

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

In the Matter of the Accusation Against:

AMADOR VINCENTE MARTINEZ, Respondent

Commission Case No. 2-418508478

OAH No. 2023110735

PROPOSED DECISION

Sean Gavin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter on May 21, 2024, in Sacramento, California.

Phillip L. Arthur, Deputy Attorney General, represented Amy Reising (complainant), Deputy Director of the California Commission on Teacher Credentialing (Commission).

Matthew Chevedden, Attorney at Law, represented Amador Vincente Martinez (respondent), who was present throughout the hearing.

Evidence was received, the record closed, and the parties submitted the matter for decision on May 21, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. On February 26, 2016, the Commission issued respondent a Certificate of Clearance. The certificate expired March 1, 2021, and has not been renewed.

2. On August 31, 2016, the Commission issued respondent an Emergency 30-Day Substitute Teaching Permit. The permit expired September 1, 2017, and has not been renewed.

3. On May 31, 2017, the Commission issued respondent a preliminary single subject teaching credential and a clear Specialist Instruction Credential in Agriculture. Both expired on June 1, 2022.

4. On July 22, 2019, the Commission issued respondent a Clear Single Subject Teaching Credential (teaching credential). The teaching credential is scheduled to expire August 1, 2024, unless renewed.

5. On June 3, 2022, the Commission issued respondent a Specialist Instruction Credential in Agriculture (specialist credential). The specialist credential is scheduled to expire August 1, 2024, unless renewed.

ALLEGATIONS IN THE ACCUSATION

6. On April 27, 2023, the Commission's former Executive Director, acting solely in her official capacity, signed and thereafter filed an Accusation seeking to discipline respondent's credentials based on his alleged unprofessional conduct, evident unfitness for service, immoral conduct, and acts involving moral turpitude. Complainant alleged that between August 18, 2021, and June 20, 2022, while working

as an agriculture teacher at Nevada Union High School (NUHS), respondent engaged in inappropriate conduct toward J.M., a female student in his class. Specifically, complainant alleged that on or about June 7, 2022, J.M. filed a complaint against respondent with NUHS in which she alleged the following:

- a. While riding in a car with Respondent to a state conference, seated next to Respondent, Respondent rested his arm on J.M.'s leg for over a minute, placing his hand on her knee.
- b. Respondent frequently kept J.M. in his classroom by herself.
- c. Respondent touched/grazed J.M.'s legs or butt several times.
- d. When J.M. noticed Respondent touching her enough to consciously move out of the way, Respondent would still graze or run into J.M.
- e. Respondent made comments to J.M. about her shape and size.
- f. Respondent asked to touch the material of J.M.'s clothes and made comments about J.M.'s clothes and how she dressed.
- g. Respondent had a private discussion with J.M. about job offers and informed J.M. that she "and the other kids" were the reason he stayed at NUHS.

h. Respondent called J.M. at strange hours with questions that could have been answered via text.

i. Respondent took a picture with J.M. at prom, then requested a copy of the picture from J.M. at 1 a.m. the following morning.

j. Respondent looked J.M. "up and down."

k. Respondent forced/requested hugs from J.M. after disciplinary conversations.

l. Respondent made comments about J.M.'s makeup and appearance.

m. Respondent asked J.M. to help him with personal matters in his classroom, while they were alone in the classroom.

n. Respondent had private conversations with J.M. and then asked J.M. not to tell other school advisors about these conversations.

o. Respondent always offered to give J.M. rides.

p. Respondent drove J.M. to her mother's work one afternoon.

7. At hearing, complainant moved to amend the Accusation to correctly identify respondent's first day of work at NUHS as August 18, 2021, instead of June 18, 2021. Respondent did not object and the Accusation was so amended.

8. After receiving the Accusation, respondent timely filed a Notice of Defense in which he raised an affirmative defense to object to certain portions of the Accusation as too indefinite or uncertain. At hearing, he waived this affirmative defense. After respondent filed his Notice of Defense, the matter was set for an evidentiary hearing before an ALJ of OAH, pursuant to Education Code section 44246 and Government Code section 11500 et seq.

Complainant's Evidence

9. During the 2021-2022 school year, J.M. was a junior at NUHS. She was a student in one of respondent's classes and a teaching assistant (TA) in another. In addition, she was an officer in Future Farmers of America (FFA), a program respondent helped advise. As a result, J.M. and respondent interacted regularly.

10. J.M. filed a complaint with the school about respondent in approximately June 2022. At hearing, she described respondent's behavior that concerned her. A few months into the school year, J.M. began to spend more time in the Agriculture department than most students. On five or six occasions, respondent commented about J.M.'s clothing. He said things like, "that's different" or "that's interesting" about what she wore. On another occasion, he remarked, "I wouldn't have thought that would fit you this way" about her clothing. On another, he said, "I didn't realize how small you were."

