

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
JURUPA UNIFIED SCHOOL DISTRICT

In the Matter of the Dismissal of:

RHONDA FULLER,

Respondent.

OAH No. 2017061004

DECISION

This matter came on regularly for hearing before the Commission on Professional Competence in Jurupa Valley, California on December 11, 12, and 13, 2017. The Commission was comprised of the following members: Administrative Law Judge (ALJ) Mary Agnes Matyszewski, Steve Parker, and Dan Crookham.¹

Kerrie McNally, Adams, Silva, & McNally, represented the Jurupa Unified School District.

Carlos Perez, Reich, Adell & Cvitan, represented respondent Rhonda Fuller, who was present throughout the hearing.

On December 14, 2017, the Commission met to deliberate and the matter was submitted.

CASE SUMMARY

Ms. Fuller was employed by the district as an agriculture teacher. In February 2017, district students participated in the national “Day Without Immigrants” protest. Later that same day, Ms. Fuller posted a reply on a district colleague’s Facebook post about the protest. The district alleged that Ms. Fuller’s post demonstrated that she engaged in immoral conduct and was unfit to serve. After considering all of the evidence presented, the Commission concluded that Ms. Fuller’s post did not constitute immoral conduct, did not demonstrate that she was unfit to serve, and did not warrant her dismissal from employment with the district. The Commission dismissed the Notice of Intent to Dismiss and Statement of Charges.

¹ The matter was continued on August 30, 2017, the date originally set for hearing when the district’s motion to disqualify respondent’s designated panel member was granted. Respondent elected a new panel member and the matter was reset for December 11-14, 2017.

FACTUAL FINDINGS

Jurisdictional Matters

1. Ms. Fuller was employed by the Jurupa Unified School District as an agriculture teacher. At all relevant times Ms. Fuller taught at Rubidoux High School (RHS).

2. On February 16, 2017, Ms. Fuller made a Facebook post on a fellow teacher's Facebook page.

3. On February 17, 2017, the district placed Ms. Fuller on paid administrative leave pending the outcome of its investigation.

4. On May 1, 2017, the district served Ms. Fuller with a Draft Notice of Intent to Dismiss and Immediately Suspend Without Pay, advising her of the district's intent to dismiss her from employment. The notice also informed her of her right to a *Skelly* hearing, and set a date for that proceeding.²

5. On May 11, 2017, Dave Doubravsky, the district's Assistant Superintendent of Educational Services, sent Ms. Fuller a letter titled "Skelly Officer Decision." Mr. Doubravsky informed Ms. Fuller that "after carefully reviewing" the charges, a letter of support, and the Petition to Allow Mrs. Fuller Back to RHS, he determined that there was "a reasonable basis to sustain the recommendation that you be terminated from your employment with the District." The letter also confirmed Ms. Fuller's decision to decline a *Skelly* hearing. On that same date, Tamara Elzig, the district's Deputy Superintendent, Personnel Services, advised Ms. Fuller that the *Skelly* officer's recommendation was to suspend and terminate Ms. Fuller's employment and that Ms. Elzig would be making that recommendation to the governing board.

6. On May 15, 2017, the district's governing board met to decide whether to issue the Notice of Intent to Dismiss and Immediately Suspend without Pay; and Statement of Charges against Ms. Fuller. The governing board voted 4-1 to adopt the Notice of Intent to Dismiss and Immediately Suspend without Pay; and Statement of Charges, placed Ms. Fuller on unpaid suspension effective May 16, 2017, and authorized the superintendent or his designee to serve a copy of the charges on Ms. Fuller.

² In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that in order to satisfy due process, an agency considering disciplinary action against a public employee must accord the employee certain "preremoval safeguards," including "notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." The Supreme Court's directive gave rise to an administrative procedure known as a *Skelly* hearing, in which an employee has the opportunity to respond to the charges upon which the proposed discipline is based.

7. On May 15, 2017, Ms. Elzig signed the Notice of Intent to Dismiss and Immediately Suspend without Pay; and Statement of Charges in her official capacity. The notice sought to immediately dismiss Ms. Fuller from employment with the district on the grounds of immoral conduct (Education Code section 44932, subdivision (a)(1)) and evident unfitness for service (Education Code section 44932, subdivision (a)(6)).

8. On July 11, 2017, an administrative law judge granted Ms. Fuller's Motion for Immediate Reversal of Suspension. The district was ordered to make Ms. Fuller whole for any unpaid wages, benefits, and compensation. She remains on paid suspension.

9. Ms. Fuller timely appealed the dismissal action, denying that grounds for her dismissal from employment existed, and this hearing ensued.

Motions in Limine

10. The parties filed several motions in limine, objections and oppositions thereto. Tentative rulings were issued, and the parties were allowed to orally argue their positions, after which final rulings were issued.

Ms. Fuller's Education and Employment History

11. Ms. Fuller is a 1983 graduate of RHS. She obtained her Bachelor of Science Degree in Agriculture Science from Cal-Poly Pomona with a concentration in Animal Science. She obtained her Master's Degree in Agricultural Education from Cal-Poly Pomona. Ms. Fuller holds a clear Single Subject Agriculture Credential and an Agriculture Specialist Credential. She began teaching in 1989. In addition to classroom instruction, Ms. Fuller spends a lot of time with students outside the classroom at fairs, shows, conferences, and on the RHS farm. She has never had a negative evaluation or review and has never been disciplined. Ms. Fuller has received several peer- and student-nominated awards at RHS, and at the county and state levels. Ms. Fuller also serves on the Future Farmers of America (FFA) advisory board, a position she still holds.

February 16, 2017, Day Without Immigrants Protest and Facebook Posts

12. On February 16, 2017, several hundred RHS students participated in the nationwide "Day Without Immigrants" protest. The protest was designed to demonstrate the contributions immigrants make to our country and the impact their absence would cause. Ninety-one percent of the student body at RHS is Hispanic and many of the students' parents are immigrants. On February 16, 2017, RHS experienced an abnormally high absence rate; the typical absence rate is two to three percent but on February 16, 2017, approximately 15-18 percent of RHS students were absent.³

³ 357 students were absent on February 16, 2017; 286 of whom had unexcused absences.

13. On the afternoon of February 16, 2017, Geoffrey Greer, at the time an RHS teacher, posted the following message on his Facebook page:

Well. A day without immigrants. Perhaps the missing workers in all the various industries out there had the intended impact and sent the desired message. I don't know. As for the public school system, having my class size reduced by 50% all day long only served to SUPPORT Trump's initiatives and prove how much better things might be without all this overcrowding.

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

In response to Mr. Greer's post, Ms. Fuller, three other RHS teachers, and one counselor, posted messages on Mr. Greer's Facebook page. Twenty-eight minutes after Mr. Greer's first post, Ms. Fuller posted the following message:

Same here! Small classes, trouble makers were gone fantastic day!

Several people posted messages after Ms. Fuller's message criticizing the teachers and the counselor for their posts. Ms. Fuller's testimony regarding her post is summarized as follows: she was home that evening and was "discouraged I had small class sizes but I got a lot done, I had fewer students." Ms. Fuller was responding to another teacher's post who commented about the small class sizes; she was not replying to Mr. Greer's post. Ms. Fuller made absolutely no mention of her "troublemaker" comment during her direct examination. Ms. Fuller's explanation that she was "discouraged" was difficult to understand given her "fantastic day" comment in her post. Likewise, her testimony that she was not referring to any students or groups of students when she posted about "trouble makers" being gone was also difficult to follow.

Ms. Fuller further testified: "Clearly I made a mistake, and I know that; I was attempting to right that wrong when I was removed; the only way to correct my mistake is to put me back in my class; I am deeply regretful; if I could change it I would, you are never too old to learn and I have; I grew up in this county since I was six years old; all I ever wanted to do with my life is serve these kids; I love these kids so much and miss them so much." Ms. Fuller explained that her students are like her children, how her own children have had to share her with her students, and how her children have many "siblings" because of her students. Ms. Fuller described how upset her students were during first period and how she spent class time discussing the Facebook posts and apologizing to them. She was doing the same thing during second period when Ms. Elzig came to her class and told her to get her purse and come to the office. Ms. Fuller was told at the office that she was being placed on leave.

At the office Ms. Elzig also asked Ms. Fuller if she would still be willing to chaperone the agriculture students at the upcoming off-campus event that was set to take place the following week. Ms. Fuller asked how she could do that if she was being placed on leave and was told the district would get back to her. Later the district informed Ms. Fuller that another individual would chaperone the students. The Commission found that the district's argument that Ms. Fuller was a danger to students or the district was unconvincing in light of Ms. Elzig asking Ms. Fuller, while placing her on leave, if she would chaperone students off campus.

While Ms. Fuller was tearful during her testimony about her remorse and her statements appeared sincere, her demeanor greatly changed on cross-examination when inconsistencies between her hearing testimony and her deposition testimony were introduced. Her tears ceased and she became flippant in her replies to district counsel as she conceded the discrepancies in her responses. Although she was genuinely remorseful, it was also clear that Ms. Fuller was annoyed with the district.

Reactions to the Facebook Posts

14. Within minutes, the Facebook posts went viral and were reposted on several social media sites. As Ms. Elzig testified, the posts went "across the United States and back within 20 minutes." Thereafter, the district was inundated with a deluge of hundreds of e-mails and letters, several telephone calls, and multiple visits from parents, students, former parents and former students, community members, individuals and press organizations, both local and from across the nation, as well as international news outlets. Although a few responses supported the district employees' posts, the overwhelming majority of them called for action, some advocated violence and others expressed outrage at the district for hiring these employees and condemned the employees for their Facebook posts. The next morning on RHS's campus, the classrooms of two teachers who had posted on Facebook were vandalized; Ms. Fuller's classroom was not vandalized. Photographs of the profanity and negative statements spray-painted on the walls outside of those two classrooms were introduced at hearing.

15. RHS Principal Jose Araux, Ed.D., testified that parents were very concerned that "racist teachers" were instructing their children; students felt that they "now knew those teachers' true colors," and staff was very upset, in fact one expressed her concerns about being on "the front line" of the turmoil. Dr. Araux described the attempts he made to address the situation, to reassure students, staff and parents, and to let the community know that the Facebook posts did not reflect the majority of RHS teachers' opinions. Dr. Araux sent and replied to e-mails, made robo-calls to parents, made announcements on campus, set up meetings with staff and parents, spoke with students and expended tremendous time and effort to resolve the issues the Facebook posts created.

Dr. Araux described the outrage and hurt the Facebook posts caused. He was very upset that teachers and a counselor "at my school" would post such negative and racist comments "about my students." Dr. Araux believed Ms. Fuller's post was just as egregious

as Mr. Greer's post because it was "a lie" as all the students who were absent on February 16, 2017, were not troublemakers. Dr. Araux thought Ms. Fuller's comments were a broad, racist generalization about the students who were absent. He reviewed Ms. Fuller's classroom rosters⁴ and confirmed his belief that the students absent from her class on February 16, 2017, were not troublemakers. Of the 33 students who were absent from Ms. Fuller's classes, 24 had no discipline other than tardies or absences; four had no discipline at all; and only five had significant discipline issues. Moreover, 10 of the students in her classes that day who did not participate in the Day Without Immigrants protest had significant discipline issues. Thus, Dr. Araux believed that Ms. Fuller's post was false, "she lied," it was "unfair" and "showed a lack of respect for the students and the community – the immigrant and Hispanic community." Dr. Araux admitted that no one ever complained to him specifically about Ms. Fuller before the posts.

