

**BEFORE THE
COMMISSION ON TEACHER CREDENTIALING
STATE OF CALIFORNIA**

**In the Matter of the Accusation and Statement of Issues
Against:**

MANUEL MADRID-OLGUIN, Respondent.

Agency Case No. 2-110208707

OAH No. 2022030982

PROPOSED DECISION

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on September 8, 2022, via telephone and videoconference.

Justin R. Surber represented complainant Mary Vixie Sandy, Ed.D., Executive Director of the California Commission on Teacher Credentialing.

Attorney Ellen N. Doty represented respondent Manuel Madrid-Olguin, who was present.

An order was entered sealing Exhibit 3, the confidential findings of the Committee of Credentials.

The matter was submitted on September 8, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 26, 2017, the California Commission on Teacher Credentialing (Commission) issued a Clear Multiple Subject Teaching Credential (Credential) to respondent Manuel Madrid-Olguin. The Credential was in full force and effect at all times relevant to the charges brought herein and is set to expire on March 1, 2024.

2. On September 17, 2015, the Commission issued a Preliminary Five-Year Multiple Subject Teaching Credential (Preliminary Credential) to respondent. The Preliminary Credential was in full force and effect at all times relevant to the charges brought herein and will expire on October 1, 2022.

3. Respondent previously held the following certification documents:

- Intern Multiple Subject Teaching Credential issued on August 1, 2016, and expired on September 1, 2018;
- Short-Term Staff Permit issued on August 12, 2015, and expired on September 1, 2016; and
- Emergency 30-Day Substitute Teaching Permit issued on February 18, 2015, and expired on March 1, 2016.

4. On February 13, 2020, the Commission received an application from respondent for a General Education Limited Assignment Single Subject Teaching Permit.

5. At its February 17–19, 2021, meeting, the Committee of Credentials determined that probable cause existed for an adverse action against respondent and recommended denial of his application. Respondent timely requested an administrative hearing.

6. On December 29, 2021, complainant Mary Vixie Sandy, Ed.D., issued the accusation and statement of issues solely in her official capacity as the Executive Director of the Commission. Complainant alleges that respondent was convicted of a crime that constituted unprofessional conduct, and acts of immoral conduct and moral turpitude, and that these acts constitute cause to discipline his credentials and deny his application. Respondent timely requested a hearing and this proceeding followed.

Criminal Conviction

7. On January 8, 2020, respondent was convicted in the Superior Court of California, County of Monterey, upon his plea of no contest, of a violation of Penal Code section 647, subdivision (j)(4)(A) (distribution of intimate image without consent), a misdemeanor. Imposition of sentence was suspended and respondent was placed on conditional probation for a term of three years, on numerous conditions, including that he serve 60 days in county jail or home detention; stay 100 yards away from and have no contact with the two victims; and pay fines and fees.

8. The facts and circumstances leading to this conviction are that, on March 29, 2018, A.L. (initials used for privacy) reported to a Gonzales Police Department officer that respondent was her ex-boyfriend and that he had posted multiple videos and photographs of them engaging in sexual intercourse and oral copulation to an online social media account. A.L. reported that the sexual encounters were consensual, but respondent did not have her permission to post the videos and images online.

9. The police officer conducted an investigation. During the investigation, the officer observed online the videos reported by A.L. On March 30, 2018, he interviewed respondent. Respondent admitted posting the videos and images, including one or more videos A.L. had recently sent him, but insisted that he had done so with A.L.'s consent.

10. Respondent deleted the social media account, videos, and images, immediately after he learned that A.L. had contacted the police and wanted him to take them down. As a result, the officer was unable to determine when the videos and images were first posted. Respondent produced evidence to the officer that some of the videos had been recorded as early as 2015.

11. During the investigation it was revealed that respondent had also posted videos and images of himself and his current girlfriend, A.M., engaging in sexual acts. Respondent claimed that A.M. consented to this publication of the video and images.

12. Prior to this hearing, respondent stipulated to the truth of Paragraph 15 of the accusation and statement of issues, which includes the following language:

On or about March 29, 2018, [r]espondent posted online images and videos of himself and A.L. engaged in sexual acts. He did not have the permission of A.L. to post the images and videos. A.L. could be identified in the images and video. A.L. understood that the images and video would [remain] private. Respondent posted online images and videos of himself and A.M. engaged in sexual acts. He did not have the permission of A.M. to post the images and videos. A.M. could be identified in the images and video.

A.M. understood that the images and video would [remain] private.

Respondent's Evidence

13. Respondent is 30 years old. He testified at hearing.

14. Respondent recently started his eighth year of teaching elementary and middle school students. He is currently teaching all subjects to a sixth-grade class at an elementary school in Soledad.

15. Respondent provided copies of his formal teaching evaluations dating back to 2016. Each rating in each evaluation is "meets standards" or better. There is no evidence respondent's teaching or conduct in the classroom or at school has ever been less than acceptable.

16. Respondent reports that many individuals in his extended family are teachers and he always wanted to be a teacher. Respondent regards teaching as a rewarding career. He particularly enjoys seeing "the lightbulb" illuminate when a student grasps a concept or standard that was challenging.

17. Respondent presented the testimony of Joaquin Garcia. Garcia teaches sixth grade at the same elementary school. He collaborates with respondent weekly and also interacts with him during breaks and physical education classes. Garcia has regularly observed respondent interact with students. Garcia reports that respondent is collaborative, innovative, respectful, and professional. Garcia has observed that the students like and trust respondent. Garcia believes that respondent is a teacher for the "right reasons." Garcia does not approve of respondent's criminal conduct, but regards it as out of character based upon his experience of respondent.

18. Respondent's oldest sister, Araceli Madrid, testified at hearing and wrote a letter in support of respondent. She describes him as responsible, hard-working, polite, and respectful. She regards his criminal conduct as unacceptable, but out of character for respondent. She has nearly daily contact with respondent, who lives with their parents. During the COVID-19 pandemic she observed him teaching remotely. She reports that he is very committed to his students, buys them supplies, and goes "the extra mile" to ensure they feel welcome and learn.

19. Respondent was a new teacher in his mid-20's when he committed the criminal conduct. The social media account he used to post the explicit videos and images did not contain his name or the name of his school, or identify him as a teacher. Nor was respondent identifiable in the images or videos posted to the website. His criminal conviction is a matter of public record. However, there is no evidence that a student, parent, teacher, or anyone else associated with his school district learned of the conviction; saw the account, videos, or images; or associated such activity with respondent, except to the extent that respondent disclosed his criminal conduct to character witnesses in this proceeding.

20. Respondent admits that he lied to the police and later to his sister, contending that A.L. and A.M. consented to his posting of the explicit videos and images. He was ashamed and attempted to falsely portray himself in a better light. He regrets his dishonesty and understands that he should have been truthful.

21. Respondent describes his deep regret for posting explicit videos and images of A.L. and A.M. without their consent. He reports that he did not fully understand the hurtfulness of that conduct at the time. However, he now appreciates that he betrayed the victims' trust and that he was responsible for hurting them.

22. Respondent voluntarily began attending therapy in January 2022 to treat anxiety, but also to work through his feelings regarding the criminal conduct and learn to better communicate with his partners. He reports that in therapy he learned about reflective listening, asking clarifying questions, and the importance of feeling safe and secure. He learned that express consent can be coerced—that a person might say “yes” but that the person’s tone or body language might signal “no.” He also learned that clarifying questions are necessary to confirm genuine consent. He now understands that a romantic partnership is a “two-way street,” and should be “balanced.”

23. Respondent contends that he will never again post sexual or pornographic images online.

24. Respondent submitted a sworn affidavit of Christine Dettinger, L.C.S.W., his therapist. Dettinger corroborates respondent’s testimony about his experiences in therapy. She believes he is sincerely remorseful for the harm caused by his conduct and his failure to “follow what are today common standards of seeking consent in partnered relationships.” She also observes that respondent regrets disappointing his family. Dettinger reports that he appears to have matured and become more insightful, which she believes is common in “young adults in this age.”

25. Respondent submitted letters of support from two former colleagues, and a cousin who is a probation officer. Two of the authors were aware of the general nature of respondent’s criminal conviction; one did not know the nature of the conduct. They describe respondent as a conscientious and dedicated teacher. They vouch for his character.

26. One of these former colleagues is a mentor who recommended respondent to teach honors classes, based on his demonstrated work ethic and

professionalism. He described respondent's workplace demeanor as "serious and sober" and reports that respondent "always maintains a professional decorum and appropriate manner both in school and department meetings, as well as the handful of times that the department has met socially."

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant is required to prove cause for discipline of a teaching permit by "clear and convincing proof to a reasonable certainty." (Cf. *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; see Bus. & Prof. Code, § 23.7.) To the extent respondent contends mitigation or rehabilitation, it is his burden to prove those contentions by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

First Cause for Discipline (Unprofessional Conduct)

2. The Commission may discipline the credential of a person who commits unprofessional conduct. (Ed. Code, § 44421,1 see § 44345.)

3. "Unprofessional conduct" is conduct that "violates the rules or ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing." (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553 [citation omitted], overruled, in part, on another ground in *Bekiaris v. Board of Education* (1972)

1 All statutory references are to the Education Code, unless otherwise stated.

6 Cal.3d 575, 588, fn. 7.) Respondent posted explicit videos and images of A.L. and A.M. online without their consent. (Factual Findings 7, 9, 11 & 12.) These acts were unbecoming of a teacher and constitute unprofessional conduct. Cause was established to discipline respondent's credentials under section 44421, based on unprofessional conduct.

Second Cause for Discipline (Immoral Conduct)

4. The Commission may discipline the credential of a person who commits immoral conduct. (§ 44421, see § 44345.) "The term 'immoral' has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals." (*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811 [citation omitted].) Respondent's posting of explicit videos and images of A.L. and A.M. without their consent constitutes immoral conduct under section 44421. (Factual Findings 7, 9, 11 & 12.) Cause was established to discipline his credentials under section 44421, based on immoral conduct.

Third Cause for Discipline (Moral Turpitude)

5. The Commission may discipline the credential of a person who commits acts of moral turpitude. (§§ 44421, 44345, subd. (e).) "Moral turpitude is sometimes used as synonymous with dishonesty, or a high degree of unfairness." (*Board of Education v. Weiland, supra*, 179 Cal.App.2d at p. 811 [citation omitted].) Moral turpitude has also been described as "any crime or misconduct committed without excuse, or any 'dishonest or immoral' act not necessarily a crime." (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027.) Respondent's posting of explicit videos and images of A.L. and A.M. without their consent constitutes acts of moral turpitude. (Factual Findings 7, 9, 11 & 12.) Cause was

established to discipline his credentials under sections 44421 and 44345, subdivision (e), for acts of moral turpitude.

Cause for Denial of Application (Moral Turpitude)

6. The Commission may deny the application of a person who commits acts of moral turpitude. (§§ 44421, 44345, subd. (e).) Cause exists to deny respondent's application for a General Education Limited Assignment Single Subject Teaching Permit under sections 44421 and 44345, subdivision (d). (See Legal Conclusion 5.)

***Morrison* Factors**

7. Pursuant to *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 and California Code of Regulations, title 5, section 80302, the Commission shall determine whether a teacher's conduct indicates such unfitness to teach as to warrant disciplinary action. That determination may be based upon factors (*Morrison* factors) that include, but are not limited to, the: (1) likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated; (2) proximity or remoteness in time of the conduct; (3) type of credential held; (4) extenuating or aggravating circumstances surrounding the conduct; (5) praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) likelihood of recurrence of the conduct; (7) the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved or other certified persons; and (8) the publicity or notoriety given to the conduct.

8. The first *Morrison* factor focuses on the "likelihood" the conduct "may have" adversely affected students, teachers, or the educational community, and the degree of adversity anticipated. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(1).) There is

no evidence that respondent's criminal acts adversely affected students, teachers, or the educational community, except to the extent he was encouraged to disclose the conduct to character witnesses in the community. This factor does not suggest unfitness to teach.

9. Respondent's criminal conduct was apparently committed over a period of several years and ended approximately four years ago. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(2).) It was not remote in time. This factor suggests unfitness.

10. Respondent holds a clear multiple subject teaching credential, and has applied for a general education limited assignment single subject teaching permit. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(3).) Elementary and middle school children are particularly impressionable. (*Broney v. California Com. on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 477.) This factor suggests unfitness.

11. The fourth *Morrison* factor examines the extenuating or aggravating circumstances surrounding the conduct. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(4).) "Aggravating factors" are circumstances demonstrating that a greater degree of adverse action is needed to adequately protect the public, schoolchildren, or the profession, including a prior record of adverse action; that the misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct; that the misconduct significantly harmed a child entrusted to the care of the credential holder; and that the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source. (§ 80300, subd. (b).) Respondent committed multiple acts of wrongdoing and he lied to the police about his actions. These are aggravating circumstances.

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12. "Mitigating factors" are circumstances demonstrating that the public, schoolchildren, and the profession would be adequately protected by a more lenient degree of adverse action. (Cal. Code Regs., tit. 5, § 80300, subd. (m).) Potential mitigating factors include: (1) absence of any prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious; (2) lack of harm to the person who is the object of the misconduct; (3) emotional or physical difficulties suffered by the holder which substantially contributed to the misconduct, provided that the difficulties were not the product of illegal conduct such as illegal substance abuse, and further provided that the holder has established through clear and convincing evidence that he or she no longer has such difficulties; (4) attestations to the holder's good character by individuals from the educational or general community who are aware of the extent of the holder's misconduct; (5) objective action by the holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing designed to timely make amends; (6) proximity or remoteness in time of the misconduct relative to the seriousness of the misconduct; and (7) the nature and extent of subsequent rehabilitation. (*Ibid.*)

13. Respondent has shown mitigating factors. Respondent has no previous or subsequent criminal record or record of teacher discipline. The formal evaluations of his teaching show his teaching performance has always met or exceeded expectations. He provided supporting character testimony and letters. Also mitigating is respondent's relatively young age at the time of the acts and his immediate cessation of the offending conduct after police contact.

14. Respondent's motive for his acts is blameworthy, not praiseworthy. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(5).)

15. Based upon the evidence in the record, it appears unlikely that respondent will reoffend. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(6).) He recently sought counseling and evidences significant remorse for and insight into the wrongfulness of his conduct. He appears to have learned much about personal boundaries.

16. Disciplinary action against respondent would not inflict an adverse impact or chilling effect on respondent or others, because there is no constitutionally protected speech or behavior in the criminal conduct at issue. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(7).)

17. Respondent's conviction is a matter of public record but there is no evidence of notoriety in his local community. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(8).)

18. In *San Diego Unified School Dist. v. Commission on Professional Competence (Lampedusa)* (2011) 194 Cal.App.4th 1454, 1458, the court applied the *Morrison* factors to the dismissal of a teacher for posting an Internet advertisement soliciting sex which contained graphic photographs of himself. The court found this conduct evidenced unfitness to teach as well as immoral conduct. (*Id.* at pp. 1462–66.) While the conduct in that case came to the attention of a student's parent and the school administration, it was—unlike respondent's conduct—not illegal and did not infringe upon the privacy of another. Application of the *Morrison* factors in this matter establishes that respondent's criminal acts indicate such unfitness to teach as to warrant disciplinary action. Cause was therefore established to discipline respondent's credentials and deny his application under section 44421.

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Determination of Discipline and Application

19. Cause for discipline and denial of the application having been established, the remaining question is what level of discipline is necessary to protect the public, schoolchildren, and the profession. The Commission may privately admonish, publicly reprove, suspend, or revoke the credential of a credential holder. (§ 44421.)

Respondent's criminal conduct was serious, repeated, and not remote in time. He lied to the police during the investigation. However, respondent was relatively young and he has demonstrated significant rehabilitation. Moreover, there is no evidence of misconduct in his role as a teacher and his teaching performance has been rated positively throughout his career. He appears to be a good candidate for probation and outright revocation of his credential is not necessary to protect the public. Revocation, stayed with a three-year period of probation, will be sufficient to ensure protection of students, the public, and the profession.

ORDER

All credentials issued to respondent Manuel Madrid-Olguin are revoked. However, the revocation is stayed and his credentials are placed on probation for a period of three years under the terms and conditions that follow. Assuming respondent satisfies all other criteria, his application for a General Education Limited Assignment Single Subject Teaching Permit shall be granted. The General Education Limited Assignment Single Subject Teaching Permit will be immediately revoked and placed on probation for the same period of three years under these terms and conditions:

1. Any other credentials issued to respondent during the period of probation, and any renewals of previously issued credentials, shall be subject to the conditions contained herein.

2. Respondent shall obey all federal, state, and local laws and regulations, including, but not limited to, the statutes and regulations of the Commission. A full and detailed account of any and all arrests or citations for any violation of law (except minor traffic offenses) shall be reported by respondent to the Commission, in writing, within 30 days of the arrest or citation.

3. The Commission shall be informed, in writing, of all employment of respondent that requires a credential. Respondent shall inform his employer of the reason for, and the terms and conditions of, his probationary status and shall provide a copy of the Commission's Decision and Order to his employer and immediate supervisor. Respondent shall authorize his employer to submit performance evaluations and other reports requested by the Commission. Respondent shall notify the Commission in writing within 72 hours after cessation of any employment that requires a credential. The notification shall contain a full explanation of the circumstances surrounding the cessation of employment.

4. Respondent shall submit to the Commission quarterly reports, under penalty of perjury, certifying and documenting compliance with all terms and conditions of probation. Respondent shall execute all release of information forms that may be reasonably required by the Commission or its representatives.

5. Respondent shall fully comply with the terms and conditions of this order and cooperate with representatives of the Commission in its monitoring and investigation of his compliance.

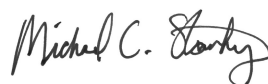
6. During the period of probation, respondent shall appear in person at interviews or meetings as directed by the Commission or its representatives upon reasonable notice.

7. Respondent must provide written notice to the Commission within 15 days of any change of address.

8. The Commission shall retain jurisdiction over respondent's case during the period of probation. If respondent violates any term or condition of this Order, after giving written notice and an opportunity to be heard on the issue of his violation of probation, the Commission may set aside the stay order and impose the revocation of respondent's credentials and permit. If an accusation or petition to revoke probation is filed against respondent during probation, the probation period shall automatically be extended until a final decision is made on the accusation or petition.

9. Upon successful completion of the terms of this probation, respondent's credentials and permit shall be fully restored.

DATE: **09/28/2022**



MICHAEL C. STARKEY

Administrative Law Judge

Office of Administrative Hearings