

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
SWEETWATER UNION HIGH SCHOOL DISTRICT

In the Matter of the Dismissal of:

PATRICK CRONIN,

A Permanent Certificated Employee,

Respondent.

OAH No. 2010060781

**DECISION OF THE
COMMISSION ON PROFESSIONAL COMPETENCE**

On October 25, 2010, a Commission on Professional Competence heard this matter in San Diego, California. The Commission included James Ahler, Connie Pruett, and Saul Watson.

Daniel R. Shinoff, Attorney at Law, and Jeanne Blumenfeld, Attorney at Law, represented Complainant, Dr. Jesus M. Gandara, Superintendent, Sweetwater Union High School District, San Diego County, State of California.

Fern M. Steiner, Attorney at Law, represented Respondent, Patrick Cronin, a permanent employee of the Sweetwater Union High School District, who was present throughout the administrative hearing.

On October 25, 2010, the matter was submitted.

PRELIMINARY STATEMENT

Well before December 2009, the Sweetwater Union High School District employed Patrick Cronin as a teacher at Eastlake High School. Mr. Cronin was a mandated child abuse reporter by reason of his employment.

On Thursday, December 10, 2009, a former student of Mr. Cronin's who was still in high school sent a text message and attachment to Mr. Cronin's cell phone. Mr. Cronin opened the attachment, started to watch the video that was attached, quickly realized that it was pornographic, and immediately ended the video. The video's poor quality prevented Mr. Cronin from recognizing the age or the identity of the female depicted. Later that day, the former student asked Mr. Cronin if he recognized the female in the video. Mr. Cronin was

upset by what had occurred, interrupted the student, and told him that sending such a message could get him fired. Mr. Cronin did not report the incident on December 10.

On Friday, December 11, student Jane Doe came to Mr. Cronin's classroom in tears. She told Mr. Cronin that she was the person depicted in the video that he had received; in fact, she had taken the video herself with her cell phone, after which she distributed the video to several high school classmates. Mr. Cronin told Jane Doe that he had to report the matter. Jane Doe begged him not to. Mr. Cronin offered Jane Doe a hall pass to enable her to remain away from the classroom for the remainder of the class period so she could compose herself. Jane Doe accepted the hall pass and walked about campus unsupervised for the remainder of the period. Jane Doe returned to the classroom at the end of the period and appeared calm. In retrospect, Mr. Cronin recognized that giving Jane Doe the hall pass and not immediately reporting what he knew was an error in judgment and a huge mistake.

On Monday, December 14, Mr. Cronin attempted to convince Jane Doe that they should jointly report the matter. Jane Doe again begged Mr. Cronin to take no action. Jane Doe was quite collected at the time. Mr. Cronin decided that he should try to convince Jane Doe that it was in her best interest to join him in reporting the matter, believing that Jane Doe would accept any outcome following their report as being support rather than punishment. Mr. Cronin did not report the matter on December 15, but he resolved to report the matter after finals were over, whether or not Jane Doe agreed to accompany him. In retrospect, Mr. Cronin recognized that this, too, was an error in judgment and that he should have reported the matter immediately after he learned Jane Doe was depicted in the video.

On Tuesday, December 15, a parent anonymously informed a staff member at Eastlake High School that Jane Doe was depicted in a pornographic video being circulated among Eastlake High School students and that the video had been sent to Mr. Cronin. Eastlake High School authorities immediately launched an investigation that included an interview with Mr. Cronin, who cooperated and was forthright in explaining what he knew and what had occurred. The Assistant Superintendent attending the interview placed Mr. Cronin on administrative leave at the conclusion of the interview. Several months later, an Accusation was filed seeking Mr. Cronin's termination of employment.

The Accusation in this matter alleged that Mr. Cronin engaged in immoral conduct by failing to immediately report that Jane Doe was depicted in the pornographic video, and that doing so was his duty as a mandated child abuse reporter; the Accusation also alleged that Mr. Cronin's conduct established his evident unfitness for service; finally, the Accusation alleged that Mr. Cronin engaged in persistent violations of school laws and regulations.

In the disciplinary hearing that followed the filing of the Accusation, Mr. Cronin admitted that he failed to promptly report his receipt of the pornographic video and that he failed to immediately report that Jane Doe was depicted in that video as soon as he learned of that. In addition to admitting his wrongdoing, Mr. Cronin presented much credible evidence in explanation, mitigation and rehabilitation.

Based on all of the evidence and based upon the application of relevant *Morrison* factors, the Commission on Professional Competence concludes that Patrick Cronin is currently fit to serve as a high school teacher and that the Accusation should be dismissed.

FACTUAL FINDINGS

Respondent's Employment with the District

1. Patrick Cronin (Respondent or Mr. Cronin) is a permanent certificated employee of the Sweetwater Union High School District. The District has employed Mr. Cronin as a high school teacher since 2000. Mr. Cronin has served the District as an athletic coach since 1994. Mr. Cronin most recently taught AP World History at Eastlake High School, where he also coached football and track.

2. Mr. Cronin's SEA Bargaining Unit Evaluation dated March 10, 2009, contained a satisfactory evaluation. No aspect of Mr. Cronin's performance was found to be unsatisfactory or to require improvement. The evaluator observed that Mr. Cronin was dedicated to becoming the best teacher possible, that he constantly reflected on his practice, that he attended workshops and clinics to improve the delivery of instruction, and that he was a committed member of the department who also served as an assistant football coach and a track coach. The evaluator commended Mr. Cronin for his connection with his students and for his dedication to the Eastlake High School Social Science program.

Mr. Cronin received similar glowing evaluations on March 9, 2007, and on March 14, 2005. In the comments that accompanied those assessments, the evaluators commented upon Mr. Cronin's ability to engage all students in learning, his clearly articulated lesson plans, and his use of multiple instructional strategies to include all students in the learning process. Mr. Cronin's classroom was friendly and supportive. The evaluators noted that Mr. Cronin valued and respected the input of each student. Students knew what was expected, and Mr. Cronin's classroom was free of behavioral problems.

The Events Occurring in December 2009

3. Early December 2009 was a very stressful and exciting time for Mr. Cronin. His wife had recently given birth to their first child, [REDACTED]

[REDACTED]. Winter Finals were impending. And, the Eastlake High School Wolves varsity football team, for whom Mr. Cronin served as an assistant coach, was scheduled to play in the C.I.F. finals at Qualcomm Stadium on Friday, December 11.

4. On Thursday, December 10, Student B, a 12th grade male student, sent a text message to Mr. Cronin's cell phone. An attachment accompanied the message. Mr. Cronin was riding in a private vehicle to Qualcomm Stadium with another coach when he received

the message. Mr. Cronin opened the attachment, which was a grainy video that depicted a woman masturbating. The message and attachment was sent by Student B, a former student who was currently on the varsity football team. Mr. Cronin immediately realized that the video content was inappropriate, and he promptly closed the video and ended the message. Mr. Cronin did not know that the video depicted Jane Doe, a 15-year-old female student at Eastlake High School.¹ Mr. Cronin deleted the message and video within a half hour of receiving it. Mr. Cronin did not let anyone else look at the video and he did not forward it to anyone else before deleting it. He did not mention the video to anyone with whom he was riding or to anyone else.²

When Mr. Cronin arrived at Qualcomm Stadium, Student B accosted Mr. Cronin and laughingly asked him if he had received the video and whether he recognized the female. Mr. Cronin was very upset. Before Student B could finish his statement, Mr. Cronin told Student B that sending the video “could cost me my job.” While Student B possessed and transmitted pornography, it did not occur to Mr. Cronin that he should notify someone about Student B’s misconduct. From the little he saw, Mr. Cronin did not know that the video involved child pornography. Mr. Cronin had no reason to notify anyone that Jane Doe was in the video on December 10 because he was unaware at that time that she was, in fact, depicted in the video.

5. On Friday, December 11, Mr. Cronin observed that Jane Doe was crying heavily when she approached his classroom, even though she did not appear to be in extreme distress. Mr. Cronin had seen teenage girls crying on campus in the past. As Mr. Cronin was asking Jane Doe what was wrong, it occurred to him that her condition might be related to the video and his having seen a part of the video. Mr. Cronin asked Jane Doe if her crying was related to the video that Student B had forwarded. Jane Doe confirmed that was the reason she was crying. The class period was about to start. Mr. Cronin told Jane Doe that he would speak with her further outside the classroom, after class began. Jane Doe agreed.