Dr. Araux's testimony about the discipline records of the absent students was not persuasive as a student could be a "troublemaker" for one teacher and not for another. Moreover, when asked to describe the agriculture program at RHS, Dr. Araux's answer revealed that he possessed little knowledge of the program or Ms. Fuller's work on campus. Thus, his testimony about her retention being detrimental to "his school" or the agriculture program because of her Facebook post was not persuasive. The Commission also found his testimony to be overreaching and exaggerated making it unconvincing.

16. Dr. Araux and Ms. Elzig testified about the student protest at school the morning after the Facebook posts which culminated in a walkout at lunch. Hundreds of students left campus and marched through the community. Ms. Elzig described the anger she observed, how the students stormed the school fences, shaking and climbing them, leading Ms. Elzig to order the gates to be opened so that students were not harmed. Ms. Elzig described the concern she felt watching the students march through the streets, attempt to march on to the local highway, and how law enforcement tried to contain the students to protect them from injury.

17 Ms. Elzig described the many efforts the district made following the Facebook posts to address the issues raised by the posts and to help RHS and the community heal. Ms. Elzig described the "standing room only" February 21, 2017, board meeting where two and one-half hours of public comments were received and news vans lined the street, including ones from across the country. None of the public comments supported the district employees who made the Facebook posts. Video clips of four individuals who made public comments were shown at the hearing and corroborated Ms. Elzig's testimony regarding what transpired at the board meeting.

⁴ Those rosters were ordered sealed. This sealing order governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517, may review the documents subject to this order, provided that such documents are protected from release to the public. No court reporter or transcription service shall transcribe the information contained in the records.

18. Robert Santiago, a math teacher at RHS, testified about the impact the Facebook posts had on him, his classroom instruction, RHS, the district, and the community. He expressed how upset the posts made him and the backlash he received from students and the community. Mr. Santiago believed that Ms. Fuller's post gave "tacit approval" to Mr. Greer's "lazy/drunk" comments and students asked him if he agreed with those comments. Mr. Santiago described the loss in instructional time because of the time he spent discussing the posts with students. His testimony established the extremely negative impact that Ms. Fuller's Facebook post had on the school and the community. In fact, Mr. Santiago was so upset by the backlash against teachers that he felt compelled to post the following on "What is Going on in Jurupa Valley," a community Facebook page:

My heart goes out to you all. I know how you feel. I have been on the receiving end when it was more socially acceptable to stigmatize Latinos.

I cannot easily explain what happened. I know some of these people; they are my colleagues. Their actions at work do not seem reflected by these comments. I have witnessed them go beyond the requirements of the job to care for students. They need to answer for themselves. Please know that Rubidoux is filled with caring people. It is privilege [*sic*] for me to work there, and I know that many others share this feeling. (repost)

Mr. Santiago admitted that he was unaware of any complaints against Ms. Fuller before her Facebook post.

19. Daniel Brooks, the district's Director of Personnel, described his conversations with parents and community members about the Facebook posts. He described how upset the parents and community members were, how they felt the Facebook posts were discriminatory, and how they demanded that the district take action. Mr. Brooks also spoke with students about their concerns and told them the posts did not reflect the district's opinions. Mr. Brooks admitted that no one ever complained to him specifically about Ms. Fuller before the Facebook posts.

20. Two current RHS students testified about the negative impact Ms. Fuller's posts had on them. They explained how the posts demonstrated that Ms. Fuller could not serve as a role model, the negative way her post referred to Hispanics and immigrants, how Ms. Fuller wrongly referred to those who participated in the Day Without Immigrants protest as "troublemakers," and the negative way that Ms. Fuller viewed the students who stayed home from school in support of the Day Without Immigrants protest. The students did not want Ms. Fuller as their teacher and they had lost trust in her. Although one of the students admitted that Ms. Fuller was a good teacher who helped her students and had not made any racist or discriminatory comments in class, given her Facebook post, that student's opinion of Ms. Fuller changed and she no longer wanted Ms. Fuller as her teacher. The Commission was not persuaded by these two students' testimony – one had never taken Ms. Fuller's class

and the other had not participated in many agriculture department or FFA activities and admitted that Ms. Fuller was a good and fair teacher. Thus, their criticisms of Ms. Fuller offered at this hearing were afforded little weight.

21. Gale Hammons, the district's Communications and Communications Strategies independent contractor, testified about her assessment and monitoring of social media sites for the district. She described the extreme negative public reaction to the 2017 Facebook posts, stating, "the backlash was pretty fierce." In addition to Facebook, the messages "went viral" on several social media accounts, including Twitter, and were reposted numerous times.

22. Several media accounts of the Facebook posts were received. These demonstrated that the Facebook posts received widespread media coverage across the district, the country and internationally.⁵

23. Ms. Fuller's argument that the responses to the Facebook posts were not about Ms. Fuller but were responses to Mr. Greer's posts was not persuasive. It was clear that Ms. Fuller's post was included in the backlash the district received from all the posts.

Board Policies

24. The district introduced several board policies. Ms. Elzig testified that Ms. Fuller's conduct caused the board to be unable to meet Board Policy 4000, which requires the board "to ensure the success of district students and programs" and "establish safe and supportive working conditions that will attract and retain staff members who are highly qualified and dedicated to the education and welfare of students."

