

**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:

BRENDA CHAVEZ, Respondent

OAH No. 2022030354

DECISION

On August 1 through 4, 2022, the Commission on Professional Competence (Commission) heard this matter by videoconference. The Commission consisted of the following members: Administrative Law Judge Kimberly J. Belvedere, Amanda E. Carlson, and Cherise Bonsell.

Christopher Keeler and Amanda Georgino, Fagan, Friedman & Fulfrost, represented complainant Kyley Ybarra, Superintendent, Riverside Unified School District (RUSD or "the district").

Arthur Four, Reich, Adell & Cvitan, represented respondent Brenda Chavez, who was present.

Oral and documentary evidence was received, the record was held open for the panel to review evidence and conduct deliberations. The record closed and was submitted for decision on August 26, 2022.

FACTUAL FINDINGS

Background

1. Ms. Chavez is credentialed as an education specialist, with an authorization in early childhood special education and an EL (English Language) authorization (bilingual). She is currently employed by RUSD as an early childhood special education preschool teacher (ECSE teacher) at the Sunshine Early Childhood Center in Riverside (Sunshine).

2. According to the duty statement for the position of ECSE teacher for RUSD, Ms. Chavez is responsible for providing a comprehensive and developmentally appropriate preschool program to students with a variety of disabilities. Instruction shall be designed to meet the individual needs of each student in accordance with their Individualized Education Program (IEP) and foster development in the areas of preacademic, academic and functional academic skills, as well as communication, self-care, social/emotional and behavioral functioning, motor skills, and leisure/play.

3. Ms. Chavez started as an instructional assistant in 1999 and, by her own words, "fell in love with" teaching special needs children. Ms. Chavez started at RUSD as a preschool teacher in her own classroom in 2005, and has been teaching moderate to severe autistic children for almost 17 years.

4. Ms. Chavez has received positive evaluations over the years, and has never been disciplined. In fact, there was no evidence that Ms. Chavez has ever had any problems in connection with her teaching special needs children during her career. Ms. Chavez has received numerous awards over the years for her teaching (2010, 2015, 2016, 2017, and 2018), specifically, in recognition for her personal commitment,

dedication, and performance. For the 2017 to 2018 school year, Ms. Chavez was honored with the distinction of being named "Teacher of the Year."

5. During the 2021-2022 school year at Sunshine, Ms. Chavez taught the morning session in Room 4; another preschool teacher, Griselda Revollo, taught the afternoon session. Following a complaint by an Intensive Behavior Intervention (IBI) assistant on October 14, 2021, RUSD launched an investigation into alleged misconduct that had been occurring in Room 4 during the 2021-2022 school year (not only purportedly by Ms. Chavez, but also by other IBI assistants (Vanessa Chavez, Odette Cilluffo and Marina Quezada) as well as Ms. Revollo. The district hired an outside investigator to conduct the investigation.

6. On January 25, 2022, following its investigation, the district served Ms. Chavez with a Statement of Charges, immediately suspending her without pay and providing her with notice of its intent to dismiss her as a permanent certificated teacher. (Ed. Code, § 44932.)

7. As grounds to dismiss Ms. Chavez, the facts generally alleged the following misconduct: the inappropriate enforcement of COVID-19 mask policies; withholding of food from children; improper use of sanitizer; utilization of a "ski chair" (restraint chair) when not authorized; being unduly harsh and restrictive in the classroom; making inappropriate or derogatory remarks towards students and/or staff; not requesting functional behavioral analysis for special needs students when required; dishonesty during the district's investigation; and not following district policy or applicable laws as a result of the above-referenced conduct.

8. The Statement of Charges alleged the following causes for dismissal as a result of the above-referenced conduct: immoral conduct; dishonesty; evident

unfitness for service; persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district; and willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district.

9. Ms. Chavez timely filed a Demand for Hearing and Notice of Defense.

10. On February 24, 2022, Ms. Chavez filed a Notice of Motion and Motion for Immediate Reversal of Suspension to challenge her immediate suspension without pay. (Ed Code, § 44939, subd. (c).) The motion, which is decided based solely on the pleadings, was denied, and Ms. Chavez remained suspended without pay.

11. This hearing followed.

Evidence Presented by the District

TESTIMONY OF KYLEY YBARRA AND DOCUMENTS REFERRED TO IN HER TESTIMONY

12. Kiley Ybarra is the Assistant Superintendent of Personnel, Leadership & Development for the district. She has held many prior positions in the field of education, including Director of Certificated Personnel, middle school principal, elementary school principal, middle school counselor, special day class teacher in fourth through sixth grade, resource teacher for disabled students, and a middle school history teacher. Ms. Ybarra holds a Bachelor of Arts in psychology with a minor in physical education and a Master of Science in counseling with an emphasis on educational counseling. Ms. Ybarra also holds a clear and multiple subject teaching credential, a pupil services credential, and an administrative credential. Ms. Ybarra

testified at the hearing and authenticated exhibits; her pertinent testimony and documents she testified about are summarized below.

At the beginning of the 2021 school year (fall) there was a mask mandate in place due to COVID-19. Employees were required to wear masks; students also had to wear masks unless their individualized Education Program (IEP) or a doctor's note said otherwise. That policy was created as part of the return to school plan. Sunshine had been shut down in March 2020 because of the pandemic, but as part of a limited return to campus, the school re-opened in November 2021. Ms. Ybarra referred to an e-mail that was purportedly sent to all employees in the district on July 22, 2021, prior to the start of the school year, although the e-mail only showed it was sent to an e-mail address entitled, bcde@riversideunified.org. The e-mail greeting was to "RUSD Staff and Families." The e-mail indicated that masks would be required for all students indoors "unless exempt." The e-mail did not indicate what constituted an exemption, rather, it contained a hyperlink to the California Department of Public Health guidance on COVID-19.

The RUSD "COVID-19 Safe Return to In-Person Instruction and Continuity of Services Plan 2021-2022," which Ms. Ybarra said all employees received, similarly contained information regarding masking. In this document, which is more detailed, masks are noted as required in all indoor settings. This document also indicated:

The face covering guidance recognizes that there are some people who cannot wear a face covering for a number of different reasons. People are exempted from the requirement if they are under age 2, have a medical or mental health condition or disability that would impede them from properly wearing or handling a face covering,

those with a communication disability, or when it would inhibit communication with a person who is hearing impaired. Those with communication disabilities or caregivers of those with communication disabilities will wear a clear mask or cloth mask with a clear panel.

Persons exempted from wearing a face covering due to a medical condition, as confirmed by school district health team and therapists, must wear a non-restrictive alternative, such as a face shield with a drape on the bottom edge, as long as their condition permits it.

Ms. Ybarra confirmed the above was the RUSD policy during Fall 2021, and that the district had a website set up as well to address any COVID-19 issues. Finally, RUSD offered voluntary Zoom meetings if employees had any questions about COVID-19 policies.

Ultimately, aside from the masking problems that were allegedly observed in Ms. Chavez's classroom, following its investigation, RUSD decided that termination rather than progressive discipline was appropriate.

TESTIMONY OF MICHELLE CORTEZ AND DOCUMENTS REFERRED TO IN HER TESTIMONY

13. Michelle Cortes is the Director of Certificated Personnel and her primary duties include employee discipline. She has held many prior positions in the field of education, including principal, assistant principal, and elementary school teacher. Ms. Cortes has a Bachelor of Arts in Spanish, and a Master of Science in Educational Administration. Ms. Cortes also holds a multiple subject credential with BCLAD

(bilingual cross-cultural language acquisition development) which authorizes her to teach elementary school in Spanish, and an administrative credential.

On October 14 and 15, 2021, she had some complaints forwarded to her concerning employee behavior in Room 4. One complaint was from Cindy Matus, an IBI assistant in Room 4. Ms. Matus testified at this hearing. Another was from Marissa Cook-Nevarez, who did not testify at this hearing. The third was from Pamela Tomassene, a Speech Language Pathologist, who testified at this hearing. The last complaint was from Kaley Weakly-Orozco, who also testified at this hearing. The complaints were mostly concerning issues in Room 4 during the afternoon sessions and alleged improper conduct by Ms. Revollo and various IBI assistants; Ms. Chavez was mentioned only a few times. The subjects were: food being withheld, improper use of a ski chair (restraint chair), children being forced to wear masks including having the masks tied around their ponytails, and distressing a child with a microwave aversion by purposely turning on the microwave.

After receiving these complaints, Ms. Cortes interviewed Ms. Chavez and Ms. Revollo. Ms. Chavez denied withholding food from children; she said she does not have any behavioral problems with children so she does not need to use any restraints; she said she was not aware of the microwave “triggering” any students; and generally denied all other allegations.

Following the complaints and interviews, Ms. Cortes spoke with Ms. Ybarra and the decision was made to place Ms. Chavez and Ms. Revollo on paid leave and hire an outside investigator. Ms. Chavez was placed on paid leave on October 18, 2021. The district hired Susan Liberati, Ed. D., of Liberati & Associates, to conduct the investigation. Following Dr. Liberati’s investigation, the decision was made to dismiss Ms. Chavez from her employment. Ms. Cortez informed Ms. Chavez of the intent to

dismiss her from her employment by letter dated January 6, 2022, and included a draft of the charging document.