After class began, and outside the classroom, Mr. Cronin told Jane Doe, “We need to tell somebody about this.” Jane Doe said, “No,” and continued crying. Mr. Cronin believed that Jane Doe needed to collect her thoughts, so he asked her if she wanted a hall pass to

¹ Jane Doe was a 15-year-old female student who was enrolled in Mr. Cronin’s AP History class. Jane Doe made a video with her cell phone that depicted her masturbating with the aid of a sex toy. Jane Doe distributed this video to several classmates. Student B ultimately came into possession of this video. While the Accusation alleged that Jane Doe “made several pornographic videos of herself” and “sent the videos to other students at Eastlake as early as September, 2009,” there was no direct evidence that established those factual matters. Nevertheless, the parties argued this matter as if those allegations had been established.

² Counsel stipulated that Mr. Cronin did not create, produce, present, sell, disseminate, distribute, exhibit or transmit the pornographic video to anyone, and that he did not encourage anyone else to engage in those or similar activities.

remain away from the classroom while class was in session. Jane Doe thought that was a good idea. Mr. Cronin gave her a hall pass for the period.

Mr. Cronin believed that Jane Doe walked about the campus, unsupervised, for the remainder of class period, although no evidence established what Jane Doe actually did after she was given the pass.

6. The District argued that it was unreasonable for Mr. Cronin to have given Jane Doe the hall pass because doing so allowed an emotionally distraught teenager to walk unsupervised about campus for nearly an hour and there was a risk that she might harm herself. The District further argued that permitting Jane Doe to walk about campus created an unreasonable risk of harm in that Jane Doe might become a target of harassment or abuse by others. These arguments were sound.

7. Jane Doe returned to Mr. Cronin's classroom towards the end of the class period. Jane Doe was "composed and doing well" when she returned. Mr. Cronin's lack of judgment in giving Jane Doe the hall pass was not overcome by Jane Doe's safe return to the classroom. Mr. Cronin did not report what he knew after Jane Doe returned.

8. The school day ended and Eastlake High School won the C.I.F. football championship that evening. Mr. Cronin was excited about the championship, but his jubilation over the team's victory was accompanied by the stress of having to deal with his [REDACTED]. Mr. Cronin likely did not spend his weekend developing strategies to deal with Jane Doe's problems.

9. On Monday, December 14, Mr. Cronin asked Jane Doe, "What do you want me to do?" Mr. Cronin was certain by then that he had the duty to report what had happened and what he knew, but Mr. Cronin hoped that he might be able to convince Jane Doe that she needed to join him in reporting the matter. Mr. Cronin believed that if he and Jane Doe reported the matter together, Jane Doe would be more likely to accept the consequences of the report as being in the nature of support rather than punishment. Jane Doe again begged Mr. Cronin to not report the matter. Mr. Cronin thought about it, and he ultimately agreed to put off making a report for a few days in the hope that he and Jane Doe could discuss the matter further and so they could reach the agreement to report the matter together when finals were over.

10. On Monday, December 14, Mr. Cronin did not believe the situation involved "child abuse" that required him to make an immediate report. Nevertheless, he believed that it was necessary from him to disclose what he knew to school administrators, and he planned to do so following finals, whether Jane Doe agreed to report it with him or not.

11. On Tuesday morning, December 15, a parent anonymously telephoned Eastlake High School and told Alexandra Lachman, a psychology intern, that an Eastlake High School football player had sent a text message and an attachment containing child pornography to other students and to Mr. Cronin. The anonymous caller stated that the female student depicted in the video had not received any attention or counseling. Ms.

Lachman immediately told her supervisor what she had been told and the supervisor, in turn, immediately notified administrators. Ms. Lachman somehow determined that Jane Doe was the person purportedly depicted in the video. Ms. Lachman, who was also a mandated child abuse reporter in her capacity as a psychology intern, did not notify law enforcement or child protective services that she had suspicion to believe that a female student at Eastlake High School was depicted in a child pornography video.

Assistant Principal Thomas Gray immediately spoke with Mr. Cronin Tuesday after being notified of the situation. Assistant Principal Gray asked Mr. Cronin if he had received an inappropriate text message involving Jane Doe, to which Mr. Cronin responded, “Yes.” The conversation lasted no more than 20 seconds. Assistant Principal Gray reported Mr. Cronin’s response to Principal Mary Lawlor, even though he had not determined when Mr. Cronin gained this knowledge. Assistant Principal Gray notified the police about the matter, but Assistant Principal Gray did not file a report with child protective services. Assistant Principal Gray was also a mandated reporter.

After speaking with Assistant Principal Gray, Principal Lawlor believed that Mr. Cronin was under an immediate duty to report the inappropriate text and video as soon as he received it. She was concerned because the video may have circulated among high school students for another three or four days after Mr. Cronin’s receipt of it, because a parent had brought the problem to Eastlake High School’s attention rather than Mr. Cronin, and because of the emotional damage to Jane Doe a consequence of the possible widespread distribution of the video. Principal Lawlor immediately set up a meeting to further discuss the matter with Mr. Cronin.

12. A meeting was held later that day. Assistant Superintendent Rita Sierra Beyers, Principal Lawlor, teacher representatives John McFadden and Lee Price, and Mr. Cronin attended the meeting. The meeting lasted 40 to 45 minutes. Assistant Superintendent Sierra Beyers kept notes of what Mr. Cronin said during the interview. Mr. Cronin related what had occurred in a manner that was entirely consistent with those matters set forth in Factual Findings 3-5 and 7-10. Mr. Cronin told those present that he was uncertain if “child abuse” was involved and he said that he thought he had a week to report what had happened. Mr. Cronin was extremely remorseful.

The Aftermath

13. Assistant Superintendent Sierra Byers placed Mr. Cronin on administrative leave at the conclusion of the December 15, 2009, meeting. Assistant Superintendent Sierra Byers did not speak with Mr. Cronin again before she recommended that Mr. Cronin be dismissed from employment.

Assistant Superintendent Sierra Byers testified that she was concerned that Mr. Cronin did not immediately report the matter to child protective services on Friday, December 10, when he found out that Jane Doe was depicted in the video, that Mr. Cronin should not have given Jane Doe a hall pass because that permitted Jane Doe to walk about the campus unsupervised, that Jane Doe should have been referred to a psychologist, and that

the distribution of the video might create a hostile school environment and constitute sexual harassment. Assistant Superintendent Sierra Byers testified that the excitement of being in the C.I.F. finals and winning the football game did not excuse Mr. Cronin from reporting what he knew to the proper authorities.

Assistant Superintendent Sierra Byers assumed that Assistant Principal Gray reported the matter to child protective services; she did not report the matter to child protective services herself. Child protective services never interviewed Assistant Superintendent Sierra Byers, who was uncertain if that agency ever took any action. Assistant Superintendent Sierra Byers knew that law enforcement conducted an investigation, and she knew that criminal charges were not filed against Mr. Cronin or anyone else following the criminal investigation. Assistant Superintendent Byers testified that several teachers, several parents and many students supported Mr. Cronin at the Governing Board's meeting related to the Jane Doe incident.

14. Jane Doe and Student B were given three-day suspensions.

15. Following the Christmas break, Principal Lawlor held a meeting with Jane Doe and her mother to discuss the possibility of Jane Doe attending another high school for the remainder of the school year. Jane Doe and her mother rejected the offer. Jane Doe returned to Eastlake High School and finished the school year there.

16. Following the Christmas break, Principal Lawlor held a staff meeting to review child protective service reporting responsibilities with high school staff. There was a discussion about the cell phone incident involving Mr. Cronin. There was some confusion among the teachers about the relationship between child abuse and the circulation of child pornography when the pornographic material was created and initially distributed by the person who was depicted. Principal Lawlor instructed staff, "If in doubt, report."

17. Leroy Price, Jr., an AP Physics teacher and a varsity football coach, was driving the vehicle in which Mr. Cronin was a passenger on December 10. Mr. Cronin never mentioned receiving a text with a pornographic attachment. Mr. Price agreed that a teacher must exercise sound judgment and be vigilant about student safety when exercising his or her professional responsibilities.

18. Chula Vista Police Officer Juan Vasquez investigated the matter giving rise to this hearing. He obtained Mr. Cronin's statement and confirmed that Mr. Cronin had deleted the video from his cell phone. Some of the students Officer Vasquez interviewed still had the Jane Doe video on their cell phones.

Following his investigation, Officer Vasquez prepared a miscellaneous police report to document what he learned during his investigation, but the Chula Vista Police Department did not refer the matter to the San Diego District Attorney's Office or request that criminal charges be filed. Officer Vasquez testified that his investigation produced no evidence establishing that Mr. Cronin had the intent to engage in any criminal wrongdoing.

19. In October 2000, when the District hired Mr. Cronin as a substitute teacher, Mr. Cronin signed a document entitled “Notice to Employees and Acknowledgment of Receipt Regarding Child Abuse Laws.” That notice summarized the provisions of Penal Code section 11166 and specifically advised Mr. Cronin that he was required to immediately report any instance of known or suspected child abuse to a child protective agency and to file a written report within 36 hours of his initial contact. In addition to defining child abuse, the notice defined “sexual exploitation” to include child pornography. The District did not establish the nature or extent of further child abuse reporting training provided to Mr. Cronin or other teachers besides the requirement that each teacher sign the acknowledgment.

It was not established that an incident similar to that involving Jane Doe occurred within the District before December 2009, or that the District provided training by which a teacher in Mr. Cronin’s position would know what to do if he or she was presented with a situation similar to that involving Jane Doe.

Without the need to analyze a teacher’s legal obligations, if any, under the Child Abuse and Neglect Reporting Act, it is clear that Mr. Cronin was under a duty to notify administrators of the incident within a reasonable period of time after he learned that the pornographic video involved a student, the sooner the better.

The Child Abuse and Neglect Reporting, Obscene Matter, Sexual Exploitation

20. The Child Abuse and Neglect Reporting Act: The Child Abuse and Neglect Reporting Act is set forth at Penal Code section 11164 et seq. The intent and purpose of the Act is to protect children from abuse and neglect.³ The following information regarding the Act appears in 2 Witkin, *California Criminal Law* 3d (2000), Sex Crimes, § 156, p. 450, and in the primary authority cited there.

The Act requires mandated reporters (including teachers and school administrators) who have personal knowledge or reasonably suspect child abuse to report that abuse to a police or sheriff’s department (excluding a school district police department), to a county probation department if designated by the county to receive such reports, or to the county welfare department. An initial report must be made immediately or as soon as is possible by telephone, and a follow-up written report must be sent, faxed, or electronically transmitted within 36 hours. When a mandated reporter knows or reasonably suspects that a child is suffering from or is at substantial risk of suffering serious emotional damage (as evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others), a report is authorized but is not required. If child abuse suspected as a result of the infliction of mental or emotional abuse, a report is authorized but is not required. The Act does not require that voluntary, consensual sexual conduct between minors under age 14 be

³ The term “child abuse or neglect” includes nonaccidental physical injury or death inflicted on a child by another person, sexual abuse, neglect, the willful harming or injuring of a child or endangering the person or health of a child, and unlawful corporal punishment or injury, but the term does not include an affray between minors or injury caused by a peace officer’s use of reasonable and necessary force within the scope of his or her employment.

reported if the reporting professional concludes that such conduct does not bear indicia of abuse. (*Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 CA3d 245, 282.)

A mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect is punishable by up to six months' confinement in a county jail or a fine of \$1,000, or both.

21. Obscene Matter: "Obscene matter" is defined as "matter, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value." (Pen. Code, § 311, subd. (a).) The Jane Doe video involved obscene matter. It was unlawful for an individual knowingly possess or control in any manner any film, videotape, or any other computer-generated image that involves a person under the age of 18 years engaging in or simulating sexual conduct (Pen. Code, § 311.11.) Mr. Cronin did not knowingly possess or control the Jane Doe video, which was sent to him by Student B without invitation and which he promptly deleted.

22. Sexual Exploitation: "Sexual exploitation" includes preparing, selling or distributing materials depicting a minor engaged in obscene acts. Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, or who knowingly permits or encourages a child to either pose or model alone for purposes of preparing a film or other pictorial depiction, involving obscene sexual conduct is guilty of sexual exploitation. (Pen. Code, § 11165.1, subd. (c).) Mr. Cronin did not engage in sexual exploitation.

The District's Regulations and Board Policy

23. The District's Administrative Regulation 5145.7 prohibits sexual harassment, which includes displaying sexually suggestive objects, drawings or photographs. Mr. Cronin did not violate this regulation because he did not display sexually suggestive photographs or other materials.

24. Board Policy 514.4 requires certificated personnel to make reports as required under the Child Abuse and Neglect Reporting Act. It was not established that Mr. Cronin violated Board Policy 514.4. It was not established that the Jane Doe video involved a willful injury inflicted upon Jane Doe by another person, or that anyone other than Jane Doe was responsible for the video. If Mr. Cronin had determined that Jane Doe was at risk for suffering serious emotional damage, and that was not established, then a report was authorized but was not required. Even if Mr. Cronin were found to have violated the Act under the circumstances, the violation was not intentional and there was but one violation.

25. The Commission concludes, based on Mr. Cronin's sincere and credible testimony, that Mr. Cronin likely would have reported the incident involving Jane Doe after finals were over and before going on the Winter break. The Commission rejects the assertion

that Mr. Cronin would not have made any report had the matter had he not been confronted by the District.

The Contentions

26. The District argued that Mr. Cronin was a mandated reporter and that he “failed to report the receipt from a student football player, of a disturbing sex video of a fifteen-year-old female Eastlake student for a period of six days until he was confronted by the District, even though he had many opportunities to do so.” The District argued that Mr. Cronin “not only failed to stop the potential danger to a vulnerable fifteen-year-old female student, but he increased the risk of harm to her when he let her walk around the school without supervision.” The District characterized Mr. Cronin’s conduct as “unacceptable and egregious,” and the District concluded that this conduct established that Mr. Cronin was unfit to teach. The District argued that Mr. Cronin’s conduct had an adverse effect on students, that Mr. Cronin failed to safeguard his students, that Mr. Cronin violated state law and District policy, that Mr. Cronin’s wrongdoing was recent, that there is a likelihood of recurrence, and that aggravating circumstances surrounded his conduct.

27. Respondent’s counsel observed that Mr. Cronin did not seek the pornographic video, that he had nothing to do with its preparation or distribution, and that he shut off and deleted the video when he realized it contained inappropriate content. Counsel argued that Mr. Cronin’s admitted wrongdoing in failing to immediately notify the District of what he knew when he learned that Jane Doe was depicted in the video did not demonstrate an evident unfitness for service (which requires a showing of unfitness based upon of a temperamental defect or inadequacy), that there was no more than a single violation of state law and district policy arising out of Mr. Cronin’s failure to report what he knew, and that no evidence established his immoral conduct. With regard to Mr. Cronin’s fitness to teach, respondent’s counsel argued that even though the wrongdoing was recent, there was no likelihood of its recurrence, there many extenuating circumstances surrounded his conduct, the notoriety related to the wrongdoing was the inevitable result of the District’s investigation and disciplinary action, and that nothing that Mr. Cronin did (or failed to do) disrupted the educational process for Jane Doe, other students, or other teachers.

Evaluation

28. Mr. Cronin was a respected teacher at Eastlake High School before the incident involving Jane Doe. Mr. Cronin dedicated himself to being the best teacher possible. He attended workshops and clinics to improve his instructional skills, engaged all students in the learning process, and was highly sensitive to student needs.

Early December 2009 was a difficult time for Mr. Cronin – he was a new father, [REDACTED] Mr. Cronin, through no fault of his own, became the recipient of a pornographic video that was sent by a former student. Mr. Cronin did not ask for the video and he did not promote, aid or assist in its production. He turned off the video as soon as he began to view it, recognizing

that the video contained inappropriate content. He deleted the video within 30 minutes. When he learned Jane Doe, a 15-year-old-student, was the subject of the video, he did not report the matter immediately and he permitted her to remain on campus, unsupervised for about an hour. When he saw Jane Doe after the class period, she did not appear to be in distress; Mr. Cronin honored her wish to not report the matter at the time, knowing that the matter had to be reported ultimately and hoping that he could persuade Jane Doe to report the matter with him. On the following school day, Mr. Cronin again did not report the matter, but he planned to report it after finals. The District learned of the video before Mr. Cronin could report it to the District.

Mr. Cronin – as a professional educator – committed an error of judgment by not promptly reporting his receipt of pornographic material from a former high school student, by not immediately reporting the incident when he found out that Jane Doe was the subject of the video, and by giving Jane Doe a hall pass and permitting her to walk about campus for about an hour unsupervised. A substantial amount of mitigating evidence explained and surrounded this misconduct.

Mr. Cronin is not unfit for service, and his misconduct was not the result a temperamental defect or character flaw. Mr. Cronin expressed sincere remorse for his wrongdoing, and it is virtually certain that the same or similar kind of misconduct will not be repeated.

Based upon the application of the *Morrison* factors, the Commission concludes that Mr. Cronin did not engage in immoral conduct, that he is not evidently unfit for service as a result of an irremediable temperamental defect, and that he did not engage in any—much less a persistent—violation or refusal to obey applicable laws and regulations.

The Commission concludes that Mr. Cronin is fit to teach and that the Accusation should be dismissed.

Jurisdictional Matters

29. The Commission on Professional Competence in this matter included James Ahler, Administrative Law Judge, Office of Administrative Hearings, Connie Pruett, who holds a single subject teaching credential and teaches U.S. History, Government and Economics with the Moreno Valley Unified School District, and Saul Watson, who holds a single subject teaching credential and is on assignment with the Oceanside Unified School District. Ms. Pruett and Mr. Watson each had more than five years teaching experience in the last ten years, neither was employed by the Sweetwater Union High School District, and neither was related to Patrick Cronin.

The parties stipulated that all jurisdictional requirements were met. The matter was submitted on October 25, 2010.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. 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 party required to prove something by a preponderance of the evidence need prove only that it is more likely to be true than not true. This simply means that the evidence on one side outweighs, preponderates over, and is more than the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect 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.)

Due Process under the Education Code

2. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44932, 44934, and 44944.) 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, subds. (c)(1)-(3).)

Hearings to determine if permanent public school teachers should be dismissed are held before a Commission - a three-member administrative tribunal consisting of one credentialed teacher chosen by the school board, a second credentialed teacher chosen by the teacher facing dismissal, and an administrative law judge of the Office of Administrative Hearings who serves as chairperson and a voting member of the commission and who is responsible for assuring that the legal rights of the parties are protected at the hearing. The Commission's decision is deemed to be the final decision of the district's governing board. (*California Teachers Ass'n v. State of California* (1999) 20 Cal.4th 327, 331.) The Commission has broad discretion to determine the issues before it, including whether dismissal is the appropriate sanction. (*Ibid.*, at p. 343.)

Relevant Statutory Authority

3. Education Code section 44932 provides in part:

“(a) No permanent employee shall be dismissed except for one or more of the following causes:

(1) Immoral . . . conduct.

. . .

(5) Evident unfitness for service.

. . .

(7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her. . . .

Immoral Conduct

4. Education Section 44932, subdivision (a)(1) lists “immoral conduct” as a cause for dismissal. Immoral conduct is not considered in the abstract, but must be considered within the context in which the Legislature considered it; more specifically, the term refers to conduct which is hostile to the welfare of the school community. Its objective is to protect 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. Thus, the phrase “immoral conduct” as used in the Education Code denotes immoral conduct that renders the teacher unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 224-225.)

Since the term “immoral conduct” is vague and broad, whether conduct demonstrates an unfitness to teach must be measured against seven criteria (1) the likelihood that the conduct may have adversely affected students or fellow teachers; (2) the degree of adversity anticipated; (3) the proximity or remoteness in time of the conduct; (4) the type of teaching certificate held by the employee involved; (5) the extenuating or aggravating circumstances, if any; (6) the likelihood of the recurrence of the questioned conduct; and (7) the extent to which the imposition of disciplinary action may have an adverse impact or chilling effect on the constitutional rights of the teacher involved or other teachers. (*Governing Board of ABC Unified School District v. Haar* (1994) 28 Cal.App.4th 369, 383.)

“Immoral conduct” as used in Education Code section 44932 is not confined to unacceptable sexual behavior. 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 Education v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

The determinative test in teacher discharge cases is whether the person is fit to teach. The terms “immoral” or “unprofessional conduct” are too vague and must be applied to a specific occupation and given context by reference to fitness for the performance of that occupation. A fitness hearing must consider not only the conduct in issue, but also (1) the 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. “Fitness to teach” is probably a question of ultimate fact. (*Board of Education v. Commission on Professional Competence* (1980) 102 Cal.App.3d 555, 560-561.)

Evident Unfitness for Service

5. “Evident unfitness for service” is not synonymous with “unprofessional conduct,” and the term 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 school district. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) “Evident unfitness” includes in its definition “unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. In reaching a conclusion if 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.)

Persistent Violation or Refusal to Obey School Laws or Regulations

6. The word “persistent” is defined by lexicographers as “refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated.” And in the judicial decisions the word has been interpreted to mean “continuing or constant.” (*Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 82.)⁴ And, it appears that the *Morrison* factors should be applied in determining whether a permanent certificated employee’s persistent violation or refusal to obey laws and regulations supports the employee’s termination. (*San Dieguito Union High School Dist. v. Commission On Professional Competence* (1985) 174 Cal.App.3d 1176, 1182.)

The Morrison Factors

7. Mr. Cronin admittedly engaged in conduct that fell below the standard of care reasonably expected of a public high school teacher in several respects. First, Mr. Cronin failed to promptly report to proper authorities that a former student, who still attended

⁴ Ms. Seaman, a teacher, applied for a voluntary leave of absence, which was denied, and failed to return to the Fair Oaks School for the commencement of the school year in violation of the governing board’s regulations. On the issue of whether Mrs. Seaman’s violation was persistent the district that each day that Ms. Seaman was absent was a separate violation of the board’s regulations, the violation met the “persistent” requirement. The appellate court concluded: The argument is specious. This is not a case where it is reasonable to say that Mrs. Seaman’s absence, by its very duration, amounted to a ‘persistent violation of the governing board’s rules. [Citation.] Nor can it fairly be said from the evidence presented that the teacher was motivated by an attitude of continuous insubordination. Mrs. Seaman had been employed by the district for a period of eight years, and there is no evidence in the record to prove that she ever violated a school law or a regulation of the governing board prior to the incident in question. (*Governing Board of the Oakdale Union School Dist. v. Seaman, supra.*, at pp. 81-82.)

Eastlake High School, sent him a pornographic video. Second, Mr. Cronin failed to immediately report to his supervisors that Jane Doe, one of his high school students, was the subject of the self-made pornographic video after he learned of that. Third, Mr. Cronin provided Jane Doe with a hall pass and permitted her to travel unsupervised about the Eastlake High School campus after he learned that she was the subject of the pornographic video and when Jane Doe was emotionally upset. These matters were undisputed.

Mr. Cronin's misconduct could have resulted in a wider distribution of the Jane Doe video and it could have resulted in some risk of injury to Jane Doe, although the evidence offered to support the possibility of those dangers was speculative and relatively minor given what Mr. Cronin knew and actually observed. Mr. Cronin's failure to timely report what he knew to some extent cast his school and the District in a poor light since timely reporting was required and was not provided. Mr. Cronin's misconduct posed virtually no risk of harm to other teachers. The District did not establish that any student-teacher relationships were impaired. Mr. Cronin's misconduct did not disrupt the educational process. Mr. Cronin's wrongdoing was relatively recent, occurring within the past year. The extent of adverse publicity or notoriety, beyond the telephone call placed by an anonymous parent, was not established. It appears that the District and Mr. Cronin wisely kept the matter as quiet as possible. Imposing discipline in this matter would not impact any teacher's constitutional right. The suggestion that Mr. Cronin did not report his receipt of the pornographic video from Student B on the basis that Student B was on the varsity football team was unfounded. Mr. Cronin was sensitive to Jane Doe's situation and he did not want to cause her harm, and his instinct to protect Jane Doe clouded his judgment on the need to report what he knew. The uncertainty surrounding the need to report the matter to child protective services, if at all, was a mitigating factor, as was Mr. Cronin's obvious lack of experience and training to enable him to know how he should proceed in this highly unique set of circumstances. Mr. Cronin's personal situation – including the recent birth of his daughter, [REDACTED] – certainly explained why the matter involving Jane Doe occupied less than his full attention. The excitement of the varsity football team being in the C.I.F. finals was also a distraction. The factors in explanation and mitigation far outweighed any factor in aggravation. Given all that has occurred and given Mr. Cronin's credible testimony on the issue, it is without doubt that Mr. Cronin will not engage in the same or similar misconduct in the future.

Based upon the application of the *Morrison* factors, the Commission concludes that Mr. Cronin did not engage in immoral conduct, that he is not evidently unfit for service as a result of an irremediable temperamental defect, and that he did not engage in a persistent violation or refusal to obey applicable laws and regulations.

Based upon the application of the *Morrison* factors, it is concluded that Mr. Cronin is currently fit to teach.

Cause Exists to Dismiss the Accusation

8. A preponderance of the evidence did not establish that cause exists under Education Code section 44932, subdivisions (a)(1), (a)(5) or (a)(7), to dismiss Patrick Cronin from his employment with the Sweetwater Union High School District. Mr. Cronin is fit to teach.

This conclusion is based on the Factual Findings and the Legal Conclusions herein.

DISPOSITION

The Accusation and Statement of Charges are dismissed. Patrick Cronin shall retain his permanent employment with the Sweetwater Union High School District.

DATED: _____

JAMES AHLER
Administrative Law Judge

DATED: _____

CONNIE PRUETT
Moreno Valley Unified School District

DATED: _____

SAUL WATSON
Oceanside Unified School District