Ms. Elzig testified that Ms. Fuller violated Board Policy 4119.21, the code of ethics and outlined the specific principles that Ms. Fuller's conduct violated. Ms. Elzig testified that Ms. Fuller's actions violated Board Policy 4119.32 because her post did not meet her duty and responsibility of "maintaining orderly conduct." Ms. Fuller's conduct resulted in the board being unable to meet its goal to "maintain a safe, positive school environment and student services that promote student welfare and academic achievement" as set forth in Board Policy 5000. Similarly, Ms. Fuller's conduct prevented the board from meeting its goal to "provide a safe school environment" as outlined in Board Policy 5145.3.

Ms. Elzig admitted there are no board policies regarding a teacher's use of social media although there are "guidelines regarding acceptable uses" of district computers.

⁵ Pursuant to the ruling on the motions in limine, Official Notice of the existence of news accounts was taken, but the content of them was subject to hearsay objections. The existence of the articles was considered to evaluate factors outlined in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 and to establish the notoriety of the conduct as discussed in *Board of Education v. Jack M.* (1977) 10 Cal.3d 691.

Ms. Fuller's Character Witnesses' Testimony

25. D [REDACTED] M [REDACTED], a former student who graduated from RHS in 2011, testified that Ms. Fuller was her teacher and FFA advisor. Ms. M [REDACTED] traveled with Ms. Fuller to competitions throughout the state and Ms. Fuller acted as a "second parent." She described Ms. Fuller as a role model who taught her "how to be a responsible person" and taught her many things outside of the classroom. Because of Ms. Fuller, Ms. M [REDACTED] is pursuing a degree in agriculture teaching. She feels indebted to Ms. Fuller, who often paid for competitions or travel when she or other students could not afford it. Ms. M [REDACTED] would not be where she is today if not for Ms. Fuller and "a lot of kids depended on the agriculture program to stay in high school and stay on track. I don't know what I would do or where I would be if not for Ms. Fuller." Ms. M [REDACTED] is Latina and an immigrant so "this is a personal issue for me." Ms. M [REDACTED] never knew Ms. Fuller to be a racist or make anti-immigrant or any anti-ethnic remarks. Ms. M [REDACTED] became tearful while testifying as she described Ms. Fuller and her impact on Ms. M [REDACTED]'s life.

26. G [REDACTED] P [REDACTED], a former student who graduated from RHS in 2017, described Ms. Fuller as her "hero." She had four classes with Ms. Fuller during her junior and senior years. She was a student in Ms. Fuller's class when the Facebook posts occurred. Ms. P [REDACTED] described Ms. Fuller as "the best teacher at [RHS]" and stated that "to get rid of her would be the biggest mistake ever." Ms. P [REDACTED] feels indebted to Ms. Fuller; referring to Ms. Fuller as her "second mom." Ms. P [REDACTED] testified that her "story is not unique," many students felt the same way and called Ms. Fuller "Mama Fuller." Ms. Fuller inspired Ms. P [REDACTED] to "follow in her footsteps" and she is taking college courses to become an agriculture teacher. Ms. P [REDACTED] described the hours long car rides to competitions and conferences that Ms. Fuller used to teach students, for example stopping to show them the San Andreas Fault line. Ms. P [REDACTED] explained how Ms. Fuller helped students realize their full potential; she would not let them be on their phones or not participate in class; and she encouraged students to get involved. Ms. P [REDACTED] believed that many students supported Ms. Fuller and that the students who protested against Ms. Fuller did so as a way to get back at her for making them do their work or get involved in class. Ms. P [REDACTED] is a Latina and never knew Ms. Fuller to make any anti-immigrant or racist remarks. Ms. P [REDACTED] became extremely tearful while testifying.

27. Rafael Mosqueda is an agriculture teacher at Hemet High School who knows Ms. Fuller through the county and state agriculture programs. He described Ms. Fuller as a role model who is highly regarded in the agriculture profession. Ms. Fuller is a "good personal family friend." Mr. Mosqueda testified, "There are not many words that do her justice as I think the world of her." She is "a very selfless, wonderful person and I wish that she did not have to go through all of this; she is one of the most awesome persons and I am glad she came into my life." Mr. Mosqueda became choked up while testifying. He has never discussed racial issues with Ms. Fuller as "there was no need." He was aware of the Facebook posts and of the RHS walkout but the walkout "was not necessarily because of the posts." Mr. Mosqueda was not asked what he thought caused the walkout if it was not because of the Facebook posts. Mr. Mosqueda is Latino and he has never heard Ms. Fuller make disparaging remarks regarding Latinos or immigrants or make any racist remarks.

28. George Monge, a teacher at RHS, who is also the Eastern Secondary Division Leader for the teacher's union, testified about the discussions teachers had at a staff meeting regarding ways they could show support for the six RHS employees who had posted on Facebook. By "a show of hands," the majority of teachers present at the staff meeting supported the six employees. Following their discussion, the teachers agreed that Mr. Monge would prepare a letter to be read at the upcoming board meeting. Teachers feared district retaliation if they signed their names on a petition but wanted the board to know they supported the six employees. Mr. Monge wrote a letter addressed to the board that he circulated to teachers to review. He read the letter to the board members and provided each of them with copies of it. Mr. Monge attached two petitions⁶ to his letter that students signed in support of Ms. Fuller and one other Facebook teacher.

Mr. Monge's letter, dated May 4, 2017, noted that during a recent afterschool gathering, the teachers and support staff of RHS "voted by an overwhelming majority to express their support" for the six colleagues currently placed on administrative leave. The letter noted that the Facebook "comments were not intended to cause harm to our students or to our school. This is seen by the apologies that were quickly posted." However, as the district correctly pointed out, Ms. Fuller did not post any; in fact, she testified that Mr. Greer's Facebook account was closed shortly after she posted her comment, so there would be no way for her to post an apology on it.⁷ Mr. Monge's letter noted that although "the district may have some legitimate concerns regarding the potential for future disruption to the learning environment," the teachers and staff of RHS "who were interacting and communicating with our students in the immediate aftermath and the time since the incident are less worried about that potentiality."

The letter stated that the day after the Facebook posts, and in the days that followed, many students and multiple student groups communicated their desire to offer forgiveness to the six district employees "to help expedite our healing process." The letter referred to the sentiment frequently expressed by students of the notion that a family member who makes a mistake is not kicked out of the family, instead that family member is counseled and coached so that mistakes are not repeated. The letter noted that this sentiment was consistent with the district's mandated student discipline program. Further, the letter noted that the absence of the teachers had greatly disrupted the learning environment and the effectiveness of several important programs at RHS and that students had gathered hundreds of signatures on petitions requesting the return of the teachers. A petition seeking Ms. Fuller's return to RHS

⁶ The petitions containing the students' names were sealed.

⁷ The district repeatedly argued that Ms. Fuller never apologized and made much of that contention, but the Commission did not find that to be the case. Ms. Fuller was apologizing to her students the morning after her February post when she was removed from her classroom. After being placed on leave, her next contact with the district was during various legal meetings such that it would not be unusual for her not to apologize in those settings. Thus the Commission was not swayed by the "no apology" argument put forth by the district.

was attached to Mr. Monge's letter. Mr. Monge's letter concluded by noting the "enormous contributions" the six employees had made to the school, the "strongly positive relations" they had established with students, the numerous awards they had received, that they were "valuable and vital members" of the community, and that "the impact of their permanent loss to our students and program would be devastating."

29. Kimberley Miller, Ed.D., is an associate professor at Cal Poly Pomona in the College of Agriculture. She first met Ms. Fuller when Dr. Miller helped judge FFA competitions at RHS as part of Dr. Miller's undergraduate coursework. She later came to work with Ms. Fuller as a colleague when Dr. Miller taught high school agriculture courses. Now as an associate professor at Cal-Poly, Ms. Fuller is on "the short list" of agriculture teachers that Cal-Poly uses to provide clinical practice for its students working on their teaching credential. Dr. Miller described Ms. Fuller as a "powerful role model" and a "strong role model" who has all the best qualities of an agriculture teacher. Dr. Miller's student teacher who was doing her clinical program in Ms. Fuller's class in February 2017 told Dr. Miller about the post; Ms. Fuller did not do so. The student teacher contacted Dr. Miller about the posts and how "angry" the students were, seeking guidance on how she should respond as the student teacher. Dr. Miller did not review Ms. Fuller's Facebook post but was told "something along the lines that [it said] 'Today was a pleasant day.'" Dr. Miller did not discuss the post with Ms. Fuller's students. Dr. Miller was shown the Facebook posts at this hearing and admitted that Ms. Fuller's post varied from what she had been told but it did not change her opinion of Ms. Fuller. Dr. Miller admitted that she advises her students to be mindful of what they post on social media.

30. Jack Havens works for the California Department of Education as an agriculture consultant. He administers a grant program in the Southern Region and the Future Farmers of America (FFA) program and provides services to teachers and districts. He testified that Ms. Fuller is an excellent teacher who was nominated by her peers for a CATA Teacher of Excellence award and an Honorary American FFA Degree. She is "always fighting for her students and the program." Mr. Havens would recommend Ms. Fuller for employment in any district "without reservation." Mr. Havens has not spoken with any of Ms. Fuller's students since the Facebook post and his only interaction with her since she was put on leave was when she asked him to write a letter of support/reference for her that he wrote in May 2017. Mr. Havens was not aware of exactly what was posted on Facebook, people "referred to it in generalities." Ms. Fuller told him "she put something on Facebook on the Day Without Immigrants" but he did not know what was posted other than "many people" told him it was a post that "class was good because a lot of students were not there that day." No one told him that Ms. Fuller posted that troublemakers were not present that day. Mr. Havens admitted that people should be mindful of what they post and that posts can be misconstrued. He agreed it is "problematic" for a teacher to post that students are "troublemakers" but if Ms. Fuller did that it would not change his opinion of her.

In his letter of recommendation, dated May 3, 2017, Mr. Havens described Ms. Fuller as "an exemplary and outstanding teacher since she first entered the profession." Mr. Havens

praised Ms. Fuller's hard work, dedication, enthusiasm and work growing the RHS agriculture program.

Ms. Fuller's Additional Letters of Reference, Support and Evaluations

31. An undated Fabulous Falcon⁸ Award was presented to Ms. Fuller for "soaring with PRIDE at [RHS.]" PRIDE stood for: Perseverance, Respect, Integrity, Dedicated to Excellence.

32. An undated certificate of appreciation presented to Ms. Fuller by the RHS Associated Student Body (ASB) commended her for "her commitment to helping ASB prepare for school events and for helping to spread the FALCON SPIRIT. We are grateful to you for going out of your way to make this year's events the best they could be."

33. A document entitled "Staff Fabulous Falcon November" identified Ms. Fuller as the winner of the "Integrity" award, noting it was given for "adherence to moral and ethical principles; soundness of moral character; and honesty." The document noted:

We come across a small number of people in our lives who exemplify an adherence to moral and ethical principles. Even fewer have gained our trust through their honesty. In the education field, finding someone who exemplifies integrity might be considered a daunting task. However, this is not the case here at [RHS]. When thinking of persons who demonstrate an adherence to moral and ethical values, many faculty here at RHS come to mind. Another definition for integrity references "the state of being undiminished". [sic] So when thinking of a person who not only adheres to moral and ethical principles, but has earned the mutual trust from her co-workers and students alike, through her honesty, all-the-while [sic] maintaining the "undiminished success" of one of Rubidoux's largest and most successful programs, Future Farmers of America, it is easy to understand why Rhonda Fuller is one of this month's Fabulous Falcon [sic].

Ms. Fuller is a Rubidoux Alum, who has great pride in Rubidoux, and is respected for honesty and integrity. If she says she will do something, it will get done! If you go to her expecting an honest answer or opinion that is precisely what you will get! All the programs she has been a part of here at RHS, have only furthered the respect for [RHS], allowing this campus to SOAR with PRIDE.

⁸ The RHS school mascot is a falcon.

34. A card signed by several colleagues indicated that they missed Ms. Fuller, cared about her, and could not wait for her to return to RHS.

35. Several cards and letters written by Ms. Fuller's students indicated how much they cared for her, how much they missed her, how much she meant to their education, how she was their favorite teacher, the passion she exhibited in her classroom, and the positive impact she had on their lives.

36. Ms. Fuller's 2015 evaluation documented that she received overall ratings of "meets" or "exceeds" criteria. The comments noted that Ms. Fuller: "facilitates learning experiences that promote meaningful interactions, and engages students in problem solving, critical thinking, and other activities that make subject matter comprehensible." "Ms. Fuller creates a physical environment that engages all students and promotes optimal learning for each student." "She ensures that students' knowledge of the subject matter incorporates different perspectives . . ." "Ms. Fuller values her students' backgrounds and interests by creating class discussion opportunities that are engaging and interesting."

District's Social Media Training

37. Joshua Lewis, the district's Director of Education Information Technology, testified about the social media training the district provided. Two programs, Tech Fest, offered in the fall, and Summer Jam, offered when school ends, were voluntary trainings for teachers regarding how to integrate technology in the classroom including the use of social media. The district offered no evidence that Ms. Fuller attended these voluntary programs and she testified that she did not attend either one because they were programs about ways that teachers could integrate technology in their classrooms. Mr. Lewis admitted that the district does not have a Facebook policy for teachers.

Mr. Lewis described the digital citizenship course that all teachers were required to teach during their advisory class. Two of the lesson plans from that course were introduced at hearing. One course, entitled, "Private Today, Public Tomorrow," dealt with ways to protect privacy on line and the unintended consequences of posting things on line. Another lesson addressed cyber bullying. Ms. Fuller submitted documentation to the district verifying that she taught the required digital citizenship course work to her students. Ms. Fuller explained that the school provided Power Point slides for the course and was supposed to print out the course books for the students but did not do so. As such, in her class "we sort of breezed through what we saw [in the Power Point] but my students were not able to really participate." Ms. Fuller could not recall if there was any instruction in those Power Point slides regarding the use of social media.

The Commission determined that Ms. Fuller's notice to the district that she taught the digital citizenship course did not enhance the gravity of her Facebook post.

Ms. Fuller's August 4, 2017, Facebook Post

38. Despite all that has transpired, on the first day of school, August 4, 2017, Ms. Fuller posted the following message on her Facebook account:

Today marks my 29th year teaching. I would never have imagined that at this point in my career I would be embroiled in this horrible legal battle with the district that I've devoted my life to. And to receive actual threats from district admin last night was just the icing on the cake! "Doing what's right is not always easy, doing what's easy is not always right" [sic]

Below those words Ms. Fuller posted a photograph of her RHS Alumni Lifetime Achievement Award 2012.

It was difficult to fathom why Ms. Fuller would post this message given all the turmoil the district and she have endured. Although the Commission ultimately concluded that Ms. Fuller should not be dismissed from service, the Commission felt that this post was extremely ill-advised and indicated that Ms. Fuller sees herself as the victim of this "legal battle" and not as the perpetrator who brought this all on herself by her February 16, 2017, post. Ms. Fuller should realize that she is solely to blame for her predicament.

Additionally, Ms. Fuller's hearing was originally set to begin on August 30, 2017, but was continued on that day because the original panel member selected by Ms. Fuller knew the witnesses and the district's motion to excuse her from serving on the Commission was granted. As such, the case was continued to December 11, 2017, and Ms. Fuller selected a new panel member to serve on the Commission. However, when Ms. Fuller made her August 2017 Facebook post, she did not know that her hearing would not proceed as set in 26 days. It was not until the morning of August 30, 2017, when the originally designated panel member notified the parties that she knew the witnesses, that the district moved to exclude that panel member and Ms. Fuller's case was continued. Thus, at the time Ms. Fuller posted her "icing on the cake" Facebook comments it was a mere 26 days before her hearing was set to begin. Why she would post a message criticizing the district and implying that she was "doing what's right" was impossible to comprehend. The Commission strongly suggests that Ms. Fuller refrain from posting comments about the district on social media.

LEGAL CONCLUSIONS

Applicable Code Sections

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

2. Education Code section 44932 provides the grounds for dismissing a permanent employee. Subdivision (a)(1) authorizes dismissal for immoral conduct. Subdivision (a)(6) authorizes dismissal for evident unfitness for service.

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

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

Burden and Standard of Proof

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

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

Immoral Conduct

7. The term “immoral” has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. The term “immoral conduct” has been defined to include conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. “Immoral conduct” is not confined to sexual matters. It includes an inconsiderate attitude toward good order and the public welfare. It is sometimes synonymous with “dishonesty” or a high degree of unfairness. (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811, noting that no other California cases had previously defined the term “immoral conduct.”)

8. “Immoral conduct” is conduct hostile to the welfare of the general public and is not confined to sexual matters. (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466.)

9. Immoral conduct cannot be considered in the abstract. It must be considered in the context in which the Legislature considered it, as conduct which is hostile to the welfare of the general public; more specifically, conduct which is hostile to the welfare of the school community. In providing standards to guide school boards in placing restraints on conduct of teachers, the Legislature is concerned with the welfare of the school community. Its objective is the protection of students from corruption. This is a proper exercise of the power of a state to abridge personal liberty and to protect larger interests. But reasonableness must be the governing criterion. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 224.) The phrase “immoral conduct” within the meaning of the Education Code denotes immoral or unprofessional conduct or moral turpitude of the teacher that renders the teacher unfit to teach. (*Ibid.* at p. 225.)

10. There are certain professions which impose upon persons attached to them responsibilities and limitations on freedom of action which do not exist in regard to other callings. Public officials such as judges, policemen and schoolteachers fall into such a category. (*Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820, 824.)

11. “As between a teacher and his student, ‘(a)n important part of the education . . . is the instilling of a proper respect for authority and obedience to necessary discipline. Lessons are learned from example as well as from precept.’ (Citation.) ‘A teacher . . . in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the [students] coming under [his] care and protection. . . . The teaching by example as well as precept, of obedience to properly constituted authority and discipline necessary to a well ordered society, is an important part of education.’’’ (*Watson v. State Bd. of Education* (1971) 22 Cal.App.3d 559, 565.)

12. “The calling of an educator is so intimate, its duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous that they are incapable of enumeration in any legislative enactment. The educator’s ability to inspire children and to govern them, his power as an educator, and the character for which he stands are matters of major concern in an educator’s selection and retention. . . . An educator in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the students coming under his care and protection. (Citation.)” (*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1463-64.)

13. The governing board of a district is entrusted with the conduct of the schools under its jurisdiction, their standards of education, and the moral, mental, and physical welfare of the pupils during school hours. An important part of the education of any child is the instilling of a proper respect for authority and obedience to necessary discipline. Lessons are learned from example as well as from precept. “Book learning” is only a phase of the important lessons a child should learn in a school. (*Palo Verde Unified School District of Riverside County v. Hensey* (1970) 9 Cal.App.3d 967, 970-71.)

14. Rejecting statutory terms, such as “immorality,” “unprofessional conduct,” or “moral turpitude” as overly broad to use as grounds for discipline of public school teachers, the *Morrison* court created a seven-part test to assess whether a misbehaving teacher is fit to teach. (*Broney v. California Com. on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 466.) “Because terms such as ‘immoral,’ ‘unprofessional,’ or ‘involving moral turpitude’ are too broad and amorphous to be used as a basis for the termination of a professional license, it must be shown the conduct in question indicates an unfitness to engage in the profession.” (*Id.* at pp. 473-74.)

15. Since the term “immoral conduct” is vague and broad, whether the conduct demonstrates an unfitness to teach must be measured against seven criteria set forth in *Morrison*. (*Governing Board of ABC Unified School District v. Haar* (1994) 28 Cal.App.4th 369, 383.)

Evident Unfitness for Service

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

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

18. In *Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, the court noted the two parallel, yet contradictory, lines of cases regarding “unfit for service.” One line of cases equated that term with “unprofessional conduct” and the other line of cases distinguished the two definitions. In deciding that the latter line of cases was the correct way to evaluate “unfit to serve,” and complied with the rules of statutory construction. The *Woodland* court concluded that “unprofessional conduct” and “evident unfitness for service” do not mean precisely the same thing. Although conduct constituting “evident unfitness for service” will often constitute “unprofessional conduct,” the converse is not always true. Evident unfitness for service requires that unfitness for service be attributable to defect in temperament, which is not necessary for a finding of unprofessional conduct. Nevertheless, lower courts may not disregard the criteria for unfitness set out in *Morrison* where that court concluded that “unprofessional conduct” meant conduct showing a teacher was unfit to teach. These criteria must be analyzed to determine, as a threshold matter, whether the conduct indicates unfitness for service. If it does, the next step is to determine whether the “unfitness” is “evident”; i.e., whether the offensive conduct is caused by a defect in temperament. (*Id.* at pp.1442-1445.) A finding of “unfit to serve” can be made if the evidence, taken in the aggregate, shows that

retaining the employee would pose a significant danger of psychological harm to students and fellow teachers. (*Id.* at p.1456.)

19. An employee can be dismissed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher. The inquiry is whether any adverse inferences can be drawn from the teacher's conduct as to his teaching ability, or as to the possibility that publicity surrounding the past conduct may in and of itself substantially impair his function as a teacher. (*Morrison, supra*, at p. 235.)

20. To establish a teacher is unfit to teach, *Morrison* requires a nexus between government employment and alleged employee misconduct stemming from the principle that “[n]o person can be denied government employment because of factors unconnected with the responsibilities of that employment.” (*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1463.)

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

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

23. In determining whether the teacher’s conduct indicated unfitness to teach, such matters as (1) the likelihood that the conduct may have adversely affected students or fellow teachers, (2) the degree of such adversity anticipated, (3) the proximity or remoteness in time of the conduct, (4) the extenuating or aggravating circumstances, if any, surrounding the conduct, (5) the likelihood of the recurrence of the questioned conduct, and (6) the notoriety and publicity accorded the teacher’s conduct may be considered. (*Jack M., supra.*, at p.702, fn 5.)

24. The nexus between an employee’s conduct and his fitness to teach is established when the conduct is detrimental to the mission and functions of the employer. Factors to consider are whether the acts demonstrate a serious lapse in good judgment, the teacher failed to recognize the seriousness of his misconduct, the teacher attempted to shift blame to parents and students who might access his social media posting, his principal had lost confidence in his ability to serve as a role model based upon the posting, or, most

noteworthy, the teacher's testimony that he did not think his postings would have any impact on his ability to teach his students if any of them had viewed his post and that he did not view his posting as immoral. The conduct itself, together with the teacher's failure to accept responsibility or recognize the seriousness of it, given his position as a teacher and role model, demonstrates evident unfitness to teach. (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1465-66.)

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

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

Morrison Factors

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

28. The *Morrison* factors may be applied to the charges in the aggregate. When a camel's back is broken, the trier of fact need not weigh each straw in its load to see which one could have done the deed. A trier of fact is entitled to consider the totality of the offensive conduct. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1456-1457.)

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

Other Discipline Considerations

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

31. The notoriety and publicity accorded a teacher's conduct may properly be considered. (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 701, fn. 5.) If the teacher's conduct is sufficiently notorious that the students know or are likely to learn of it, and if the teacher continues to model his past conduct, the Commission may infer that the teacher's conduct may result in student emulation, but such an inference is disputable. (*Id.*, at p. 699 and fn. 4.)

32. Where it can reasonably be inferred that the salient facts at issue reached the attention of many persons in the community, it may also be inferred that the educator's conduct attained a degree of timely notoriety among persons - students, teachers, parents, and others - interested in the high school. (*Comings v. State Bd. of Education* (1972) 23 Cal.App.3d 94, 105–6.)

33. An educator may be dismissed if the conduct has gained sufficient notoriety so as to impair his or her on-campus relationships. (*Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820, 826; *Watson v. State Bd. of Educ.* (1971) 22 Cal.App.3d 559, 562.)

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

Evaluation

35. Ms. Fuller's 2017 Facebook post negatively impacted students, the school, the district and the community. However, having considered all of the evidence, the Commission did not find that the district proved that Ms. Fuller's Facebook post constituted immoral conduct or demonstrated that she was evidently unfit to serve.

While there can be no question that Ms. Fuller's post was unwise, it did not demonstrate that she was corrupt, depraved, or lacked respect for her community. Contrary to the district's assertions, calling students "troublemakers" did not rise to the level of immoral conduct as that term is defined in the case law. Nor did her post demonstrate that she was racist. Although the posts, Ms. Fuller's post included, negatively impacted the community, that negative impact appears to have abated as evidenced by the lack of any persons attending the hearing who were opposed to Ms. Fuller. Indeed, the courtroom was filled with individuals who strongly supported her. Furthermore, her post cannot be considered in the abstract, but must be looked at in the context in which it was made: she was replying to another teacher's post about the small classroom sizes and lack of students at school and not to Mr. Greer's post specifically. In that context, her post was not immoral. Even if one were to conclude that her post was directly responding to Mr. Greer's post, the words that Ms. Fuller used in her post would still not rise to the level required to establish "immoral conduct."

As a teacher, Ms. Fuller is required to set an example, and she did not set a good one with this post, but in light of all of the evidence presented, her post did not constitute

immoral conduct. Quite the contrary, the evidence demonstrated that Ms. Fuller has set an excellent example at RHS, as evidenced by the awards, distinctions, 2015 evaluation, letters of reference, and testimony introduced at this hearing.

Similarly, the district also did not establish that Ms. Fuller is evidently unfit to teach. While her post was in poor taste, her single act of bad judgment by posting her comments on Facebook did not rise to the level of demonstrating that she was unsuitable, incapable, incompetent or unfit to teach. The evidence did not demonstrate that Ms. Fuller suffers from a defect in temperament, or a fixed character trait, nor did it demonstrate that retaining Ms. Fuller as an employee would pose a significant danger of psychological harm to students and fellow teachers. In fact, the undisputed evidence proved that even while placing Ms. Fuller on suspension, Ms. Elzig asked Ms. Fuller to travel off-campus with students and chaperone the agricultural event taking place the following week. If the district truly felt that Ms. Fuller posed a risk of harm to students, it would never have asked her to chaperone that event. That request to chaperone undercut the district's argument. In addition, the evidence established that Ms. Fuller is remorseful, is capable of change, deeply regrets her actions, and desperately desires a return to the classroom so that she can make amends. In fact, she was making amends when she was pulled from her classroom, even before she was fully aware of the community outrage to her post. Thus, it was not established that she was incapable of remediation. Rather, her post was an aberrant, isolated act in an otherwise distinguished teaching career. On balance, Ms. Fuller possesses the "qualities of character necessary for teaching fitness" and the likelihood that she would ever post such comments again is extremely remote.

The district did establish the notoriety given to the posts and the extremely negative impact they initially had on the community. However, based upon the totality of the evidence presented, especially the petitions, letters, cards and testimony in support of Ms. Fuller, as well as her testimony, accepting responsibility for her post and expressing deep remorse, it was not established that she is evidently unfit to serve in the district. The Commission concluded that the evidence established that it was in the best interests of the students that Ms. Fuller be returned to her classroom.

Cause Does Not Exist to Dismiss Ms. Fuller

36. Cause does not exist to dismiss Ms. Fuller pursuant to Education Code section 44932, subdivision (a)(1), because the evidence did not establish that Ms. Fuller engaged in immoral conduct.

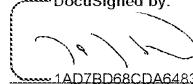
37. Cause does not exist to dismiss Ms. Fuller pursuant to Education Code section 44932, subdivision (a)(6), because the evidence did not establish that Ms. Fuller was evidently unfit for service.

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ORDER

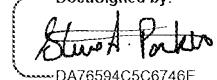
Ms. Fuller's appeal of her dismissal from employment with the Jurupa Unified School District is granted. The district's request to dismiss Ms. Fuller is denied. Ms. Fuller shall not be dismissed from her employment with the district. The Notice of Intent to Dismiss and Statement of Charges filed against Ms. Fuller are hereby dismissed.

DATED: January 12, 2018

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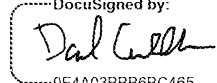
MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

DATED: January 12, 2018

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STEVE PARKER
Commission Member

DATED: January 12, 2018

-----DocuSigned by:

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DAN CROOKHAM
Commission Member