

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

In the Matter of the Dismissal of:

ROBIN RIGGLE,

A Permanent Certificated Employee,

Respondent.

OAH No. 2017061010

DECISION

On September 11, 12, and 13, 2017, a Commission on Professional Competence (Commission) heard this matter in Jurupa Valley, California. The Commission consisted of the following members: Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH); Pamela Bernard; and Greg Solomon.

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

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

The record was held open to permit the committee to deliberate and reach a decision. The record was closed and the matter submitted on September 29, 2017.

ISSUES

Did two Facebook comments made by Mrs. Riggle on a Facebook thread concerning “A Day Without Immigrants” (protest event), wherein she commented, “I had 50 absences today” and “Yes. It was a very pleasant day,” constitute immoral conduct or evident unfitness for service?

Was Mrs. Riggle dishonest when she was questioned by complainant regarding whether she knew about the protest event prior to posting her comments on Facebook?

SUMMARY

Although Mrs. Riggle could have used better judgement before posting her comments to a public Facebook thread that arguably contained some negative commentary about immigrants and people who supported the protest event, the district did not show by a preponderance of the evidence that her conduct constituted immoral conduct or evident unfitness for service. Further, the district did not show by a preponderance of the evidence that she was dishonest about whether she knew about the protest event prior to making her Facebook comments. Accordingly, applicable law prohibits the district from terminating Mrs. Riggle.

FACTUAL FINDINGS

Procedural History and Jurisdictional Matters

1. Mrs. Riggle is a permanent certificated teacher employed by the JUSD. At the time of the incident that formed the basis for these proceedings, she was an art teacher assigned to Rubidoux High School (RHS).
2. On February 16, 2017, Mrs. Riggle made two comments on a Facebook thread. The district learned about the Facebook thread because many people in the community were upset by some of the comments they read. Gale Hammons, a communications and public relations contract employee of the district, also notified district administrators about the comments.
3. On February 16, 2017, complainant placed Mrs. Riggle on paid administrative leave.
4. On May 15, 2017, complainant signed the Notice of Intent to Dismiss and Immediately Suspend Without Pay and the Statement of Charges, in her official capacity, alleging that Mrs. Riggle is subject to termination for immoral conduct, dishonesty, and evident unfitness for service, in violation of Education Code sections 44932, subdivisions (a)(1), (a)(4), and (a)(6).
5. On May 16, 2017, complainant placed Mrs. Riggle on unpaid leave.
6. The charging documents, and other jurisdictional documents, were served on Mrs. Riggle, who timely filed a Demand for Hearing denying the charges against her.
7. Mrs. Riggle filed a Motion for Immediate Reversal of Suspension (motion) with OAH, pursuant to Education Code section 44939, alleging that the charging documents

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

8. On July 11, 2017, the Hon. Adam L. Berg granted Mrs. Riggle’s motion. Mrs. Riggle was taken off unpaid administrative leave and placed on paid administrative leave pending the outcome of the hearing.

The Protest Event

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

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

The Facebook Thread

11. On February 16, 2017, several teachers at RHS – Geoffrey Greer, Robin Riggle, Charles Baugh, Patricia Crawford, and Allen Umbarger, posted comments on a Facebook thread started by Mr. Greer on his public Facebook page.² The original post by Mr. Greer read as follows:

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

² According to the testimony of Gale Hammons, the communications and public relations employee that works for the district, regardless of whether a person has their personal Facebook page set to private, if they comment on a public post, their comments can be viewed by everyone.

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

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

Several other individuals posted comments on Mr. Greer's Facebook thread. Eventually, Mrs. Riggle posted the following free-standing comment (i.e. not in reply to Mr. Greer): "I had fifty absences today." Mr. Greer replied, "Yup. And I bet your class went a whole lot more smoothly as well." Mrs. Riggle then posted the following, "Yes, it was a very pleasant day."

Those two comments were the only comments posted by Mrs. Riggle on the Facebook thread.

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

The Aftermath

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

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

firestorm.³ The district received angry e-mails from students, parents, community members, individuals who had no affiliation or personal interest in the district, and some who lived across the country. The American Civil Liberties Union, Department of Justice⁴, Anti-Defamation League, and various immigrant organizations wrote to the district regarding their concern after learning of the comments on the Facebook thread. Some of the angry communications were directed solely towards Mr. Greer. Others were directed at all the teachers whose comments appeared on the Facebook thread. In many of the e-mail communications, it was unclear if the writers were reacting to the actual posts, the representation in the news regarding the posts, or what they had read from others regarding their opinions of what the posts contained. Nonetheless, it was not disputed that many people from all walks of life were upset for a variety of reasons about the comments contained on the Facebook thread.

February 17, 2017, and the Student Walkout

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

14. Janiece Bailey, an English teacher at RHS, testified that by the time she arrived at school that day, Mr. Greer’s classroom was covered up with butcher paper. Some students on campus were wearing the Mexican flag on their hat, and some had bandanas in their pockets. In her first class, they discussed the Facebook thread. Students expressed their opinions. Many wanted to know what happened to the teachers. Many expressed frustration, anger, and feeling of betrayal. In her next class, the students were not really discussing the Facebook thread; Ms. Bailey felt they probably had already done so in their earlier class. As the day went on, most of the students did not want to discuss the Facebook thread.

Ms. Bailey said that around lunchtime, a large group of students started chanting very loud, yelling, and acting very upset. She said teachers followed them to monitor the situation. Some students threw food and water bottles. Some students moved towards the flagpole and attempted to climb it. An announcement was made for the students to return to class, but many did not. The group of students made their way to a gate and started to push on it; campus security opened the gate “for their safety.” Opening the gate allowed the group to walk off campus and into the street. Some students began jumping on a news van.

³ For example, one article from the Huffington Post was simply entitled, “Riverside Teachers Put on Paid Leave Over Immigrant Protest Comments.” Another article from the Washington Post, however, was entitled, “These California Teachers Mocked Students For Skipping School On Immigrant Boycott Day.”

⁴ It was never made clear in testimony whether it was the California Department of Justice or the federal Department of Justice.

Ms. Bailey returned to her classroom. She had fewer students than normal. She believed the students who were in class felt embarrassed and were upset about the “general disrespect” the other students were showing towards school staff. The sixth period was cancelled; students remained in their fifth period classrooms.

The following day, Ms. Bailey had her students do a writing assignment. The purpose of the letters was to express their opinions and sentiments, write letters of apology, or whatever the students wanted to do. Some of the letters expressed support for the teachers whose comments appeared on the Facebook thread; others expressed anger and frustration.

Ms. Bailey said most of the anger was directed at Mr. Greer. Personally, Ms. Bailey did not feel Mrs. Riggle’s two comments were a concern; her concern was always with the initial post made by Mr. Greer. Since February 17, 2017, there have been no further walkouts at RHS. Ms. Bailey feels bad for Mrs. Riggle because Mrs. Riggle is the “nicest person she has ever known.” When she saw the Facebook thread, Ms. Bailey worried that Mrs. Riggle’s comments could be misinterpreted; she did not find Mrs. Riggle’s comments to be offensive or hurtful.

15. Testimony of several other witnesses corroborated the testimony of Ms. Bailey regarding what occurred during the student walkout on February 17, 2017.

16. Leanna Apodaca is an English teacher at RHS. Ms. Apodaca said she did not see a big difference in her classes on February 16, 2017. Her students did raise some concerns with her in class on February 21, 2017, concerning the protest event and Facebook thread incident. She documented the concerns in an e-mail to the principal. The concerns, which were many, included things that both supported and opposed the protest event, as well as various views on how the Facebook thread incident was treated (i.e. some students pointed out that the comments could be construed as racist or hurtful, while others pointed out the importance of not taking things out of context). Ms. Apodaca knows Mrs. Riggle and said that she has seen no “racist tendencies” and would not consider Mrs. Riggle to be “racist.”

17. Cindy Aguilar is a translator and clerk/typist for the school district. She testified that on February 17, 2017, many parents contacted the school about the Facebook thread and generally expressed one of two sentiments: either they were upset about the comments or they supported the teachers and were upset the teachers were going to be put on leave.

18. Karime Espinoza is a student at RHS whose parents are immigrants. She stayed home for the protest event. When she saw the Facebook thread, it made her feel “sad” because she thought it was “disrespectful.” She felt Mr. Greer’s comment suggested that “we are lazy and drunk.” Mrs. Riggle’s comment only upset her a “little” because “it kind of agreed” with Mr. Greer’s post. She said when she returned to RHS on February 17, 2017, there “was a lot of tension.” She has never had Mrs. Riggle as a teacher.

19. E C is a student at RHS whose parents are immigrants. He went to school the day of the protest event. He said he felt betrayed “mainly by Mr. Greer” because he felt Mr. Greer’s comment meant that students who did not show up were lazy or drunk. When asked if he felt betrayed by Mrs. Riggle, he said, “no.” He said he thought Mrs. Riggle’s comment could be interpreted either that it was a pleasant day because there were fewer students, or because there were less immigrants. Mr. Castillo has never had Mrs. Riggle as a teacher.

20. M L is a former student of RHS. She has several siblings that either are attending, or have attended, RHS. Ms. Lopez did not have Mrs. Riggle for a teacher. Ms. Lopez felt the “posts” were “mocking of our struggle” and were degrading. She said she knew Mrs. Riggle’s comments were “not as offensive as the rest” but still feels that fact that Mrs. Riggle commented “shows she agrees” with Mr. Greer’s comment. She has a continuing concern regarding what will be done with the teachers because she feels they will not be effective if they are returned to the classroom. Ms. Lopez said that she was “one of the persons who organized the [student] walkout” on February 17, 2017. She now works for the Inland Coalition for Immigrant Justice, although she did not work for that organization at the time she participated in organizing the student walkout. Ms. Lopez did not feel Mrs. Riggle’s comments were racist, but she did feel they were “discriminatory.”

Other Evidence Presented by the District

TESTIMONY OF ROBERT SANTIAGO

21. Robert Santiago is a math teacher at RHS. Mr. Santiago was angry when he saw the Facebook thread and felt it showed a lack of sensitivity. Specifically regarding Mrs. Riggle’s two comments, he felt her comments “tacitly approved” of Mr. Greer’s original comment. Mr. Santiago “experienced racism” when he was younger and said he “started to relive” those moments when he saw the comments. Mr. Santiago said that throughout the day during his classes, the students were angry and discussing the Facebook thread. By the time of fifth period, the students were more interested in expressing themselves than tending to class, so Mr. Santiago let them do so because he feared if he did not, he would have the “same problem” in the classroom that was “occurring outside.” By the time sixth period came around, most of the students remaining were his “high achieving seniors” who were ready to “get back on task.”

Mr. Santiago posted a comment in the Facebook group “What’s going on in Jurupa Valley” on February 17, 2017. He did so because he started receiving texts from former students and saw many comments on Facebook, and felt that a “broad brush” was being used to paint all teachers at RHS in a bad light. His comment was:

[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 a privilege for me to work there, and I know that many others share this feeling.

TESTIMONY OF JOSH LEWIS

22. Josh Lewis is the Director of Information Technology at the JUSD. His primary duty is to oversee the networks. Mr. Lewis testified about the existence of the district's acceptable use policy for the use of technology, which is contained in the district's policy manual entitled, "Annual Notification to Employees." This manual is provided to employees at the commencement of the school year. District documents confirm that Mrs. Riggle received a copy of the policy manual on September 1, 2016.

Mr. Lewis testified that the policy does not address employee use of social media but does address conduct when online. He pointed out several provisions of the policy that he felt Mrs. Riggle's comments on the Facebook thread violated. However, the policy itself commences with the following sentence: The Acceptable Use Policy (AUP) defines the proper use of the *district* technology resources. (Emphasis added.) Thus, a teacher cannot violate the AUP unless they are engaging in inappropriate conduct in connection with the use of district resources. Mrs. Riggle's comments on the Facebook thread were made after school hours, on her personal computer, on her personal time, and as such, no district resources were utilized.

Mr. Lewis also testified that the district hosts two events, Techfest and Summerjam, held at the beginning and end of the school year, respectively. These events relate to the use of information technology in the classroom. Mr. Lewis said, however, that the events are optional.

Finally, Mr. Lewis testified that all teachers are required to teach digital citizenship to their students. Exhibits provided showed the content of the curriculum, which generally entails proper conduct online in a variety of situations. Mrs. Riggle did provide the digital citizenship curriculum to her students during the 2016-2017 school year. The documents provided that entail the digital curriculum do not show any curriculum aimed at teachers and their personal conduct online after school hours.

TESTIMONY OF DANIEL BROOKS

23. Daniel Brooks is the Director of Personnel at JUSD. His duties include overseeing the personnel department, hiring, recruitment, investigations, and discipline, among other things. Prior to becoming the Director of Personnel, Mr. Brooks served in both teaching and administrative positions.

When Mr. Brooks saw the Facebook thread, he was very disappointed to see "Mr. Greer's post would express sentiments like that." Mr. Brooks felt that the post "perpetuates anti-immigrant sentiments," as well as negative stereotypes of immigrants being lazy and

drunk, and affects people's perceptions of immigrant groups. Mr. Brooks felt the posts were inappropriate.

Following the incident, many people were upset and angry and called the school. Mr. Brooks testified that some people called the school in support of the teachers, as well.

In a meeting on March 17, 2017, between himself, complainant, and Mrs. Riggle, Mr. Brooks testified that Mrs. Riggle stated she was not aware of the day without immigrants at the time the students were missing.

TESTIMONY OF JOSE ARAUX

24. Dr. Araux has been the principal at RHS for five years. He has held other positions in administration and as a teacher throughout his career. Dr. Araux's testimony is summarized below.

RHS has approximately 1,578 students. Approximately 90 percent of the students are Hispanic, two percent are black, two percent are white, and the rest are "other." Dr. Araux is aware that some of the students at the school have parents who are immigrants. Dr. Araux said the purpose of the protest event on February 16, 2017, was to show the "importance of the immigrant community" and their contribution to this country. Many students were absent the day of the protest event, but a majority of the students came to school.

Dr. Araux reviewed the comments made on the Facebook thread and said he could not believe the comments were made by his teachers. He was especially disheartened when he read Mr. Greer's post. He was offended by Mrs. Riggle's comments, however, because "they were in the chain of comments."

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

On February 18, 2017, Dr. Araux received an e-mail from a student notifying him about a potential second student walkout planned for February 21, 2017. The student was very "disappointed" with the actions of the other students who walked off the campus on February 17, 2017, and concerned about the safety of students and staff members at RHS should the second walkout have occurred. Dr. Araux sent out an e-mail to all staff with a modified schedule for that day in order to avert a second walkout. Dr. Araux sent a

notification to parents warning them of the safety concerns should a second walkout occur and also telling them that the school day would be modified on February 21, 2017. The message did not encourage parents to tell their students to remain in class and refrain from participating in the second walkout. Nonetheless, the second walkout never occurred.

COMPLAINANT'S TESTIMONY

25. Complainant is the Deputy Superintendent for the JUSD. Her responsibilities include human resources, contract negotiations, developing policies, and disciplinary matters, among other things. Complainant has served in various teaching and administrative positions in her career. Complainant's testimony is summarized as follows.

The district did a "robocall" to parents regarding the February 16, 2017, protest event urging them to have their students remain in school. The district also posted as much on their internet site.

Complainant saw the posts by the teachers at RHS on February 16, 2017. She said she knew it would be a firestorm, because they were "significant" and "discriminatory" in nature and had already gone "viral." Complainant believed that Mr. Greer's post meant that immigrants were lazy and drunk and this was a problem for the district because most of the students are Hispanic. Complainant interpreted Mrs. Riggle's two comments as "discriminatory" and being "part of" Mr. Greer's original post, perpetuating the same thinking. Complainant said she believed Mrs. Riggle was making a comment about immigrants, and by commenting, Mrs. Riggle opened the door for other teachers to respond.

On February 17, 2017, complainant went to RHS. She went to Mrs. Riggle's second period classroom and asked her to come with her – in front of the students. Complainant said some students cheered and applauded. She escorted Mrs. Riggle to a room, where Mr. Brooks was also located. Mrs. Riggle asked why she was there. At that point, complainant gave Mrs. Riggle a letter indicating that she was being placed on paid administrative leave due to the Facebook thread incident.

Complainant's recollection of the student walkout on February 17, 2017, was consistent with what other witnesses described. She estimated approximately 300 students left class after lunch. After about an hour and a half, some came back, some did not. Prior to walking off campus, the students were completely unruly. They attempted to take down the American flag from the flagpole and raise the Mexican flag. The students chanted, "Fuck you" and "Fuck Trump." When students began to shake a gate that secures the campus, she made the decision to open it for their safety. Students then jumped on top of a news van. As the students marched down public streets outside the school, police tried to block intersections. She believed that the student's opinions on national immigration policy were also mixed in with the outrage over the posts.

On March 21, 2017, complainant met with Mrs. Riggle. Mr. Brooks was also present. Complainant said, when Mrs. Riggle was asked whether she knew about the protest event on February 16, 2017, prior to making her Facebook comments, Mrs. Riggle told her that she

did not know. However, complainant said that e-mails on Mrs. Riggle's district e-mail account showed that she was aware. Specifically, complainant pointed to an e-mail where Mrs. Riggle questioned the absenteeism in school that day and another district employee replied, "It's a Day Without Immigrants Boycott today."

Multiple documents containing various policies and procedures of the district were provided. Complainant said she believed Mrs. Riggle violated some of these policies.

Specifically, complainant believed Mrs. Riggle's Facebook posts violated Board Policy 4000, which describes personnel "concepts and roles." However, this policy talks about what the governing board must do, not teachers. This policy is not one that can be violated by a teacher.

Complainant also believed Mrs. Riggle's two Facebook posts violated the Code of Ethics, contained in Board Policy 4119.21. However, the Code of Ethics speaks of teacher's responsibilities in the classroom – not activities engaged in during their personal time. Moreover, the broad language complainant referred to as being violated came from the preamble of the document, which cannot be violated.⁵

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

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

Complainant believed that Mrs. Riggle's comments violated Board Policy 5145.3, concerning harassment and discrimination. This policy applies to activities on campus as well as off campus that create a hostile environment at the school. It is unclear, however, how Mrs. Riggle's comments violate this policy given that her comments merely reflected on class size during the protest event, and did not disparage any student or contain any racially inappropriate or discriminatory language. It is also unclear how the comment could be

⁵ The Code of Ethics contains a clause at the end stating that the code governs the profession and any violations will be considered "unprofessional." The clause goes on to say that in order to constitute grounds for discipline, the violation must endanger students, evidence malice, indicate serious incompetency, bad judgement, or a pattern of bad judgement." Interestingly, complainant stated the Code of Ethics was violated, but did not charge Mrs. Riggle with unprofessional conduct. A reasonable inference, then, can be drawn that the district did not believe Mrs. Riggle did anything that constituted a danger to students, and her conduct did not involve provable malice, bad judgement, or a pattern of bad judgement.

construed as being racially motivated, given that the students who participated in the protest event were Hispanic; but those who remained were also predominantly Hispanic.

Complainant confirmed Mrs. Riggle made her comments on personal time and that she did not use a district computer to do so.

Evidence Presented by Mrs. Riggle

CHARACTER WITNESSES

26. T ■ L ■ is a former student of RHS who graduated in 2011. He said Mrs. Riggle was his teacher in 2007 and 2008, and he continues to communicate with her. He described Mrs. Riggle as a very kind, caring, person, who went out of her way to check up on students. In his senior year, Japan had a major earthquake. He became involved in a project trying to raise money for disaster relief. Mrs. Riggle went out of her way to help him. He does not believe Mrs. Riggle is a racist. She did not exhibit any racist behavior in class. She did not exhibit any anti-immigrant behavior in class. The last time he saw her was in 2012 or 2013, when he came to visit her on campus.

27. David Reed is Mrs. Riggle's father. He has been a minister for 50 years. He holds a doctorate in church administration and charitable planning, along with a Bachelor of Arts in psychology and an Associate of Arts degree in sociology. Mr. Reed said Mrs. Riggle was raised in a family that is one of faith and diversity. For example, farm workers in California are a very disadvantaged group. He marched in support of them over 50 years ago – Mrs. Riggle saw that. He also marched in support of the Caesar Chavez hunger fast – Mrs. Riggle saw that. At one point during Mrs. Riggle's youth, she was in a church group that went back and forth to Arizona and missions in Mexico to help the disadvantaged. She also helped build a well in a poor city in Mexico. Mr. Reed said that the church and youth group Mrs. Riggle participated in were very ethnic, multi-racial, and socioeconomically diverse. According to Mr. Reed, Mrs. Riggle uses art to "reach into the lives and souls of her students" and teach them "in a way that goes beyond the color palette." Mr. Reed's testimony was credible and compelling.

28. Charles Baugh is a teacher at RHS, who also made a post on Mr. Greer's Facebook thread. He said he took Mrs. Riggle's post to mean merely that she had 50 absences, and that his post – that he had 49 and his classes were also quieter – responded to that post. Mr. Baugh did not say much about Mrs. Riggle; his testimony was more geared towards his own comments on Facebook.

29. Diane Rose is a Special Education teacher at RHS. She has known Mrs. Riggle for seven years. They served as co-advisors to the travel club. She said Mrs. Riggle was both a camper and a counselor at a church camp they both attend – where Ms. Rose is the craft director. On occasion, some of her students go into Mrs. Riggle's classroom, so she also goes into Mrs. Riggle's classroom. Ms. Rose described Mrs. Riggle as the "gentlest soul in the world" who has never exhibited any behaviors that could be considered

discriminatory or anti-immigrant. Ms. Rose said Mrs. Riggle finds the positive in every single person and is an amazing woman. Ms. Rose described her as a “gift” whose reason for being on this earth is “to let children be who they want to be.”

MRS. RIGGLE’S MOST RECENT EVALUATION FORM

30. Mrs. Riggle received her most recent evaluation on April 24, 2015. She received an “exceeds” standards in all but two categories; in those two categories, she received a “meets” standards. Some of the comments on her evaluation are as follows:

“Mutual respect is evidenced between Mrs. Riggle and students.”

“She is aware of the different learning styles of her student[s] and work[s] individually with those needing additional support.”

“Riggle circulated around the room as students gathered their research materials and the art work they had begun. She reminded students that they needed to complete their assignment and use the appropriate use of color combination keeping in mind the theme.”

“Mrs. Riggle developed . . . activities that supported student learning.”

MRS. RIGGLE’S TESTIMONY

31. The following is a summary of Mrs. Riggle’s testimony.

Mrs. Riggle has been a teacher for approximately 10 years. She is currently assigned to RHS. She has worked in at least one other school in the district. She also worked as a substitute in another school district. Mrs. Riggle has a Master of Education from the University in LaVerne, which is also where she received her teaching credential in art. She also has a Bachelor’s Degree in Fine Arts and an Associate of Arts degree in Fashion.

Mrs. Riggle was aware of the February 16, 2017, protest event before it happened. She said she had heard things on campus and had also seen it on the news. The morning of February 16, 2017, she did not notice anything unusual, but as the day went on, she noticed an unusually high rate of absenteeism.

When Mrs. Riggle returned home after school, she went on Facebook. She saw Mr. Greer’s post and thought it was a bit insensitive. She wrote her comment because she wanted to add something to the discussion that was positive; she explained that teachers are taught to make observations and be reflective about what is happening in classes. Mrs. Riggle explained that she believed her post was positive, because on a very politically

charged day, in “crazy political times,” it could have been very volatile in the classroom; instead, it was a pleasant day. She said that evening she did see some comments on Facebook calling the Facebook thread racist and referring to her as a racist, but she did not realize at that point the extent of the response.

On February 17, 2017, she went to school and taught her first period class. In her second period class, complainant removed her from her class. She did not recall any students clapping. They went into an office and complainant asked for her ID badge and keys and told her she was on paid administrative leave. Mrs. Riggle asked if it was because of the Facebook posts and if she should have a union representative present. Complainant told her it was not a disciplinary matter. Later, complainant gave her a letter explaining the reason for the leave.

Mrs. Riggle said the district has never given any guidance as to proper use of social media on a private computer and has never been made aware of any social media policy. She has taught digital citizenship. She has never attended Summerjam or Techfest.

On March 21, 2017, Mrs. Riggle met with complainant and someone else. She said complainant did not ask any questions. She said the purpose of the meeting was to let her know what charges were being made against her. Mrs. Riggle recalled being asked whether she knew about the February 16, 2017, protest event before it happened. Mrs. Riggle said she told them she had been made aware of it on the news the night before and from hearing conversations between students in her class.

Mrs. Riggle said she is absolutely not a racist and has no reason to hate immigrants. She said she does not believe she did anything in the classroom to show she is a racist and she has never said anything racist or discriminatory. Regarding her comments, she had no intention of saying anything mean, derogatory, or racist; she only wanted to express observations about what had happened in her classroom that day – and it was a very pleasant productive day. She said her Facebook settings are set to the highest privacy settings and that she did not even know members of the public could view her posts. She said never in her wildest imagination could she have seen what happened. Mrs. Riggle said she was deeply sorry for anything she did that contributed to the outrage and she felt bad about how the situation was publicized.

LEGAL CONCLUSIONS

Burden and Standard of Proof

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

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

Applicable Law

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

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

5. A permanent certificated teacher may be dismissed for, among other things, dishonesty, immoral conduct, and evident unfitness for service. (Ed. Code, § 44932, subs. (a)(1), (a)(4), and (a)(5).)

DISHONESTY

6. Education Code section 44932, subdivision (a)(4), provides that a teacher may be dismissed for being dishonest.

IMMORAL CONDUCT

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

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

Immoral conduct alone cannot serve as a basis to terminate a teacher unless the

conduct indicates the teacher is also unfit to teach. (*Palo Verde, supra*, at p. 972.)

EVIDENT UNFITNESS FOR SERVICE

8. Unfitness for service means “not fit; not adapted to a purpose, unsuitable; incapable; incompetent; and physically or mentally unsound.” (*Palo Verde, supra*, at p. 972.) As a threshold matter, the criteria outlined by the California Supreme Court in *Morrison v. State Bd. of Education* (1969) 1 Cal.3d 214, are examined to ascertain whether the conduct in question indicates unfitness for service. In reaching a conclusion that grounds exist to dismiss a certificated employee on the basis of evident unfitness for service, not all *Morrison* factors need be examined, only the pertinent ones. (*Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384.) In this sense, the purpose of examining the *Morrison* criteria serves, initially, to establish a nexus between the proven conduct and fitness to teach.

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

THE MORRISON FACTORS

9. In *Morrison*, the court held that an individual can be removed from the teaching profession only upon a showing that his or her “retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher.” (*Morrison, supra*, 1 Cal.3d 214, at p. 235.) Thus, even in instances where the charged conduct is established, it must also be established that the conduct renders the respondent unfit to teach. (*Morrison, supra*, 1 Cal.3d 214, at pp. 229-230; *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208; *Woodland, supra*, 4 Cal.App.4th at pp. 1444-1445.) The court then delineated the following criteria to determine whether a teacher’s conduct indicated that he or she is not fit to teach: (1) the likelihood that the conduct may have adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of the conduct; (4) the type of teaching certificate held by the teacher; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct in question; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the recurrence of the conduct in question; and (8) the extent to which disciplinary action may inflict an adverse impact or have a chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Morrison, supra*, at pp. 229-230.)

10. In *Board of Education v. Jack M.* (1970) 19 Cal.3d 691, the Supreme Court detailed the process to be considered in determining fitness to teach. This opinion upheld the

standard established in *Morrison* that a discharged teacher is entitled to a fitness hearing in which not only his conduct but also these factors are analyzed: (1) likelihood of recurrence of the questioned conduct; (2) the extenuating or aggravating circumstances, if any; (3) the effect of notoriety and publicity; (4) impairment of teachers' and students' relationships; (5) disruption of educational process; (6) motive; (7) proximity or remoteness in time of conduct. (*Id.*, at f.n. 5.)

Evaluation and Conclusion

11. Mrs. Riggle's choice to post two comments on a Facebook thread that contained other posts with questionable commentary regarding immigrants evidenced poor judgement, especially given the demographics of the school district in which she is employed. However, the law does not permit dismissal of a teacher solely based on poor judgment; the question is whether her two Facebook posts on the Facebook thread constituted immoral conduct or evident unfitness for service.

EVIDENT UNFITNESS FOR SERVICE

12. Once the Facebook thread was discovered, it went viral. Parents, students, teachers, immigrant groups, civil rights organizations, and community members became upset about the overall content of the Facebook thread. The district received e-mails from a variety of individuals expressing their anger about the Facebook posts. The incident gained widespread media attention. Mrs. Riggle's and Mr. Greer's classrooms were sprayed with graffiti. The day after the Facebook posts, her classroom was disrupted. According to Mrs. Bailey, her classroom conditions were somewhat disrupted during the day but by the end of the day, most of the students had addressed the issues in their other classes. Thus, things seemed to be returning to normal.

However, school and district operations were substantially interrupted by the same conditions above, as well as by a student protest in the form of a walk-out from regularly scheduled classes. The walk-out was organized in part by Ms. Marina, according to her testimony, and occurred the day after the Facebook posts. During the walkout, several hundred students left the campus without permission. They blocked streets and almost damaged a school gate. A majority of the students who comprised the approximately 1,600 total students at RHS, however, remained on campus and did not partake in the disruption. Most certainly, the reaction to the Facebook thread affected the schools' ability to provide educational services on February 17, 2017.

At the same time, the nature of the Facebook posts must be considered. Mrs. Riggle's Facebook comments were made on her personal time, on her personal computer, on her private Facebook account, after school hours. Her comments did not disparage any student. They did not comment on any student activities. They did not comment on student race. They did not express agreement with Mr. Greer's comments about immigrants or with anyone else on the Facebook thread. Her comments did not contain strong language or other questionable material that showed an inappropriate temperament, an undesirable character

trait, corruption, depravity, moral indignation for any class of persons, or contain any material that suggest Mrs. Riggle would be unfit to teach art. Her comments merely reflected her observations of what impact the protest event had on her classroom that day.

Furthermore, Mrs. Riggle's credible testimony established that she did not intentionally make the comments to harm students nor did she have any insidious motive; she merely expressed her view about her classroom conditions on the day that a very public event took place. Mrs. Riggle had no idea that her comments would be construed in the manner that they were; in fact, she thought she was adding something positive to the discussion as she found Mr. Greer's initial comment to be somewhat insensitive. Indeed, Mrs. Riggle's background, as recounted by her father, showed that she has been raised in a very diverse and inclusive environment. Mrs. Riggle has also taught in the district for 10 years without issue. Her most recent personnel evaluation noted that the mutual respect between Mrs. Riggle and the students was evident.

Simply put, while several of the factors set forth in *Morrison*⁶ and *Jack M.* arguably may have been satisfied, thus establishing a nexus between the comments and the fitness to teach, ultimately, a preponderance of the evidence did not establish that Mrs. Riggle's two comments on the Facebook thread were attributable to a temperamental defect, inadequacy, or a fixed character trait not remediable merely on receipt of notice that one's conduct fails to meet expectations of the school district. In other words, she was not shown to be unfit, not adapted to a purpose, unsuitable, incapable, incompetent, or physically or mentally unsound to continue teaching. Thus, her comments do not constitute evident unfitness for service.

IMMORAL CONDUCT

13. A preponderance of the evidence also did not establish that Mrs. Riggle's comments constituted immoral conduct. Again, while she may have used poor judgement in participating in a Facebook thread that contained other questionable comments, for the same reasons discussed above, her decision to post about conditions in her classroom were not

⁶ Clearly there was a lot of notoriety surrounding this incident and there was an impact on the students because of the *overall* Facebook thread – which Mrs. Riggle happened to be a part of. Mrs. Riggle's comments could be construed as adversely affecting students and teachers to the extent that her comments were contained on a Facebook thread that contained other questionable comments. Teachers and district personnel were also affected because they had to modify their schedules to tend to the problems that arose following the Facebook incident. Given the demographics of the district, Mrs. Riggle should have anticipated some backlash about commenting on a Facebook thread that contained arguably insensitive remarks about immigrants, or at least persons participating in the protest event. There were no aggravating circumstances or bad motives; to the contrary, Mrs. Riggle's credible testimony established she thought she was adding a positive tone to the conversation. Mrs. Riggle apologized for what happened and there is no reason to believe something of this nature will happen again. Mrs. Riggle is an art teacher where political issues are unlikely to arise in her class.

flagrant, shameless, inconsistent with public decency, or reflective of a *moral* indifference to the opinions of others.

DISHONESTY

14. The Notice of Intent to Dismiss charged that, in an interview with the district on March 21, 2017, Mrs. Riggle said she was not aware of the reason students were absent from school prior to posting her comments on the Facebook thread. However, the evidence did not show precisely what question was asked of Mrs. Riggle; here, the exact wording of the question is crucial because of conflicting testimony regarding Mrs. Riggle's response. Complainant testified that Mrs. Riggle told her during the interview that she was unaware of the existence of the protest event. Mrs. Riggle testified that she was asked if she knew about the protest event itself, and she stated that she did, but she had not discussed it with her students. Mr. Brooks, who was also in the meeting, testified that Mrs. Riggle said she was not aware of the protest event "at the time her students were missing." These different interpretations of Mrs. Riggle's response could have been attributed to several different questions. Accordingly, a preponderance of the evidence did not establish that Mrs. Riggle was dishonest.

Conclusion

15. As role models, teachers need to be cognizant of the nature of their job and the impact their personal speech may have on the population they serve. Most definitely, teachers need to use discretion and sound judgment if they decide to engage in social media interaction. Mrs. Riggle should have considered the overall manner in which her comments might be construed, given the other comments that existed in other portions of the Facebook thread.

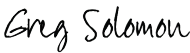
Perhaps remedial training on how to use social media would be desirable. Perhaps the district should enact a policy, which it does not currently have, to help guide employees on proper conduct when utilizing social media. Perhaps the classes the district currently has pertaining to social media and computer usage could be made mandatory rather than voluntary. There are many remedial measures that could be taken to try and prevent employees from using poor judgement on social media platforms when not in the classroom. Nonetheless, the Commission is not permitted to make recommendations nor to impose any remedial measures for conduct raised in this case, which might have been appropriate. Rather, the choice the district gave the Commission was all or nothing: dismiss Mrs. Riggle or dismiss the charges entirely.

Given that the district did not establish the charged offenses by a preponderance of the evidence, cause does not exist to dismiss Mrs. Riggle pursuant to Education Code sections 44932, subdivisions (a)(1), (a)(4), or (a)(6).


ORDER

The Statement of Charges against Robin Riggle is dismissed.


DATED: October 26, 2017

DocuSigned by:

A335A85AE3A24E7
GREG SOLOMON
Certificated Music Teacher and Coordinator for
Visual and Performing Arts
Moreno Valley Unified School District

DATED: October 27, 2017

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02B594F80B6B434
PAMELA BERNARD
Certificated Theater Arts Teacher
Beaumont Unified School District

DATED: October 27, 2017

DocuSigned by:

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KIMBERLY J. BELVEDERE
Administrative Law Judge
Office of Administrative Hearings