TESTIMONY OF CYNTHIA HARTSHORN AND DOCUMENTS REFERRED TO IN HER TESTIMONY

14. Cynthia Hartshorn is the Coordinator for Pupil Services and Special Education Local Plan Area. She has held many other positions in the field of education including program specialist in special education department, and teaching in a moderate to severe structured autism classroom at the preschool level. She holds a Bachelor of Arts in psychology and a Master of Science in Special Education. She also has an education specialist credential for students with moderate to severe disabilities, K through 12, an administrative services credential, and an early childhood special education authorization. Ms. Hartshorn's testimony is summarized below.

Classrooms at Sunshine are structured so there is a morning and an afternoon session. Each session has one teacher but there are overlaps because it is required by the teachers' contracts. Each session is 3.75 hours, and the overlap time is when the other teacher helps the teacher whose class is not currently in session. According to the class roster for the 2021 to 2022 school year, Ms. Chavez and Ms. Revollo each had eight students in their classroom. All students in their moderate to severe special education classrooms had a primary disability of autism or related disorder with similar characteristics. Every student in both classrooms had an IEP.

Ms. Hartshorn has observed Ms. Chavez teaching on several occasions. She described Ms. Chavez as running a "very tight routine" in her classroom. The same routine is followed on a day to day basis. Ms. Chavez "tends to have a "strict style" with students and is "firm and straightforward" when teaching. Ms. Hartshorn used to

teach a moderate to severe special education classroom and she would normally be on the floor playing with students, but Ms. Chavez is not as “warm and fuzzy” as she is or as other teachers normally are.

Ms. Hartshorn identified a photograph of what is commonly known as a ski chair. It is essentially a metal chair with a footrest. The purpose of the ski chair is to support a student who may not be able to sit up on his own. It is not designed to be a restraint chair because limiting a student’s freedom of movement is not permitted unless the student is in imminent danger to himself or others. If a student needed a ski chair, it would be in the student’s IEP. Wedging a ski chair against a table would never be appropriate as this action would be considered a forbidden physical or mechanical restraint.

The Picture Exchange Communication System (PECS) is a system of teaching that involves using pictures that represent an object or emotions that a student would normally communicate, but, because of his special needs and inability to verbalize, the student can use pictures (icons) to communicate. All students have access to their lunch and if PECS were used at lunch and a student did not use the correct icon to communicate he or she wanted a specific item, it would not be appropriate to withhold that item of food. The students are not required to use PECS or communicate correctly to get their food.

During any instruction in a special education classroom, if there is a problem, the teacher can seek more training, speak to the school psychologist, have a behavioral analyst come into the classroom, obtain a functional behavioral assessment, or call an IEP meeting to address the problem. No adverse strategies (like withholding food) are to be used in teaching special education children. Special education teachers focus on positive behavior interventions to teach alternative strategies in addressing

problematic behaviors. The district provides countless training opportunities and an autism symposium three to five times per year to help special education teachers utilize proper teaching techniques to address student behavior. Ms. Hartshorn reviewed the various exhibits provided that detailed the subjects addressed at the various trainings and autism symposiums confirming that the district did indeed provide comprehensive training to assist its special education teachers in the classroom.

TESTIMONY OF TASCEAIE CHURCHWELL AND DOCUMENTS REFERRED TO IN HER TESTIMONY

15. Tasceaie Churchwell, Psy.D., is the principal at Sunshine. Dr. Churchwell has held many other positions in the field of education, including elementary school principal, assistant principal, and special education elementary school teacher. Dr. Churchwell holds a Doctor of Psychology degree and a Master of Arts in Special Education. She also has a special education credential and an administrative credential. Dr. Churchwell testified at this hearing. Her testimony and documents she referred to are summarized below.

Dr. Churchwell is Ms. Chavez's direct supervisor. During the 2021-2022 school year, masks were mandatory due to COVID-19. The district posted signage everywhere around the school and communicated the mandatory mask policy to employees at meetings. Most of the special education students who could wear masks did, but there were some exceptions. If a special education student took a mask off, the teacher was expected to prompt the student to wear the mask properly, but if the student refused, the teacher would be expected to let it go and accommodate the student's need. Dr. Churchwell said the issue should never be pressed. She also said there was never a requirement to wear more than one mask.

During the 2021 to 2022 school year, Ms. Chavez was very organized, very structured, and worked very closely with Ms. Revollo, her co-teacher in Room 4. Dr. Churchwell expressed that she could not even tell the difference at times who was the AM teacher and who was the PM teacher because Ms. Chavez and Ms. Revollo worked so well together. Initially, Dr. Churchwell had some questions regarding why Ms. Chavez was "so firm" with the students. She also had concerns about using PECS during lunch and did not understand why some students might not get their food (like chips, for example), and when she asked Ms. Chavez, Ms. Chavez would tell Dr. Churchwell that the student had eaten enough already or that they were "working on other foods." Dr. Churchwell found this odd because lunchtime should be a time where food is given "freely." Dr. Churchwell also said she would ask why students were in the ski chair and pushed up against the table, and Ms. Chavez would tell her it was "for safety."

In Room 4 during the 2021 to 2022 school year, there were at least four IBI assistants. On October 14, 2021, one of the IBI assistants (Cindi Matus) expressed concerns regarding what she perceived was happening in Room 4. Ms. Matus was distraught. Ms. Matus explained to her that Ms. Revollo was "stuffing a meatball" in one of the student's mouths and she "just couldn't take it anymore." Ms. Matus then told Dr. Churchwell about other things she observed that she felt were problematic. Dr. Churchwell reported the alleged misconduct to Ms. Cortes, who told her to have Ms. Matus provide a written statement.

Dr. Churchwell referred to an exhibit that contained the written statement provided by Ms. Matus, and said that all of the things in that statement were the complaints Ms. Matus raised with her orally on October 14, 2021. A review of that statement revealed that the complaints detailed alleged incidents that began around

11:40 a.m., and ended around lunch time, which all occurred after the morning session in Room 4 ended. However, all of the complaints had to do with other IBI assistants or Ms. Revollo, and not Ms. Chavez. The complaints were troublesome, and if true, showed appalling conduct by the IBI assistants and Ms. Revollo. Regarding the only instances pertaining to Ms. Chavez, the written statement indicated the following:

- One student, who is not on the 2021 to 2022 roster for Ms. Chavez's class, is distressed by the microwave and will cry, cover his ears, or run to the bathroom when it is in use; all IBI assistants and teachers know this; and both Ms. Revollo and Ms. Chavez would "purposely" turn on the microwave and make a comment in Spanish that it is done so he gets used to it. However, in the next sentence of her written complaint, Ms. Matus wrote she "did not see who kept restarting the microwave."
- One of the IBI assistants made a comment about a student needing an attitude check and specifically needed a "good spanking" and both Ms. Revollo and Ms. Chavez "agreed." However, the statement did not say how she knew that Ms. Revollo or Ms. Chavez "agreed."

Ms. Matus testified at the hearing and more findings regarding her complaint will be discussed below in connection with her testimony.

Dr. Churchwell also asked others to write statements. She received a statement from Marissa Cook-Nevarez, who wrote about problems in the "afternoon class" of Room 4, and described things such as "the afternoon teacher" withholding food from a student named "N [REDACTED]" (who is a student on the roster in Ms. Revollo's class) until he used the right gesture to receive that food item, and similar things happening

during snack time. There was no mention in Ms. Cook-Nevarez's written statement to Dr. Churchwell about Ms. Chavez.

Regarding Dr. Churchwell's own observations, she did see students wearing two masks in Room 4, and said she was told that it was just for "extra protection" and that they were being "very cautious." She also did hear Ms. Chavez make a comment at some point about one mask being for "eating" and the other for "protection." Dr. Churchwell explained that for some special needs students, the mask is a sensory issue and they sometimes chew them, so likely that comment meant that since a student was chewing one mask, another would be placed on to provide protection from COVID-19. She noted that if a student is "resisting" a mask it would "never be appropriate" to force a mask on a student. However, she did not testify she ever witnessed Ms. Chavez force a mask on a student.

Dr. Churchwell also said that during COVID-19, teachers were supposed to "sanitize and hand wash a lot" and that Ms. Chavez used a sanitizer in her classroom other than the one that was provided by the district.

Dr. Churchwell collected several other statements regarding alleged incidents that happened in Room 4, all of which will be discussed below in connection with the testimony of those witnesses.

TESTIMONY OF CINDY MATUS AND DOCUMENTS REFERRED TO IN HER TESTIMONY

16. Cindy Matus is a special education teacher in a moderate to severe autism classroom for the Redlands Unified School District. She previously worked as a substitute teacher and an IBI assistant for RUSD. Ms. Matus has a Bachelor of Arts in

liberal studies and holds an education specialist credential in moderate to severe autism.

Ms. Matus worked as an IBI assistant in September and October 2021 in Room 4. In addition to Ms. Chavez and Ms. Revollo being in the classroom during their sessions, there were other IBI assistants and a speech and language pathologist, as well. Additionally, she would see Ms. Hopewell and Dr. Churchwell come into the classroom on occasion.

On October 14, 2021, she began writing down incidents that had been occurring in the afternoon session of Room 4 on that date. She felt "overwhelmed" and decided she needed to talk to Dr. Churchwell. It was "emotionally disturbing" for her, she was "distraught," and said "I literally brought my Bible hoping" the situation would improve before she went to talk to Dr. Churchwell.

Ms. Matus confirmed that the document provided in the exhibits and authenticated by Dr. Churchwell previously was the letter she gave to Dr. Churchwell on October 14, 2021. She further elaborated on the incidents in the letter as follows:

Regarding the incident in her letter that occurred around 11:40 a.m., which occurred during "tabletops," and where one of the IBI assistants, "Vanessa," was putting students' hair in ponytails even though they do not like it, and spraying one student with water when he tried to take his ponytail down, Ms. Chavez was "present," although she did not indicate whether Ms. Chavez knew what was happening in relation to those students.

Regarding the "microwave" incident that she described in her letter as occurring around 11:40 a.m., at approximately the same time as the above-referenced incident, she noted that one student has sensory issues with the microwave and someone

would turn it on and off. She felt this was being done to distress the student since she would go to the microwave and there would be nothing in it. However, she did not see who turned it on and off. She also said sometimes Ms. Chavez would "turn it on and off" and also turn the bathroom lights on and off knowing that those things annoyed a particular student. Later she testified that she never saw Ms. Chavez turn the microwave on and off but "she was there." She also said that both Ms. Chavez and Ms. Revollo have made the statement that it is done "so he gets over it" to each other. In her opinion, it is not an appropriate way to address behaviors; something else such as noise cancelling headphones or having the student go on a walk or leave the area when the microwave is on is what should have been done.

Regarding the incident in her letter at 11:44 a.m. about a statement one of the IBI assistants made to Ms. Chavez and Ms. Revollo about a student needing an attitude check and a spanking, Ms. Matus said this type of talk was "typical."

Regarding the incident that occurred at lunch and snack time where a student was not given a preferred meal item unless the student did specific hand gestures, which pointed to Ms. Revollo as the perpetrator in Ms. Matus's letter, at the hearing Ms. Matus testified that Ms. Chavez was "in the room" when these things happened. She said it is not appropriate to withhold food from students.

Ms. Matus testified about other concerns regarding Room 4 that were not noted in her written statement. She did not explain why these allegations were not in her letter. Regarding the use of the ski chair, she said Ms. Chavez would use the chair when a student would not sit. She explained that the chair depicted in the exhibit photo is the same chair, but the chair in the photo does not have the belt/strap around the middle. She said when students would have tantrums, Ms. Chavez would put them in the chair, hold them by their arms and "yell" at them. She felt the chair

was used as a restraint to keep the student at the table to make them do certain activities. "Other IBIs in the classroom also did this." She described it as "very common."

Ms. Matus testified that Ms. Chavez would "forcefully" put food in students' mouths that they did not like, even with students who were not aggressive.

There was a "lot" of "namecalling" in the classroom. For example, students were referred to as "diabolito," meaning "little devil," "she-demon," and as being overweight. Another student who had thick eyebrows was referred to as "Frida Kahlo." It was not clear from the testimony precisely who made these statements (i.e. Ms. Chavez, Ms. Revollo, or IBI assistants). Ms. Revollo called one student a "little asshole" but again, it was not established whether Ms. Chavez was present or heard the comment.

Ms. Matus's "biggest concern" was that "both teachers" in Room 4 were "teaming up" to convince another teacher that one student needed to be removed from the classroom because he was not autistic. Ms. Matus did not agree with this because the student made progress on all of his goals when she worked with him, and he worked very well with discrete teaching, so this was simply not true.

Regarding masks, Ms. Matus testified that Ms. Chavez "forced" students to wear masks. Students were often restrained so they could have masks "forcefully" put on them and forced to wear multiple masks because they chewed a single mask. Masks were also being tied around students' hair if their ears would not hold the mask. If a student tried to remove a mask, Ms. Chavez would try to "restrain" them from doing so. Ms. Matus said staff had been instructed at the beginning of the year during orientation that students do not have to wear masks if they cannot tolerate them.

During the school year it was common for Ms. Chavez and Ms. Revollo to say things to each other like “fuck that bitch” when referring to other teachers.

TESTIMONY OF MELODY HOPEWELL AND DOCUMENTS REFERRED TO DURING HER TESTIMONY

17. Melody Hopewell is an IBI Supervisor for RUSD. She has a Bachelor of Arts in psychology and sociology and a Master of Arts in psychology. She is a board-certified behavior analyst. Ms. Hopewell is responsible for putting on training sessions for teachers and IBI assistants teaching students with autism. Ms. Hopewell authenticated multiple exhibits concerning the types of training the district has provided at Sunshine for teachers and IBI assistants teaching special needs students. Ms. Hopewell testified at the hearing. Her testimony is summarized below.

Regarding PECS, she described it as a formal system that uses pictures to help supplement and encourage language for students. During the 2021 to 2022 school year, she would visit Room 4 during the morning and afternoon sessions. At one point, in 2020, the appropriateness of using PECS during lunchtime was discussed with Ms. Chavez (as noted in Ms. Hopewell’s IBI Consultation Notes from March 3, 2020), but Ms. Hopewell found Ms. Chavez to have a “general resistance to teaching protocols.” Neither the Consultation Notes nor testimony was clear on precisely how Ms. Chavez showed a “general resistance” to specific protocols.

Ms. Hopewell said that PECS icons should be available for students to use at all times and should be used to interact with students. Ms. Chavez did use PECS icons to communicate with students. The PECS icons, however, should not be used during mealtime and Ms. Chavez made students use PECS to request their meal items. This was brought to the attention of the principal, it was addressed, and following that

time, she never saw it happen again. Ms. Hopewell did not indicate when it was she brought it to the attention of the principal or when the last time was that Ms. Chavez used the PECS during mealtime, so it was unclear whether this was during the 2020 to 2021 school year or the 2021 to 2022 school year.

Ms. Hopewell explained that if an instructor deviates in any way from the PECS protocol, then he or she really is not using PECS because that is a standardized communication tool. Anything used outside of the formal PECS setting would be considered just a basic communication exchange icon. There are many communication methods used with students, but none are appropriate to be used during mealtime to require a student to request food.

Regarding the use of the ski chair, Ms. Hopewell said these were used on a "regular basis" by Ms. Chavez. Ms. Hopewell visited Room 4 at least every other week (two or three times a month). "Restraint" is defined as a student not being able to control their limbs. So, if a chair is pushed up against a table, the student's legs would be trapped. After she spoke with Ms. Hartshorn about seeing the ski chair in use, she saw Ms. Chavez use it on another occasion to get a student named "V [REDACTED]" who was "flailing" and "engaging in behaviors" to sit by the table. On that occasion, she intervened and told Ms. Chavez not to do it because there are other ways to address behavior. Ms. Hopewell said this occurred during the 2020 to 2021 school year, but was not specific as to when. Ms. Hopewell described the chairs as "very heavy" and constructed in such a way that a student would not be able to easily push himself away from the table. She feels that using the chair would therefore qualify as a restraint because the way the chair was pushed up against the table a student would not be able to get out of the chair.

Regarding play time, in her statement to Dr. Liberati, Ms. Hopewell stated that the rules in Room 4 were overly restrictive, the teachers and aides were too rigid, and the students did not play at all. The investigation did not elaborate on what Ms. Hopewell meant by this, nor did she elaborate on it in her testimony.

TESTIMONY OF PAMELA TOMASSENE AND DOCUMENTS REFERRED TO DURING HER TESTIMONY

18. Pamela Tomassene has been a speech and language pathologist at RUSD for four years. She has also worked as a behavioral therapist and flight attendant. Ms. Tomassene has a Bachelor of Science in psychology and Master of Arts in Communication Disorders. Ms. Tomassene is also a licensed speech and language pathologist. Ms. Tomassene testified at the hearing. Her testimony and documents she referred to in her testimony are summarized below.

During the 2020 to 2021 and 2021 to 2022 school year she worked primarily at Sunshine, although she left in the fall of 2021. On average, she went into Ms. Chavez's classroom 45 minutes twice per week. Ms. Tomassene wrote a statement for Dr. Churchwell on October 15, 2021, regarding what she had observed in Room 4 [errors in original]:

I am writing in regards to a situation I witnessed on October 14, 2021, in Mrs. Rovello's class at Sunshine between 1:00 AM to 1:45 PM. I was doing a speech therapy session in the classroom. A student named N [REDACTED] was brought to my table by an aid who was physically directing him. N [REDACTED] was visibly upset and protesting to sit down. He was physically placed in a "ski" chair (a chair with metal arms

and a flat bottom) and he immediately began pulling at his face mask. I noticed he was wearing three face masks over his nose and mouth and a fourth one was around the back of his neck which kept all of them tied together in a knot on top of his head. He kept trying to reach for the knot while he was crying and flailing his arms. The [aide] (whose name I don't know) kept firmly telling him, "No, stop it." He was then physically restrained by holding both of his arms down on the table. When I asked why he was wearing three masks, the aid stated, "He won't keep his mask on." I sensed the aid [sic] was very irritated with him. N [REDACTED] has a disability and is only able to use a few words. He is not able to verbally state when he is having difficulty breathing or uncomfortable, so behaviors are likely to be exhibited when he tries to communicate his wants and needs.

To reiterate: N [REDACTED] was wearing two light blue paper masks and a thick light blue cloth mask over the top. All of them covered his nose and mouth. The mask on the back of his neck was a light blue paper mask and the elastic loops were somehow attached to the masks in front and tied into a knot on the top of his head.

As the next group came to my table, I noticed two students wearing two masks, when I asked why they were wearing two masks Mrs. Chavez (the morning SDC teacher) stated, "One to eat and one to wear" (while laughing) and Mrs.

Revollo stated, "Yep, they always want to stick it in their mouth, so they get two" (while smiling).

I have witnessed students in this class being forced to wear masks and then physically restrained when they try to remove them. Now, it has escalated to some students wearing two to three masks. I feel it is my duty to report this situation and help rectify it.

Please contact me if you have further questions.

Ms. Tomassene's testimony elaborated on her written statement. She said that students had been seen wearing multiple masks in Room 4 and that Ms. Chavez had stated one was to "eat" and one to "wear." She also felt that Ms. Revollo was condescending to students and physically restrained them when they did not want to wear masks and that it happened in the AM and PM sessions. Ms. Tomassene explained that when a student would take down his mask, "they would be restrained by holding their hands down by their sides." Ms. Tomassene said at the beginning of the school year, Dr. Churchwell had given instructions that teachers should "do their best" regarding masks but not to force students if they did not want to wear one. In her letter she also referred to one incident where a student was wearing three masks and one student had it "tied" on above his ears.

Ms. Tomassene said that she believed there was a lack of behavioral management and ability to work as a team in Room 4, and that Ms. Chavez "not intervening" was a problem. She did not elaborate on what she meant by this.

Ms. Tomassene said that the ski chair weighs 20 to 30 pounds and was in use "almost every time" she was in Room 4 and it was used for different students. It was

used in a “restraining manner” where the student would be pushed up against the table. It was also used at snack time. She said it was used by Ms. Chavez and two aides.

Regarding the use of Lysol in the classroom, she saw one aide use it. They were not supposed to use Lysol in the classroom. The district does not allow the use of chemicals around the students because children with autism are “very oral” and put a lot of things in their mouths. Even during COVID-19, it is not allowed. There is an alternative disinfecting solution available for use. She never saw Ms. Chavez use it but the Lysol was on a shelf in plain sight.

TESTIMONY OF MAYRA AVILA-RIVERA

19. Mayra Avila-Rivera has been an IBI assistant at Sunshine for five years. She holds a Bachelor of Science in Early Childhood and Adolescent Development. Ms. Avila-Rivera testified at the hearing and her testimony is summarized below.

She has never worked with Ms. Chavez. Ms. Avila-Rivera had the opportunity to observe Ms. Chavez and students during “bus circle” time, which happens daily for about 15 minutes during drop off and pick up. During the 2019 to 2020, 2020 to 2021, and 2021 to 2022 school years, she has heard “comments” regarding autistic students’ behavior and appearances. The comments were made where students would have been in a position to hear them. She did not recall which students were the subject of the comments or the specificity of the comments, just that Ms. Chavez had made “comments” about behavior and hygiene.

TESTIMONY OF KAYLEY WEAKLY-OROZCO AND DOCUMENTS REFERRED TO DURING HER TESTIMONY

20. Ms. Weakly-Orozco is a teacher in a moderate to severe autism classroom (Room 5) at Sunshine. She has been a morning session teacher for four years and prior to that she was an afternoon teacher. Ms. Weakly-Orozco holds a Bachelor of Arts in liberal studies and a Master of Arts in special education. She has a preliminary administrative services credential and an early childhood special education teaching credential.

Ms. Weakly-Orozco wrote a letter at Dr. Churchwell's request regarding what she observed in Room 4. Her written statement mostly concerned conduct by individuals other than Ms. Chavez, which are omitted. She wrote:

I, Kaley Weakly-Orozco, have witnessed multiple actions against the students in Room 4 performed by staff members Griselda Revollo, Brenda Chavez, and Vanessa Chavez.

[¶] . . . [¶]

[Regarding Brenda Chavez]¹ I am more recently concerned with how often she is sanitizing the student's hands, and that she demands that our preschool students wear not one

¹ One incident involving Ms. Chavez was omitted because in the letter Ms. Weakly-Orozco stated it occurred 10 years ago, which is outside the scope of this proceeding and barred from consideration by statute.

but two and sometimes three masks in order to keep their mouth and nose covered, while the third is being chewed or sucked on. The students are having their hair pulled back and masks are being tied to the student's hair to keep them on. . . .

[¶] . . . [¶]

These are only incidents that I have personally witnessed, and they span over the course of years. . . .

Ms. Weakly-Orozco's testimony echoed her letter. She added at the hearing that she had "witnessed" Ms. Chavez spraying some sort of hand sanitizer on students' hands during the day and this is forbidden because they had been instructed to only use hand sanitizer after drop off and at pick up and to only use district provided sanitizer. She was also concerned about masks because during the bus circle time she observed Ms. Chavez pull a student's mask down over their mouth after the student had moved it. She also saw students at the bus circle wearing masks that were too large so they were tied around pony tails and she saw students wearing multiple masks. She did not, however, know who tied the masks on the students. She also would overhear yelling and "firm" comments being made in Room 4 that were inappropriate but did not specify precisely what the comments were, when they were made, who made the comments, or to whom they were made, only that if the comments were made to her child, her child would be upset to be spoken to that way. Finally, Ms. Weakly-Orozco testified that she did see Ms. Chavez on one occasion at the bus circle physically restrain a student by putting a hand on the student's shoulder or putting her leg in front of the student so the student "could not escape." Ms. Weakly-Orozco stated that the proper way to handle this situation would be to squat

down to the student's level and tell him to wait for the bus, not to restrain him. The bus was 20 to 30 feet away and behind a gate so there was no need for restraint.

TESTIMONY OF JAMIE SALTER

21. Jamie Salter's testimony and her curriculum vitae are summarized as follows: she has a Bachelor of Arts in psychology with a double minor in education and social relations. She has a Master of Education degree, an Educational Specialist degree in School Psychology (Ed.S.), and is a nationally certified school psychologist. She holds a preliminary administrative credential, a pupil personnel services credential, and is a board-certified behavior analyst. Ms. Salter has had significant work over the past 20 years in the field of special education and specifically has done a tremendous amount of work concerning autism. She has served as an autism specialist, conducted functional behavioral assessments, and conducted multi-faceted psychological assessments to determine the needs of developmentally disabled students in school. Ms. Salter has published, though not in peer-reviewed journals, and has provided many trainings and presentations in various areas pertaining to behavioral interventions and autism.

Under both state and federal law, positive interventions are always favored over negative interventions when it comes to addressing behaviors of special needs students. For example, you cannot use noxious sprays, deny sleep, deny food, deny water, ridicule them, or deprive them of their senses as a way to control behavior. Regarding physical restraint, the only time it would ever be possible would be if a student was in "clear and present danger of physical harm" and all other lesser methods have been tried and failed. Restraint cannot be used for coercion, discipline, retaliation, or convenience. If there is a student having a behavioral outburst that constitutes an emergency, the proper way to handle it would be to report it, and

conduct a functional behavior assessment to determine if a behavior plan should be put into place. A ski chair, specifically, should never be used for anything other than stability and its use should be written into a student's IEP. It is not a device to control behavior. Ms. Salter feels that a ski chair should not even be in a classroom unless there is a student who needs it.

Regarding masks, if a student is resistant to wearing a mask, there are ways to try to help them wear it. For example, have them build up to it, get one that has Sponge Bob or Mickey Mouse on it, or try a different material (cloth mask versus paper mask). It is never appropriate to wrap a mask around a student's hair.

Regarding the allegations concerning a microwave, it is not appropriate to expose a child to an offending noise with the hope that he will get over it, unless a behavior specialist specifically writes a plan for that. A teacher should be doing everything she can to avoid whatever trigger a student has.

Yelling or scolding students is not an effective behavioral intervention because yelling or scolding are not positive interventions.

Regarding food in a classroom, each district has different policies. Generally, the use of food as reinforcement is prohibited. However, in more severely impacted classrooms, food may be used as a reinforcement. Ms. Salter was not familiar with RUSD's policy. Regardless of policy, however, at mealtime, food should never be used in a negative way because students have a right to eat.

TESTIMONY OF SUSAN LIBERATI

22. Dr. Liberati testified at the hearing concerning her investigation. She also testified about why she felt Ms. Chavez was dishonest during the investigation.

However, credibility determinations are for the Commission to make; not witnesses. Thus, other than authenticating her investigation, Dr. Liberati's testimony, though considered, was not relied upon in making any credibility determinations regarding any witnesses.

STATEMENT OF Ms. REVOLLO

23. Ms. Revollo did not testify at the hearing. As such, her testimony constitutes administrative hearsay pursuant to Government Code section 11513, subdivision (d), and may be used to supplement or explain other evidence. Dr. Liberati interviewed Ms. Revollo during her investigation. Ms. Revollo's statement not only indicates that she admitted many of the types of allegations contained in the Statement of Charges, but notably, did not implicate Ms. Chavez with respect to any particular conduct (date, time, name, student involved, etc.). For that reason, the statement supplements and explains Ms. Chavez's statement to Dr. Liberati and testimony at hearing denying misconduct, as well as the testimony of some of the other witnesses regarding what they heard in Room 4, and is reproduced, in its entirety below:

Ms. Revollo has worked in the District in various positions including as a tutor, Special Education Aide, junior high school teacher, and for the last three years she has served as a teacher at Sunshine. The first two years in room five and one year in room four. Initially, Ms. Revollo noted that the only training she has received is a one hour training she referred to as IDI. Ms. Revollo later stated that she has received ProACT training, however, she does not consider ProACT relevant because "that's more like restraining

students if they're super elevated, and we don't really restrain our students. We don't use those procedures on our students. They're too little."

Ms. Revollo noted that she has attended Special Education symposiums when they were offered topics such as lesson planning and classroom management strategies. She found the symposiums to be helpful.

Ms. Revollo noted to not have received any training or instruction via her formal education in the value of play and social emotional growth for preschool children.

She explained that goals for the children include "requesting wants and needs, following a teacher's directed task and then just some of them have academics, like numbers, or colors, or shapes. But very basic like that." "Social emotional goals for some students include peer interaction."

Ms. Revollo noted that the students' IEPs are maintained in the classroom in separate files in a box. The teachers explain the goals and the daily objectives each day for the Aides. She stated to have completed one functional behavior analysis in her first year of teaching. Ms. Revollo has not noticed any behaviors for which she would recommend a functional behavior analysis.

Ms. Revollo stated to not know if the sound of the microwave is a trigger for a student in her class; however, he does cry and sometimes cover his ears when it is in use "but that's about all he does." She stated that the microwave needs to be used by the staff to heat up lunch or make popcorn. There is another microwave in the faculty lounge.

Ms. Revollo has been trained in the use of PECS and noted to have used it during snack and/or lunchtime although she has not used it recently. Ms. Revollo noted that she has never held food back from a child who was not pointing to the icon. Upon further questioning, Ms. Revollo recalled using PECS with E■■■■ for about a two-week period. Ms. Revollo explained that E■■■■ would hand the icon to her and then he would receive whatever he was asking for.

Ms. Revollo noted that if PECS were being used during the snack or lunch period, as when they were using PECS for E■■■■, if he did not point to the correct icon on the PECS board they would give him the optional item. As it relates to food, the staff allow the students to use the "hand over hand" strategy to get food. As it relates to PECS, the student needs to point to the icon for each bite of a sandwich, for instance.

Ms. Revollo noted that "the teachers and aides in room four would use the ski chairs for safety reasons. So, with E■■■■,

would get up, run around the classroom, hit staff, hit students, run towards the door, and leave. And a lot of times, our chairs are so flimsy that some of our kids tilt the chairs and would fall. So, once they fell several times, we're like, they're going to hit their head, we would put them in the ski chair, and they would sit in it until we went to the next activity, then they would sit on a different chair."

Ms. Revollo noted that "it is not a restraint for the child because no one is sitting next to them or behind them... it's just harder for them to slide out or tilt the chair." The chair is then pushed against the table. Ms. Revollo stated that the ski chair is not written in E■■■■'s IEP, nor has she requested a functional behavioral analysis be conducted.

The ski chair is also used for N■■■■ because he has a tendency to tilt his chair and fall back. The ski chair works because when they return to their regular chair, they learn not to tilt and fall. Ms. Revollo is not aware of the California Education Code regarding child restraint.

Ms. Revollo noted that they keep a water spray bottle in the classroom to spray the student's hair to comb it out of their eyes so that they can see. She stated she has never observed a staff member spray water in the face of a child in room four.

Ms. Revollo stated that she has never held food, including strawberries, from I ■ or asked him to point to an icon or use hand over hand because he can talk. Ms. Revollo continued by noting that she has never refused snacks or food for a child because they would not say the name of the food item or cooperate.

N ■ will usually wear one mask but sometimes needs two if one is too big and falls off. Ms. Revollo said she never considered the safety implications of wearing two masks.

Ms. Revollo stated that she calls O ■ "a little devil" as a joke because of the sounds he makes; he bites and scratches. She admits it is not respectful, but "it's not meaning harm." There are other adults, but Ms. Revollo is not aware of messages she may be sending to the aides by making such comments, nor has she requested a functional behavioral analysis be conducted.

Ms. Revollo could not recall her interaction with A ■ and if she physically restrained him from standing up from a seated position as she has a difficult time remembering things that far back; in this case, two years.

Ms. Revollo finds that she needs to place two masks on a student because they chew on one, and the other covers their mouth and nose. She cannot see if the student has swallowed or is still chewing on the first mask but does not

consider it a safety issue, although she admits that it could be a safety issue if the first mask breaks apart.

Ms. Revollo stated that she has never seen Vanessa [Chavez – the IBI assistant] put a student's t-shirt over a chair to keep them in their seat or put a boy's hair in a ponytail.

Evidence Presented by Respondent

TESTIMONY OF BRENDA CHAVEZ

24. The following is a summary of Ms. Chavez's testimony, which was very short and presented by discrete issues, rendering it somewhat "choppy": During the 2021-2022 school year, Ms. Chavez had approximately 10 students in her class. One student, "J [REDACTED]," who was discussed in the allegations concerning being triggered by the microwave, was not in her class and was not her student.

25. Regarding the "ski chair," there was one in her class that did not contain a belt, like the photograph depicted in one of the hearing exhibits. Ms. Chavez was never instructed on how to use a "ski chair," never discussed with anyone how to use a "ski chair," and it was never used to restrain a child. She did recall seeing a child named "E [REDACTED]" sitting in it during "circle" time in the afternoon class taught by Ms. Revollo, but he was not her student.

26. Regarding the use of PECS or any kind of picture icon during mealtime, she did use it depending on who needed to use it based on their IEP goals and it was used after consultation with a speech therapist. She has been trained in the use of PECS. Her understanding (from the speech therapist) is that it could be used during mealtime to receive a highly preferred item. There were some students who had

difficulty because they did not quite grasp the use of the icons, but if a student was struggling with using the icon, she would never withhold any food item.

27. Regarding the use of masks, Ms. Chavez recalled receiving an e-mail regarding the mask policy. But it was never communicated to her how they were to make exceptions (i.e. what procedure was to be used for exceptions). Ms. Chavez asked for a clarification on the mask policy and was informed that the only exception was if the student had a doctor's note indicating that the child did not need to wear a mask. Ms. Chavez never tied any masks to a student's hair and never joked about students wearing two masks because they usually eat one mask.

28. Regarding sanitation, Ms. Chavez noted that children's hands were supposed to be sanitized when they arrived, whenever they switched areas within the classroom, if there was a recess, and between activities. Ms. Chavez and other teachers were given instructions that all things needed to be cleaned and sanitized.

29. Ms. Chavez never called a student a "little asshole" or "little devil." She never discussed any kind of "chancla" therapy with any of the IBI assistants. Ms. Chavez recalled Ms. Matus being frustrated on one occasion while walking to the playground and, after a child ran away from her, she may have said something like "Miss Cindy sometimes we always need a chancla in our life." Ms. Chavez explained that the word "chancla" was a word used specifically in Hispanic cultures, usually among Mexicans. It is a very common phrase.

30. Ms. Chavez first learned of the allegations in this matter on October 18, 2021, when she was pulled out of her classroom by Dr. Churchwell. Ms. Cortez was there as well, and they had about a 45-minute discussion.

31. When Ms. Chavez spoke with Dr. Liberati during her investigation, she felt the questions were very vague and she was not made aware of precisely what the allegations were about. Nonetheless, she was honest with Dr. Liberati.

32. During Dr. Liberati's investigation, Ms. Chavez provided a statement. Dr. Liberati did not state in her report what questions were asked and there were no transcripts provided concerning the interview with Ms. Chavez. The statements attributed to Ms. Chavez in Dr. Liberati's report were conclusory, and are viewed with caution. Nonetheless, Ms. Chavez's statements to Dr. Liberati were reported as follows:

Ms. Chavez started teaching in 2005 and in the last six or seven years in the autism-specific program. She noted to have attended a whole series of classes specific to autism that included everything from discrete trial training to structure teaching in a variety of strategies for autism specific students. She also attends the District's Autism Symposiums each year. The symposiums include a variety of useful topics, everything from speech to how to use play in the preschool classroom to enhance learning. Miss Chavez indicated that the symposiums have been very helpful.

The goals that are followed for the students are contained in the EIP [s/c]. Ms. Chavez stated that her students usually work on teacher-directed tasks, working in groups, learning how to feed themselves, academic, skill-building, and social-emotional skills depending on each student's goals. Ms. Chavez reported that the aides in her classroom are aware of each student's goals as she has had a discussion

with each Aide. She has not shown the aides the IEP as she believes that would be a violation of confidentiality.

Strategies used in the classroom include using pictures, modeling, and hand over hand. She has never initiated a functional behavior analysis with any of her students. Ms. Chavez recalled that Melody Hopewell would also provide classroom support and guidance. Free play is incorporated into the day for her students to provide for a less structured environment and reduction of stress.

Ms. Chavez noted to take into consideration triggers for students to minimize anxiety or frustration. She noted not to be familiar with a student in the afternoon class by the name of J [REDACTED]. Ms. Chavez noted that she had seen J [REDACTED] cry while she was heating her food in the microwave but did not know him because he is not her student, nor has anyone discussed what J [REDACTED]'s trigger is with her.

Ms. Chavez stated to have been trained in ProACT and PECS. If a student cannot use the picture to ask for a snack, she, or the employee sitting next to the student, will help the student by using the hand-over-hand technique. Ms. Chavez noted that most of her students, except for two who need hand over hand, will ask for what they want before needing to use the hand over hand strategy.

Ms. Chavez noted that the tray of food is placed directly in front of the child, within arm's length, and the child can grab and eat or drink whatever is on the tray. At the same time, the teachers and aides are also working with the students and asking them to tell them which food or drink item they want and, if they get it correct, they "give the food or drink item to them."

Ms. Chavez stated that she has one ski chair in her class and that she has not had to use it for her class. She explained that "if there are students that are a little bigger and then the chairs are a little flimsy, if they're the kind that they can easily tip over sometimes we will use them for them to sit better, but we really don't, at least with my class I don't have any part right now. The ski chair is used to help students sit better because it is sturdier."

Ms. Chavez noted that Griselda [Revollo] used the ski chair for a student in her class by the name of E■■■■ because he is "a really big boy who was functioning at a much younger cognitive level and he didn't sit very well, and he was tipping back in the regular chairs we use in the classroom." She noted that they used the ski chair and the little table in the circle area to help E■■■■ stay in the chair. Ms. Chavez stated that the ski chair was used on a daily basis for E■■■■. She is not aware if E■■■■ has the use of the ski chair noted in his IEP. Ms. Chavez stated that she has received training via

ProACT and defines restraining as "pulling a student down." She clarified by stating that when E [REDACTED] was placed in the ski chair and pushed up against the table, they were not restraining him because no one was sitting behind him, holding him there. Ms. Chavez noted that the ski chair used daily was not effective "because he was able to get out of it."

Ms. Chavez noted that she "brought Lysol spray into the classroom to sanitize the workboxes when we're done." She explained that she did not check if she were allowed to bring Lysol spray but felt it would be effective with COVID prevention. "I've only used it when we're done with work boxes. We have a little partition where we put all of the workboxes then, and then I just kind of lightly spray."

Regarding V [REDACTED], Ms. Chavez said, "I yelled at him and, well, not yelled, but I've used a firm voice no hitting, do not hit me because he has. And that this has been recent. He had a new baby come into the fold, so we've seen a little bit of changes."

Ms. Chavez stated that she has never pushed a student down to make them sit or stay seated but, she explained that she had used deep messaging for sensory input as it helps students with anxiety. "V [REDACTED] wears several face masks with the first one as the mask he is allowed to chew and the second one for protection." Ms. Chavez noted that

she did not question if the aforementioned behavior is safe because the first one is in his mouth and he's chewing on it." She did not consider V [REDACTED]'s behavior a choking hazard, albeit they cannot see the mask he is chewing on under the mask he is wearing for protection.

Ms. Chavez recalls saying to the adults in the room and as a joke that certain students need "chancla therapy." She admits that her comment is probably not appropriate.

Ms. Chavez acknowledged that she did discuss her private life, including drinking on the weekends, "I had 5 Micheladas this weekend" in front of students while teaching; her children, and her husband possibly being homosexual, saying that "he should just come out of the closet." She stated that this type of personal conversation, in hindsight, is inappropriate in front of students.

CHARACTER WITNESSES

Charli Shipman

33. Charli Shipman is a speech and language pathologist in charge of the preschool intervention program at Sunshine, and has worked for several different districts in her career. Ms. Shipman started working with Ms. Chavez in Ms. Chavez's classroom during the 2013 to 2014 school year and worked as a speech pathologist assigned to Ms. Chavez's class until the 2018 to 2019 school year. She consulted with Ms. Chavez on occasion during the 2019 to 2020 school year.

During the 2020 to 2021 school year, the campus was closed due to the COVID-19 pandemic. During the 2021 to 2022 school year, Ms. Shipman would help out in the mornings if she could because she liked Ms. Chavez's class.

Ms. Shipman described the children in Ms. Chavez's class as "happy" and felt Ms. Chavez treated the students as her own kids. Ms. Chavez is "firm," but uses a "mommy" kind of voice and that is good because children need that kind of structure. Ms. Shipman never witnessed any abuse and had she witnessed such abuse, she would have immediately reported it because she is a mandated reporter.

During mealtime, the children always had their PECS icons available to ask for specific items. Ms. Shipman helped out during lunchtime and noted that the IBI assistants would have certain preferred items of food and Ms. Shipman would facilitate communication by encouraging the students to use the right icon. However, all of the food was in front of each child and no child was ever denied food; rather, they were encouraged to ask for items with the icons.

Regarding the use of masks due to the COVID-19 pandemic, all teachers were required to "encourage" mask use. Students were not really fidgeting, were not ripping masks off, and she did not see anything inappropriate regarding how masks were used in Ms. Chavez's classroom. In fact, most students at the school tolerated masks well. Ms. Shipman never saw students wearing multiple masks; never saw students with masks tied to their heads; never saw masks wrapped around a child's pony tail; and never saw students chewing a mask and wearing another mask over the chewed mask. Ms. Shipman explained that her understanding was masks were required for students unless they had a doctor's note. She recalled receiving a "Safe Return to School" plan and some e-mail communications, and was aware that special needs students could be

exempt from the mask requirement, however, she believed it still required a doctor's note for the exemption.

Finally, Ms. Shipman never saw any child improperly restrained by Ms. Chavez.

Ines Anderson

34. Ines Anderson is a school psychologist at Sunshine and has been a teacher and psychologist at other schools as well. Her duties as a school psychologist include assessment of students, consulting with teachers, and recommending student placement. Ms. Anderson has known Ms. Chavez since 2019. During the 2019 to 2020 school year classes were virtual because of the pandemic, but they returned to classrooms in December 2020.

Ms. Anderson described Ms. Chavez's classroom as "very well run," where students were "always engaged" and learning. Ms. Anderson did not see any problems that concerned her in Ms. Chavez's classroom. Ms. Anderson did observe the use of picture icons for communication but never saw Ms. Chavez withholding or denying food. Regarding masks, students were encouraged to wear them but they were not sent home if they did not wear a mask. She never saw students wearing multiple masks and never saw students with masks tied to their heads. She recalled getting something from the school regarding the mask policy but was not certain what it was. Finally, Ms. Anderson has never known Ms. Chavez to make disparaging comments against students.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant has the burden of proving the allegations. The standard of proof in a teacher disciplinary proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that one is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

Applicable Law

2. A permanent employee may be dismissed for cause only after a dismissal hearing. (§§ 44932, 44934, & 44944.)

3. When a school board recommends dismissal for cause, one may only vote for or against the dismissal; the Commission may not dispose of a charge seeking dismissal by imposing probation or an alternative sanction. (§ 44944, subd. (d)(1).)

4. Pursuant to Education Code section 44932, a permanent certificated teacher may be dismissed for immoral conduct (*Id.* at subd. (a)(1)), dishonesty (*Id.* at subd. (a)(4)), evident unfitness for service (*Id.* at subd. (a)(6)), and persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district employing him or her (*Id.* at subd. (a)(8)). A teacher may also be

dismissed for willful refusal to perform regular assignments without reasonable cause. (Ed. Code, § 44939, subd. (b).)

5. Upon the charge of “willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district,” a district may immediately suspend the employee from his or her duties. (§ 44939, subd. (b).)

Applicable District Policies

6. The district submitted various documents that constitute policy for RUSD employees, including the most recent Certificated Bargaining Agreement between RUSD and the Riverside City Teacher’s Association; RUSD policies relating to professional standards; and the RUSD Early Childhood Special Education Preschool Teacher job description. Several documents concerning the RUSD policies relating to masking during COVID-19 were also submitted, as detailed in the testimony of Ms. Ybarra. These documents were all reviewed and considered.

Evaluation

7. For the reasons discussed below regarding the allegations in each paragraph of the Statement of Charges, a preponderance of the evidence did not establish that Ms. Chavez engaged in the charged conduct.

8. Statement of Charges Paragraphs 6 through 10, 28, 29, and 30 pertaining to the use of a “ski” chair, sanitation, and masking of students:

Regarding the use of the ski chair: It was not established Ms. Chavez did anything inappropriate with the ski chair. For further discussion as to why this

allegation was not established, refer to the discussion below in Legal Conclusions paragraphs 14 and 15.

Regarding the allegations concerning improper sanitation: Ms. Weakly-Orozco testified that she had “witnessed” Ms. Chavez spraying some sort of hand sanitizer on students’ hands during the day and this is forbidden because staff had been instructed to only use hand sanitizer after drop off and at pick up and to only use district provided sanitizer. Ms. Tomassene testified she saw an aide using Lysol in the classroom but she never saw Ms. Chavez use Lysol. Ms. Chavez testified that children’s hands were supposed to be sanitized when they arrived, whenever they switched areas within the classroom, if there was a recess, and between activities. Dr. Churchwell said that during COVID-19, teachers were supposed to “sanitize and hand wash a lot” but that the district provided the sanitizer. No documentary evidence (at least none that was pointed out) showed that district sanitizer was required, and insufficient evidence showed that Ms. Chavez did anything improper regarding how she used sanitizer or sprays.

Regarding the allegations concerning improper masking of students: it was not established that Ms. Chavez did anything inappropriate regarding masking of students. The COVID-19 pandemic was a unique and trying time for everyone. Mask guidance at the city, county, state, and federal levels was constantly changing. Agencies had their own specific guidance. The Center for Disease Control put out both recommendations and mandatory “guidelines.” The California Department of Public Health put out its own guidance and mandates. The Governor of the State of California issued executive orders regarding mask guidance, recommendations, and mandates. At certain points during the pandemic, one mask was required. At other times, two masks were recommended. Later, N95 or K95 masks were recommended. With the inconsistent

guidance, recommendations, orders, mandates, regulations, etc. across the state, it was virtually impossible at any given time to know what, as an employee, one was required to do.

The same can be said for the RUSD guidance. According to Ms. Ybarra, at the beginning of 2021 school year (fall) there was a mask mandate in place due to COVID-19. Employees were required to wear masks; students also had to wear masks unless their individualized Education Program (IEP) or a doctor's note said otherwise. Ms. Ybarra referred to an e-mail that was purportedly sent to all employees in the district on July 22, 2021, prior to the start of the school year, although the e-mail only showed it was sent to an e-mail address entitled, bcde@riversideunified.org. The e-mail greeting was to "RUSD Staff and Families." The e-mail indicated that masks would be required for all students indoors "unless exempt." The e-mail did not indicate what constituted an exemption, rather, it contained a hyperlink to the California Department of Public Health guidance on COVID-19 – which was constantly changing during the pandemic. The website set up by the district similarly was not reproduced at the hearing so that it could be established at any given time whether mask rules were being followed.

The RUSD "COVID-19 Safe Return to In-Person Instruction and Continuity of Services Plan 2021-2022," which Ms. Ybarra said all employees received, similarly contained information regarding masking. In this document, which is more detailed, masks are noted as required in all indoor settings. This document also indicated persons would be exempt if they had a medical or mental health condition or a disability that would impede them from properly wearing or handling a face covering and that persons exempted from wearing a face covering due to a medical condition must be confirmed by school district health team and therapists. It did not state that

special needs students could forgo a mask; or provide to what extent a teacher should attempt to encourage mask wearing. In that respect, each teacher seems to have been left to use his own judgement regarding what was appropriate.

Ms. Chavez testified that she asked for a clarification on the mask policy and was informed that the only exception was if the student had a doctor's note indicating that the student did not need to wear a mask. This assumption would be consistent with the documents noted above. Most of the witnesses, as well, testified that mask wearing was to be encouraged but not forced. However, the term "encourage" is very broad; if a student was chewing on a mask or continuously taking it off, Ms. Chavez's method of encouraging mask wearing might have been to put a fresh mask on (that would not be chewed) over the one the student was chewing. Another teacher might have felt no masking should be forced, in other words, once a student takes a mask off or starts chewing it, to not make any effort to replace it or put on another mask. Again, this is a judgement call and it cannot be said that Ms. Chavez did anything wrong if she permitted students to wear two masks (even the guidance from the state and local levels at times recommended two masks be worn).

Ms. Chavez testified she never tied any masks to a student's hair. No evidence established that she did. While there may have been students with masks tied in an unusual way, in this case, it needed to be established that it was Ms. Chavez and not someone else who did it. Ms. Matus testified that Ms. Chavez "forced" students to wear masks, that students were forced to wear multiple masks because they chewed a single mask, that masks were tied around students' hair if their ears would not hold the mask, and that Ms. Chavez would try to "restrain" them from chewing masks. Ms. Matus's perceptions, however, contradict Ms. Chavez's credible denial regarding that conduct. It is also noted that Ms. Tomassene, when describing October 14, 2021, also

described a student wearing multiple masks and masks tied in an odd way on a student, however, she attributed the conduct to one of the IBI assistants. It simply was not established that Ms. Chavez engaged in any of that conduct (or that the conduct was improper).

There was also testimony that at the bus circle students were seen wearing two masks, which raises a second issue: nobody considered the possibility that parents may have sent their children to school with two masks or with masks fastened in a way (i.e. around ears, hair, or knotted) so that they would not come off. Thus, what some witnesses may have seen in Room 4 were children masked exactly the way they were sent to school.

Finally, Ms. Chavez said she never “joked” about students wearing two masks because one was for wearing and the other was for eating. But, joking is different than simply making a comment. Ms. Chavez may have made the comment, but there is nothing wrong with such a comment. Even Dr. Churchwell testified she heard Ms. Chavez make a comment at some point about one mask being for “eating” and the other for “protection.” Dr. Churchwell explained that for some special needs students, the mask is a sensory issue and they sometimes chewed them, so likely that comment meant that since a student was chewing one mask, another would be placed on to provide protection from COVID-19. Given that teachers were required to encourage mask use, it seems if one mask was being chewed, it would be reasonable for a teacher to feel that putting a new mask on might be consistent with the district’s policy of encouraging mask use.

In sum, the evidence on all issues concerning masking was insufficient to show Ms. Chavez did anything wrong concerning masks.

9. Statement of Charges Paragraph 11 pertaining to “speaking in an aggressive and negative” way towards students: Ms. Matus testified there was a “lot” of “name calling” in Room 4, mainly, students referred to as “diabolito,” “she-demon,” being overweight, and “Frida Kahlo.” It was not clear from the testimony, however, precisely who made these statements given that there were many people in the classroom (i.e. Ms. Chavez, Ms. Revollo, or IBI assistants). Ms. Matus testified that Ms. Revollo called one student a “little asshole,” but again, it was not established whether Ms. Chavez was present or heard the comment and this case is not about what Ms. Revollo did. Ms. Matus testified that Ms. Chavez made a comment regarding a student needing “chancla” therapy, which is essentially a spanking. Ms. Chavez easily explained that comment, however, recalling Ms. Matus being frustrated on one occasion while walking to the playground and, after a child ran away from her, possibly telling Ms. Matus something like “Miss Cindy sometimes we always need a chancla in our life.” This is not a derogatory or inappropriate comment regarding a student, it was a comment to another teacher expressing a personal opinion – not advocating anything inappropriate or shown to be directed towards a student. Ms. Tomassene felt that Ms. Revollo was “condescending” to students, and in her written statement to Dr. Churchwell, which mostly had to do with Ms. Revollo, the only comment she claimed Ms. Chavez made had to do with the wearing of masks, which was not established to be disrespectful, derogatory, or inappropriate, for the reasons discussed above in Legal Conclusions paragraph 8. Ms. Avila-Rivera testified that during the 2019 to 2020, 2020 to 2021, and 2021 to 2022 school years, she has heard “comments” regarding autistic students’ behavior but did not recall what the comments were, just that Ms. Chavez had made comments about behavior and hygiene – which is too vague to sustain an allegation. Finally, Ms. Weakly-Orozco only overheard what she construed to be yelling and “firm” comments being made in Room 4 that were inappropriate but

did not specify precisely what the comments were, when they were made, by whom they were made, or to whom they were made. The weight of the evidence, therefore, did not establish the allegations in the Statement of Charges Paragraph 11.

10. Statement of Charges Paragraphs 12 through 15, 19, 21, 27 concerning withholding of food, the use of a "ski" chair, and masking of students:

Regarding withholding of food: The allegations concerning withholding food mostly had to do with the use of PECS during mealtime. Ms. Chavez testified that while she may have used PECS or picture icons during mealtime for students to request highly preferred items, as she was informed she could do by a speech therapist, she never withheld food from a student even if the student struggled with the icon. Her testimony was credible. In contrast, the statement of Ms. Revollo in Dr. Liberati's report, wherein she not only appeared to admit that she used PECS during lunch and snack time but also that a student needed to point to an icon for each bite of food, showed this act was done by Ms. Revollo. Again, as with many of the allegations in the Statement of Charges, the issue regarding withholding food from students did not appear to involve Ms. Chavez. Ms. Matus's written statement to Dr. Churchwell and testimony seemed to confirm as much. Regarding the incident that occurred at lunch and snack time where a student was not given a preferred meal item unless doing specific hand gestures, Ms. Matus's letter essentially points to Ms. Revollo as the perpetrator, and at hearing Ms. Matus merely said that Ms. Chavez was "in the room" when these things happened. Being "in the room" is not the same as being the individual who committed misconduct nor does it establish that Ms. Chavez observed the conduct. Marissa Cook-Nevarez's written statement to Dr. Churchwell also pointed to the "afternoon teacher" as the one who withheld food from students. It is also noted that the evidence did not establish it would be inappropriate to use picture

icons during mealtime. While some witnesses testified it was not, other witnesses testified it would be acceptable to do so as long as it was not done in a way to withhold food. Thus, it cannot be said Ms. Chavez did anything wrong concerning PECS or picture icons as it pertained to mealtimes.

Regarding the use of the ski chair: It was not established Ms. Chavez did anything inappropriate with the ski chair. For further discussion as to why this allegation was not established, refer to the discussion below in Legal Conclusions paragraphs 14 and 15.

Regarding the masking of students: It was not established that Ms. Chavez did anything inappropriate, as discussed above in Legal Conclusions paragraph 8.

11. Statement of Charges Paragraphs 16 and 17 concerning the refusal of staff to follow her recommendations for addressing students' behavioral difficulties and the inappropriate use of PECS: There was a lot of confusion regarding the allegations in this paragraph as to whether there was an issue with the use of PECS or an issue with the use of regular icons for communication, as they are two separate and distinct things. Witnesses seemed to use the terms interchangeably; while it might be inappropriate to use PECS during mealtime, it would not be inappropriate for a student or teacher to use picture icons to communicate. It certainly would not be appropriate to withhold food from a student if the student did not use a correct icon. However, based on the testimony, what was not clear was whether Ms. Chavez improperly used PECS or picture icons during mealtime.

12. Statement of Charges Paragraph 18 regarding Ms. Chavez's classroom being "overly restrictive," "rigid," and allowing "little to no free play" during the school year: Insufficient evidence was presented on this issue, if at all. The Commission did

not locate any testimony concerning not allowing “free play.” Further, this paragraph is vague and ambiguous regarding the concepts of “rigid” and “overly restrictive,” and what conduct was problematic. For further discussion as to why these allegations were not established, refer to Legal Conclusions paragraphs 14 and 15.

13. Statement of Charges Paragraph 20 concerning an IBI assistant who felt the classroom environment was “harsh and uncomfortable” and who reported students being placed in a chair and yelled at until they cried, and that Ms. Chavez and others spoke “excessively harshly [*sic*]” to students and were “rough”: The Statement of Charges is vague and ambiguous – it did not indicate what was meant by being “rough” with students, what speech was excessively harsh, and did not indicate who the IBI assistant was who made these allegations. The Commission could not ascertain from the evidence the identity of the IBI assistant being referred to in this paragraph.

Ms. Weakly-Orozco, who is not an IBI assistant (she is a teacher in the classroom next to Ms. Chavez) said she overheard yelling and “firm” comments being made in Room 4 that were inappropriate but did not specify precisely what the comments were, when they were made, who made them, or to whom they were made. Ms. Hartshorn, who is not an IBI assistant, noted that in her opinion, Ms. Chavez “tends to have a “strict style” with students, is “firm and straightforward” when teaching, and is not as “warm and fuzzy” as other teachers normally are. This did not establish anything other than the fact that some teachers do not appear to like Ms. Chavez’s style of teaching. It is also in stark contrast to the testimony of Ms. Shipman, a speech and language pathologist familiar with Ms. Chavez’s classroom, who testified that the students in Ms. Chavez’s class were “happy and she treated the students as if they were her own children.” Ms. Shipman explained that Ms. Chavez is “firm” but uses a “mommy” kind of voice that is good for the classroom. And there was the testimony of

Ms. Anderson, the school psychologist, who described Ms. Chavez's classroom as "very well run," where students were "always engaged" and learning.

Regarding students being placed in a chair until they cried, again, this was a very vague allegation and there was insufficient evidence to support it. Though some of the witnesses testified in their opinion students were placed in a ski chair, the chair in the room did not have a strap like the one depicted in the photograph submitted as an exhibit. Thus, a child could not be restrained in the chair. Ms. Matus testified that Ms. Chavez would use the chair when a student would not sit or would have tantrums. However, given that it was not a restraint chair, it was not established that Ms. Chavez used the chair as anything other than a regular chair. Ms. Hopewell testified that she saw Ms. Chavez use the chair with a student named "V [REDACTED]" who was "flailing" and "engaging in behaviors" to get her to sit by the table. However, this allegedly occurred during the 2020 to 2021 school year and Ms. Hopewell's opinion regarding why she felt the student was restrained was because the chair was "very heavy" and constructed in such a way that a student would not be able to easily push themselves away from the table. That is not the same thing as restraining a student in a ski chair. Ms. Tomassene said that the ski chair weighs 20 to 30 pounds and was in use "almost every time" she was in Room 4 and it was used for different students. She felt it was used in a "restraining manner" where the student would be pushed up against the table and that it was used by Ms. Chavez and two IBI assistants. Yet, in her written statement to Dr. Churchwell on October 15, 2021, Ms. Tomassene said the ski chair was being used with a student in Ms. Revollo's class and by the IBI assistants; she did not mention Ms. Chavez. The testimony concerning the ski chair use was, therefore, inconsistent and problematic, at best. The evidence simply did not establish that Ms. Chavez used it as a restraint device.

14. Statement of Charges Paragraphs 22 through 26 concerning specific derogatory comments and “disrespectful remarks” allegedly made by Ms. Chavez and paragraphs 31 through 33 regarding Ms. Chavez making certain inappropriate comments regarding conduct towards students and her private life: Again, as with most of the testimony in this case, insufficient evidence established the allegations in these paragraphs.

Regarding disrespectful remarks, derogatory comments, and inappropriate comments about and towards students: The testimony as to this issue was inconsistent and vague, as explained in detail in Legal Conclusions paragraph 9.

Regarding comments about her private life. Ms. Chavez told Dr. Liberati that in hindsight she may have made comments about her private life in front of students, and that doing so might have been inappropriate. However, while Ms. Chavez may have had some personal discussions with others within earshot of students, and this may reflect poor judgement, it does not fit into any category of professional misconduct as charged.

15. Statement of Charges Paragraph 34 concerning Ms. Chavez being dishonest about not knowing a student being triggered by the microwave and claiming free play was regularly incorporated into her classroom when it was not: As noted above regarding “free play,” the Commission did not locate any specific evidence on this issue. Nobody described what “free play” was and when it allegedly was not used, and therefore, there was nothing to show whether Ms. Chavez was dishonest about it. In her statement to Dr. Liberati, Ms. Hopewell stated that the rules in Room 4 were overly restrictive, the teachers and aides were too rigid, and the students did not play at all. The investigation did not elaborate, however, on what Ms. Hopewell meant by this, nor did she elaborate in her testimony. Further, all that

statement showed was that Ms. Hopewell did not observe free play; it did not establish free play was never used. Ms. Matus's testimony was similarly problematic; she testified that Ms. Chavez was not "warm and fuzzy" and did not get down and play with students like other teachers did. But, again, this does not mean Ms. Chavez did anything improper in how she ran her classroom; and it is contradictory to the testimony of Ms. Chavez's character witnesses who found Ms. Chavez's room to be perfectly fine.

Regarding the microwave, although there was some witness testimony from Ms. Matus concerning a student being sensitive to the microwave, insufficient evidence showed that Ms. Chavez was, in fact, by way of an IEP, informed that any child was so triggered. The microwave issue also involved one of Ms. Revollo's students, not one of Ms. Chavez's students. The testimony was further problematic because Ms. Matus on one hand said that sometimes Ms. Chavez would turn the microwave on and off, but later she said she did not know who turned it on, but Ms. Chavez "was there." Ms. Matus also said that both Ms. Chavez and Ms. Revollo have made the statement that it is done "so he gets over it" but that the statement was made to each other. That statement, if it occurred, did not establish anything other than a conversation occurred between two people; not that Ms. Chavez, specifically, turned on a microwave to torment a student with a sensitivity.

16. Paragraph 35 regarding the failure to request Functional Behavioral Analyses for students whose behavior indicated they "were entitled to such assessments by law": Again, this paragraph was vague and ambiguous, did not indicate which students allegedly had behavioral problems or which students would have been entitled to a functional behavioral analysis that should have been requested by Ms. Chavez. Ms. Chavez did not note any behavioral problems with students in her class.

This case involved many different individuals and many different allegations spread across two years regarding a classroom shared by two teachers. There was no evidence that showed there were any students in Ms. Chavez's class who had specific behavioral problems such that a functional behavioral analysis should have been requested. Indeed, virtually all the allegations concerned students in Ms. Revollo's class or during the afternoon session; and it was not established that Ms. Chavez had any issues with behavioral problems during her morning session.

17. Statement of Charges paragraphs 36 through 38 regarding violations of law and district policy: For the reasons discussed above, claimant did not establish by a preponderance of the evidence the alleged factual violations in the Statement of Charges, it was not established that Ms. Chavez violated any district policy or the Individuals with Disabilities Education Act.

18. Notably, when Dr. Liberati conducted her investigation, Ms. Revollo admitted problematic conduct that would sustain many of the allegations contained in the Statement of Charges (such as using PECS during lunch or snack time, using the ski chair, making derogatory comments regarding students, using multiple masks on students, and using the microwave even though she knew it made one of her student's cry). However, Ms. Revollo's statements did not name any specific incident or conduct implicating Ms. Chavez specifically; most of Ms. Revollo's statement pertained to her conduct, her observations, and her opinions. What Ms. Revollo's statement did reveal was that any problematic conduct in Room 4 appeared to be attributable to Ms. Revollo and Ms. Revollo's aides, and not Ms. Chavez.

Conclusion

19. All witnesses seemed to be putting forth their best efforts to provide competent and credible testimony, albeit much of the district's witnesses testimony was belied by the documents. Ms. Chavez, however, was also credible, had impeccable character references that refuted the testimony of RUSD's witnesses, and has been teaching special needs students since 1999, first as an instructional aide and later as a credentialed teacher, without issue. While it is possible that some of the events described by the district's witnesses occurred in the manner they said they did, it is equally, if not more plausible, that the events, statements, and conduct allegedly observed was misconstrued, taken out of context, or did not occur at all, as respondent asserted in most instances.

20. In closing arguments, counsel for complainant argued, correctly, that the "preponderance of the evidence" standard is, essentially, "50 percent plus a feather." In other words, no matter how slight it is, as long as the evidence preponderates ever so slightly in complainant's favor, the allegations are deemed established.

Ultimately, the "feather" in this case is what was missing. The evidence presented by the district, though credible, was not sufficient to overcome Ms. Chavez's equally credible denial of culpability or explanations refuting culpability under applicable law, and thus, a preponderance of the evidence did not establish the allegations in the Statement of Charges. Given that the facts underlying each of the allegations were not established by a preponderance of the evidence, it renders unnecessary the need to discuss whether any conduct fits into each of the alleged causes for discipline (immoral conduct, dishonesty, evident unfitness, etc.)

21. Cause does not exist to impose discipline against Ms. Chavez pursuant to Education Code section 44932, subdivisions (a)(1), (a)(4), (a)(6), or (a)(8), or Education Code section 44939, subdivision (b).

22. These conclusions are based on the Factual Findings and Legal Conclusions as a whole. Evidence and arguments presented by the parties, and not referenced in this decision, have been considered in reaching this decision. All arguments contrary to this decision have been considered and rejected.

ORDER

The appeal by respondent Brenda Chavez is granted. The Riverside Unified School District's decision to dismiss respondent and immediately suspend her without pay is reversed. The district shall provide respondent back pay for any lost wages, benefits, and compensation from the time she was suspended without pay.

DATE: October 17, 2022

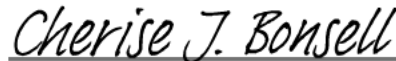


Amanda Carlson (Oct 17, 2022 14:22 PDT)

AMANDA E. CARLSON

Commission Member

DATE: October 17, 2022

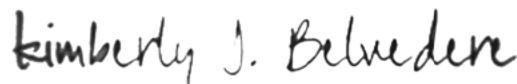


Cherise J. Bonsell (Oct 17, 2022 20:21 PDT)

CHERISE BONSELL

Commission Member

DATE: October 17, 2022



KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings