." According to Mr. Phelps, everyone in the math department knew that Ms. Reed performed the SOH CAH TOA skit the way she did. Mr. Phelps is not aware of anyone at North beyond the math department who was aware that Ms. Reed was performing the skit. Mr. Phelps testified that he also uses mnemonics in his teaching, which he calls Phelpisms. Mr. Phelps believes that there is a place in the classroom for mnemonics and "goofy behavior" from teachers because some students learn better that way.

Mr. Phelps recalled when the video of Ms. Reed's skit went viral. He was coaching on the softball field, and got a text from another teacher telling him that Ms. Reed was in the front office and asking for a site representative. Mr. Phelps went to the front office, but by the time he arrived, the teacher's union had sent a representative from the main office for Ms. Reed, and Mr. Phelps did not sit in on that meeting.

On January 10, 2022, after he had received Ms. Reed's permission to do so, Mr. Phelps sent an email to all the North teachers and staff explaining that the district would be starting the process to terminate Ms. Reed's employment and advocating for Ms. Reed regarding this matter. Mr. Phelps testified that he sent the email because he wanted to get information out to fellow teachers on campus. He had been getting lots of emails, texts, and calls from teachers asking about Ms. Reed's status, and he found this to be the most efficient way to communicate to all of the teachers and staff at North. In his email, Mr. Phelps wrote, in part, as follows:

I have known Candice for many years now as a colleague and, like many of you, as my child's teacher. . . . She is a teacher that goes above and beyond to help her students inside and outside the classroom. . . . Frankly this decision by the district angers and scares me as an educator. While I can understand why many will see Mrs. Reed's partial lesson as culturally insensitive, the whole lesson must be seen to understand the context of what was seen in the small snippet of the video. Furthermore, this lesson has been taught for many years with nary a complaint. As administrators have come and gone, this lesson has never been a problem. In fact [*sic*] this lesson has been lauded in the past. She has not been given a platform to explain her side of the situation. . . .

Mr. Phelps does not believe that Ms. Reed should be terminated from her position at the district. He stated that "education is a learning tool, not just for students, but also for educators." He further stated, "If we don't learn from our

mistakes and move forward, we are missing out on what could make us better people.” Mr. Phelps understands that “cultural sensitivity has increased recently,” but he does not believe that Ms. Reed “should be fired for this but should learn from it and grow to become a better teacher.”

TESTIMONY OF STUDENTS

41. JD is 15 years old and currently a student at North in the 10th grade. JD was in the ninth grade on October 19, 2021, and a student in Ms. Reed’s first period classroom when Ms. Reed performed the SOH CAH TOA skit. Prior to Ms. Reed’s performance of the skit, JD’s experience with Ms. Reed was positive and JD stated that Ms. Reed “was kind and accepting of everyone.”

JD described her reaction to witnessing Ms. Reed’s SOH CAH TOA skit. JD stated that she “was confused and giggling and did not know where it came from.” She said that after that class, she “had a chat with friends and we were confused but it was no big deal to us.” JD talked about the skit with her friends, and they agreed “it was weird,” but they “moved on to the next class and thought about it no more.” Sometime thereafter the district talked to students about that lesson. JD said that the district wanted to make sure they “were okay and had resources to talk to.” JD felt comfortable after these events.

JD testified that she thinks Ms. Reed is a good teacher and should be allowed to continue to teach. JD thinks that Ms. Reed is involved with her students and makes sure that they are engaged. Ms. Reed has never made JD feel embarrassed or humiliated. JD stated that Ms. Reed has never made fun of her, made fun of her religion or dress or language. In response to the question of “Did you ever believe that Ms. Reed was making fun of cultural dances?” JD answered, “I don’t think she intended

to make fun of it, but that is how it came off to other people – her intent was not to make fun but to educate.” JD then stated that she distinguishes between Ms. Reed’s intent and “how people perceive things.” However, JD admitted that it would be reasonable for Native American students to think Ms. Reed was making fun of them. JD then stated, “I think that the dancing was offensive.” However, she did not think that the prayer to each of the gods in Ms. Reed’s skit was offensive.

42. Maria Rebecca Alvarado Barahona is 19 years old and graduated from North in 2021. Ms. Barahona currently works as a “Lead” at a marketing company. She has attended college for one year at UCR majoring in sociology. Thereafter, she began working in her mother’s business and ultimately took a position with a company that would pay for her next year of college. During her freshman year at North, Ms. Barahona had Ms. Reed as her Math II teacher. Ms. Barahona testified that Ms. Reed was “one of the best teachers [she] has had,” and never did anything to disrespect her. While at North, Ms. Barahona would go to Ms. Reed for help in her advanced calculus class even though Ms. Reed was not her teacher for that class. Ms. Barahona stayed in contact with Ms. Reed after Ms. Barahona graduated from North.

Ms. Barahona learned of the viral video of Ms. Reed’s skit in October 2021 during the time she was attending UCR. After seeing the video, Ms. Barahona stated “it was an automatic ‘oh no’ for me.” She explained that by “oh no” she meant that the “media is taking things out of hand instead of focusing on the real issues, and we are discussing something that offended only one student.” Ms. Barahona recalls that Ms. Reed performed the same skit in 2017 or 2018 in her classroom, but she “thought nothing of it,” and “nobody [in Ms. Barahona’s class] expressed to her” that they were offended by the skit. After seeing the video, Ms. Barahona characterized Ms. Reed’s

skit as “misguided.” Ms. Barahona stated multiple times during her testimony that as a result of Ms. Reed’s skit, “nobody was actually hurt.”

On October 28, 2021, Ms. Barahona sent an email to the district’s board regarding the viral video of Ms. Reed’s skit. She stated that she reached out to other students from North regarding the email and “about 10 students edited” the email for her after she wrote it. Ms. Barahona wrote the email because she knows Ms. Reed, and her fellow classmates who edited the email know her and took Ms. Reed’s classes, and “all were delighted by it.” Ms. Barahona stated that she wrote the email because “this whole cancel culture thing bothered me,” and she spent a couple of hours drafting the email. Ms. Barahona’s email, which was received in evidence, provides, in part, as follows:

I’d like to begin by saying that by no means are her actions to be excused. The headdress to be specific, was an action of ignorance and offensive to the indigenous culture. Her actions are to be reprimanded and they have been by having her take leave with the negative and harsh uproar the video caused. She was mocking the culture and it was wrong. Therefore we must take action to avoid such behavior to be expressed by teachers for the sake of all. . . . The system should change in order to obtain a better school environment for all. This is a lesson for all educators to learn about the culture and ethnic backgrounds of their students so they can be more sensitive, accepting and aware of that when teaching and interacting with them. Firing Ms. Reed doesn’t treat the root of the issue, it offers

an easy out for administrators. . . . Please don't try to sweep this under the rug by firing her. There should be talk of a transfer and a chance to amend [*sic*] the damage she did. . . .

Ms. Barahona testified that "there are issues far more hurtful to students than what happened in this lesson." She stated that while she was not personally offended by the skit, "that does not make the lesson right" and characterized the lesson as "misguided." Ms. Barahona stressed that the district knew this lesson was happening for years but did nothing about it. Ms. Barahona said, "there was one student that began this entire thing by posting the video instead of talking to administrators about it." She said she does not blame the student but does blame the school administration's response because "if the school had responded differently, then I would not have seen horrible messages to the teacher."

TESTIMONY FROM CHARACTER WITNESSES

43. Cindy Sewell retired from her position as a teacher in another school district six years ago. Prior to her retirement, Ms. Sewell worked as a teacher for 30 years in classes from second to sixth grades. Prior to that she worked as a teacher of English as a second language for a few years and was a math specialist. She received her bachelor's degree in Education in 1976 and held multiple teaching certifications. Ms. Sewell never worked for the district.

Ms. Sewell has known Ms. Reed for over 30 years because Ms. Sewell's daughter and Ms. Reed have been good friends since the age of 12. Ms. Sewell's daughter met Ms. Reed at church and they quickly became best friends. During the time Ms. Sewell's daughter and Ms. Reed were in high school, Ms. Reed would come to Ms. Sewell's

home often. During the time Ms. Reed was considering becoming a teacher, Ms. Reed came to observe one of Ms. Sewell's class at an elementary school sometime in 1995 to 1997 and also participated in the class and helped with the students. Ms. Sewell observed Ms. Reed during that class and said she had a good rapport with students and was personable. Ms. Sewell described Ms. Reed as "one of the kindest people I know," as "honest, hard-working, and responsible." Ms. Sewell has never observed Ms. Reed as a teacher in Ms. Reed's classroom.

Ms. Sewell saw the viral video of Ms. Reed's skit on social media. At the time she first saw the video, she did not realize that Ms. Reed was the teacher in the video. Ms. Sewell testified that she believed that the teacher in the video was simply "engaging the kids." A few months after seeing the video, Ms. Sewell "figured out" the teacher was Ms. Reed. Ms. Sewell's impression of the video was that the teacher was "doing whatever it takes to make the lesson stick." Ms. Sewell testified that she did not see anything from the video that she considered to be offensive or that may have an impact on Native American students. Ms. Sewell stated, "I used to dress up like a mad scientist and in historical costumes to help my kids learn – I have done some whacky things."

44. Carrie Marie Ayars currently lives in Tennessee, where she has lived for the past three months. Prior to that, Ms. Ayars lived in Corona, California. From 1989 to 1996, Ms. Ayars lived in Riverside, California where she first met Ms. Reed. Ms. Reed and Ms. Ayars attended junior high school and high school together. They graduated high school together in 1996. After high school, Ms. Ayars and Ms. Reed kept in touch. Ms. Ayars and Ms. Reed have been friends for 33 years.

Ms. Ayars described Ms. Reed as her best friend for 33 years. She said Ms. Reed is smart, very strong, a good mother to her children, a good friend, a good listener,

and has been a good support system for Ms. Ayars for years. Ms. Ayars testified that Ms. Reed is very forthcoming, is not racist or prejudiced, and has never done anything that led Ms. Ayars to believe Ms. Reed is prejudiced towards other cultures.

Ms. Ayars first became aware of the video of Ms. Reed's skit when Ms. Ayars's daughter showed it to her. Ms. Ayars saw the video and stated that she "was not shocked" because she knew Ms. Reed was a dedicated teacher, "who was willing to do that for her students." Ms. Ayars said that Ms. Reed had the "humility to put herself out there to teach a math concept to high schoolers, who are very judgmental." Ms. Ayars said that Ms. Reed "was making a fool of herself" to teach a math concept, which "is honorable and I admire that." Ms. Ayars stated that she did not perceive the video as being racist in any way, but she "knows it was perceived as racist." Ms. Ayars said that she doesn't think "it came from a place of racism," but that she can see how people think it is racist. Ms. Ayars knows that Ms. Reed "did not intend it that way."

LEGAL CONCLUSIONS

Applicable Code Sections Regarding Dismissal Actions

1. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44934 and 44944.)
2. Education Code section 44932 provides the grounds for dismissing a permanent employee. Subdivision (a)(1) authorizes dismissal for immoral conduct. Subdivision (a)(6) authorizes dismissal for evident unfitness for service. Subdivision (a)(8) authorizes dismissal for persistent violation or refusal to obey regulations and district policies.

3. Education Code section 44939 provides the grounds for suspension of a permanent employee.

4. Education Code section 44944 establishes the right to a hearing, the process for selecting the three-member Commission on Professional Competence, and sets forth the Commissions' authority regarding its final decision.

5. Education Code section 44938 outlines the procedures the governing board must follow before acting on any charges brought against a permanent employee.

Burden and Standard of Proof

6. The "burden of proof" means the obligation of a party, to convince the trier of fact that the existence of a fact sought to be proved is more probable than its nonexistence. (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1128.) The district has the burden of proof to establish cause to dismiss its employee.

7. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) A preponderance of the evidence means that the evidence on one side of an issue outweighs, preponderates over, and is more than, the evidence on the other side of the issue, not necessarily in number of witnesses or quantity, but in the convincing effect the evidence has on those to whom it is addressed. In other words, the term refers to evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Board Policies and Additional Statutes Alleged to Be Applicable

8. District Board Policies 0410, 0415, and 4119.21 set forth the professional standards the board expects of its employees. As noted in Policy 0410, the board expects district employees to “provide equal opportunity for all individuals in education,” to provide programs, activities, and practices that are “free from unlawful discrimination, including discrimination against an individual or group based on race, color, ancestry, nationality, national origin, ethnic group identification, age, religion,” and “[d]istrict programs and activities must also be free of any racially derogatory or discriminatory school or athletic team names, mascots, or nicknames.” As noted in Policy 0415, the district “prohibits discrimination, harassment, intimidation, or bullying in all district programs, activities, and employment on the basis of actual or perceived ancestry, age, color, disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, age, sex, sexual orientation, parental or marital status, pregnancy, or association with a person or a group with one or more of these actual or perceived characteristics.” The Profession Standards section 4119.21 sets out ethical standards of educators as adopted by the district.

9. Education Code section 200 provides:

It is the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, equal rights, and opportunities in the educational institutions of the state.

The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor.

10. Education Code section 220 provides:

No person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, including immigration status, in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state student financial aid.

Relevant Judicial Authority

IMMORAL CONDUCT

11. The seminal case for teacher dismissals is *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. There the Supreme Court held that where charges of immoral conduct, unprofessional conduct, or evidence unfitness for service are raised in teacher dismissal cases, the applicable standard is whether the person is fit to teach. The factors outlined in *Morrison* must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service. (*Id.* at p.229.)

12. Immoral conduct has been defined to mean that which is hostile to the welfare of the general public and contrary to good morals. It includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and

dissoluteness. It can be conduct that is willful, 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. (*Board of Education of the San Francisco Unified School District v. Weiland* (19 60) 179 Cal.App.2d 808, 811.)

EVIDENT UNFITNESS FOR SERVICE

13. The applicable standard or determinative test in teacher dismissal cases is whether the person is fit to teach. "Fitness to teach" is a question of ultimate fact. (*Board of Education v. Commission on Professional Competence* (1980) 102 Cal.App.3d 555, 560-561.)

14. "Evident" is defined as "clear to the vision and understanding." "Unfit" is defined as "not fit; not adapted to a purpose, unsuitable; incapable; incompetent; and physically or mentally unsound" and "unsuitable, incompetent and not adapted for a particular use or service." (*Palo Verde Unified School District of Riverside County v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

15. In *Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, the court noted the two parallel, yet contradictory, lines of cases regarding "unfit for service." One line of cases equated that term with "unprofessional conduct" and the other line of cases distinguished the two definitions. In deciding that the latter line of cases was the correct way to evaluate "unfit to serve," the *Woodland* court complied with the rules of statutory construction. The *Woodland* court concluded that "unprofessional conduct" and "evident unfitness for service" do not mean precisely the same thing. Although conduct constituting "evident unfitness for service" will often constitute "unprofessional conduct," the

converse is not always true. Evident unfitness for service requires that unfitness for service be attributable to defect in temperament, which is not necessary for a finding of unprofessional conduct. Nevertheless, lower courts may not disregard the criteria for unfitness set out in *Morrison* where that court concluded that “unprofessional conduct” meant conduct showing a teacher was unfit to teach. These criteria must be analyzed to determine, as a threshold matter, whether the conduct indicates unfitness for service. If it does, the next step is to determine whether the “unfitness” is “evident”; i.e., whether the offensive conduct is caused by a defect in temperament. (*Id.* at pp.1442-1445.) A finding of “unfit to serve” can be made if the evidence, taken in the aggregate, shows that retaining the employee would pose a significant danger of psychological harm to students and fellow teachers. (*Id.* at p.1456.)

16. An employee can be dismissed from the teaching profession only upon a showing that his or her 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 inquiry is whether any adverse inferences can be drawn from the teacher’s conduct as to his teaching ability, or as to the possibility that publicity surrounding the past conduct may in and of itself substantially impair his function as a teacher. (*Morrison, supra*, at p. 235.)

17. To establish a teacher is unfit to teach, *Morrison* requires a nexus between government employment and alleged employee misconduct stemming from the principle that “[n]o person can be denied government employment because of factors unconnected with the responsibilities of that employment.” (*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th1454, 1463.)

18. “Unlike ‘unprofessional conduct,’ ‘evident unfitness for service’ connotes a fixed character trait, presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectation of the employing school district.” (*San Diego Unified School District v. Commission on Professional Competence* (2013) 214 Cal.App.4th 1120, 1142-43.)

19. An employee’s actions on a given day may suggest a lack of judgment and discretion or may be an isolated act precipitated by an unusual accumulation of pressure and stress. An absence of any other incidents in the employee’s teaching career suggestive of lack of judgment or discretion can further distinguish the aberrant character of the act at issue. In such a case, a fact finder could reasonably conclude that the isolated incident of poor judgment was outweighed by years of demonstrated teaching competence, and that on balance the employee possessed the qualities of character necessary for teaching fitness. (*Board of Education v. Jack M.* (1977) 19 Cal. 3d 691, 696-701.)

20. In determining whether the teacher’s conduct indicated unfitness to teach, such matters as (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 extenuating or aggravating circumstances, if any, surrounding the conduct, (5) the likelihood of the recurrence of the questioned conduct, and (6) the notoriety and publicity accorded the teacher’s conduct may be considered. (*Jack M., supra.*, at p.702, fn. 5.)

21. The nexus between an employee’s conduct and his or her fitness to teach is established when the conduct is detrimental to the mission and functions of the employer. Factors to consider are whether the acts demonstrate a serious lapse in good judgment, the teacher fails to recognize the seriousness of his misconduct, the

teacher attempts to shift blame to parents and students, the principal has lost confidence in the teacher's ability to serve as a role model based upon his or her actions, or, most noteworthy, the teacher's testimony that he or she does not think his or her actions would have any impact on his ability to teach students if any of them had viewed the actions as immoral. The conduct itself, together with the teacher's failure to accept responsibility or recognize the seriousness of it, given his or her position as a teacher and role model, demonstrates evident unfitness to teach. (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1465-66.)

22. One act does not alone demonstrate the unfitness of the teacher but is simply one of the factors to be considered. (*Board of Education v. Commission on Professional Competence* (1980) 102 Cal. App.3d 555, 561-62.)

23. There must be a nexus between the teacher's conduct and his or her usefulness to the school district and only when so construed can grounds to dismiss for immoral conduct or unfitness to serve be constitutionally applied. (*Board of Trustees v. Judge* (1975) 50 Cal. App. 3d 920, 929.)

PERSISTENT VIOLATION OF OR REFUSAL TO OBEY LAWS

24. A violation of Education Code section 44932, subdivision (a)(8), must also be established by reference to the *Morrison* factors. If unfitness to teach is shown, then the district must further establish that the employee's refusal to follow the laws or regulations was "persistent," i.e., "stubborn and continuing." (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1183.) Isolated incidents or incidents involving an issue unresolved over a period

of time are not generally considered "persistent." (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.)

25. The word "persistent" is defined by lexicographers as "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.) Education Codes section 44932, subdivision (8) pertains to unintentional as well as intentional transgressions, and hence the Legislature has decreed that a single violation is not sufficient to warrant dismissal, apparently to allow for correction; "it is the persistent disregard" of school rules that the subdivision is designed to regulate. (*Id.* at p.84.)

Morrison Factors

26. In *Morrison, supra*, the Supreme Court suggested seven factors to consider when evaluating whether the school employee should be dismissed: (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the teacher; (4) the existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; and (7) the extent that the discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.

27. The *Morrison* factors may be applied to the charges in the aggregate. When a camel's back is broken, the trier of fact need not weigh each straw in its load to see which one could have done the deed. A trier of fact is entitled to consider the

totality of the offensive conduct. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1456-1457.)

28. Only the pertinent *Morrison* factors need to be analyzed. (*Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 476.)

Other Disciplinary Considerations

29. An administrator's loss of confidence in the educator and doubt regarding the educator's ability to serve as a role model for students are factors that may be considered. (*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1460.)

30. The Commission is vested with discretion not to dismiss an employee even if grounds for discipline exist. (*Fontana Unified School District v. Burman* (1988) 45 Cal.3d 209.)

Evaluation of Charges

31. Ms. Reed has been employed by the district at North for almost 20 years, since the 2002-2003 school year. Based on the evidence, Ms. Reed appears to have been utilizing the "SOH CAH TOA skit" that was recorded by a student on October 19, 2021, for many years at North and at least as far back as 2012, although she did not use the skit every year during that time period. Mr. Phelps credibly testified that the entire math department of North was aware that Ms. Reed was performing this skit for many years. However, the evidence did not establish that North administrators were aware that Ms. Reed was using the SOH CAH TOA skit prior to October 19, 2021. The Commission finds that the preponderance of the evidence established that Ms. Reed was never told by the district's administration or anyone else that she should not

utilize the skit. To the contrary, other math teachers praised her use of the skit as an effective method to keep her students engaged and to retain the mnemonic SOH CAH TOA.

A preponderance of the evidence established that multiple students of North experienced emotional, social, and psychological harm as a result of Ms. Reed's skit. Specifically, Dr. Fryberg provided credible and persuasive testimony regarding the negative impact Ms. Reed's behavior during the skit had on all the students at North, both indigenous students and non-indigenous students. Five students testified at the hearing regarding the negative impact Ms. Reed's skit had on them and their fellow students. The five students credibly testified that Ms. Reed's skit made them uncomfortable, was racist, and was mocking indigenous culture. One student testified that when he voiced his feelings regarding how Ms. Reed's skit was racist, other students told him that he was "too sensitive," which as credibly explained by Dr. Fryberg, is simply another microaggression towards indigenous students. Extensive evidence was received showing emails, and comments to the district board by many students, community members and families that Ms. Reed's skit adversely affected students at North and people in the community. Students testified at the hearing that they felt unsafe as a result of protests at the school that were a direct result of Ms. Reed's skit. Accordingly, the Commission finds that the *Morrison* Factors of the likelihood Ms. Reed's conduct caused an adverse effect to students was established and that likelihood was very high, and the degree of those adverse effects was very high.

Additionally, Mr. Phelps credibly testified that the "little Indian boy skit" has been around for many years, and was the method taught to Mr. Phelps when he was a child. Accordingly, this SOH CAH TOA skit is well known, and Ms. Reed was praised by

the other math teachers for using it. However, despite its long history, a preponderance of the evidence established that the skit was culturally insensitive and harmful to students as found above. Ms. Reed had even undergone training on August 10, 2020, for "Culturally Responsive Pedagogy," yet she still chose to give the skit as a lesson without any reflection on how it would affect her students. While Ms. Reed intended to use the skit to teach her students, her failure to understand the cultural insensitivity of the skit, particularly in light of her previous training, is disturbing and blameworthy. A preponderance of the evidence also established that Ms. Reed continued to be perplexed as to why the skit was offensive to students and others well after she had been placed on administrative leave. Ms. Reed has an obligation to abide by district policies, which require her not to discriminate against her students based on ethnic group identification, and her use of that skit repeatedly for many years, which was demeaning and mocking of indigenous people, directly violated those district policies regardless of whether her intent in doing so was to teach students. The Commission finds that Ms. Reed's conduct constituted a persistent violation of district policies. Furthermore, the Commission finds that Ms. Reed's conduct also constituted immoral conduct because the conduct showed a moral indifference towards the adverse effects the skit had on all her students, particularly indigenous students.

While the Commission finds that Ms. Reed violated district policies and her conduct constituted immoral conduct, as set forth above, the Commission did not find that Ms. Reed has a "fixed character trait" that would not be remediable on receipt of notice that her conduct was wrong. As noted above, a preponderance of the evidence did not establish that Ms. Reed had ever been notified prior to October 19, 2021, by the school, the district, students, or anyone that her skit was inappropriate. Given her 20 years of experience as a teacher at North with positive performance reviews, the evidence does not establish that Ms. Reed would have been unable to stop performing

the skit or any other culturally insensitive lessons if she had been notified to do so. To the contrary, the evidence establishes that she likely would have stopped using the skit immediately if she had been given any notification at all that she should not be using it. The district never provided such notice. Accordingly, the Commission did not find that the evidence established that Ms. Reed is evidently unfit for service as a teacher.

32. After consideration of all the evidence, the Commission finds that Ms. Reed's conduct during the October 19, 2021, skit, as well as each of her performances of the skit prior to that date as discussed above, constitutes immoral conduct and persistently violated multiple district policies regarding professional standards, code of ethics, and prohibition against discrimination or harassment based on race and national origin.

33. The Commission did not find that Ms. Reed is evidently unfit for service as a teacher. Specifically, insufficient evidence was provided to establish that Ms. Reed's performance of the skit constituted a "fixed character trait" that would not be remediable on receipt of notice that her conduct was wrong. The evidence demonstrated that prior to October 19, 2021, Ms. Reed had received no notice at all from the district, students, or anyone else that her skit was wrong. Instead, she received praise from other math teachers for using it. While her failure to reflect on the skit and how it would affect her students was blameworthy, the evidence did not establish that she was not capable of stopping the behavior if she had ever received any notice that it was wrong. The evidence failed to establish that the district ever gave such notice.

Cause Exists to Dismiss Ms. Reed

34. Cause exists to dismiss Ms. Reed pursuant to Education Code section 44932, subdivision (a)(1), because the evidence established that Ms. Reed engaged in immoral conduct.

35. Cause exists to dismiss Ms. Reed pursuant to Education Code section 44932, subdivision (a)(8), because the evidence established that Ms. Reed persistently violated district policies, regulations and school directives.

Cause Does Not Exist to Dismiss Ms. Reed for Evident Unfitness for Service

36. Cause does not exist to dismiss Ms. Reed pursuant to Education Code section 44932, subdivision (a)(6), because the evidence did not establish that Ms. Reed was evidently unfit for service.

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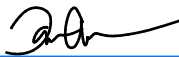
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ORDER

Ms. Reed's appeal of her immediate suspension and dismissal from employment with the Riverside Unified School District is denied. The district's request to suspend and dismiss Ms. Reed is granted. Ms. Reed shall be dismissed from the district.

DATED: February 24, 2023


Janice Cloward (Feb 24, 2023 09:27 PST)
Janice Cloward
Commission Member

DATED: February 24, 2023


Amar Samet (Feb 24, 2023 09:56 PST)
Amar Samet
Commission Member

DATED: February 24, 2023

Debra D. Nye-Perkins
DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings