

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

In the Matter of the Accusation against:

JAY MICHAEL JASPER, Respondent

Agency Case No. 1-877020035

OAH No. 2020030692

PROPOSED DECISION

Erin R. Koch-Goodman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by telephone and videoconference from September 28 through October 1, 2020, from Sacramento, California.

Joshua B. Eisenberg, Deputy Attorney General, represented Mary Vixie Sandy, Ed.D. (complainant), Executive Director, California Commission on Teacher Credentialing (CTC or Commission).

Jay Michael Jasper (respondent) appeared and represented himself.

Oral and documentary evidence was received, the record closed and the matter submitted for decision on October 1, 2020.

FACTUAL FINDINGS

Background

1. On May 23, 2003, the CTC issued a Clear Pupil Personnel Services (PPS) Credential (Credential) to respondent. The PPS credential is for school counselors, school psychologists, school social workers and child welfare and attendance providers. The Credential will expire on June 1, 2023, unless renewed or revoked. On August 19, 2003, the CTC first issued an emergency 30-Day Substitute Teaching Permit (Permit) to respondent. The CTC reissued the Permit for August 14, 2017, through September 1, 2018. Currently, the Permit has expired and has not been renewed.

EMPLOYMENT HISTORY

2. The Elk Grove Unified School District (EGUSD or District) employed respondent from 2006 until 2018. From 2006 to 2010, respondent was a Transition Specialist at Florin High School, working with special education students. From 2010 to 2017, respondent was a counselor: from August 2010 to June 2015 at Pleasant Grove High School (PGHS), and from July 2015 to September 2017 at Smedberg Middle School (Smedberg or SMS).

3. On July 20, 2017, the District served respondent with a proposed statement of charges, seeking his termination. On September 5, 2017, the EGUSD Board approved the statement of charges and respondent was placed on unpaid suspension effective September 6, 2017. On October 2, 2017, respondent appealed. The matter was set for hearing before the Commission on Professional Competence. On May 9, 2018, the parties settled the matter, with terms including respondent's resignation, effective June 30, 2018.

EGUSD POLICY NOTICE

4. On September 21, 2006, respondent signed and dated the EGUSD Known or Suspected Child Abuse and Neglect Reporting Signed Statement (Statement). The Statement directs all mandated reporters, classified and certificated employees, who have knowledge of or reasonably suspects a child has been the victim of abuse or neglect to report the known or suspected instance to the proper authorities, as required by the law. Signing the Statement, respondent acknowledged receiving "a copy of the Board Policy and Administrative Regulation 5141.4, and Penal Code Sections 11165.7, 11166, 11167," and agreed to follow their provisions.

Accusation

5. On or about January 16, 2020, complainant issued an Accusation against respondent, alleging he acted unprofessionally, engaged in immoral conduct, and displayed moral turpitude and an evident unfitness for service while working as a counselor for the EGUSD. Complainant seeks to revoke respondent's Credential, because he repeatedly used poor judgment, did not competently complete his job duties, and failed to work and communicate effectively with peers and students.

6. On or about February 11, 2020, respondent appealed and requested an administrative hearing pursuant to Government Code sections 11505 and 11506. This hearing followed.

Conduct at Issue

7. In general, complainant alleges respondent is unfit to remain a counselor, because he is unable to effectively communicate and engage with others. Specifically, complainant alleges five incidents, between 2015 and 2017, wherein respondent acted

inappropriately and with poor judgement: (1) a request for help by Smedberg Counselor Cheryl Stark on September 4, 2015; (2) a report of abuse regarding SMS Student A.P.7¹ on February 2, 2016; (3) a report of bullying regarding SMS Student N.S.7 on February 29, 2016; (4) a report of abuse regarding SMS Student A.B.7 on May 9, 2016; and a text message sent to PGHS Counselor Dawn Grovhoug on May 18, 2017. The incidents are each examined separately below.

8. From 2010 to 2015, the PGHS counseling staff included: respondent, Dawn Grovhoug (part-time), Todd Hirsch, Michele Jimenez Lundy, and Teresa Schmutte (lead). The PGHS counselors reported to Vice-Principal (VP) Edward Van Brenk. From 2015 to 2017, the SMS counseling staff included: respondent, Counselor Stark and Para Ralston (part-time). The SMS counselors reported to VP Portia Clinton.