11. Approximately three or four times, respondent touched the material of J.M.'s clothing at her shoulder or knee. On one occasion, he gestured to touch her clothing and commented about her "extravagant outfit changes from day to day." He also "looked [her] up and down" five or six times by "glancing in [her] direction in an obvious way." Respondent's conduct made J.M. feel "uncomfortable to question

something I shouldn't have to question." She believed his comments and touching her clothing were unrelated to his classroom instruction.

12. Based on respondent's conduct, J.M. began to consciously move out of his way in the classroom. Despite these efforts, respondent would still approach J.M. very closely and sometimes graze against her or bump into her leg, knee, or butt. He did this approximately six or seven times. At first, the contact seemed accidental to J.M. She acknowledged the classroom was small and tightly packed with furniture and equipment. Respondent never said anything to J.M. to suggest his contact was intentional. However, J.M. felt "very uncomfortable" and tried to "really keep track of it" and pay attention to whether respondent behaved the same way toward other students. In J.M.'s opinion, respondent did not closely approach, bump into, or graze against other students nearly as much as he did to her.

13. Respondent also occasionally asked J.M. to stay behind in the classroom after class ended. Sometimes respondent remained with her, but other times he did not. J.M. acknowledged her TA and FFA duties sometimes required her to stay at school, occasionally as late as 9:00 p.m. However, she found respondent's requests, and his stated reasons for the requests, to be "off-topic" and unrelated to classroom instruction. J.M. "tried to make it clear" she preferred to wait until their next regular class period to talk. Respondent made these requests approximately five or six times, which was often enough for J.M.'s friends to begin to tease her that respondent had created a "dad and daughter relationship" with her.

14. In addition to asking J.M. to stay after class, respondent also made other comments that seemed "parental" to J.M. Specifically, approximately seven or eight times, respondent criticized J.M. for being disrespectful. J.M. recalled one incident in which she declined to meet with respondent after school hours. The next day,

respondent asked why J.M. seemed to be “disobedient” to respondent. During the conversation, respondent told J.M. he had other job offers but intended to remain at NUHS the next school year in part because she was his “number one kid.” He explained he held her to “a higher standard.”

15. At the end of the conversation, he told J.M., “give me a hug, let’s settle this.” J.M. hugged respondent because she felt she had to compromise her comfort to appease his authority over her. J.M. found the request for a hug “jarring” and inappropriate because she had never ended her conversations with other teachers with any sort of physical embrace. She also felt uncomfortable having what she considered to be an intimate conversation with respondent, especially about boundaries she did not believe she should have to set with him.

16. Respondent also contacted J.M. outside of school hours, which made her feel uncomfortable. He sometimes called J.M. to ask her to come back to campus, which she found unnecessary. Other times, he called, texted, or emailed her to ask what she considered to be “irrelevant” or non-urgent questions. For example, related to their FFA activities or J.M.’s TA duties, respondent sometimes contacted J.M. to confirm their plans for the next day or ask her for an address. J.M. believed these contacts were unnecessary. She was “alarmed” that respondent was “crossing boundaries outside of work hours.” J.M. estimated that, in total, respondent contacted her after school hours five or six times. Once or twice, he contacted her between 9:00 and 9:30 p.m. The other times, he contacted her between 4:00 and 7:00 p.m.

17. One on occasion in November or December 2021, as J.M. was walking though the school parking lot after school, respondent honked his car horn to get her attention and then offered her a ride around the corner to her mother’s work. J.M.

agreed and sat in the back seat during the approximately two-minute drive. She did not believe respondent was trying to “take advantage of [her].”

18. Later in the school year, respondent drove J.M. and other students to and from a field trip destination. On the way home, J.M. sat between respondent and another student in the front seat of respondent’s truck. J.M.’s hips were one to two inches apart from respondent and the other student. Respondent commented that he was surprised J.M. was “small enough” to fit in the middle seat. Then, for “nearly the whole car ride,” which lasted over 30 minutes, respondent rested his elbow and eventually his entire arm on J.M.’s leg. He did not grip or grab her leg in any way, but J.M. felt “very uncomfortable” and “very vulnerable.” She felt even more uncomfortable by her belief that respondent seemed “unfazed” by the interaction. She did not complain to respondent or ask him to move his arm at any time.

19. Near the end of the school year, J.M. attended NUHS’s senior prom with her sister and some friends. Respondent chaperoned the dance. When respondent saw J.M., he said he was surprised to see her there because she was not yet a senior. He then asked if they could pose together for a photograph. J.M. agreed. A few hours after the prom ended, at approximately 1:00 a.m., respondent texted J.M. and asked her to send him the photo. J.M. was already asleep and did not respond. Respondent then texted her again later that day to request the photo. J.M. thought it was strange that respondent was asking for the photo at 1:00 a.m. and on a weekend when they would see one another the following Monday at school. To her, the interaction felt “forced and uncomfortable.”

NUHS INVESTIGATION

20. In late May 2022, J.M. asked another teacher for advice about how to handle her discomfort with respondent's behavior. That teacher reported the conduct to Kelly Rhoden, NUHS's principal. Ms. Rhoden and NUHS's assistant principal, Luke Browning, investigated the complaint. On June 9, 2022, Mr. Browning and two other NUHS staff members met with respondent. They shared with him a list of J.M.'s complaints and asked him to address each one. Generally, respondent acknowledged J.M.'s complaints were true, but explained he did not believe he behaved inappropriately.

21. For example, respondent admitted he commented about J.M.'s clothing, but explained it was in the context of ensuring her attire was appropriate for a shop class environment in which students used power tools. Specifically, he acknowledged telling J.M. he was not sure he had shop overalls or an FFA jacket that would fit her because of her diminutive stature. He also said he would sometimes have to touch the fabric of students' clothing to ensure it was appropriate for the shop.

22. Similarly, respondent acknowledged he reprimanded J.M. for being disrespectful. He explained he was counseling other students about their own behavior when J.M. interjected to stand up for her classmates. He advised J.M. to allow him to speak with the other students as he saw fit. J.M. replied that she felt frustrated, to which respondent answered, "we are going to work some things out." He then gave J.M. a "pat on the back or side hug."

23. Respondent admitted he drove J.M. to her mother's work one time. He believed he had her mother's permission to do so, and had J.M. sit in the back seat with the windows rolled down. Regarding the allegation that he rested his arm on

J.M.'s leg while driving home from a field trip, respondent acknowledged "she did ride up front [and] was right there," but he tried his best not to touch her or others in the truck.

24. Respondent admitted he sometimes called J.M. with questions. He recalled one instance when he called her because he arrived at a canned food drive event but did not know exactly where to go.

25. Respondent did not believe he was singling J.M. out unfairly. Rather, he explained that, as an FFA officer, she had "more responsibility and more freedom." He denied consciously bumping into or grazing against J.M. He denied giving J.M. unwanted attention. He acknowledged one incident in which J.M. wore "really cool make up" that he told her made her eye look like "an oxidized penny." He also acknowledged telling J.M. that she and her classmates were a major reason he remained at NUHS.

26. Finally, respondent acknowledged he posed for a photograph with J.M. at the senior prom and then asked for a copy of it. He explained he took photos with several students and did not believe doing so was a problem. After the prom ended, he got fast food and drove home. He then sent the text asking for the photo and went to sleep.

27. Mr. Browning prepared a written report in which he summarized respondent's responses to J.M.'s complaints. The report did not identify what NUHS policies, if any, applied to the circumstances, nor did it state whether respondent violated any NUHS policies. At hearing, Ms. Rhoden confirmed the report was part of respondent's personnel file. She confirmed NUHS did not reach any conclusions or

take any disciplinary action against respondent. It referred the matter to local law enforcement, but Ms. Rhoden was unaware of what happened as a result, if anything.

28. After the investigation, Ms. Rhoden met with respondent and Dan Frisella, the school district's superintendent. During the meeting, Ms. Rhoden and Mr. Frisella suggested that NUHS might choose not to reelect respondent for the next school year. They also suggested that, as an alternative, respondent could resign. At hearing, Ms. Rhoden confirmed she had observed respondent teaching and found him to be a "hands on" teacher who got his students "interested in the work." Apart from J.M.'s complaint, Ms. Rhoden considered respondent to be a good teacher.

29. On June 20, 2022, respondent resigned from his position at NUHS. As a result, the NUHS school district filed a Notification of Credential Holder's Change in Employment Statue Due to Allegations of Misconduct with the Commission.

Respondent's Evidence

RESPONDENT'S WRITTEN STATEMENT

30. After NUHS notified the Commission of respondent's resignation, a committee of the Commission began an investigation and contacted respondent for his version of events. He submitted a letter, dated April 20, 2023, in which he explained his conduct. He acknowledged joking with J.M. and other students about the school-issued shop clothes being oversized, but he denied making any derogatory comments about J.M.'s size or shape. He acknowledged calling J.M. after school once to ask for directions. He acknowledged telling J.M. and her classmates that his students were a reason for him to stay at NUHS.

31. Regarding the prom photo, respondent wrote in his letter, "I understand that the prom photo situation can seem strange at first. However, I asked for photos with all of my students. I only asked for a copy of it late as I returned home late."

32. Generally, respondent denied the balance of J.M.'s complaints against him. He specifically denied intentionally resting his arm on J.M.'s leg during their drive home from the field trip.

33. Respondent explained these events have caused him to think and reflect in two ways:

First, I will and have strengthened my boundaries with students. Second, I have reflected on how to respond to shocking information. Here, I quickly resigned, causing this current action before the Committee. Though I wished to move past the allegations, perhaps waiting and letting the process reach its end could have better shown what really occurred. I learned to be patient.

RESPONDENT'S TESTIMONY

34. At hearing, respondent testified consistently with his statements during NUHS's investigation and with his letter to the Commission. He also provided additional detail. He explained his classroom at NUHS had spaces between desks that were approximately three to four feet wide. Respondent is a large man who estimated his body is two and a half to three feet across. As a result, he bumped into students approximately two or three times each class period. He never purposefully made contact with a student. He denied intentionally grazing against J.M.'s leg, butt, or any other part of her body.

35. Respondent also acknowledged commenting that J.M. was “a petite individual” when he was looking for a shop jacket to fit her. Further, he admitted he complimented her eye shadow one day because it resembled rusted copper and “looked cool.”

36. Respondent denied touching students’ clothing just to feel the fabric. Rather, he sometimes had to verify that their clothing material would not melt while they used welding tools. He does not believe he singled out J.M. more than any other student in this regard.

37. Respondent denied intentionally resting his arm on J.M.’s leg while he drove. He holds the steering wheel with an underhand grip near the bottom of the wheel. He acknowledged his arm may have come into contact with J.M. during the drive, but he insisted any such contact was incidental and caused by being crowded into the front seat with two other people. At first, respondent questioned whether his front seat would even be large enough to fit three people. He remarked that he was surprised J.M. could fit comfortably in the middle seat.

38. Respondent acknowledged he drove J.M. to her mother’s work on one occasion. He recalled that the weather was cold and drizzling. He knew driving a student was “frowned upon” by NUHS, but he did not think it was inappropriate to do so in this case because he believed he had her mother’s permission, it was a short drive, and he had her sit in the back seat.

39. Besides the incident after the senior prom, respondent never texted or contacted J.M. after 8:00 p.m. He only ever contacted her after school hours to “get information.” He contacted her instead of another teacher because J.M. was directly assigned to his class for FFA and because she often seemed organized.

40. Regarding the prom photo, respondent explained his chaperone duties required him to greet students at the entrance and ensure they had tickets and were ready to enter. In that role, he interacted with many students. He took photographs with multiple students that night, including J.M. He does not believe he behaved inappropriately toward J.M. or her date.

41. When the prom ended, respondent drove to a restaurant, then went home. He got home at approximately 12:30 a.m. and texted J.M. at 1:00 a.m. He was “not conscientious of the time” when he did so. He can understand why J.M. would be concerned with receiving a message from him so late at night, and he regrets making her uncomfortable. He sees now that, as a teacher, he must maintain appropriate boundaries with students at all times.

42. Respondent now works at Pioneer High School (Pioneer) in Woodland, California. Apart from texting J.M. at 1:00 a.m., respondent does not regret his actions at NUHS. Nevertheless, this experience has changed how he interacts with his current students. Now, he is careful to keep personal matters private. For example, he discussed the possibility of leaving NUHS with J.M. and her classmates. He would not do that again in the future. Similarly, whereas before he would pat a student on the back or offer a side hug, he now exclusively uses handshakes with his students. He feels connected to the students at Pioneer and wants to continue growing the Agriculture department.

CHARACTER EVIDENCE

43. Linda Ergo, the grandmother and legal guardian of one of respondent’s former students at NUHS, testified at hearing. During her granddaughter’s time in respondent’s class, Ms. Ergo interacted with respondent approximately once every two

months. She observed that respondent seemed to care about his students. She never saw him engage in any inappropriate conduct, nor did her granddaughter report any to her. She has also bought and bred lambs from respondent's family in the past, though she has not seen him in approximately two years. She is aware of the allegations in the Accusation but does not believe them because "it's not like [respondent]" to act that way.

44. Respondent submitted three letters of support. Anthony Peters worked with respondent as a teacher for approximately five years before respondent began at NUHS. Mr. Peters noted that, during that time, he "saw nothing nor heard of anything that would make me question [respondent's] integrity as a person." To the contrary, respondent "was a stalwart presence on campus and among the staff. He valued his integrity and held himself to an incredibly high standard." Mr. Peters praised respondent's hard work, dedication, and commitment to his students.

45. Izaskun Zallo is an Agriculture teacher and chair of the Agriculture department at Pioneer. She has regularly observed respondent in the classroom. She noted:

[Respondent] is a strong teacher who truly cares about his students and is dedicated to their success. He is able to make strong connections with students such that they look forward to attending his class. Every day, he greets students at the door with a firm handshake. Not only is he emulating the importance of respect, but also setting the tone for what his expectations are in his classroom.

46. In Ms. Zallo's opinion, respondent is "a skilled educator" who is "always honest, fair and respectful towards students and expects the same from each of them, in and out of the classroom." She noted respondent "makes himself available during lunch and after school on several days so that students may come in and continue working on their shop projects and developing their skills outside of class time." Regarding respondent's interpersonal interactions with students, Ms. Zallo observed "he consistently demonstrates a high level of integrity and honesty in his interactions with others, always striving to do the right thing even during difficult situations." She is aware of the allegations against respondent. Nevertheless, she "wholeheartedly recommend[s] without reservation that [respondent] should keep his teaching license and continue to educate students in California."

47. Jo Moniz, the mother of one of respondent's former students, is aware of the allegations against respondent. In her letter, she wrote, in relevant part, "I wholeheartedly trusted [respondent] with my child." In her opinion, "[respondent] encouraged the kids to believe in themselves and gave them confidence, even with my son at times, but never was [respondent] out of line or ever stepped over the boundaries of his teaching position." She observed he was "always professional, courteous and respected by the kids as well as the parents." Ms. Moniz noted she worked in the medical field for 25 years, "where you had to announce to the patient that you were going to touch their arm," and with that standard in mind, she believes "[respondent] was never out of line with any of his students/parents."

48. Respondent also submitted recent evaluations of his work at Pioneer. His February 2023 evaluation rated him as "meets and occasionally exceeds professional standards of competence" in all categories, including "engaging and supporting all students in learning," "creating and maintaining effective environments for student

learning," "understanding and organizing subject matter for student learning," "planning instruction and designing learning experiences for all students," "assessing students for learning," and "developing as a professional educator."

Analysis

49. J.M. was a credible witness. She answered direct questions forthrightly and without hesitation. She explained her answers in appropriate detail when asked. Her testimony was consistent throughout direct and cross-examination. She has no interest in the outcome of this hearing. She credibly explained her experiences with respondent, and her testimony is given great weight.

50. Respondent was also a credible witness. He acknowledged his mistakes, in particular his choice to text J.M. at 1:00 a.m. and his belief that NUHS "frowned upon" giving rides to students. His testimony was consistent with his statements to NUHS administrators and with his letter to the Commission. His testimony is also given great weight.

51. The Accusation includes sixteen separate allegations of unprofessional conduct. Given the volume of allegations, it is appropriate to address each separately.

WHILE RIDING IN A CAR WITH RESPONDENT TO A STATE CONFERENCE, SEATED NEXT TO RESPONDENT, RESPONDENT RESTED HIS ARM ON J.M.'S LEG FOR OVER A MINUTE, PLACING HIS HAND ON HER KNEE

52. J.M. credibly testified that complainant's arm was in contact with her leg for an extended time during their drive. J.M. and respondent both credibly testified that they were cramped in the front seat with another student beside J.M. Respondent is a large man and he credibly testified that any contact with J.M. during this drive was

incidental. J.M. acknowledged that respondent did not grip or grab her leg in any way. She did not complain or ask respondent to move his arm during the drive. Respondent credibly testified that he held the bottom of the steering wheel with an underhand grip, which is consistent with J.M.'s testimony that respondent's arm was low and near her. Under the circumstances, although complainant proved respondent's arm touched J.M.'s leg, complainant did not prove that such conduct was intentional or irresponsible. As such, complainant did not prove respondent's conduct constituted unprofessional conduct, evident unfitness for service, immoral conduct, or acts of moral turpitude.

RESPONDENT FREQUENTLY KEPT J.M. IN HIS CLASSROOM BY HERSELF

53. J.M. and respondent both credibly testified that, as a TA and FFA officer, J.M. had duties and responsibilities that required her to interact with respondent outside of their regular class schedule and, sometimes, outside of regular school hours. J.M. credibly testified that sometimes respondent remained in the classroom with her, but other times he did not. Complainant did not prove that this practice constituted unprofessional conduct, evident unfitness for service, immoral conduct, or acts of moral turpitude.

RESPONDENT TOUCHED/GRAZED J.M.'S LEGS OR BUTT SEVERAL TIMES

54. J.M. and respondent both credibly testified that their classroom at NUHS was tightly packed with furniture and equipment. Respondent acknowledged he is a large man who regularly bumped into students throughout his teaching day. Although J.M. credibly testified that respondent bumped into or grazed her legs or butt multiple times, complainant did not prove that under the circumstances, such conduct was

intentional or constituted unprofessional conduct, evident unfitness for service, immoral conduct, or acts of moral turpitude.

WHEN J.M. NOTICED RESPONDENT TOUCHING HER ENOUGH TO CONSCIOUSLY MOVE OUT OF THE WAY, RESPONDENT WOULD STILL GRAZE OR RUN INTO J.M.

55. As explained above, complainant did not prove that respondent's contact with J.M. in the classroom was intentional. As such, complainant did not prove respondent's conduct constituted unprofessional conduct, evident unfitness for service, immoral conduct, or acts of moral turpitude.

RESPONDENT MADE COMMENTS TO J.M. ABOUT HER SHAPE AND SIZE

56. J.M. credibly testified that respondent commented about her size and how certain clothing fit her. Respondent credibly explained the circumstances under which he made those comments. Specifically, respondent remarked that certain school-provided protective clothing might not fit J.M. He also noted his surprise that she would fit in the middle seat of his truck. Under the circumstances, complainant proved such conduct occurred, but did not prove it constituted unprofessional conduct, evident unfitness for service, immoral conduct, or acts of moral turpitude.

RESPONDENT ASKED TO TOUCH THE MATERIAL OF J.M.'S CLOTHES AND MADE COMMENTS ABOUT J.M.'S CLOTHES AND HOW SHE DRESSED

57. As explained above, respondent credibly explained that he touched and commented about J.M.'s clothing to ensure it was appropriate to wear in a shop with power tools and welding equipment. Under the circumstances, complainant proved

such conduct occurred, but did not prove it constituted unprofessional conduct, evident unfitness for service, immoral conduct, or acts of moral turpitude.

RESPONDENT HAD A PRIVATE DISCUSSION WITH J.M. ABOUT JOB OFFERS AND INFORMED J.M. THAT SHE "AND THE OTHER KIDS" WERE THE REASON HE STAYED AT NUHS

58. J.M. credibly testified that respondent told her she and her classmates were one of the main reasons he chose to stay at NUHS. Respondent did not deny those comments. However, although complainant proved respondent made these comments, complainant did not present evidence to support a finding that such comments constituted unprofessional conduct, evident unfitness for service, immoral conduct, or acts of moral turpitude.

RESPONDENT CALLED J.M. AT STRANGE HOURS WITH QUESTIONS THAT COULD HAVE BEEN ANSWERED VIA TEXT

59. J.M. and respondent both credibly testified that, as a TA and FFA officer, J.M. had duties and responsibilities that required her to interact with respondent outside of their regular class schedule and, sometimes, outside of regular school hours. Respondent credibly explained that he called J.M. to ask for directions when he arrived at a canned food drive event and did not know where to go. Under the circumstances, although complainant proved respondent called J.M. after school hours, she did not prove such conduct constituted unprofessional conduct, evident unfitness for service, immoral conduct, or acts of moral turpitude.

RESPONDENT TOOK A PICTURE WITH J.M. AT PROM, THEN REQUESTED A COPY OF THE PICTURE FROM J.M. AT 1:00 A.M. THE FOLLOWING MORNING

60. This event is undisputed. Although respondent admitted he was “not conscientious of the time” when he texted J.M. at 1:00 a.m., he had a duty as a teacher to maintain appropriate boundaries with his students. Although complainant did not prove that posing for the photo with J.M. was inappropriate, by texting J.M. at 1:00 a.m. to ask for the photo, respondent breached those boundaries and therefore behaved unprofessionally. Complainant did not prove such conduct constituted evident unfitness for service, immoral conduct, or acts of moral turpitude.

RESPONDENT LOOKED J.M. "UP AND DOWN"

61. J.M. testified that respondent “looked [her] up and down” five or six times by “glancing in [her] direction in an obvious way.” Although her testimony was credible that she felt uncomfortable, without more, complainant failed to prove that glancing in J.M.’s direction five or six times constituted unprofessional conduct, evident unfitness for service, immoral conduct, or acts of moral turpitude.

RESPONDENT FORCED/REQUESTED HUGS FROM J.M. AFTER DISCIPLINARY CONVERSATIONS

62. J.M. and respondent credibly testified that after a conversation in which respondent reprimanded J.M. for interjecting while he talked with other students, he told J.M., “give me a hug, let’s settle this.” J.M. did so. J.M. credibly testified that doing so made her feel uncomfortable. However, complainant did not produce evidence to prove that hugging a student in this context was inappropriate. Nor did complainant prove that NUHS had a policy about teachers hugging students, or that respondent

violated that or any other NUHS policy. Therefore, although complainant proved respondent hugged J.M., she did not prove hugging a student constituted unprofessional conduct, evident unfitness for service, immoral conduct, or acts of moral turpitude.

RESPONDENT MADE COMMENTS ABOUT J.M.'S MAKEUP AND APPEARANCE

63. J.M. credibly testified that respondent commented about how her clothing fit her on multiple occasions. Respondent credibly explained that part of his job required him to ensure his students wore clothing that was appropriate and safe in a shop environment. Respondent acknowledged complimenting J.M.'s eye makeup one time. Complainant did not prove such behavior constituted unprofessional conduct, evident unfitness for service, immoral conduct, or acts of moral turpitude.

RESPONDENT ASKED J.M. TO HELP HIM WITH PERSONAL MATTERS IN HIS CLASSROOM, WHILE THEY WERE ALONE IN THE CLASSROOM

64. J.M. and respondent both credibly testified that, as a TA and FFA officer, J.M. had duties and responsibilities that required her to interact with respondent outside of their regular class schedule and, sometimes, outside of regular school hours. The only evidence of a personal matter that respondent discussed with J.M. was that, on at least one occasion, respondent told J.M. he was considering leaving NUHS. He then said J.M. and her classmates were a main reason why he would stay. Complainant did not prove making that comment constituted asking J.M. for help, nor that it constituted unprofessional conduct, evident unfitness for service, immoral conduct, or acts of moral turpitude.

RESPONDENT HAD PRIVATE CONVERSATIONS WITH J.M. AND THEN ASKED J.M. NOT TO TELL OTHER SCHOOL ADVISORS ABOUT THESE CONVERSATIONS

65. Complainant did not produce evidence to support this allegation.

RESPONDENT ALWAYS OFFERED TO GIVE J.M. RIDES

66. Complainant did not produce evidence to support this allegation.

RESPONDENT DROVE J.M. TO HER MOTHER'S WORK ONE AFTERNOON

67. J.M. and respondent credibly testified that, on one occasion, respondent drove J.M. to her mother's work. J.M. willingly accepted respondent's offer and rode in the back seat for approximately two minutes. Respondent credibly testified that he offered J.M. the ride because it was cold and drizzling and he believed he had her mother's permission. Under those circumstances, complainant did not prove respondent's behavior constituted unprofessional conduct, evident unfitness for service, immoral conduct, or acts of moral turpitude.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving the existence of grounds for disciplining respondent's credentials and must do so by clear and convincing evidence to a reasonable certainty. (*Daniels v. Dept. of Motor Vehicles* (1983) 33 Cal.3d 532, 536 ["When an administrative agency initiates an action to suspend or revoke a license, the burden of proving the facts necessary to support the action rests with the agency making the allegation"]; *Gardener v. Comm'n. 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].) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a high probability [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original).

Causes for Discipline

2. The Commission may discipline a credential based on the holder's unprofessional conduct. (Ed. Code, § 44421.) As discussed above, complainant proved by clear and convincing evidence that respondent engaged in unprofessional conduct when he texted his student at 1:00 a.m. to ask for a photo they took together earlier that evening. Such conduct was unprofessional because it violated the rules or ethical code of the teaching profession and was unbecoming of a teacher in good standing. (*Bd. of Education v. Swan* (1953) 41 Cal.2d 546, 553; quoting, 66 Corpus Juris, p. 55.) Cause therefore exists to discipline respondent's credentials for unprofessional conduct pursuant to Education Code section 44421.

3. The Commission may discipline a credential based on the holder's evident unfitness for service. (Ed. Code, § 44421.) "Evident unfitness for service" means a teacher is clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. (*Woodland Joint Unified School Dist. v. Com. on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) "Unlike 'unprofessional conduct,' 'evident unfitness for service' connotes a fixed character trait,

presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Ibid.*)

4. As discussed above, complainant did not prove by clear and convincing evidence that respondent demonstrated evident unfitness for services. Cause therefore does not exist to discipline his credentials for evident unfitness for services pursuant to Education Code section 44421.

5. The Commission may discipline a credential based on the holder's immoral conduct. (Ed. Code, § 44421.) The term "immoral" has been defined generally as "that which is hostile to the welfare of the general public and contrary to good morals. . . . [It] 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 as an inconsiderate attitude toward good order and the public welfare." (*Bd. of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

6. As discussed above, complainant did not prove by clear and convincing evidence that respondent engaged in immoral conduct. Cause therefore does not exist to discipline his credentials for immoral conduct pursuant to Education Code section 44421.

7. The Commission may discipline a credential "for any cause that would have warranted the denial of an application for a credential or the renewal thereof." (Ed. Code, § 44421.) An application for a credential may be denied if the applicant "has committed any act involving moral turpitude." (Ed. Code, § 44345, subd. (e).) "Moral turpitude" has been defined as "everything done contrary to justice, honesty, modesty or good morals." (*Rice v. Alcoholic Beverage Appeals Bd.* (1979) 89 Cal.App.3d 30, 36.)

An act involves moral turpitude if it involves a serious breach of a duty owed to another or to society. (*In re Stuart K. Lesansky* (2001) 25 Cal.4th 11, 16.)

8. As discussed above, complainant did not prove by clear and convincing evidence that respondent committed an act involving moral turpitude. Cause therefore does not exist to discipline his credentials for committing an act involving moral turpitude pursuant to Education Code sections 44421 and 44345, subdivision (e).

Morrison Factors

9. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, the California Supreme Court concluded that a teaching credential cannot be disciplined for immoral conduct, unprofessional conduct, or conduct involving moral turpitude “unless that conduct indicates that the [educator] is unfit to teach.” (*Id.* at p. 229.) The Court outlined factors to consider when determining whether an educator’s conduct demonstrates unfitness to teach, which have been codified in California Code of Regulations, title 5, section 80302, subdivision (a). The criteria are as follows: (1) the likelihood of adverse effects on students, fellow teachers, or the educational community; (2) the proximity or remoteness in time of the misconduct; (3) the type of credential held by respondent; (4) extenuating or aggravating circumstances; (5) praiseworthiness or blameworthiness of motives; (6) likelihood of recurrence; (7) the extent to which disciplinary action may chill or have an adverse impact upon the exercise of constitutional rights among teachers or other persons involved; and (8) the publicity or notoriety of respondent’s misconduct.

10. Respondent’s unprofessional conduct had an adverse effect on J.M. His unprofessional conduct occurred approximately two years ago, which is fairly recent. As shown through the evidence, respondent’s credentials can require him to work

closely with students, often one-on-one, and sometimes away from campus. As a result, his ability to maintain appropriate professional boundaries is even more important. Respondent bears the sole responsibility for his unprofessional conduct. Given respondent's lack of disciplinary history before or after these events, coupled with his sincere remorse and acknowledgement of his failing, as well as the support of his former and current colleagues, his misconduct is unlikely to recur. Disciplining respondent's credentials is unlikely to have a negative impact on other teachers' exercise of their constitutional rights. There was no evidence that respondent's 1:00 a.m. text message to J.M. was publicized or notorious.

AGGRAVATING AND MITIGATING FACTORS

11. The Commission's regulations define "aggravating factor" as "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." (Cal. Code Regs., tit. 5, § 80300, subd. (b).) The definition includes six examples:

- (1) a prior record of adverse action including the nature and extent of that record;
- (2) that the misconduct evidences multiple acts of wrongdoing or demonstrate a pattern of misconduct;
- (3) that the misconduct was surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators;

- (4) that the misconduct significantly harmed a child entrusted to the care of a credential holder or applicant, significantly harmed the public or the educational system;
- (5) that the holder or applicant demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders; or
- (6) that the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source.

12. Notably, none of these aggravating factors are present in this case. Respondent has taught for approximately eight years with no prior employer or credential discipline. The wrongdoing in question is an isolated incident. Respondent's conduct did not involve bad faith or dishonesty. Although J.M. was uncomfortable receiving respondent's text message, there was no evidence she was significantly harmed. Respondent did not demonstrate indifference to the consequences of his actions, but rather accepted responsibility and credibly explained that he is more vigilant now to maintain appropriate professional boundaries. Finally, respondent had no prior warnings or reprimands.

13. Neither the Education Code nor the regulations adopted by the Commission specify what constitutes "extenuating circumstances." However, the California Code of Regulations defines "mitigating factor" as "an event or circumstance which demonstrates that the public, schoolchildren and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever." (Cal. Code Regs., tit. 5, § 80300, subd. (m).) The definition includes seven examples:

- (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 or applicant which substantially contributed to the misconduct; provided that the difficulties were not the product of illegal conduct by the credential holder or applicant, such as illegal drug or substance abuse; and further provided that the credential holder or applicant has established through clear and convincing evidence that he or she no longer has such difficulties;
- (4) a demonstration of good character of the applicant or holder attested to by references from the educational community or the general community from individuals aware of the extent of the applicant's or holder's misconduct;
- (5) objective action taken by the applicant or holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing which is designed to timely make amends for the consequences of the misconduct;

(6) the proximity or remoteness in time relative to the seriousness of the misconduct; or

(7) the nature and extent of subsequent rehabilitation.

14. Here, the evidence established the presence of multiple mitigating factors. Respondent has no record of prior adverse action, and his present misconduct is not the “most serious” kind of misconduct in which a teacher can engage. Neither J.M. nor anyone else was significantly harmed. Respondent’s present and former colleagues, and a parent of a former student, all attested to respondent’s good character before and after the incident. Respondent recognized his wrongdoing and is actively monitoring his current behavior with students to ensure he does not cross professional boundaries again. Since the events in question occurred approximately two years ago, respondent has gained new employment as an Agriculture teacher at a different high school.

Appropriate Discipline

15. Complainant proved there is cause to discipline respondent for unprofessional conduct. Such discipline may consist of “a private admonition, or public reproof of a credential holder, or the suspension or revocation of a credential.” (Ed. Code, § 44000.5.) For unprofessional conduct, the Commission “shall privately admonish, publicly reprove, revoke or suspend” the credentials in question. (Ed. Code, § 44421.) When determining what level of discipline to impose, the Commission should consider the aggravating and mitigating factors previously identified. (Cal. Code Regs., tit. 5, § 80300, subds. (b), (m).)

16. As discussed above, many of the mitigating factors—and none of the aggravating factors—are present. Consequently, suspending or revoking respondent’s

credentials is unwarranted and would be unduly punitive. The purpose of an administrative disciplinary action is not to punish the licensee for his misconduct, but rather to ensure he does not exercise his license privileges in derogation of the public interest. (*Camacho v. Youde* (1979) 95 Cal. App. 3d 161, 164.)

17. Instead, the appropriate discipline is to publicly reprove respondent. Such public reproof serves the interests of public protection because it will constitute an “adverse action” and thus can be considered as prior discipline in the event respondent engages in future misconduct. Furthermore, a public reproof balances the Commission’s interest in regulating its licensees with consideration of the significant mitigating factors present here.

ORDER

Respondent Amador Vincente Martinez’s Clear Single Subject Teaching Credential and Specialist Instruction Credential in Agriculture are PUBLICLY REPROVED for unprofessional conduct, pursuant to Education Code section 44421.

DATE: June 20, 2024


Sean Gavin (Jun 20, 2024 14:43 PDT)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings