

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

**In the Matter of the First Amended Accusation Against:**

**JONATHAN JAY WRIGHT, Respondent.**

**Agency Case No. 2-109848346**

**OAH No. 2022090420**

**PROPOSED DECISION**

David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference March 20-24, 2023.

Complainant was represented by Diana Petikyan, Deputy Attorney General. Respondent Jonathan Jay Wright was present and was represented by Rothschild Wishek & Sands LLP, by Stephen B. Plessner, attorney.

Oral and documentary evidence was received. The record closed and the matter was submitted for decision on March 24, 2023.

**Amendment, Redactions, and Motions**

During the hearing, complainant made a motion to amend the First Amended Accusation, found in Exhibit 1, at page A51, line 18, to change the date "January 14,

2011," to "January 25, 2011." There was no objection by respondent. The amendment was allowed.

Certain information in Exhibits U and W was redacted during the hearing to protect privacy or confidentiality. Exhibit 27, a video recording, is sealed by separate protective order, to protect privacy or confidentiality.

Respondent filed prehearing motions and complainant filed an opposition brief, found in Exhibit 1. The rulings summarized below are explained in more detail on the record, and such explanations are incorporated by reference. Respondent's request for bifurcation of certain issues and objections to certain evidence unless other evidence was first introduced were denied/overruled without prejudice. In further consideration of the entire record, the request is denied, and the objections are overruled. There was sufficient evidence of an independent basis for possible discipline of respondent's credentials for the reasons alleged in paragraph 13 of the First Amended Accusation, so as to consider the evidence of allegations of prior misconduct, as alleged in paragraph 14 of the First Amended Accusation. Respondent's blanket objection to hearsay evidence was denied without prejudice to respondent raising hearsay objections during the hearing. Hearsay objections were ruled upon during the hearing and on the record. Respondent's request to admit character witness testimony was not opposed and was granted.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. The California Commission on Teacher Credentialing (Commission) issued to respondent the following four credentials:

A. On April 1, 2004, a Clear Designated Subjects Supervision and Coordination Credential, which expired on October 1, 2012. It was reissued on October 16, 2015, and was in full force and effect at times relevant to the charges brought in the First Amended Accusation and will expire on November 1, 2027, unless renewed.

B. On July 20, 2017, a Certificate of Eligibility Administrative Services Credential, which does not expire and allows respondent to seek employment in an administrative position.

C. On December 12, 2005, a Clear Single Subject Teaching Credential, in English. It was in full force and effect at all times relevant to the charges brought in the First Amended Accusation and will expire on January 1, 2026, unless renewed.

D. On September 1, 2002, a Clear Designated Subjects Vocational Education Teaching Credential: Full Time, in multimedia production, which expired on October 1, 2012. The Clear Designated Subjects Vocational Education Teaching Credential: Full Time was reissued on October 9, 2012, was in full force and effect at times relevant to the charges brought in the First Amended Accusation, and will expire on November 1, 2027, unless renewed.

2. There was no evidence of prior discipline or adverse action by the Commission against these credentials.

3. The Accusation and First Amended Accusation refer to other credentials issued to respondent which expired prior to the events alleged therein. These credentials are not relevant.

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4. Complainant Mary Vixie Sandy, Ed.D., brought the Accusation and the First Amended Accusation solely in her official capacity as Executive Director of the Commission.

5. Prior to the filing of the Accusation, at its meeting January 20-22, 2021, the Commission's Committee of Credentials determined probable cause existed for an adverse action against respondent. Respondent was notified of this determination and requested an administrative hearing. Complainant then filed the Accusation.

6. After receiving the Accusation, respondent filed a Notice of Defense and requested an administrative hearing.

7. All jurisdictional requirements have been met.

### **Alleged Causes for Discipline**

8. In the First Amended Accusation, complainant alleges respondent's credentials should be disciplined for unprofessional conduct, immoral conduct, evident unfitness for service, and persistent defiance of and refusal to obey laws and duties of a school district employee, all pursuant to Education Code (Code) section 44421, and for acts of moral turpitude, pursuant to Code sections 44421 and 44345, subdivision (e). These causes are all based on allegations relating to an incident involving respondent that occurred on October 22, 2019, discussed in more detail below (First Amended Accusation, paragraph 13), and also on allegations there were prior disciplinary actions taken against respondent from 2011 through 2019 that also violate these Code sections (First Amended Accusation, paragraph 14). Complainant also alleges "disciplinary considerations" consisting of respondent's criminal convictions in 2002 and 2012 for alcohol-related violations of the Vehicle Code (First Amended Accusation, paragraphs 21 and 22).

9. As noted in more detail in Legal Conclusions 15 and 16, the “prior disciplinary actions” are not considered as separate bases for adverse action against respondent’s credentials. However, under California Code of Regulations, title 5 (Regulation), section 80300, subdivision (b)(6), prior notice, warnings, or reprimands can be considered as aggravating factors relating to the level of adverse action to be imposed, if any.

10. As noted in more detail in Factual Finding 34 and Legal Conclusion 17, the criminal convictions are not relevant, even as “disciplinary considerations.” However, factual findings are made because the criminal convictions were included in the Committee of Credentials’ investigation reports as possible bases for adverse action against respondent’s credentials, even though they are not pleaded in the First Amended Accusation as bases for adverse action or discipline.

### **INCIDENT ON OCTOBER 22, 2019**

11. Respondent began teaching at the Alternative Education Center (AEC) within the Chino Valley Unified School District (District) during the 2014 to 2015 academic year. Students at AEC are enrolled in one or two independent study classes at a time and are expected to complete a class in about 20 days. The student and teacher of each class have an agreement regarding the coursework to be completed. Each student is assigned to a homeroom teacher who acts as a case manager for the student and monitors his or her class agreements and attendance. Attendance for purposes of state funding is based on the completion of classes and not physical attendance.

12. On October 22, 2019, homeroom teacher Mary Hancock gave student S.A. a form to be signed by respondent, who was S.A.’s teacher for a course in

cartooning. (Initials are used to protect the identity of students who may still be minors.) Respondent refused to sign the form. Hancock and S.A. went into respondent's classroom to further discuss the form. Hancock requested respondent sign the form. Respondent refused to sign the form and ordered Hancock and S.A. to leave the classroom. Respondent either pitched his body backwards or moved backwards, then tripped over his chair, fell, and hit his head on the cabinetry. Respondent then called 911, falsely reported Hancock caused him to fall, and stated he was in fear for his life. Respondent also falsely reported Hancock had a large swelling or bulge in her abdomen and he thought she may have a gun or knife. Police and paramedics responded to the scene. The police determined Hancock did not cause respondent to fall, and Hancock was not arrested. Without the permission of Hancock or S.A., respondent recorded on his cell phone portions of the incident, including respondent's interaction and dialogue with Hancock and S.A. Following the incident, respondent was placed on paid administrative leave. Respondent then resigned pending an investigation by the District.

13. Factual Finding 9 is based on the clear and convincing evidence as it relates to the allegations in paragraph 13 of the First Amended Accusation. Other evidence established a broader context to the incident. The relevant evidence is summarized below.

14. Respondent raised complaints about interruptions and disruptions by teachers and administrators coming into his classroom. He raised these complaints for many years, in many ways, including oral and written complaints to the interrupting teachers and administrators, to his different Department chairpersons over the years, and to other administrators. He sometimes relied upon language in a collective bargaining agreement relating to working in an environment without interruptions.

Some later examples of emails by respondent in evidence regarding these subjects are from October 2018 (Exhibit D) through early the day of the incident, October 22, 2019 (Exhibit O), and include, without limitation, Exhibits E, F, G, and L. Respondent testified, for example, he had established a TV studio in his classroom where students would broadcast daily announcements and do other programming, and people entering his class could interrupt those programs, or even interrupt exams he was giving.

15. In a vacuum, these interruptions would appear to be overly disruptive. However, testimony and documents from other District employees established the teaching atmosphere at the AEC was markedly different than in traditional schools and classrooms. Classroom interruptions by teachers, staff, probation officers, and administrators were a common occurrence, and tolerated by everyone, except for respondent. The number of times respondent was interrupted, as depicted in his complaints and testimony, in fact support these interruptions as commonplace occurrences such that the people making the interruptions could consider them as the standard operating procedure. Nevertheless, respondent continued to bristle, complain, and send numerous emails on the subject. Respondent was particularly irked by prior interruptions of his class by Hancock.

16. To understand the broader context of the events just before. Hancock and S.A. went to respondent's classroom, respondent claimed S.A. had not attended respondent's cartooning class for more than four weeks and respondent reported the absence to Hancock, who was S.A.'s homeroom teacher. In S.A.'s interview with Brenes, he told Brenes he had finished the work and showed it to respondent. Respondent incorrectly believed, after four weeks of non-attendance, S.A. was automatically dropped from the course. (See respondent's email dated October 3, 2019, Exhibit Z.) However, it would take action by Hancock as S.A.'s homeroom teacher for that to

occur. On October 22, 2019, respondent sent S.A. to Hancock with a blank form – a New Course Assignment Request, or NCAR - for her to fill out for S.A. to re-enroll. When S.A. came to the homeroom with his work for the cartooning class, Hancock was happy to see he was in school and wanted to get respondent to sign the bottom of a different, filled in, NCAR form to show that S.A. had completed the course. Hancock acknowledged in her testimony at the administrative hearing that although she reviewed S.A.'s work, she did not know if it satisfied all of the course requirements. Because Hancock believed S.A. had completed the course, she sent S.A. back to respondent with the request respondent sign the NCAR indicating course completion. Respondent did not believe all the work for the course was completed and testified he also believed some of the work was done by another person, not S.A. Respondent believed S.A. needed to be re-enrolled, therefore he thought Hancock needed to complete a new NCAR for that purpose. The conclusion there was this misunderstanding comes from review of all of the evidence. However, the evidence also shows that neither respondent nor Hancock communicated that day such that they knew there was this misunderstanding.

17. Before going to respondent's classroom, Hancock called his classroom, but respondent did not answer the call. Hancock went to the available administrator, Teresa Moore, discussed the matter, and followed Moore's direction to take the filled-in NCAR form to respondent. Hancock notified a security officer, Nancy Weibelt, and asked her to also come to respondent's classroom. Weibelt declined.

18. When respondent saw Hancock and S.A. enter his classroom, he also believed he saw Weibelt walking back and forth by his door. He became nervous. He testified he told Hancock he was going to record her, and contends she gave tacit consent by staying in his room. Neither Hancock nor S.A., in their interviews with



Brenes or elsewhere, confirmed respondent's statement about recording. In the summary of respondent's interview, Brenes wrote respondent admitted recording the interactions without their consent. (Exhibit 24, p. A258.) There was no discussion of S.A.'s work for the class, just a back and forth about signing the form as well as respondent's direction to Hancock to follow procedures (apparently based on his belief S.A. had been dropped from the course) and to leave his room. Respondent stated to Brenes his comment to the 911 operator about Hancock having a gun or a knife was an attempt to be humorous.

19. Respondent's video recording of the encounter that was received in evidence, Exhibit 27, does not include aspects of the incident that were acknowledged as having occurred, including respondent's statements to the 911 operator he had been attacked by a teacher, he suspected she had a gun or a knife, and he was in fear for his life. After the Sheriff's Deputies arrived, respondent told Deputy Garcia he had been hit in the face with the NCAR form or that Hancock had pushed him. After Deputy Garcia viewed the video, she questioned the accuracy of these statements, and respondent recanted them.

20. As noted in more detail below, respondent's habits of complaining to and about colleagues, staff, and administrators, and sending numerous lengthy, sometimes confrontational emails, often resulted in complaints by others that respondent created a hostile work environment, and directives to respondent to change his behavior.

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## **PRIOR NOTICES, WARNINGS, AND REPRIMANDS BY RESPONDENT'S EMPLOYERS**

21. After the October 22, 2019 incident, the District conducted an investigation based on Hancock's two complaints, the first relating to that incident, and the second that respondent created a hostile work environment at AEC. Isabel Brenes, Ed.D., the District's Director of Human Resources, conducted the investigation and prepared a report. (Exhibit 8.) The report refers to 52 attachments, mostly summaries of Brenes's interviews of teachers, staff, administrators, students, and respondent, as well as document summaries and descriptions of videos. Only a handful of these attachments were submitted in evidence at the administrative hearing. However, many of the attachments were summarized in the Commission's Committee of Credentials' Confidential Investigative Report and Confidential Investigative Report #2. (Exhibit 24.) Although some of the Committee's summaries may be double and perhaps triple hearsay (oral statements made to Brenes, summarized in her report, then summarized in the Committee's report), no objections were raised. In some instances, the statements were not received for the truth of the matters asserted and, therefore, are not hearsay. In several instances direct evidence (testimony and documents) was consistent with and confirmed the substance and accuracy of the summaries of the statements. The consistency of reporting of events and communications by several interviewees, as depicted in the summaries, also lends trustworthiness to the summaries by Brenes and the Committee. Hearsay evidence may be used in administrative hearings but only to supplement or explain other evidence. (Gov. Code § 11513, subd. (d).) Such evidence, referred to as administrative hearsay, may be combined with other evidence to provide substantial evidence sufficient to support a factual finding. (*Komizu v. Gourley* (2002) 103 Cal.App.4th 1001.)

22. Brenes summarized numerous prior warnings, letters, and actions taken against respondent, and other events, alleged in paragraph 14 of the First Amended Accusation and discussed in more detail below. Written documentation of those actions was received in evidence as well as the testimony of several authors and others involved in the events, including respondent's testimony and his written responses regarding some of the events. Brenes's summaries were accurate.

23. During Brenes's investigation, the District learned of the prior notices, warnings, and reprimands taken against respondent and other events, discussed in Factual Findings 24-33 below.

24A. From 2003 to 2012, respondent was employed as an instructor for the District at Boys Republic High School (Boys Republic), a juvenile placement facility for boys who are placed on probation by the court. Many of the boys are prohibited from exhibiting gang behavior as a part of their probation. Students live on campus where staff includes probation officers and security guards. Staff are responsible for the well-being of the students. On January 25, 2011, respondent received a letter from Richard "Rick" Landorf, the principal, not a "Conference Summary" as alleged. (First Amended Accusation, paragraph 14a.) The letter concerned respondent's use of a staff radio to "broadcast a false police radio call to check a vehicle license, for back up, to release the dogs, etc." (Exhibit 11.) Respondent was instructed not to use the staff radio for any reason.

24B. The letter noted respondent had expressed remorse for the broadcast, and Landorf was concerned the radio call could create confusion if other staff heard the call and might have called 911; however, this was not the case "and no real harm was done." (Exhibit 11.) In the letter, Landorf encouraged respondent "to think about the possible ramification that may occur when you act without thinking," that Landorf

considered this a local issue, and the letter would not be placed in respondent's District file. (*Ibid.*)

24C. Respondent explained the radio call was part of a joke with a student with whom he had joked before. Respondent did a "radio check" as he had been taught while in the military and thought there was no one on the radio channel because there was no response to his radio check. Respondent later learned other staff had heard the broadcast and thought it was humorous.

24D. Landorf credibly testified the campus at Boys Republic was sprawling and included a farm, 12 classrooms, seven dormitories/cottages for students, housing and administrative offices for staff, a barn, a gym, and a pool. Treatment of the juveniles was the first priority, over their education, and the students were present for varying periods of time, at the direction of their probation officers or the courts. Staff and probation officers "constantly" entered classrooms for various purposes.

24E. Respondent was at Boys Republic when Landorf arrived as the principal in 2008. Generally, Landorf would speak informally with teachers, including respondent, when issues arose; however, he later found it necessary to document some of the instances. Concerning the radio call, Landorf's secretary heard it and identified respondent's voice. Landorf noted the Boys Republic campus was open, with no fences or gates, but there were security officers with radios. There were no dogs on campus at that time. Landorf stated he had not written a conference summary for any situation with a teacher before this time, but his strategy of talking with respondent "was not working" so he "was at a point where I said I'd write it up as an 'in-house' matter."

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24F. Respondent's conduct regarding the radio call as established by the clear and convincing evidence amounts to unprofessional conduct. Respondent's conclusion there was no one on the radio channel was proven false, and there was no evidence others would be aware of the nature of the radio check process respondent had learned in the military. Landorf's concerns were well-taken.

25A. On September 18, 2012, respondent received a Conference Summary from Landorf concerning inappropriate pictures taken with new cameras obtained for use by respondent's students. (Exhibit 12.) (First Amended Accusation, paragraph 14b.) The pictures showed students "flashing gang signs and posturing on campus in the pictures – a possible violation of their probation." (*Ibid.*) Respondent was "immediately apologetic and showed remorse." (*Ibid.*) In their discussion, Landorf was not satisfied with some of respondent's answers. Landorf advised respondent he must supervise in person students' activities while taking pictures "to avoid inappropriate pictures. [Respondent] acknowledged the importance of the conversation and assured me it would not happen again." (*Ibid.*)

25B. Respondent described certain video and photographic projects by students, including work on a "blue book" for students ready to complete their time at Boys Republic and who had earned the privilege. Students who earned "citizenship" status for good performance and behavior had special privileges and were allowed to get a blue book and to use video and still cameras around campus to compile images for a blue book. Respondent typically had not directly supervised those activities but would review the work before it was distributed for any purpose. With respect to these specific photographs, respondent stated some of his students worked on a project for another teacher, who had a printer while respondent did not. The students printed the subject pictures and later showed them to respondent. Respondent recalled he viewed

one student giving a "reverse V for victory" hand sign, which he did not recognize as a gang sign. Although respondent had not been present at all times when photographs and videos were taken by students, he understood Landorf's concerns and agreed to provide direct supervision, even though the effect was to greatly reduce the freedom previously allowed for gathering blue book content or other photographic or video projects.

25C. Landorf testified credibly this was a serious situation, as the students could have been removed from Boys Republic and returned to juvenile hall for a violation of probation. Landorf was unsure whether he saw respondent in one of the pictures. The citizenship and blue book processes and privileges were outside of official education operations and were implemented by treatment staff. In meeting with respondent, Landorf was concerned the situation not be repeated, so he required respondent to directly supervise the activity.

25D. Respondent's conduct regarding the photograph with gang signs as established by the clear and convincing evidence amounts to unprofessional conduct. Respondent's trust of students who earned citizenship and had camera privileges was too broad considering the risk such conduct, that might otherwise seem relatively innocuous, could have serious ramifications. Although respondent's actions and motives were well-intentioned, the students were enrolled at Boys Republic due to their risky and illegal behavior and more direct supervision, or other safeguards, should have been in place. Landorf's concerns were well-taken.

26A. On October 5, 2012, respondent received a Conference Summary from Landorf concerning respondent's relationship with students and "treatment staff." (Exhibit 13.) The allegation in paragraph 14c in the First Amended Accusation incorrectly refers to this as "treatment of staff." The Conference Summary related to a

meeting during which Landorf gave instructions to respondent, including that he was not to “attempt to teach, explain, or discuss with your students gang signs, language, gang clothing, and affiliations, etc.” which were better taught by other staff. (*Id.* at p. A205). Landorf also instructed respondent “to stop sharing with your students private issues that have occurred between you and me or BR staff.” (*Ibid.*)

26B. Landorf testified credibly about the meeting, which lasted over one hour, and some of the underlying circumstances. However, his testimony did not directly provide additional background to the two parts of the meeting and Conference Summary which are the subjects of the allegation. Landorf also discussed with respondent the steps of progressive discipline which, starting with a verbal warning, can continue to a Conference Summary, Warning Letter, Formal Letter of Reprimand, and Transfer/Termination. Landorf stated respondent appeared to understand his concerns and agreed to make changes.

26C. Respondent testified at the administrative hearing about some of his statements to students and that he was kidding and thought he was being funny in making the comments, but later realized it was not humorous and it would be better to not joke with students or staff.

26D. Respondent’s conduct as alleged in the October 5, 2012 Conference Summary and as established by the clear and convincing evidence amounts to unprofessional conduct. While additional facts would place this conduct in a broader context, the subjects alone - that is, respondent discussing with his students topics relating to gangs and subjects that were private between respondent and Landorf or staff – are of a nature that respondent should not have discussed them with students. Landorf’s concerns were well-taken.

27A. On January 31, 2013, respondent received a Letter of Warning of Unprofessional Conduct from Landorf concerning inappropriate communication with his supervisor. (Exhibit 14.) (First Amended Accusation, paragraph 14d.) Specifically, during a meeting with Landorf, Boys Republic Associate Director Lance Parks, Boys Republic Executive Director Chris Burns, and another schoolteacher, respondent stated, "I'm going to just say it, yep (pause) here goes. I think at times, Mr. Landorf's head is far up Lance's ass and Lance's head is far up Mr. Landorf's ass. Neither one of you know what the fuck is going on. Yep! That's right (pause) I've got balls. I don't care what you people think." (*Id.* at p. A207.)

27B. The Letter of Warning referred to two policies that respondent violated, one by the Board and one in the collective bargaining agreement. Landorf also wrote that the conduct had a negative effect on morale, impaired respondent's ability to interact with other employees, showed a lack of professional judgment, and raised questions of his ability to conduct himself professionally with students. Landorf referred to a prior directive for respondent to take time before responding, to reflect before answering.

27C. Landorf testified the meeting started because respondent had said another teacher or staff person was the devil, and staff "had had enough of these types of comments." After respondent's comments about the locations of people's heads, Landorf ended the meeting, believed he needed to have respondent removed from campus, and spoke to two administrators. Respondent remained off campus for about four months and Landorf arranged for a substitute teacher.

27D. Respondent submitted a written rebuttal including he had arranged the meeting to report two inappropriate actions against respondent by a member of the staff. (Exhibit GGG.) Respondent believed he had disproven he had done anything



wrong in the two interactions, yet Landorf did not accept the proof, did not acknowledge the wrongdoing by others, and did not vindicate respondent's position. In his rebuttal, respondent wrote that Landorf said respondent was a great teacher yet had written up respondent for what respondent considered "false accusations and bogus assumptions at least four times," leading respondent to ask, "who do principals answer to?" (*Ibid.*) Respondent expressed his desire to stay at Boys Republic but was concerned Landorf "threatened" to transfer him.

27E. In his testimony at the administrative hearing, respondent admitted "wrongdoing" and stated he was at his wits end. This was the "most egregious thing I've done . . . . I said it, and I apologized. I regret it. I should have taken it back."

27F. Respondent's conduct as alleged in the January 31, 2013 Letter of Warning of Unprofessional Conduct and as established by the clear and convincing evidence amounts to unprofessional conduct.

28A. On May 31 and June 17, 2013, respondent received Letters of Reprimand from two Directors of Human Resources in the District concerning his unprofessional conduct with staff and students at Boys Republic. (Exhibits 15 and 16.) (First Amended Accusation, paragraph 14e.) The Letters are virtually identical, with the second adding a requirement for respondent to complete a fitness for duty exam. Specifically, the Letters relate that, on April 26, 2013, respondent left his classroom unattended, pulled student L.M. out of class, and took that student to confront another teacher, Marv Freeman, regarding a written statement Freeman made. Respondent also sent multiple complaint emails to his supervisor, Landorf, culminating in an intense exchange between respondent and Landorf, wherein Landorf left because he did not feel safe.

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28B. Again, there is broader context beyond the above actions as alleged and proven. Respondent was concerned Freeman wrote that another student, identified only as M., was doing better because L.M. was no longer in the same class. Respondent encouraged L.M. to confront Freeman about this statement. The Letters of Reprimand depict L.M. as not wanting the confrontation and agreeing that M. was probably doing better after L.M. left because they used to talk together during the class. When respondent and L.M. entered, they interrupted Freeman's class. According to Landorf's testimony, a teacher's aide in Freeman's class called the office to report respondent was yelling at Freeman.

28C. The Letters relate that, on the same day, April 26, 2013, respondent sent emails to Landorf and Norm Enfield, the Assistant Superintendent of Human Resources, concerning respondent's complaints about another teacher, Ms. Anleu-Yates (first name unknown). When Landorf came to discuss the events of the day in respondent's room, he met respondent on an outside patio. Landorf described respondent's eyes as large, and respondent was talking to himself and seemed "distressed." The Letters described respondent as perspiring, shaking, and speaking with an elevated voice. Landorf was concerned and called 911. Paramedics and police arrived, and Landorf believed staff and students observed them or heard about it. Respondent refused medical care. Landorf arranged for respondent's wife to take him home. It was the last time Landorf saw respondent.

28D. Respondent admitted in his testimony at the administrative hearing he was wrong to confront Freeman with a student and he regrets it. He explained he believed it was protocol at Boys Republic to "confront if you see something wrong." Respondent described L.M. as being "in tears" when he saw the statement written by Freeman and described Freeman as embarrassed and red-faced. Respondent testified

the events occurred at about 8:00 a.m. but it was several hours later that the police arrived.

28E. The Letters of Reprimand noted respondent had a history of demonstrating a lack of judgment and had been admonished multiple times for unprofessional conduct. The Letters included that respondent violated Board policies regarding intimidation or harassment of a student, ensuring the safety of students, other policies, as well as the collective bargaining agreement. "Your poor judgment has created an unsafe and hostile educational and work environment, . . . has a deleterious effect on your credibility and undermines your ability to provide effective supervision to students and collaborative professional relationships with staff." (Exhibit 16, p. A213.)

28F. Respondent's conduct as alleged in the May 31 and June 17, 2013, Letters of Reprimand and as established by the clear and convincing evidence amounts to unprofessional conduct.

29. It is alleged in paragraph 14 of the First Amended Accusation: "f. On July 1, 2013, Respondent received a change of assignment from Boys Republic to Ayala High School, effective for the 2013-2014 academic year"; and "g. On January 5, 2015, Respondent was administratively transferred from Ayala High School to the AEC." The change of assignment and the transfer were established by clear and convincing evidence; however, it was not established these two actions are considered "prior disciplinary actions," as also alleged therein.

30A. On February 3, 2016, respondent received a Conference Summary from Preston Carr, Ed.D., the Director of the AEC, for creating a hostile work environment,

"based on disparaging treatment as a result of emails sent to [two] teachers." (Exhibit 19.) (First Amended Accusation, paragraph 14h.)

30B. Carr described respondent as likeable at first, and there arose "good moments, bad moments." Later, there were "challenges" to working with him. Carr explained his preference was to have informal discussions about issues instead of formal write ups. Carr testified respondent got upset and irritated with people and sent them numerous emails. Carr had given numerous verbal warnings to respondent, and then instructed that he should send drafts of emails to Carr's secretary, Kim, for review and approval before the emails were sent to teachers or staff.

30C. The specific emails respondent sent to teachers Antonio Montanez and Bob Morey referenced in the February 3, 2016 Conference Summary, although relatively tame, nevertheless caused Montanez to feel respondent had disparaged his character, and the email to Morey was, according to Carr, based on "accusations and unnecessary comments to your colleagues." (Exhibit 19, p. A217.) Carr included that respondent had sent an email to Kim for review that was "accusatory and needed some filtering prior to sending . . . ." (*Ibid.*) Respondent was directed to cease sending negative emails, maintain a professional response to staff and students, and not to "engage in matters that are not directly related to your job as a teacher." (*Ibid.*)

30D. Respondent explained in his testimony some problems arose when he was assigned new students as their homeroom teacher but the prior homeroom teachers to these students were not informed and continued to function as their course managers. Respondent did not realize this at first. He acknowledged some of his emails were accusatory. Of note, with respect to the reference to the email that Kim had reviewed, respondent's interpretation was that he was being "dinged" for having followed the very procedure Carr had instituted. It escaped him that Kim had reviewed

the email and found it to be accusatory and required filtering, despite respondent being instructed previously to avoid writing this type of email.

30E. Respondent's conduct as alleged in the February 3, 2016 Conference Summary and as established by the clear and convincing evidence amounts to unprofessional conduct.

31A. On May 24, 2016, respondent received a Letter of Reprimand from Carr for again creating a hostile work environment, "by sending negative emails toward staff [...], lack of judgment, and not adhering to administrative directives." (Exhibit 20, p. A219.) (First Amended Accusation, paragraph 14i.)

31B. Carr explained in his testimony that other teachers' concerns about respondent varied depending on circumstances. He referred to an incident when a teacher entered a parking lot against a directional sign and respondent overreacted by "berating" and yelling at her. Respondent complained about a custodian parking in a particular area or leaving his cart somewhere or spraying his classroom. Carr told respondent these were not his problems. Carr testified that the issue was the way respondent handled the situations. It took little for respondent to become "furious" at people.

31C. Respondent described Carr as often being absent from campus and not aware of the full circumstances surrounding events and interactions. He did not believe Carr was an effective administrator. Respondent testified he was following policies and procedures and was seeking input and direction, but it often was not made available to him.

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31D. Respondent's conduct as alleged in the May 24, 2016 Letter of Reprimand and as established by the clear and convincing evidence amounts to unprofessional conduct.

32A. On January 7, 2019, respondent received a Conference Summary from Carr concerning unlawfully recording a meeting, directing respondent to refrain from using devices to record meetings without permission. (Exhibit 21.) (First Amended Accusation, paragraph 14 j.)

32B. Respondent sought to have minutes prepared of departmental staff meetings so he could be clear about policies and directions discussed in the meetings. (See, e.g., respondent's email October 10, 2018, Exhibit RR.) No meeting minutes had been prepared. Respondent testified he was frustrated by the lack of minutes to use as a resource for policies and other department actions. Respondent had some difficulty handwriting notes after he had broken his thumb. He explained he had been using a computer program to transcribe the meeting and would make his notes available to the participants. On December 1, 2018, respondent sent an email to Carr about his attempt to use this computer program, in the context of a class respondent was taking for his doctorate degree, to transcribe a staff meeting. Respondent related various problems he encountered, such as the lack of identifying different speakers and some inaccuracies in wording. (Exhibit F.) Respondent wrote he encouraged people "to record the audio first and then transcribe them to text." (*Id.* at p. B9.)

32C. Hancock, as Department chair, received complaints by others about respondent recording the departmental staff meeting on November 30, 2018, and sent an email to Carr making a formal complaint of recording without consent. (Ex. 28, p. A424.)

32D. In this context, respondent's testimony he did not use his computer to record the meeting but, rather, to take notes, is unconvincing.

32E. Respondent's conduct as alleged in the January 7, 2019 Conference Summary and as established by the clear and convincing evidence amounts to unprofessional conduct.

33A. On March 7, 2019, respondent received a Conference Summary from Carr concerning the disruptive use of email contrary to District policy, and directing respondent to, among other things, cease from making inappropriate verbal or written contact with staff. (Exhibit 22.) (First Amended Accusation, paragraph 14 k.)

33B. In the Conference Summary, Carr listed six emails from respondent, from February 7-14, 2019, regarding various subject matters, deemed by Carr as inappropriate, a disruptive use of time, or beyond respondent's responsibilities as a teacher. Carr directed respondent to take steps "prior to sending emails based on assumptions, emotions, and allegations without processing the concerns which often can be resolved with a conversation either the next day or a few hours later. [¶] The emails are consuming the staff with ongoing [*sic*] and disruptive to the learning environment, . . . are often judgmental, [and] you again took part in email and other communications that create an unfriendly, unprofessional and negative work environment. Sending accusatory and negative emails and not following directives are unprofessional." (Exhibit 22, pp. A225-A225.)

33C. Carr testified some of these emails and subjects had been discussed with respondent multiple times. He referred to these and other emails as containing condescending remarks or as silly, negative, or unnecessary. Respondent continued to complain of people disrupting his classes, which interruptions Carr described as

something that usually happens at AEC. Respondent continued to use bold or capitalized letters even after he was informed it was not received well and should be avoided. Respondent continued to involve himself in things Carr believed were "outside his lane." Although individually some of these practices might be considered trivial or of limited impact, their combined effects, and the failure and seeming inability of respondent to comply with directives, created an ongoing difficult and hostile environment. In the context as he described, Carr's concerns were well taken.

33D. Respondent testified he did not feel he "was being heard" and that Carr unfairly characterized all of his emails as negative. Respondent stated he was trying to seek clarifications re policies. Respondent would request meetings for discussion but was not accommodated. Respondent was concerned that others were not recommending students to take his classes.

33E. Respondent's conduct as alleged in the March 7, 2019 Conference Summary and as established by the clear and convincing evidence amounts to unprofessional conduct.

### **"DISCIPLINARY CONSIDERATIONS"**

34. In paragraphs 21 and 22 of the First Amended Accusation, complainant alleges, as "Disciplinary Considerations," respondent had criminal convictions in 2002 and 2012 for violating Vehicle Code section 23152 by driving after consuming alcohol. These allegations are not referenced in any of the five alleged causes for discipline. There was no authority cited by complainant authorizing the use of these "Disciplinary Considerations," and the criminal convictions do not satisfy any of the aggravating factors in Regulation, section 80300, subdivision (b), cited in paragraph 11 of the First Amended Accusation. Nor do they comport with any of the "relationship factors" in



Regulation, section 80302, subdivision (a), cited in paragraph 12 of the First Amended Accusation. Nevertheless, as the criminal convictions are included in the investigation reports of the Committee of Credentials and have been included in the First Amended Accusation, Factual Findings on them follow.

35. On March 8, 2002, respondent was convicted, on his plea of guilty, of violating Vehicle Code section 23152, subdivision (b), driving under the influence of alcohol with a blood alcohol content of 0.08 percent or greater, a misdemeanor. (*People v. Wright*, San Bernardino Superior Court, 2002, case no. TWV033517.) Pronouncement of judgment was withheld, and respondent was placed on summary probation for three years on terms and conditions, including that he pay fines and fees and complete a first offender alcohol education program. On July 29, 2013, the court granted respondent's petition and ordered his plea set aside, and the complaint was dismissed.

36. On March 19, 2012, respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol with a prior offense, a misdemeanor. (*People v. Wright*, San Bernardino Superior Court, 2012, case no. TWC1002642.) Pronouncement of judgment was withheld, and respondent was placed on summary probation for three years on terms and conditions, including that he serve 90 days in county jail (with credit for two days), pay fines and fees, and complete a multiple offender alcohol education program. On July 1, 2012, the court granted respondent's petition and ordered his plea set aside, and the complaint was dismissed.

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## **Other Evidence in Support of Discipline**

37. Dory Prieto was a counselor at AEC. In Brenes's summary of Prieto's interview, Prieto reported she has moved students from respondent's homeroom because parents informed her their students felt uncomfortable with respondent and that emails or calls from respondent to parents were very aggressive. (Exhibit 24, pp. A249-A250.) Prieto sent a letter to S.A.'s parents on the date of the October 22, 2019 incident indicating he witnessed a potentially traumatic event. (See reference to exhibit V to Brenes's report in Exhibit 8, p. A182, and Exhibit 28, p. A405.) S.A. submitted a report and incident statement about the incident. (See reference to exhibit X in Brenes's report in Exhibit 8, p. A183.) Neither the letter nor the incident report was submitted in evidence.

38. Brenes's investigative report, Exhibit 24, includes summaries of her interviews with 16 teachers, staff, and administrators at Boys Republic and AEC. As those interviews are summarized in the report of the Committee of Credentials, the overwhelming majority of these interviewees reported, at a minimum, strained relationships with respondent, with many encounters unexpectedly escalating to respondent yelling at them. They reported respondent as being angry and hostile, bullying, unprofessional, and sending multiple emails that were accusatory or upsetting. These interviews are consistent with other direct evidence and supplement and explain the evidence relating to the history of respondent receiving warnings, letters of reprimand, and conference summaries.

## **Respondent's Background; Other Relevant Evidence**

39. Respondent is 55 years old. He was born and raised in Minnesota and attended a university there for two years before he moved to California to work as an

actor. Respondent then enlisted in the Army, was on active duty from 1990 to 1992, and received an honorable discharge. He then served in the Army Reserve, first in Minnesota from 1992 to 1997, then in California until 2002. Respondent was awarded a Bachelor of Arts in film and television production in 1995 from Metropolitan State University in Minnesota and obtained a teaching credential from Concordia University in Minnesota. He received a Master of Arts in education in 2017 and a Doctor of Education (Ed.D.) in 2021 from Concordia University, Irvine.

40. Respondent started his teaching career as a teacher assistant at a middle school in Minnesota from 1992 to 1997. From 1997 to 1999 he was a high school instructor in Rancho Cucamonga. Respondent came to the District in 1999, where he first was an instructor at Don Lugo High School until 2003, when he moved to Boys Republic, where he was an instructor through 2012. Respondent then was an instructor at Ayala High School from 2012 to 2015, when he moved to the AEC and served as an instructor from 2015 to 2019, when he was placed on leave. Respondent resigned from the District effective January 31, 2021.

41. For the District, respondent taught English classes and classes in video production. From the time of his first teaching assignment in California, respondent has provided innovative, engaging instruction and lead special projects involving video production and television studio technology and presentation, with projects for students, staff, and other district personnel. Respondent testified passionately about his interests in student advancement and about video and television production.

42. After leaving the District respondent worked for one year for the Bureau of Indian Education at the Sherman Indian School in Riverside, California. He then had the opportunity and moved to Guam on a two-year contract through the Department of Defense to teach at a school for children of service members. He received excellent

references from his time at the Sherman Indian School, including high marks for collaboration with others and being a team player. (Exhibits EE and FF, supplementing and explaining respondent's testimony.) Before the end of his contract, in November 2020, respondent returned to California to assist in the daily care of a member of his family with medical issues.

43. In January 2021 respondent submitted a written statement to the Committee of Credentials as a "supplemental statement to provide more context regarding the allegations made against me and the difficulties I faced in my district." (Exhibit CC, p. B62.) In summary, respondent wrote of the difficulties he experienced with administrators, Carr in particular, department chairpersons, colleagues, and staff. Respondent wrote that he holds people accountable, and people did not like it when he reported allegations against them, either his own or complaints from students. Respondent found a lack of structure and failure to follow proper operating procedures. He highlighted several teachers and staff, in several examples, who did not follow procedures and who became upset when he confronted them or brought the situations to the attention of supervisors and superiors. Although respondent sought solutions to problems, he often experienced disrespectful conduct from others.

44. Respondent explained when Hancock and S.A. entered his classroom on October 22, 2019, and would not leave, he wanted a neutral party to remove her. He had not received help or support from his department chair or the administration, so he called 911. In retrospect he testified he should have just walked out of the room. "I can control how I respond but not others' actions." He did not want Hancock to be arrested; he just wanted her to leave.

45. In its Confidential Investigative Report #2, the Committee on Credentials listed several factors in mitigation, including letters of recommendation, emails

between respondent and others, teacher evaluations, education documents, photographs, information on S.A.'s status in the cartooning class, and respondent's Level I Grievance against Carr. (Exhibit 24, p. A314.) Also attached was respondent's written statement dated December 8, 2020, conveying his version of the incident with Hancock and S.A. on October 22, 2019. That version was consistent with his belief Hancock was trying to have him commit academic fraud by signing the NCAR to indicate S.A. had completed the class, and the reasons that respondent felt he had no other viable option than to seek help by calling 911.

46. Respondent submitted numerous emails in evidence, many of them providing added context to the attempts he made to inform teachers, staff, and administrators of issues and problems he perceived and often including his suggestions for improvement and requests for help, meetings, or clarification of procedures and policies. (See, for example, Exhibits KK, PP, MM, M, N.) In his testimony, respondent noted he did not get responses to many of these emails, and he felt he was not being heard or respected. As an example, respondent related being part of a team tasked with making a presentation, putting in the work to have his part prepared, including slides, and then having his portion dropped with no explanation. In other instances, respondent felt teachers or counselors were discouraging students from taking respondent's classes.

47. Respondent was proud of his work at Boys Republic, had a good relationship with principal Dick Meyers, instituted "shirt and tie Fridays," and expanded the video production and television studio projects to cover numerous school activities.

48. Several witnesses testified on respondent's behalf. Respondent was a homeroom teacher for Caira Cabrera from 2018 to 2020 who spent a lot of time with

her and offered her patience and kindness. She had negative experiences with other teachers, including Hancock. Nathaniel Pilate was a student at Boys Republic from 2005 to 2007 who recalls respondent as enthusiastic and trusting, allowing students to explore, very unlike other teachers there. Respondent was "by the book, but not without a heart." Cabrera and Pilate have used skills learned from respondent to advance in their careers. Maria Trinci's son was respondent's student at Ayala High School in 2018, his senior year. Respondent was a strong positive influence who helped her son obtain credits to graduate. Trinci's son had a bad experience in another class where the teacher used disparaging remarks about race and did not give credit for work submitted. Judy McConnell retired in 2003 after 38 years teaching in the District. She has known respondent for more than 30 years and praises him as a dedicated teacher who also had good rapport with staff. She did not believe Carr was an effective administrator and did not trust him. Michael McDuffie, a county probation officer, met respondent at Boys Republic in 2008. They bonded as veterans and, over time, became friends. McDuffie characterized respondent as passionate to teach, particularly to a student body that was tough to motivate. Ron Rogosheske retired from teaching in Minneapolis and has known respondent as his student in elementary and high school. They have a shared interest in media communications and have stayed friends. While respondent was teaching in high school, he assisted Rogosheske in summer programs. Rogosheske praised respondent's leadership and communication with students, and testified respondent had a good way of dealing with people. All of these witnesses were aware of the allegations and nevertheless spoke on respondent's behalf.

49. Respondent submitted character-reference letters from Dr. Gayla Mead, a counselor at Ayala High School, and Ronald Mead, the principal there. (Exhibits P and Q.) The letters were received as administrative hearsay. The letters supplement and

explain the positive and dedicated efforts respondent demonstrated, as a teacher and as a collaborator with other staff. They praised his effectiveness in applying high quality instruction to the video productions of students and his devotion to the success of his students.

50. Respondent testified he first consulted a therapist in mid-2013 when he was instructed to complete a fitness for duty exam as part of his directives from the Director of Human Resources. (See Factual Finding 28A.) He saw Dr. Ibarra then, again when he left AEC, in 2019, and currently consults as needed. He discussed subjects of his issues at school and worked on precipitating events and conflict resolution. This work in therapy has changed respondent's teaching philosophy and made him more aware of cultural differences and nuances that affect others' perceptions of him. Respondent realized he let his ego "get in the way," he was perceived as curt with people when he was "a stickler for the rules," and his sarcasm and humor may have been misplaced. By implementing new strategies at the Indian School and in Guam, respondent believes he has improved his teaching techniques and effectiveness. And respondent realizes he should not send as many emails, "should let things go," and needs to be more careful about what he says to others.

51. Respondent was respectful of the proceedings and spoke with sincerity. When asked why he wanted to teach, respondent testified he enjoys sharing knowledge with students, to have them take ownership, to help them identify a goal, and "let them find their way." He stated video production classes were a transparent tool for learning that help students improve in other subjects. The students were "serving stakeholders, digging deeper with digital, and creating collaboration." He "definitely" desires to continue teaching and, based on what he has learned, can be a

team player even if he disagrees with others. "I will grow and become a better educator."

## **LEGAL CONCLUSIONS**

### **Standard and Burden of Proof**

1. In this proceeding based on the First Amended Accusation, complainant has the burden to prove its case by clear and convincing evidence to a reasonable certainty. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035.) Therefore, to impose discipline on respondent's credentials, complainant is obligated to adduce evidence that is clear, explicit, and unequivocal; so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. (*In Re Marriage of Weaver* (1990) 224 Cal.App.3d 478.) Clear and convincing evidence has been defined as "[e]vidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the fact[s] for which it is offered as proof." (Cal. Civil Jury Instructions [BAJI] 2.62; accord, *Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 847.)

### **Alleged Bases for Discipline, and Interpretation**

2. Pursuant to the Code, commencing with section 44000, and the Regulations, commencing with section 80000, the Commission is responsible for credentialing teachers in public schools in California, including issuing credentials and taking adverse action against applicants and credential holders. "Adverse action" is defined in Regulation section 80300, subdivision (a), as "a denial, a private admonition, public reproof, suspension or a revocation of one or more credentials." Under Code section 44440, subdivision (c), the Commission has the authority to institute a



disciplinary proceeding against a credential holder, suspend or revoke the credential, or issue a public reproof or private admonition against the credential holder.

Regulation section 80300, subdivision (t), provides that a suspension may be stayed "on condition of probation," indicating that adverse action may also take the form of placing a credential on probation subject to terms.

3. Code section 44421 authorizes the Commission to take adverse action against an individual's teaching credential for immoral conduct, unprofessional conduct, for "persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system," for any cause that would warrant denial of an application, or for evident unfitness for service.

4. Under Code section 44345, subdivision (e), the Commission may deny an application if the applicant has committed acts involving moral turpitude. Any such denial "shall be based upon reasons related to the applicant's fitness to teach or fitness to perform other duties for which that applicant is certificated, or competence to perform the duties which the credential would authorize the applicant to perform."

5. Language similar to some of these statutory grounds is also found in Code sections authorizing a school district to terminate the employment of a teacher. For example, a teacher may be terminated for unprofessional conduct or for immoral conduct, under Code section 44932, subdivision (a)(1). Cases under this Code section have discussed and defined these bases for a teacher's termination of employment and are instructive here to help define the bases for discipline of a teaching credential.

6. There is broad discretion in determining what constitutes unfitness to teach, in determining what constitutes immoral conduct, and in deciding whether the teacher should be sanctioned. (*California Teachers Ass'n v. State of California* (1999) 20

Cal.4th 327.) The proven conduct should be looked at in the aggregate. It is not necessary to determine if each and every act demonstrates unfitness; it is proper to examine the totality of the offensive conduct. "When the camel's back is broken we need not weigh each straw in its load to see which one could have done the deed." (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1457) (*Woodland*).

7. Evident unfitness for service properly means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. [Fn. omitted.]" (*Woodland, supra*, 2 Cal.App.4th at p. 1444.) This cause for discipline 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.*) The criteria for unfitness found in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 (*Morrison*), discussed in more detail below, "must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service. [Citation.] If the *Morrison* criteria indicate unfitness to teach, the next step is to determine whether the 'unfitness' is 'evident'; i.e., whether the offensive conduct is caused by a defect in temperament. (*Woodland, supra*, 2 Cal.App.4th at p. 1445.) For instance, a teacher's removal of school property (a public address system speaker) from the classroom wall may be considered evidence of evident unfitness for service. (*Palo Verde Unified School Dist. of Riverside County v. Hensey* (1970) 9 Cal.App.3d 967, 973) (*Hensey*).

8. "Immoral conduct," pursuant to Code section 44932, subdivision (a)(1), has been defined to mean conduct that is 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. It is sometimes used as

indicating a high degree of unfairness. (*Board of Ed. of the San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811 (*Weiland*); *Hensey, supra*, 9 Cal.App.3d at p. 972.)

9. The factual scenarios in *Weiland*, *Hensey*, and other cases are helpful in understanding the types of actions that can constitute “immoral conduct” and “evident unfitness for service” as bases to dismiss a teacher. By inference, these cases help in interpreting similar language regarding grounds to discipline teaching credentials. In *Weiland*, a teacher of an evening class was aware that when the number of students in a class was down to 15 for three successive evenings, the class would be automatically dropped, and the teacher would lose her position. The teacher testified she falsified records by adding the names of three persons who were absent. Although the teacher argued that other teachers did the same and she did so “to expose the situation,” nevertheless her conduct was not justified, and the evidence established “that the purpose of the falsification was to secure appellant’s continued employment. The evidence was clearly sufficient to support the findings” of immoral conduct. (*Weiland, supra*, 179 Cal.App.2d at 811.)

10. In *Hensey*, dismissal was justified for a junior college teacher who used vulgar language and engaged in questionable acts in his classes. It was not necessarily each individual act or comment but, rather, the totality. The teacher tore out a loudspeaker in his classroom. He referred to the school’s bell system as sounding like a worn-out phonograph in a whorehouse. He stated the district superintendent spent too much time licking up the school board and simulated licking the classroom wall with his tongue. Although he explained he meant “face licking,” the expression “means in common parlance licking an entirely different portion of the anatomy” and was obviously so intended. (*Hensey, supra*, 9 Cal.App.3d at 974, 975.) The teacher also

referred to the school walls looking as though someone had peed on them and then smeared them with baby crap. The different actions and statements were described as creating a dangerous situation (loudspeaker) and bearing on his fitness to teach (whorehouse). Other statements showed a lack of restraint and a tendency to vulgarity and bad taste. The conduct was disruptive, an impairment of the teaching process, and not an example of the responsible dissent which should be fostered in the classroom (licking). "All of the incidents taken in the aggregate serve as a substantial basis for the trial court's determination that the charges of 'immoral conduct' and 'evident unfitness for service' were true and constituted cause for dismissal." (*Ibid.*)

11. Under Code section 44421, it was not immoral conduct or unfitness for service for a college English teacher to use for illustrative purposes a poem containing obscenities, slang references to male and female sexual organs and to sexual activity, and profane references to Jehovah and Christ, and a brochure containing photographs of entwined nude couples suggesting sexual intercourse. (*Board of Trustees v. Metzger* (1972) 8 Cal.3d 206)

12. "Unprofessional conduct," as used in Code section 44932, subdivision (a)(l), may be defined as conduct which violates the rules or ethical code of a profession or is such conduct that is unbecoming of a member of a profession in good standing. (*Board of Education of the City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553.) "A teacher . . . in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the children coming under her care and protection." (*Id.* at p. 552; citations omitted.)

13. As an example, conduct that produced serious friction in the school and showed a teacher's insubordination and refusal to conform to the instructions and

requirements of superiors has been held to be unprofessional conduct. (*Johnson v. Taft School Dist.* (1937) 19 Cal.App.2d 405, 407.)

14. "Moral turpitude is a concept that 'defies exact description' [citation] and 'cannot be defined with precision' [citation]." (*In re Grant* (2014) 58 Cal.4th 469, 475-476.) "Our Supreme Court has defined moral turpitude as 'an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.' [Citation.] Moral turpitude has also been described as any crime or misconduct committed without excuse, or any 'dishonest or immoral' act not necessarily a crime. [Citation.] The definition depends on the state of public morals and may vary according to the community or the times, as well as on the degree of public harm produced by the act in question. [Citation.]" (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027; see also *Ricasa v. Office of Administrative Hearings* (2018) 31 Cal.App.5th 262, 281; *Golde v. Fox* (1979) 98 Cal.App.3d 167, 185.) Moral turpitude has been defined as "everything done contrary to justice, honesty, modesty or good morals." (*Rice v. Alcoholic Beverage etc. Appeals Bd.* (1979) 89 Cal.App.3d 30, 36.)

15. In each instance in the First Amended Accusation, complainant alleges the causes for discipline are based upon respondent's actions and words on October 22, 2019, as alleged in paragraph 14, and on "the prior disciplinary actions taken against Respondent," as alleged in paragraph 15. However, those "prior disciplinary actions" were not included in the portions of the Committee of Credentials' investigative reports which state, "This probable cause report contains information that Respondent may be subject to discipline as a result of the following," with references to only the incident involving Hancock when respondent called 911 and the two

criminal convictions. (Exhibit 24, see pp. A236-A237 and A276-A277.) Although the alleged “prior disciplinary actions” are included in later portions of the investigative reports, respondent was not put on proper notice during the investigation that these “prior disciplinary actions” were considered by the Committee of Credentials or the Commission as separate bases for discipline of his credentials. Their later inclusion in the Accusation and First Amended Accusation does not cure the lack of proper notice.

16. The significance of the “prior disciplinary actions” is relevant, however, under Regulation section 80300, subdivision (b), as possible aggravating factors in considering the degree of adverse action that may be appropriate if a cause for discipline has been established. This regulation is discussed in more detail below.

17. As noted in Factual Finding 34, the two prior criminal convictions are not pleaded as causes for discipline in the First Amended Accusation. Therefore, the only evidence considered in determining whether the five causes for discipline have been proven is the evidence related to the October 22, 2019 incident.

## **Conclusions on the Causes for Discipline**

18. Respondent’s actions and words on October 22, 2019, constitute conduct that is unbecoming of a member of the teaching profession in good standing.

19. There is cause to take adverse action against respondent’s credentials under Code section 44421 for unprofessional conduct, based on his actions and words on October 22, 2019. (See Factual Findings 11 through 19, 37, 44.)

20. Respondent’s actions and words on October 22, 2019, constitute conduct showing moral indifference to the opinions of respectable members of the community, an

inconsiderate attitude toward good order and the public welfare, and indicate a high degree of unfairness.

21. There is cause to take adverse action against respondent's credentials under Code section 44421 for immoral conduct, based on his actions and words on October 22, 2019. (See Factual Findings 11 through 19, 37, 44.)

22. Respondent's actions and words on October 22, 2019, constitute conduct that was willful, demonstrated an inconsiderate attitude toward good order and the public welfare, and were contrary to justice, honesty, or good morals.

23. There is cause to take adverse action against respondent's credentials under Code sections 44345, subdivision (c), and 44421, for committing acts of moral turpitude, based on his actions and words on October 22, 2019. (See Factual Findings 11 through 19, 37, 44.)

24. The violations noted above of Code sections 44345, subdivision (c), and 44421, constitute defiance of, or refusal to obey, the laws regulating the duties of persons serving in the public school system, as that language is used in Code section 44421. However, that Code section requires "persistent defiance of, and refusal to obey" such laws. As analyzed above, the gravamen of the First Amended Accusation is a singular incident, on October 22, 2019. The prior warnings and notices that were also proven are pertinent to the degree of adverse action that may be taken by the Commission under Regulation section 80300, subdivision (b), discussed in more detail below, but are not separate grounds for taking adverse action. The singular incident does not support the conclusion respondent showed "persistent" defiance or refusal, as required to state a cause for discipline under Code section 44421.

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25. There is no cause to take adverse action against respondent's credentials under Code section 44421, for persistent defiance of, or refusal to obey, the laws regulating the duties of persons serving in the public school system.

26. Before the Commission may take action against a credential, it is required to establish respondent's conduct is related to his fitness to teach. (*Morrison*, see Legal Conclusion 7.) Evident unfitness for service is both a separate basis to impose discipline on a teaching credential under Code section 44421, and also must be established before immoral conduct, unprofessional conduct, or an act of moral turpitude can be found as a basis for discipline. In *Morrison*, the California Supreme Court examined a teacher's non-criminal consensual homosexual relationship, with no connection to his position as a teacher, and concluded there was an insufficient nexus between the misconduct and his teaching credential. Therefore, the teacher's credential could not be disciplined. Some of the factors used in this determination, known as the *Morrison* factors, are now included in Regulation section 80302 relating to investigations by the Committee. Only the pertinent factors need to be analyzed. (*West Valley–Mission Community College Dist. v. Concepcion* (1993) 16 Cal.App.4th 1766, 1777.)

27. The eight *Morrison*/Regulation section 80302 factors are applied here as follows:

27A. The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated. This likelihood was established by clear and convincing evidence.

27B. The proximity or remoteness in time of the conduct. The incident with respondent, Hancock, and S.A. occurred on October 22, 2019.



27C. The type of credential held or applied for by the person involved. Respondent's credentials allow him to teach students of elementary through grade 12 in a single subject and to teach vocational education.

27D. The extenuating or aggravating circumstances surrounding the conduct. An extenuating circumstance would, by definition, lessen the seriousness of a situation, perhaps by offering a partial excuse. In one sense, respondent's continued difficulties with interruptions to his class as well as prior issues with Hancock might be considered as extenuating in a subjective sense. However, as noted above, such interruptions were the norm and respondent's overreaction to what was the standard procedure in the AEC on the day of the incident aggravated the circumstances.

27E. The praiseworthiness or blameworthiness of the motives resulting in the conduct. There is no perceived praiseworthiness in the acts established by the evidence. Respondent's escalation of the situation by describing Hancock as having hit him with a document or pushing him, and as possibly having a gun or a knife, are escalations not supported by the facts and indicate a blameworthy motive.

27F. The likelihood of the recurrence of the questioned conduct. Recurrence is likely, given respondent has received warnings, reprimands, and conference summaries relating to his problematic conduct with colleagues, staff, and administrators from 2011 through 2019, and had a therapist for most of that time with whom he discussed work issues and conflicts. Yet, the October 22, 2019 incident occurred and took on immense proportions and consequences. While it is hoped the conduct will not recur, respondent needs a longer track record of appropriate conduct and effective anger management and conflict resolution to give reasonable assurances the questioned conduct will not recur, and of continued success in his teaching career.

27G. 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. Respondent did not offer any evidence to establish any constitutional right of his that will be impacted adversely by this matter.

27H. The publicity or notoriety given to the conduct. Most of the employees interviewed by Brenes were aware of the incident, student S.A. submitted an incident report, and the parents of S.A. were notified by the school counselor.

28. There is sufficient evidence of a connection or nexus between respondent's acts and words during the incident on October 22, 2019, and his fitness to teach. Complainant established by clear and convincing evidence respondent's misconduct has a direct nexus to his fitness to teach and to the teaching profession.

29. For evidence unfitness to teach to be a separate bases for adverse action, the unfitness must be by reason of temperamental defects or inadequacies; a character trait "not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Woodland, supra*, 2 Cal.App.4th at p. 1444.) Here, respondent received nine warnings, notices, and reprimands, including directives for improvements, in the eight years prior to the seminal incident. The number and subject matters of these prior warnings combined with the incident is clear and convincing evidence of a temperamental defect.

30. There is cause to take adverse action against respondent's credentials under Code section 44421 for evident unfitness for service, based on his actions and words on October 22, 2019. (See Factual Findings 11 through 19, 37, 44.)

31. Respondent contends each separate sentence of the description of the October 22, 2019 incident, as described in paragraph 13 of the First Amended

Accusation, does not meet the criteria of any of the causes for discipline pleaded therein. However, as noted in *Woodland* and *Hensey*, it was not necessarily each individual act or comment but, rather, the totality. The events should be looked at in the aggregate. Adverse action against respondent's credentials therefore is warranted.

### **AGGRAVATING FACTORS**

32. In considering the degree of adverse action that may be appropriate, the Commission is authorized to consider aggravating factors. Regulation section 80300, subdivision (b), states:

"Aggravating 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. Aggravating factors may include, but are not limited to, the following:

- (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 demonstrates 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;

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- (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.

33. Applying these factors, there have been no prior adverse actions against respondent's credentials and his "misconduct," i.e., the October 22, 2019 incident, is singular. There were no "multiple" acts. That act of misconduct was surrounded by dishonesty considering the false information respondent gave to the 911 operator and to a Sheriff's deputy, and it significantly harmed a student and another teacher. Respondent demonstrated indifference toward the consequence of the misconduct when it occurred. There were nine instances from 2011 to earlier in 2019 when respondent had prior notice, warnings, or reprimands for inappropriate interactions with staff, colleagues, and administrators.

## **Outcome**

34. Licensing disciplinary matters like this are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, a licensing agency should be primarily concerned with protection of the public. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

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35. In most instances where wrongdoing has been proven, the person's reactions and subsequent demonstration of having learned from the consequences should be considered. Rehabilitation denotes the restoring of privileges and a good name, as through therapy and education. (American Heritage Dict. (3d ed. 1994) p. 695.) Legally, rehabilitation requires a consideration of those offenses from which one has allegedly been rehabilitated. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041.) Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve one who has achieved reformation and regeneration. (*Id.* at p. 1058.) The absence of a prior disciplinary record is a mitigating factor. (*Chefsky v. State Bar* (1984) 36 Cal.3d 116, 132, fn. 10.) Remorse and cooperation are mitigating factors. (*In re Demergian* (1989) 48 Cal.3d 284, 296.) While a candid admission of misconduct and full acknowledgment of wrongdoing may be a necessary step in the rehabilitation process, it is only a first step. A truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he is once again fit to practice. (*In re Trebilcock* (1981) 30 Cal.3d 312.)

36. To determine the appropriate outcome for respondent requires consideration of the aggravating factors and the evidence of his rehabilitation. The nature of the October 22, 2019 incident itself and the aggravating factors supports adverse action at the level of revocation of respondent's credentials. It cannot be concluded respondent accepted full responsibility for his actions and expressed remorse. His submissions to the Committee of Credentials and to the Commission continued to lay blame on others, some of which may have been warranted, but he accepted virtually no blame himself. Those submissions, in December 2020 and January 2021 (see Exhibits 24, pp. A315-A317, and CC), in the guise of providing "context" for the various events investigated, did not show acceptance of responsibility or remorse. Respondent, despite receiving numerous warnings, letters, and conference

summaries related to his bad conduct and poor reactions to and communications with others, continued to maintain that conduct and, in the October 22, 2019 incident, increase the amplitude to an unacceptable degree. Such actions and words occurred despite respondent consulting with a therapist, originally to demonstrate his fitness before returning to work in mid-2013 and continuing to the present. Respondent clearly had issues and conflicts with many colleagues, staff, and administrators during his time at the District.

37. Of note, there was less evidence of issues between respondent and students, and some students were extremely generous in their praise of respondent. Similarly, respondent has had colleagues, staff, and administrators who praise and value him as a teacher, colleague, and friend. He has begun to undertake actions to support his rehabilitation. However, considering the extreme nature and effects of respondent's misconduct, he does not yet have a sufficient record of positive action to allow him to maintain his credentials. For protection of the public, those credentials are revoked.

## **ORDER**

1. The Clear Designated Subjects Supervision and Coordination Credential issued to respondent Jonathan Jay Wright is revoked.

2. The Certificate of Eligibility Administrative Services Credential issued to respondent Jonathan Jay Wright is revoked.

3. The Clear Single Subject Teaching Credential issued to respondent Jonathan Jay Wright is revoked.

4. The Clear Designated Subjects Vocational Education Teaching Credential:  
Full Time issued to respondent Jonathan Jay Wright is revoked.

DATE: **04/19/2023**

*David Rosenman*

DAVID B. ROSENMAN

Administrative Law Judge

Office of Administrative Hearing