REQUEST FOR HELP – COUNSELOR STARK

9. On or about September 4, 2015, VP Dolores Moore telephoned Counselor Stark. She had received a report about Student S.F., a special education student, who was acting out in class. He told staff he was being bullied, he was angry, and he wanted to hurt the other students. VP Moore directed Sarah Francis, para-educator, to escort Student S.F. to Counselor Stark's office. In the interim, Counselor Stark telephoned S.F.'s mother and requested her assistance; the mother said she would come to the school immediately. Shortly thereafter, Para-educator Francis and Student S.F. appeared at Counselor Stark's office. Para-educator Francis left, and Student S.F. entered Counselor Stark's office and sat down across the desk from her.

¹ Initials are used to protect the identity of the minor students. The number 7 indicates the student's grade level.

Student S.F. could not sit still; he was rocking and shaking. Then, Student S.F. stood up, walked over to a bookcase in Counselor Stark's office, picked up a large natural stone or geode from her collection, turned to her and said, "I am going to kill you" or words to that effect. Counselor Stark immediately feared for her safety.

10. Counselor Stark walked around her desk, away from Student S.F., and stood in the doorway of her office. Counselor Stark yelled to respondent: "this student is unsafe; I'm worried he is going to leave my office; I don't feel safe; go get Ms. Moore." Respondent's office was approximately 20 feet away from Counselor Stark's office, both office doors were open, and Counselor Stark and respondent could see one another. Respondent got up and walked to VP Moore's office. He sat down and told VP Moore words to the effect of, "Ms. Stark is afraid [Student S.F.] is going to leave her office, but I will remain close by and assist her if needed." VP Moore acknowledged respondent and asked him to have Counselor Stark contact her on the walkie-talkie if she needed her. Respondent then returned to his office and sat down. Counselor Stark remained in the doorway of her office until Student S.F.'s mother appeared and took him home.

11. Counselor Stark reported the incident to VP Moore and Principal Richard Wall, alleging respondent failed and refused to aid her when she was in imminent danger. Principal Wall and VP Moore met with respondent to discuss the incident. Respondent expressed concern but believed he had acted appropriately. He did not understand Counselor Stark was in fear for her safety or in imminent danger and/or she wanted VP Moore to come to her office immediately. Respondent further explained that, from his office, he was no more than 20 feet away from Counselor Stark and would have made himself available if she needed immediate help. When counseled, respondent noted SMS had no threat protocol or procedure to follow in

case staff needed immediate aid (i.e., specific words to cue immediate help was needed). Principal Wall agreed to establish a threat protocol, and on September 22, 2015, the administrative and counseling staff met to develop the same. Thereafter, Principal Wall emailed copies of the threat protocol to all counselors and administrators and had front office staff trained on the same. The "Threat Situation" Protocol read: "Get someone to help immediately. Don't leave a staff member alone in a threatening situation. Contact someone for help." The protocol further instructed staff how to contact someone, what information to provide, the appropriate staff response, and how to communicate the urgency of the situation.

ABUSE REPORT – STUDENT A.P.7

12. On or about February 2, 2016, SMS Student A.P.7 reported to her sixth period dance class, crying, and upset. The teacher, Taleen Drolet, began class, engaged the students in journaling, and then individually approached Student A.P.7. Ms. Drolet asked Student A.P.7 what was wrong and A.P. responded: "my Mom beat me this morning." Ms. Drolet took Student A.P.7 aside and asked her to provide additional detail. Student A.P.7 said her mother beat her with a wire hanger, leaving marks on her arm; Student A.P.7 then showed Ms. Drolet eight thin red marks on her arm.

13. Because Ms. Drolet had a classroom full of students, she referenced school materials and determined Student A.P.7's counselor was respondent. Ms. Drolet telephoned respondent for help. She reported the abuse to him, and respondent told her she would have to call Child Protective Services (CPS). Ms. Drolet agreed, but asked respondent to console Student A.P.7 while Ms. Drolet completed her sixth period class. Ms. Drolet excused Student A.P.7 and directed her to respondent's office.

14. Student A.P.7 arrived at respondent's office. She reported to respondent she had been hit by her mother with a wire hanger and showed respondent her arm. Respondent and Student A.P.7 spoke for a few minutes. Among other things, respondent told Student A.P.7: (1) Ms. Drolet will have to file a CPS report against her mother; and (2) it was okay for parents to spank their children but not leave marks. When Student A.P.7 asked if she could return to Ms. Drolet's classroom, respondent excused her and directed her back to class. Student A.P.7 returned to Ms. Drolet's class approximately 20 minutes after she left. She rejoined the class activities but remained quiet.

15. When class ended, Ms. Drolet asked Student A.P.7 to stay behind. Ms. Drolet asked Student A.P.7 if she was all right. Student A.P.7 said she was not and began shaking and crying. Student A.P.7 said she did not want to go home, because her mother would beat her again. She reported her mother had kept her home most of the entire day, and hit her with a large metal spoon, a wire hanger, and slapped her in the head with an open palm. Ms. Drolet asked Student A.P.7 if she had shared the same information with respondent; Student A.P.7 said she had. Ms. Drolet then asked Student A.P.7 what respondent had said in response and why had he sent to her back to class; Student A.P.7 recounted respondent's statements to Ms. Drolet. Ms. Drolet was displeased with respondent.

16. Ms. Drolet walked Student A.P.7 to the girls' locker room and directed her to change into her regular clothes. Ms. Drolet waited in the Physical Education office with another teacher, Lori Center. Ms. Drolet shared with Ms. Center the details of Student A.P.7's abuse and that respondent had been informed but returned the student to class. Ms. Drolet and Ms. Center agreed that VP Clinton should be involved. Ms. Drolet called VP Clinton and reported a summary of the facts thus far. VP Clinton

directed Ms. Drolet to take Student A.P.7 back to respondent's office and remain there with her. After she changed, Ms. Drolet and Student A.P.7 walked to respondent's office.

17. Ms. Drolet and Student A.P.7 arrived at respondent's office and found him eating a small bag of chips. Ms. Drolet and Student A.P.7 entered respondent's office and sat down. Respondent continued eating and asked how he could help. Student A.P.7 said she was scared to go home. She began shaking and crying. Ms. Drolet said: "[Student A.P.7] cannot go home." Respondent asked Student A.P.7 how she normally got home, and Student A.P.7 said her mother was outside waiting in the car to pick her up. Respondent asked if he could invite her mother into the conference room and facilitate a conversation between the two of them, suggesting he tell her mother, "[Student A.P.7] is very upset; you cannot hit and injure her." Ms. Drolet interjected, suggesting respondent contact VP Clinton first. Respondent agreed and radioed VP Clinton, asking her to come to his office in the next five to ten minutes, indicating it was not an emergency.

18. VP Clinton arrived, and respondent stepped out of his office to speak with her. Specifically, respondent reported Student A.P.7 was afraid to go home and she had marks on her arms. VP Clinton asked if CPS had been called and respondent said no. VP Clinton and respondent returned to his office. VP Clinton asked Student A.P.7 how she usually got home. Student A.P.7 said she walks or her mother picks her up. VP Clinton asked what the plan was for that day and Student A.P. said she saw her mother waiting in the car outside the school. VP Clinton walked over to the window behind Student A.P.7 and Ms. Drolet and closed the blinds, blocking the view into respondent's office from the front of the school. VP Clinton directed respondent and Ms. Drolet to call CPS. Respondent dialed CPS, using the speaker phone, while Student

A.P.7 remained in respondent's office. VP Clinton walked to Principal Wall's office and informed him of the situation. Principal Wall contacted local law enforcement and VP Clinton left to supervise the departure of students for the end of the school day.

19. Principal Wall walked to respondent's office and asked Ms. Drolet to step out of the office. Principal Wall met privately with Ms. Drolet, who gave him a summary of what had happened thus far. Then, Ms. Drolet returned to respondent's office. Principal Wall then escorted Student A.P.7 down the hall to VP Clinton's office. Principal Wall came back to respondent's office and said Student A.P.7's mother was now sitting in the front office by the secretaries. Principal Wall next escorted Ms. Drolet down the hall to VP Clinton's office and informed her that law enforcement had been called and were on their way. VP Clinton reentered the main office and saw Student A.P.7's mother by the secretaries. After speaking with Principal Wall, VP Clinton returned to the front desk to supervise Student A.P.7's mother, brother and aunt, who were later joined by the father.

20. Twenty minutes later, a police officer arrived and interviewed Student A.P.7 in VP Clinton's office, with Ms. Drolet present. Principal Wall directed Ms. Drolet to return to respondent's office to speak with the CPS representative who was on the phone. While Ms. Drolet spoke to CPS, she and respondent completed the online CPS report. After she completed the CPS call, Ms. Drolet took the information from CPS to the police officer in VP Clinton's office. After giving her personal information to the police officer, Ms. Drolet left campus, with VP Clinton's permission.

21. Respondent printed the completed CPS report to the main office common printer and then left school. VP Clinton remained at school with the police officer until CPS arrived at approximately 7:00 p.m. Student A.P.7 and her brother were released to their aunt at approximately 7:45 p.m. The police officer issued a citation to

Student A.P.7's mother, and Student A.P.7's parents remained to be interviewed by CPS. The police officer told VP Clinton she could go home and he would remain with Student A.P.7's parents.

22. The following day, Ms. Drolet got an email from Ms. Ralston, main office secretary, informing her she had left the CPS report on the main office common printer and directed her to retrieve it immediately. Ms. Drolet went to the main office, retrieved the report, and then handed it to the Administration secretary.

23. On March 4, 2016, Principal Wall and VP Clinton met with respondent to discuss the incident. Respondent described his first conversation with Student A.P.7 as limited, indicating she only gave him a general description of what happened and then asked to go back to class after he explained a CPS report would have to be filed. When questioned, respondent admitted telling Student A.P.7 parents were permitted to spank their children. Respondent explained he was making a distinction between parents spanking their children, which is acceptable, and parents hitting their children and leaving marks, which is not acceptable. He denied telling Student A.P.7 she was safe to go home, and she would not be hit again.

BULLYING REPORT – STUDENT N.S.7

24. On or about February 29, 2016, SMS Student N.S.7 visited respondent's office and reported other students had bullied him, calling him names, making derogatory comments about his family, and teasing him about his hair, clothes, and shoes. Respondent asked Student N.S.7 if he wanted to invite the bullies to engage in mediation and/or a "No Contact Contract"; Student N.S.7 declined. Respondent counseled Student N.S.7 to ignore the other students and walk away exuding confidence. Respondent then shared a personal story about bullies with Student N.S.7.

Respondent said he too was bullied in school; he gave examples of the “yo mamma” jokes he had experienced as a teenager (e.g., that’s not what your mamma said last night when she ran her fingers through my hair”). They concluded their conversation and Student N.S.7 left respondent’s office.

25. The same day, Student N.S.7 was picked up from school by his father, Brendon Smith. Student N.S.7 told his father about his conversation with respondent, alleging respondent had encouraged him to, among other things: respond to the bullies with “yo mamma” jokes, tell the bullies to “fuck off” and not to be afraid to physically fight the same. Mr. Smith was not pleased with respondent’s advice to his son. That day or the next, Mr. Smith and Student N.S.7 met with respondent; respondent denied making the above statements. Mr. Smith was unhappy with their meeting with respondent and reported the incident to Principal Wall.

26. On March 4, 2016, Principal Wall and VP Clinton met with respondent to discuss the incident. Respondent denied using profane language or encouraging Student N.S.7 to fight. He confirmed sharing a personal story with Student N.S.7, explaining how students had bullied him using “yo mamma” jokes as hurtful putdowns, but that responding in-kind only worsened the interpersonal conflict.

ABUSE REPORT – STUDENT A.B.7

27. On May 9, 2016, two female SMS students visited respondent’s office and showed him a series of text messages wherein Student A.B.7 disclosed he had been physically abused by a guardian grandparent. Respondent determined Student A.B.7 was assigned to Counselor Stark. Respondent then sent Counselor Stark the following email, with a carbon copy to VP Clinton:

Some students informed me of suspected abuse of [AB 7]. In a text message that was captured by a screen shot, [AB7] told a female friend that he deliberately doesn't do his best in school in order to keep parent expectations low. He said he used to consistently [get] good grades, but would "get beat" if he ever got anything lower than a B. The text said this explains the scars on his elbows that she asked about. [AB7's] brother confirmed beatings to the same female friend. Apparently, his grandmother would send him to his grandfather's house to get physical punishment. According to friend, [AB7] is finishing his 7th grade year at SMS before returning to live w/ grandmother in Fairfield, CA. Can you investigate allegations?

On May 9, 2017, Counselor Stark met with Student A.B.7 and filed a report of alleged abuse with CPS.

28. On May 13, 2017, Principal Wall met with respondent. When questioned, respondent reported sending the email to Counselor Stark because he did not "reasonably suspect" the information provided to him showed abuse was taking place. Going forward, Principal Wall directed respondent to "err on the side of caution when considering whether or not to file a CPS report in cases of suspected abuse involving one of the District's student." Principal Wall continued, "[i]f you are in doubt as to whether or not a reasonable suspicion of child abuse exists, in order to ensure students are protected, make the CPS report and let the authorities investigate to determine whether child abuse has or has not occurred."

COUNSELOR TRAINING – PGHS COUNSELOR GROVHOUG

29. On May 18, 2017, respondent attended an EGUSD training for counselors. Respondent arrived, collected the training materials, and found a seat. Ten minutes after the training began, Counselor Grovhoug walked into the training. Respondent had worked with Counselor Grovhoug at PGHS between 2010 and 2015; to say the least, their professional relationship was troubled, unpleasant, and contentious. In September 2015, respondent filed a District Complaint, alleging he was bullied by PGHS counselors, including Counselor Grovhoug. Thereafter, respondent felt forced to transfer schools.

30. The presenter said hello to Counselor Grovhoug and directed her to find a seat. Ms. Grovhoug said hello, collected the class materials, and looked around the classroom to find a seat. She made eye contact with respondent, and then turned around and left the training.

31. On Friday, May 19, 2017, at 5:56 p.m., respondent sent the following text message to Counselor Grovhoug:

Dawn, what happened? Did you finally get a conscience, realize my humanity and couldn't depersonalize me any further for your agenda? You ought to be ashamed of yourself. How you treated me was fucking inexcusable, and then you lied and tried to play victim. You are a cunt. I've never called a woman that before, but this is the perfect word for you – CUNT. You're shallow, small minded, dishonest, petty, manipulative and who you are, inside, is rotten as a corpse. I think you know this deep down already,

but you've done a good job keeping your inner ugliness hidden by being a phony. You just make fun of others, lie, and have no empathy – perfect qualities for a school counselor! And what you did to Michele was messed up. You knew she's psychologically weak, so you brought her into your clique to use for your agenda to get rid of me. I've heard that you, Todd and Teresa cut her loose the following year. The stupid drama you continue to play out is childish. Stop it! You're not a victim, but a "mean girl" and a bully – maybe you lose your nerve without your backup from Teresa and Hershey Squirt [Todd Hirsch]. You can't be both a victim and a Tina Fey (minus the looks and wit) wannabe feminist. Pick one and go with it, either a victim cunt or a TFWF cunt. Better yet, how about stop deliberately hurting others, as you hurt me. I did nothing to deserve that and you know it.

32. On May 23, 2017, Counselor Grovhoug filed a police report. The same day, EGUSD placed respondent on administrative leave. On May 25, 2017, Counselor Grovhoug filed a Request for a Civil Harassment Restraining Order (Order) with the Sacramento County Superior Court. Respondent filed a response on June 6, 2017 and appeared at the hearing on June 16, 2017. Following oral argument, Judge Judy Hersher issued a two-year Order against respondent.

Respondent's Defense

33. Currently, respondent is not working as a counselor, but he would like to return to counseling. He believes his education and professional experience make him

a good counselor. In addition, counseling provided him a good income and he is “the sole breadwinner” for his wife and two minor boys. He admits having made mistakes as a counselor, most obviously sending the text message to Counselor Grovhoug. However, he believes he has grown as a person since that time. He has engaged in individual counseling and works hard to have a good relationship with people.

EDUCATION AND EXPERIENCE

34. In 1994, respondent earned a Bachelor of Arts in psychology (child development) from St. Mary’s College in Orinda. In 1996, he began attending John F. Kennedy (JFK) University in Orinda, focusing on holistic health education. In 2000, he received a Certificate in Conflict Resolution from JFK University, having taken part in a supervised internship at the Berkeley and Sacramento Mediation Centers. In 2003, after transferring to California State University, Sacramento, he earned his Master of Arts in counseling.

35. Respondent was hired by the EGUSD in 2006 and found great success as a Transition Specialist at Florin High School. Unfortunately, when respondent started at PGHS, the counselors did not offer him a warm welcome; they repeatedly excluded him from work discussions and work-related social activities. He felt bullied, ostracized, and isolated. He became depressed and found it difficult to go to work. In 2012, he began taking antianxiety medications. However, later that year, his depression worsened after he received a layoff notice (Notice) from the District. The Notice was withdrawn that summer.

36. In 2013, respondent continued to feel much maligned by his colleagues. He sought help from the PGHS administration. However, VP Van Brenk told respondent his perception did not match the reality of the situation, and counseled

respondent to be more aware of his audience and to try to engage with others in a more positive manner. Respondent's anxiety increased and was exacerbated when he received another Notice from the District. Again, the Notice was withdrawn that summer. However, things did not improve for respondent.

37. In the 2013-2014 school year, respondent believed he had been assigned a larger student caseload than the other counselors. He complained to the lead counselor, the other counselors, and VP Van Brenk. Respondent was repeatedly told the distribution was correct and fair because other factors were considered (i.e., Lead Counselor Schmutte had a smaller caseload because she also had administrative responsibilities; Counselor Grovhoug had a smaller caseload because she was a part-time employee; and PGHS attempted to keep students assigned to the same counselor throughout high school, etc.) Nonetheless, respondent was not satisfied with the explanations and continued to complain about his caseload at every staff meeting. Then, respondent received a third Notice from the District and became even more despondent. As before, the Notice was withdrawn over the summer. Nonetheless, respondent believed the third Notice was a clear message: "the District no longer wants you, nor do your colleagues." Ultimately, respondent felt constantly undermined by the PGHS administration and his colleagues. In 2015, respondent filed a complaint with the District about his inhospitable work environment; within months, he felt pressured to seek a District transfer.

38. In June 2015, the District transferred respondent to SMS. Respondent tried to immediately establish rapport with Counselor Stark, the only other fulltime counselor at SMS, but his efforts were not well-received. He admits spending his first year focused on learning the nuances of middle school, and he admitted not getting everything right. Nonetheless, respondent believes he handled all the incidents in

question appropriately. He was responsive to Counselor Stark's need for assistance and worked cooperatively with Ms. Drolet to ensure the safety of a student. He counseled a student to walk away from bullies, never used curse words, and transferred a matter to Counselor Stark because the student was on her caseload. In year two, respondent felt like he had few issues and was developing into a very good counselor. He even dealt with a student suicide while Counselor Stark was out on an extended leave of absence.

39. In sum, respondent believes the EGUSD failed him: (1) they never provided him training on reporting child abuse; (2) they did not adequately investigate his September 2015 complaint of bullying by PGHS counselors, and instead forced him to transfer; and (3) they gave no notice for areas requiring improvement before dismissing him. Respondent received all good evaluations. He believes, but for his text to Counselor Grovhoug, the EGUSD should not have dismissed him and that one mistake should not define his career.

REQUEST FOR HELP – CHERYL STARK

40. For respondent, the meeting with Principal Wall and VP Moore was a success. He explained his understanding of the situation and his actions. He sought direction for future events and suggested the adoption of a Threat Protocol to supply clear direction to all staff going forward. After the meeting, a Threat Protocol was created and distributed.

41. Respondent contends neither Principal Wall and/or VP Moore ever told him his conduct was wrong or he could or would be disciplined for the same. Nonetheless, respondent found the incident referenced in his EGUSD Notice of

Dismissal as a basis upon which he was being dismissed. Respondent contends he was never given an opportunity to correct his behavior without notice of the same.

ABUSE REPORT – STUDENT A.P.7

42. Respondent described his first interaction with Student A.P.7 in his office as providing comfort and calm. He “probably” told her everything was going to be okay and/or she was going to be all right to comfort her. However, he denies telling her she would be safe at home and she would not be hit again.

43. Respondent described his interactions with Ms. Drolet as a “collaborative brainstorming session.” Respondent believes they mutually agreed not to let Student A.P.7 go home and to contact VP Clinton for help. Respondent radioed VP Clinton, but “did not say it was an emergency because that would require all administrators and security to immediately sprint to my office.” He also “did not describe the situation in detail on the radio to protect Student A.P.7’s privacy.” Respondent admitted asking Student A.P.7 if he could bring her mother into the office and talk to her. However, he personally decided that it was not a promising idea. Ultimately, he was also concerned about Student A.P.7’s mother, who had come into the office and needed someone to talk to her.

44. Together, respondent and Ms. Drolet contacted CPS and completed the online CPS report. After Ms. Drolet left, respondent printed the report to the main office common printer, but nothing printed. He printed the report a second time, found it in the printer, and submitted it; he does not know how another copy of the report was left in the printer. Thereafter, respondent asked VP Clinton if he could do anything else and she gave him permission to leave campus. He did so.

45. Finally, respondent does not recall ever receiving training from the EGUSD on reporting child abuse. Nonetheless, respondent believes he handled the incident "very well."

BULLYING REPORT – STUDENT N.S.7

46. Respondent met with Student N.S.7 on multiple occasions, during which the student repeatedly complained of bullying. At all times, respondent tried to provide support (i.e., you are not alone, this happens to a lot of people, here is a story from my teenage years); give options to deal with the situation (i.e., walk away and/or a No Contact Contract); and comfort (i.e., everything will be okay and/or you will get through this). Respondent denies he ever told Student N.S.7 to engage in physically violent behavior or used profanity with Student N.S.7. Respondent made the same denials to Principal Wall and VP Clinton on March 4, 2016; he does not understand why they would find his denials not credible.

ABUSE REPORT – STUDENT A.B.7

47. For respondent, after reviewing the text messages suggesting abuse, "something sounded off." Because Student A.B.7 was on Counselor Stark's caseload, respondent thought she might know him and/or know more about his history. Because there was not an immediate threat to Student A.B.7, respondent relayed the information to Counselor Stark for investigation. He believes he was collaborating with a colleague about a student.

COUNSELOR TRAINING – PGHS COUNSELOR GROVHOUG

48. In 2016-2017, respondent heard his former PGHS colleagues were spreading rumors about him, including a claim they got him transferred. He felt bullied

and victimized all over again. Then, in May 2017, when he saw Counselor Grovhoug at the District training, everything came flooding back to him. He went home, started drinking alcohol and caffeine, and began drafting a text message to Counselor Grovhoug; he was venting, and for him, the text was cathartic. He repeatedly wrote, read, and edited the text. He had no intention of sending it, but his finger slipped, and he sent the message. He was unsure what to do next. He hoped Counselor Grovhoug would just delete the text and “maybe it could just slide.” However, the following week, respondent was escorted off the SMS campus.

49. In retrospect, respondent thinks he should have apologized, but at the time, he thought it would make it worse. He described the text as offensive and immature. He said it was out of character for him and he has never done something like that before or since. He has used the experience to improve his character. At hearing, he apologized to Counselor Grovhoug.

CHARACTER REFERENCES

50. Respondent offered five letters of support: a 2002 letter of reference from a college professor, and four 2018 letters from two professional colleagues, Sandra Barrett and Janet Bartholomew, and two fellow parishioners, Edie Dornbush and Raenett Earnest. Uniformly, the authors describe respondent as caring, empathetic, compassionate, as well as professional and cooperative. Respondent also offered several handwritten thank you notes from students.

51. At hearing, respondent also offered the testimony of Ms. Barrett and Paul VanderKlay, Pastor, Living Stones Christian Reformed Church. Ms. Barrett worked with respondent at Florin High School, when he was a Transition Specialist working with special education students, helping them learn job skills and find employment. Ms.

Barrett described respondent as a great team member, who is professional, collegial, and patient with staff, parents, and students. Ms. Barrett believes respondent wrote the text message to his colleague in error; he was frustrated and made a mistake. She would still hire him. Pastor VanderKlay described respondent as a trusted member of the church, elected deacon for two terms, and loved and respected by fellow parishioners; but he noted respondent was not a current member of the church. Pastor VanderKlay recounted providing support and counsel to respondent, especially when he worked at PGHS and felt bullied by his colleagues. Pastor VanderKlay coached respondent not to retaliate. He believes respondent's text message to his colleague was a lapse of judgement; he and respondent "were working to return good to evil or perceived evil but failed."

Discussion

52. A counselor is a unique educator, providing guidance and support to students outside the classroom. Counselors must combine education and experience with insight and good judgement. Without question, respondent is well-educated in the relevant field of study, earning two advanced degrees and a certificate in conflict resolution. Respondent also has many years of experience as a counselor, but his insight, self-awareness and decision-making are lacking. Too frequently, respondent is guided by impulse, emotion, and self-interest and not by rationale and deliberate reflection. Respondent's focus is often myopic, rather than holistic, focusing on the minutia without appreciating the entire landscape. His presentation of evidence and testimony reflected the same.

53. Repeatedly, respondent failed to make efforts to foster good working relationships with his colleagues; promote mutual understanding; and respect the contributions and perspectives of others. While he reported working collaboratively

with others, the evidence did not support the same. In fact, respondent was continually unable to collaborate with colleagues or act as a unified and cohesive component of the larger school system to meet the learning and developmental needs of all students. Based upon the Factual Findings as a whole, respondent is subject to discipline by the Commission, and based on the evidence presented at hearing, respondent's Credential should be revoked.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In an administrative proceeding in which a licensing agency seeks the suspension or revocation of an existing, professional license, the standard of proof is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 583.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Brooks* (2008) 169 Cal.App.4th 176, 190.)

2. The burden of proving the charges rests upon the party making the charges. (*Lopez v. Imperial County Sheriff's Office* (2008) 165 Cal.App.4th 1, 4.) Therefore, complainant bears the burden of proving the existence of grounds for disciplining respondent's credential, and such evidence must be clear and convincing to a reasonable certainty. (See, *Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1036, 1039-1040 [recognizing that the clear and convincing evidence standard applies to proceedings to discipline a teacher's credential, whereas

the lesser preponderance of the evidence standard applies to proceedings to dismiss a teacher from particular employment].)

Authority to Discipline

3. Education Code section 44421 provides in part:

The Commission on Teacher Credentialing shall privately admonish, publicly reprove, revoke or suspend for immoral or unprofessional conduct . . . or for any cause that would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service.

Causes of Action

IMMORAL ACTS AND ACTS OF MORAL TURPITUDE

4. In general, the term “immoral” is defined as “that 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 willful, flagrant or shameless conduct showing moral indifference to the opinions of respectable members of the community, and an inconsiderate attitude toward good order and the public welfare.” (*The Bd. Of Education Of The San Francisco Unified School Dist. et al. v. Marilyn Weiland* (1960) 179 Cal.App.2d 808, 811.) The immoral conduct of a teacher has been compared to the moral turpitude of an attorney. “Moral turpitude is sometimes used synonymously with dishonesty or a high degree of unfairness.” (*Ibid.*)

UNPROFESSIONAL CONDUCT AND UNFITNESS TO TEACH

5. The phrase “unprofessional conduct” is conduct such as to indicate unfitness to teach. (*Perez v. Commission On Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.) The California Supreme Court has delineated factors for determining whether particular conduct demonstrates unfitness to teach – Morrison Factors. (See, *Morrison v. State Bd. of Education* (1969) 1 Cal.3d 214, 229-230 [analyzing former Ed. Code, § 13202, predecessor to Ed. Code, § 44421.]) The Commission has adopted a regulation which includes the *Morrison* Factors. California Code of Regulations, title 5, section 80302, subdivision (a), provides:

The Committee, in conducting its investigation, shall determine the relationship between the alleged misconduct and the applicant’s or holder’s fitness, competence, or ability to effectively perform the duties authorized by the credential. Such relationship may be based on facts which include, but are not limited to, the following:

- (1) The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated;
- (2) The proximity or remoteness in time of the conduct;
- (3) The type of credential held or applied for by the person involved;
- (4) The extenuating or aggravating circumstances surrounding the conduct;

(5) The praiseworthiness or blameworthiness of the motives resulting in the conduct;

(6) The likelihood of the recurrence of the questioned 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;

(8) The publicity or notoriety given to the conduct.

EVIDENT UNFITNESS FOR SERVICE

6. "Evident unfitness for service" means clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. Unlike unprofessional conduct, evident unfitness for service connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet professional standards. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) The *Morrison* Factors must be analyzed as a threshold matter to determine if the conduct indicates unfitness for service. (*Id.* at p. 1445.) If the *Morrison* Factors are met, the next step is to determine if the teacher's unfitness is "'evident'; i.e., whether the offensive conduct is caused by a defect in temperament." (*Ibid.*)

Causes for Adverse Action

7. Based upon the Factual Findings as a whole, cause exists under Education Code section 44421, for adverse action against respondent's Credential on the grounds of immoral acts and acts of moral turpitude. Respondent's text message to

Counselor Grovhoug was indecent, showing a high degree of unfairness and an indifference to the opinions of respectable members of the community.

8. Based upon the Factual Findings as a whole, cause exists under Education Code section 44421, for adverse action against respondent's Credential on the grounds of unprofessional conduct and evident unfitness for service. Applying the *Morrison* Factors, respondent's conduct shows an unfitness to teach and/or counsel. From 2010 through 2017, respondent used his Credential to act as a school counselor for the EGUSD. Unfortunately, respondent did not properly execute his duties (failing to report child abuse), made questionable decisions (sending an abused child back to class and referring a report of child abuse to another counselor for investigation), and caused conflict with his colleagues on multiple occasions (failing to get help for Counselor Stark and sending a vulgar text message to Counselor Grovhoug). Respondent's conduct risked harm to students, fellow counselors, teachers, the educational community, and the public at large. Further, respondent's conduct evidences several aggravating factors², including: multiple acts of wrongdoing or a pattern of misconduct; the misconduct significantly harmed a child entrusted to the care of a credential holder or applicant, or significantly harmed the public or the educational system; and the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source. (Cal. Code Regs., tit. 5, § 80300, subd. (b)(2), (4) & (6).)

² An "[a]ggravating factor" is an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession.

9. Ultimately, the evidence established respondent lacks the intuition, insight, and impulse control necessary to work as a counselor. Even with professional coaching and/or mentorship, respondent's behavior is very likely to recur, and the CTC owes a duty to students to provide a safe and stable learning environment.

10. Complainant seeks revocation of respondent's Credential. Based upon the Factual Findings as a whole, complainant has proven respondent engaged in immoral acts or acts of moral turpitude, as well as unprofessional conduct and an evident unfitness for service. For all the above reasons, the public interest and safety requires that respondent's Credential be revoked.

ORDER

Respondent Jay Michael Jasper's Clear Pupil Personnel Services Credential is hereby REVOKED.

DATE: November 13, 2020



ERIN R. KOCH-GOODMAN

Administrative Law Judge

Office of Administrative Hearings