

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

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

JOHNATHEN BLAKE TONOZZI, Respondent

Agency Case No. 2-314344244

OAH No. 2023080690

PROPOSED DECISION

Patrice De Guzman Huber, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 17 and 18, 2024 from Sacramento, California.

Steve J. Pyun, Deputy Attorney General, represented complainant Mary Vixie Sandy, Ed.D., Executive Director of the California Commission on Teacher Credentialing (Commission), State of California.

Joshua F. Richtel, Esq., represented respondent Johnathen Blake Tonozzi, who appeared.

The record was held open for complainant to redact her exhibits. Evidence was received, the record closed, and the matter submitted for decision on April 26, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. On April 19, 2016, the Commission issued respondent an Emergency 30-Day Substitute Teaching Permit (permit), which expired on May 1, 2020.

2. On December 15, 2017, the Commission issued respondent a Certificate of Clearance (certificate). The certificate expired on January 1, 2023. The Commission may discipline an expired certificate. (Ed. Code, § 44440, subd. (b).)

3. On February 3, 2021, the Commission reissued respondent's permit, which expired on March 1, 2022. The Commission may discipline an expired permit. (Ed. Code, § 44440, subd. (b).)

4. On June 28, 2021, the Commission issued respondent a Preliminary Five-Year Single Subject Teaching Credential (credential). The credential will expire on July 1, 2026, unless renewed or revoked.

5. On February 9, 2022, respondent applied for reissuance of his permit (application). The application remains pending and the permit has not been reissued.

6. On June 5, 2023, Commission staff, on behalf of complainant in her official capacity, signed and thereafter filed an Accusation and Statement of Issues. Complainant seeks to deny respondent's application based on his alleged misconduct involving moral turpitude, pursuant to Education Code section 44345, subdivision (e). Complainant also seeks to revoke all credentials, certificates, and authorizations issued to respondent, based on respondent's alleged unprofessional conduct, immoral

conduct, conduct involving moral turpitude, and evident unfitness for service, pursuant to Education Code sections 44345, subdivision (e), and 44421.

Generally, complainant alleged, between September 2021 and October 2021, while a high school social studies and history teacher for Central Unified School District (CUSD) in Fresno County, California, respondent engaged in inappropriate and unprofessional conduct toward A.D., a student. In aggravation, complainant alleged respondent's misconduct evidences multiple acts of wrongdoing and demonstrates a pattern of misconduct. Complainant further alleged respondent's misconduct significantly harmed A.D., the public, or the educational system.

7. Respondent timely filed a Notice of Defense and request for hearing. The matter was set for an evidentiary hearing before an ALJ of the OAH pursuant to Education Code section 44246 and Government Code section 11500 et seq.

Respondent's Interactions with A.D.

8. In August 2021, CUSD hired respondent to teach at Justin Garza High School (JGHS). Fifteen-year-old student A.D. was in respondent's social studies class. She occasionally spent the lunch hour in respondent's classroom, along with other students. In September 2021, respondent and A.D. began "following" each other on Instagram, a social media application with a chat function. From September 23, 2021, until October 23, 2021, they regularly chatted on Instagram.

9. On Instagram, respondent and A.D. talked about various subjects, including school, pop culture, music, and fashion. They used memes, emojis, slang, and profanity. Respondent mentioned an ex-girlfriend a few times and joked about wanting to date another teacher. In some conversations, A.D. talked about a crush she had on a college student who was text messaging her. Respondent offered to give A.D.

a pair of basketball shorts. A.D. offered to purchase respondent a Starbucks drink, jokingly asked to drive his car, and asked him to buy her a pair of shoes. Respondent declined each time.

10. In early October 2021, JGHS Vice Principal Brent Dettman learned respondent and A.D. were chatting on Instagram. Mr. Dettman suggested to respondent he cease social media contact with A.D. or any other student. Respondent immediately “unfollowed” A.D. on Instagram. Later that same month, CUSD administration saw some of the Instagram messages and became concerned. Jack Kelejian, CUSD Assistant Superintendent, assigned Eliseo Cuellar, CUSD Director of Human Resources, to investigate respondent’s interactions with A.D. On November 8, 2021, CUSD placed respondent on paid administrative leave, pending the outcome of its investigation.

11. To investigate, Mr. Cuellar interviewed witnesses and prepared written summaries of the interviews. Mr. Cuellar wrote a “BRICK” report memorializing his investigation and testified consistently with that report. “BRICK” stands for Background; Rule; Impact; Corrective Action; and Know Your Rights.

12. Mr. Cuellar interviewed A.D., who testified at hearing consistently with Mr. Cuellar’s written summary of her interview. Initially, A.D. and respondent connected over their shared experience of having parents with cancer, specifically A.D.’s mother and respondent’s father. A.D. felt at ease talking to respondent on Instagram because Ashley Schoolfield, A.D.’s “Leadership” teacher, regularly checked the social media of “Leadership” students, including A.D. On three occasions, A.D. accepted boba from respondent. She believes she gave respondent money to purchase boba at least once. A.D. was on the basketball team and accepted a pair of basketball shorts from respondent because she could use another pair of shorts.

It was uncommon for A.D. and respondent to be alone together. On the rare occasion they were alone in respondent's classroom, the door was always propped open with a chair. A.D. testified respondent never touched her inappropriately. Their physical contact was minimal, usually just to pose together for photos. A.D. recalled on one occasion, she "hit" respondent's arm jokingly. A.D. began feeling "weird" about chatting on Instagram with respondent when she heard rumors at school, suggesting she and respondent had an inappropriate relationship. To avoid the rumors, A.D. "unfollowed" respondent on Instagram.

13. Mr. Cuellar interviewed J.B., a student in respondent's history class, along with J.B.'s mother, J. [REDACTED] M. [REDACTED]. Ms. M. [REDACTED] initially contacted JGHS administrators because J.B. received an F in respondent's class. Ms. M. [REDACTED] also wanted to report what J.B. told her about A.D. and respondent.

14. J.B. testified at hearing. She and A.D. used to be but are no longer friends. At hearing and in her interview, J.B. said A.D. showed her some of the Instagram messages between A.D. and respondent. In J.B.'s opinion, A.D. and respondent talked to each other as if they were friends. At hearing and in her interview, J.B. stated she observed, while respondent was loading boxes into his vehicle in the parking lot after school, A.D. was sitting in the driver's seat of his vehicle. At hearing, J.B. testified, while J.B. and A.D. waited for rides after school, A.D. combed her fingers through respondent's hair. In her interview, J.B. said nothing about this incident to Mr. Cuellar.

During the interview, Mr. Cuellar asked J.B. how respondent conducted himself around A.D. J.B. said respondent often made jokes. J.B. told Mr. Cuellar, on one occasion, she saw respondent "grab" A.D.'s head and say, "This is what macaroni looks like." At hearing, J.B. gave a different version of this incident. She testified respondent

high-fived A.D. and said, "This is what macaroni sounds like." J.B. testified she believed the "macaroni" comment was a joke, but she did not understand what it meant.

15. As part of his investigation, Mr. Cuellar reviewed the Instagram messages. He noted respondent used profanity and talked about other students and teachers. Mr. Cuellar found particularly alarming a photo respondent sent to A.D. The photo depicted a velociraptor from the film *Jurassic Park*. The photo did not bear any text captions. After sending the photo, respondent messaged, "Haha. Clever girl. Jurassic Park." Mr. Cuellar interpreted respondent's use of the photo as his admission he is a predator. During Mr. Cuellar's investigation, he did not ask respondent or A.D. to explain or provide context to any of the Instagram messages.

16. Respondent resigned on November 19, 2021. At hearing, Mr. Kelejian confirmed he accepted respondent's resignation. After CUSD's Board of Trustees approved respondent's resignation, Mr. Kelejian notified the Commission of respondent's change in employment status, pursuant to California Code of Regulations, title 5, section 80303.

PSYCHOLOGIST OPINION ON INSTAGRAM MESSAGES

17. Paul S.D. Berg, Ph.D., testified. He has been a licensed clinical psychologist in California since 1967. Dr. Berg earned his bachelor's degree at the City College of New York in New York City and his master's degree and Ph.D. at Michigan State University in East Lansing, Michigan. He has been operating a private practice since 1964, specializing in post-traumatic disorders, family dysfunctions, and depressive and anxiety disorders. Dr. Berg also conducts forensic evaluations and has been qualified as an expert witness in superior courts. He has evaluated and treated victims of grooming and, occasionally, groomers.

18. Dr. Berg explained a grooming relationship requires a power imbalance in addition to “regular courting” behaviors such as emotional bonding, trust building, and gifting. A groomer is good at identifying potential victims who are missing something from their lives, which the groomer seeks to fill. Dr. Berg explained a groomer uses courting behaviors to gradually disarm a potential victim, until the groomer achieves the ultimate goal, a sexual relationship.

19. In reviewing the Instagram messages between respondent and A.D., Dr. Berg noted what appeared to be respondent’s attempt to disarm A.D. by minimizing the power imbalance. For example, respondent used language culturally accessible to someone younger, such as “dude,” “bruh” [bro], and profanity. According to Dr. Berg, the gifts, such as boba and shorts, and conversations about their common experience of having a cancer-stricken parent were also generally consistent with an attempt to disarm.

20. Although Dr. Berg opined some of respondent’s behaviors appeared consistent with grooming, he did not treat, forensically evaluate, or diagnose respondent. According to Dr. Berg, the Instagram messages alone are insufficient to clinically conclude whether respondent is a groomer.

Respondent’s Evidence

21. Before JGHS, respondent had never taught or interacted with students in person. The teaching credential program at National University in Fresno, California, required respondent to work as a student teacher for six months. He completed this requirement at Ahwahnee Middle School in Fresno, California, where he interacted with students in virtual classrooms and by email. Classes were virtual because of COVID-19. Respondent obtained his teaching credential at 30 years old.

22. When CUSD began investigating respondent, he immediately asked his long-time therapist, Patricia Behrens, to help him identify his problematic conduct. Respondent has been seeing Ms. Behrens at least once per week since 2019. With her guidance, respondent realized he had acted inappropriately toward A.D. and felt he failed as a teacher. He resigned from JGHS to spend time on himself and his issues.

23. In therapy, respondent learned how his experiences culminated in his problematic behavior. Growing up, he lacked independence. He continues to live at home, even as an adult. His parents, particularly his mother, did everything for him, including cooking and other household chores. When respondent was with his ex-girlfriend for eight years, her family "never took no for an answer" and regularly disrespected his boundaries. Respondent realized his anxiety, insecurity, and desire to be liked conditioned him to disregard boundaries so long as the end result is people's approval.

24. Specifically as to A.D., respondent realized he felt comfortable with her because they each had a parent who had cancer. Additionally, they also liked similar music and fashion. As a result, respondent felt they were "closer to equals," and he could treat her as a friend. As friends, respondent felt it was acceptable to talk to her casually, using profanity, emojis, and memes. At hearing, respondent explained the *Jurassic Park* photo Mr. Cuellar found alarming. The photo is a meme referencing a scene in the movie wherein a character refers to a velociraptor as a "clever girl." Respondent used the meme in response to A.D.'s immediately preceding message to him saying, "You're so clever." He did not use the meme to confess any predatory intent.

25. Respondent admitted giving A.D. boba on a number of occasions, despite feeling, as he described, like a "delivery man." Respondent also admitted

giving A.D. basketball shorts. He explained he had planned to donate the shorts to charity. They were counterfeit Off-White brand shorts respondent bought in Asia. Because A.D. seemed to also like the brand, respondent thought to give the shorts to her rather than donate them to charity.

26. Although A.D.'s attention and friendship validated respondent's desire to be liked, respondent denied any inappropriate physical contact with A.D. or any sexual interest in her. He testified he was rarely alone with her and denied she ever touched his hair or sat in his vehicle. Even so, respondent learned in therapy he demonstrated poor judgment when he treated A.D. as a peer. Now, respondent understands the importance of maintaining firm boundaries within each person's respective role. Respondent regularly engages in a self-check and looks critically at his thought process and behaviors. Every week, he seeks Ms. Behrens's guidance to ensure he is behaving appropriately.

27. Due to respondent's better understanding of himself, his triggers, and his behaviors, he would not cross professional boundaries again in the future. After spending almost two years focusing on self-reflection and self-improvement, he returned to teaching in September 2023. He secured employment as a substitute teacher at the Center for Advanced Research and Technology (CART), a high school in Fresno, California. At CART, respondent does not treat students as equals and keeps a professional distance from them. Respondent was pleased when his efforts to act appropriately as an educator and perform well at CART resulted in CART's offer to work as a long-term substitute teacher for six months. Respondent enjoys teaching at CART and would like to continue teaching there.

28. Ms. Behrens testified at hearing. She has been a Licensed Marriage and Family Therapist (LMFT) since 2011. Prior to her career as an LMFT, Ms. Behrens was a

probation officer in Fresno and Madera Counties and, later, a credentialed teacher of third and fourth grades. Ms. Behrens described respondent as codependent, particularly on his mother. Respondent and his mother are so close that, in childhood and throughout adulthood, respondent would report his whereabouts and all details of his daily life. As a result of this codependent relationship, respondent lacked individuation or a sense of a separate self. Without individuation, boundaries appeared blurry to respondent. Because respondent is anxious and insecure, blurry boundaries were acceptable so long as the end result was others' approval. According to Ms. Behrens, he lacked "social maturity" to think critically about social interactions.

29. When respondent's boundary issues came to light, Ms. Behrens and respondent focused their therapy sessions on helping respondent learn how to set and maintain boundaries. Together, they completed a therapeutic workbook on boundaries. Ms. Behrens is actively involved in helping respondent continually evaluate his conduct and judgment. In their weekly sessions, respondent describes his thought process and social interactions to Ms. Behrens to gain further insight on what is going well and what could improve. Over the years, Ms. Behrens testified respondent has shown "tremendous" growth.

30. Ms. Behrens believes respondent did not have any sexual interest in A.D. Ms. Behrens conceded some of respondent's conduct may appear consistent with grooming behaviors. However, in her opinion, any apparent consistency is inadvertent and not motivated by the ultimate goal of a sexual relationship.

Analysis

31. Evidence Code section 780 sets forth factors to consider in determining the credibility of a witness. The trier of fact may "accept part of the testimony of a

witness and reject another part even though the latter contradicts the part accepted.” (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also “reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material.” (*Id.* at pp. 67-68, quoting *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Finally, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)

32. Respondent’s testimony was credible and persuasive. He was forthcoming about his interactions with A.D., including the Instagram messages and his gifts of boba and basketball shorts. He testified he erred when he treated A.D. as an equal and failed to set and maintain proper boundaries. In addressing his wrongdoing, respondent testified with remorse and embarrassment. His demeanor and attitude while testifying contributed to his credibility. (Evid. Code, § 780, subds. (a), (j).)

Further, his testimony was consistent with A.D.’s independent testimony and with portions of J.B.’s independent testimony. (Evid. Code, § 780, subds. (c), (d), (i).) Respondent described his interactions with A.D. as friendly, which A.D. and J.B. independently corroborated. (*Ibid.*) His denial of sexual interest in A.D. is consistent with the absence of sexual overture in the Instagram messages and their interactions as a whole. (*Ibid.*) Further, respondent’s testimony on his rehabilitation efforts is consistent with his positive work performance at CART and resulting offer to work as a permanent substitute teacher. (*Ibid.*) Consequently, respondent’s testimony is given great weight.

33. Respondent's testimony on the *Jurassic Park* meme was also persuasive. A meme is an amusing, interesting, or humorous item, such as a captioned image or video, spread rapidly on social media. The *Jurassic Park* meme respondent used references a scene in which a character tries to hunt a pack of velociraptors. As the character prepares to shoot one, another velociraptor successfully ambushes him. Upon seeing this velociraptor, he states, "Clever girl," as if to say the pack outsmarted him. Respondent testified he used the meme to respond to A.D. calling him clever, not to confess any predatory motive.

Mr. Cuellar's interpretation that respondent used the meme to admit he was a predator is not persuasive, as it is inconsistent with the meme's actual reference. More broadly, Mr. Cuellar's opinions on the Instagram messages or social media are given little weight in light of his misunderstanding of pop culture references and modern ways younger people communicate and his failure to, at the very least, ask either respondent or A.D. to provide context or explain the slang and memes they used.

34. Similarly, J.B.'s testimony is unpersuasive in light of her bias, motive, and inconsistent statements. (Evid. Code, § 780, subds. (f), (h).) J.B.'s failing grade in respondent's class and her falling out of friendship with A.D. reveal a bias and motive to make allegations damaging to respondent, A.D., or both. (*Id.* at subd. (f).) J.B.'s inconsistency also suggests she is not credible. The difference between "grabbing" A.D.'s head and giving her a high-five, and the difference between the appearance and sound of macaroni, are significant and cannot reasonably be attributed to an understandable variance in her recall. J.B. did not explain why her story changed between her interview and hearing. (*Id.* at subd. (h).)

Additionally, A.D. combing her fingers through respondent's hair, if true, would be a vivid image. There is no reason J.B. would omit telling Mr. Cuellar about this

incident when her interview was closer in time to the event. Instead, J.B. described the hair touching incident for the first time at hearing, nearly three years later. (Evid. Code, § 780, subds. (c), (d).) For the above reasons, J.B.'s testimony was not credible or persuasive.

35. In contrast, A.D.'s testimony is given great weight. Her testimony was consistent with her statements during the CUSD investigation, with respondent's statements and testimony, and with portions of J.B.'s statements and testimony. (Evid. Code, § 780, subds. (a), (g), (j).) A.D. was forthcoming about respondent's interactions with her, including chatting on Instagram and his gifts of boba and basketball shorts. A.D.'s testimony was consistent with respondent's independent testimony they were rarely alone and he never touched her inappropriately. (*Id.* at subds. (c), (d), (g), (i).) A.D.'s perception of respondent's interactions with her as friendly is also consistent with the tenor of their Instagram messages as a whole. (*Ibid.*)

36. Dr. Berg's testimony was also credible, considering his objectivity and expertise in the field of psychology. (Evid. Code, § 780, subds. (d), (f), (j).) Based on Dr. Berg's assessment, respondent exhibited behaviors consistent with grooming. However, as Dr. Berg noted, the Instagram messages alone are insufficient to clinically conclude whether respondent is a groomer.

37. Ms. Behrens's testimony is given great weight in light of her credentials and longstanding and ongoing treatment of respondent. (Evid. Code, § 780, subds. (c), (d).) While some of respondent's behaviors may appear consistent with grooming behaviors, Ms. Behrens opined any apparent consistency is inadvertent. Further, Ms. Behrens testified credibly about respondent's issues, his rehabilitation efforts, and his "tremendous" growth within the last few years. (*Id.* at subds. (c), (d).)

38. The criteria to be reviewed in determining whether a teacher is unfit to teach are set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 and have been codified in California Code of Regulations, title 5, section 80302, subdivision (a). These factors are:

- (1) the likelihood that the conduct may have adversely affected students or fellow teachers, and the degree of such adversity anticipated;
- (2) the proximity or remoteness in time of the conduct;
- (3) the types of credentials held or sought by the person involved;
- (4) any extenuating or aggravating circumstances surrounding the conduct;
- (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct;
- (6) the likelihood of recurrence of the questioned conduct;
- (7) the extent to which disciplinary action may have an adverse impact or chilling effect upon the constitutional rights of the person involved, or other teachers; and
- (8) the publicity or notoriety given to the conduct.

LIKELIHOOD OF ADVERSE EFFECTS ON STUDENTS OR FELLOW TEACHERS

39. A.D., other students, and respondent's fellow teachers likely experienced adverse effects due to respondent's conduct. A teacher's duty goes beyond substantive instruction. The educational system is meant to serve as training for the larger society. School is where young people learn their respective roles, how to respect other people's roles and boundaries, and how to navigate diverse social relationships. As an educator, respondent had a responsibility to model appropriate behavior and conduct. He failed to do so when he crossed boundaries and behaved inappropriately toward A.D. Respondent's conduct overall weakened the integrity of the educational system's role in preparing students to integrate into society.

PROXIMITY OR REMOTENESS IN TIME

40. Respondent's conduct occurred in 2021. It is more proximate than remote in time.

TYPES OF CREDENTIALS HELD AND SOUGHT

41. Respondent holds a Preliminary Five-Year Single Subject Teaching Credential and seeks to renew his Emergency 30-Day Substitute Teaching Permit. Both the credential and the permit require teaching competence. Furthermore, a single subject teaching credential is most likely used in upper grades, where respondent will interact with teenaged students like A.D. Therefore, his ability to manage those relationships appropriately is more important in light of his credential.

EXTENUATING OR AGGRAVATING CIRCUMSTANCES

42. Neither the Education Code nor the applicable regulations specify what constitutes "extenuating circumstances." However, California Code of Regulations,

title 5, section 80300, subdivision (m), defines "mitigating factor" as "an event or circumstance which demonstrates that the public, school children and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever." Although respondent ultimately failed to maintain proper boundaries with A.D., the evidence suggests he made some attempt to maintain professional distance. He declined her offer to buy him a Starbucks drink, did not permit her to drive his vehicle, and declined to purchase shoes for her. On the rare occasion they were alone together, respondent ensured the door remained open.

Respondent's efforts at self-improvement after he realized his wrongdoing are further mitigating. He was remorseful, felt like a failure, and decided to focus on correcting himself before returning to teaching. He demonstrated he gained insight into his triggers, motivations, and thought process, and his efforts to check himself and his conduct continue. Respondent has exhibited "tremendous" growth, to such extent that he secured employment at CART, performed well, and received an offer for a permanent substitute teaching position.

43. California Code of Regulations, title 5, section 80300, subdivision (b), lists aggravating factors, the presence of which indicate a greater degree of discipline is necessary to protect students and the teaching profession. Two pertinent factors are: (1) misconduct that evidences multiple acts of wrongdoing and demonstrates a pattern of misconduct; and (2) significant harm to a child entrusted to the care of a credential holder or applicant, the public, or the educational system. (*Id.* at subds. (b)(2), (4).)

Respondent's failure to behave appropriately reflected negatively on the educational system, whose purpose is to train students to become well-adjusted, productive members of society. Contrary to that purpose, respondent's actions

deprived A.D. of the opportunity to practice staying within the bounds of her role in society. However, complainant did not establish how respondent's interactions with A.D., both in person and on Instagram, constitute discrete acts or a pattern of misconduct. Similarly, complainant did not establish whether any harm respondent caused rose to the level of significant harm.

PRAISEWORTHINESS OR BLAMEWORTHINESS OF MOTIVES RESULTING IN THE MISCONDUCT

44. Respondent's conduct was blameworthy in several respects. He crossed student-teacher boundaries with A.D. by discussing his personal life, gossiping about people at school, and giving her gifts such as boba and shorts. An insecure person, respondent was blinded by the validation A.D.'s attention brought. He failed to realize, at any point during his interactions with A.D., his conduct was inappropriate. As a result, his actions reflected negatively on the educational system's charge to teach students how to behave appropriately and integrate into larger society.

LIKELIHOOD OF RECURRENCE

45. The likelihood of recurrence is minimal. Respondent was remorseful and admitted his failure as a teacher. To work on himself, he resigned from JGHS and immediately sought therapy. He learned how his personal experiences shaped his views on boundaries and appropriate behavior and now understands his desire to be liked cannot control his conduct. After almost two years of self-reflection and with therapeutic support, respondent felt ready to return to teaching and secured a position at CART, where he appears to be excelling. Respondent credibly testified he has taken this time in his life as a learning experience and has demonstrated

commendable improvement and insight. Thus, recurrence of respondent's problematic conduct is unlikely.

ADVERSE IMPACT OR CHILLING EFFECT

46. There is no evidence that discipline would adversely impact or chill respondent or any other teacher in the free exercise of their constitutional rights.

PUBLICITY OR NOTORIETY OF MISCONDUCT

47. No evidence was presented that respondent's conduct was publicized. Based on the existence of school rumors, there is some evidence of notoriety.

CONCLUSION

48. Respondent's mitigating evidence is substantial and persuasive. He was remorseful and earnest in learning from his mistakes, receiving therapeutic support, and practicing what he has learned. He articulated his understanding of what caused his problematic conduct and continues to work with his therapist to critically evaluate himself. With insight, it would be unlikely for respondent's inappropriate conduct to recur. Commendably, after focusing nearly two years on self-reflection and self-work, respondent was able to secure employment as a substitute teacher at another high school where his performance earned him an offer of a permanent substitute position.

49. However, while respondent has demonstrated insight and sustained and ongoing self-improvement, the clear and convincing evidence shows his boundary-crossing conduct toward A.D. was unprofessional and unbecoming of a teacher. Thus, cause exists to discipline his credential based on that unprofessional conduct. Nevertheless, complainant did not establish respondent's conduct rose to the level of immoral conduct or moral turpitude or demonstrated he is unfit to teach. His behavior

was not motivated by a desire to harm A.D., other students or teachers, or the educational system. Respondent has been consistently honest and forthcoming about his wrongdoing.

50. When all the evidence is considered in light of the *Morrison* factors, respondent has demonstrated he is able to perform his duties as a teacher in a manner consistent with the protection of the public, students, and the profession. A public reproof serves the interests of public protection because it will constitute prior discipline and can therefore be considered 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 mitigation factors present here and respondent's significant rehabilitation. Thus, the appropriate discipline in this case is a public reproof.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant has the burden of proving the allegations in the Accusation by clear and convincing evidence to a reasonable certainty. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Brooks* (2008) 169 Cal.App.4th 176, 190.)

2. As to the Statement of Issues, respondent has the burden to prove by a preponderance of the evidence he is entitled to the permit he seeks. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205; *Coffin v. Alcoholic Beverage*

Control Appeals Bd. (2006) 139 Cal.App.4th 471, 476.) Preponderance of the evidence means "more likely than not." (*Sandoval v. Bank of America* (2002) 94 Cal.App.4th 1378, 1388.)

Applicable Law

3. Pursuant to the Education Code, commencing with section 44000, and California Code of Regulations, title 5, commencing with section 80000, the Commission is responsible for credentialing teachers in public schools in California, including taking adverse action against applicants and credential holders.

4. The Commission may privately admonish, publicly reprove, revoke, or suspend a credential for immoral or unprofessional conduct, evident unfitness of service, or any cause that would warrant denial of an application, such as an act involving moral turpitude. (Ed. Code, §§ 44345, subd. (e), 44421.)

5. An aggravating factor is an event or circumstance that demonstrates a greater degree of discipline is necessary to adequately protect the public, schoolchildren, or the profession. Aggravating factors include multiple acts of wrongdoing, a pattern of misconduct, and misconduct significantly harming a child, the public, or educational system. (Cal. Code Regs., tit. 5, § 80300.)

6. California Code of Regulations, title 5, 80302, subdivision (a), provides the factors to consider to "determine the relationship between the alleged misconduct and the applicant's or holder's fitness, competence, or ability to effectively perform the duties authorized by the credential."

7. The California Supreme Court has recognized that the terms "immoral conduct" and "unprofessional conduct" substantially overlap one another and conduct

that constitutes one often includes the other. (*Morrison, supra*, 1 Cal.3d 214, 221, fn. 9.) "Unprofessional conduct" includes "that which violates the rules of ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing." (*Bd. of Education of the City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553, internal quotations omitted.) Additionally, in *San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466, the court explained:

[T]he definition of immoral or unprofessional conduct must be considered in conjunction with the unique position of public school teachers, upon whom are imposed "responsibilities and limitations on freedom of action which do not exist in regard to other callings." [Citation.]

8. Immoral conduct is sometimes considered as synonymous with "dishonesty" or a high degree of unfairness. (*Bd. of Education of the San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.) The court explained in *Palo Verde Unified School District of Riverside v. Hensey* (1970) 9 Cal.App.3d 967, 972:

The term "immoral" has been defined as that which is hostile to the welfare of the general public and contrary to good morals. Immorality 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.

9. 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.) It includes any crime or misconduct committed without excuse, or any dishonest act not necessarily a crime. (See *Golde v. Fox* (1979) 98 Cal.App.3d 167, 181.)

10. "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.*)

Causes for Discipline

11. Complainant established, by clear and convincing evidence, respondent committed acts of unprofessional conduct by interacting with A.D. as a peer, giving her gifts, connecting with her on social media, and discussing his personal life. Thus, cause exists to discipline respondent's credentials, certificates, and authorizations for unprofessional conduct, pursuant to Education Code section 44421.

12. Complainant failed to establish, by clear and convincing evidence, respondent committed acts of immoral conduct. Thus, cause does not exist to discipline respondent's credentials, certificates, and authorizations for immoral conduct, pursuant to Education Code section 44421.

13. Complainant failed to establish, by clear and convincing evidence, respondent committed acts of moral turpitude. Thus, cause does not exist to discipline

respondent's credentials, certificates, and authorizations pursuant for acts of moral turpitude, pursuant to Education Code sections 44345, subdivision (e), and 44421.

14. Complainant failed to establish, by clear and convincing evidence, respondent demonstrated evident unfitness for service. Thus, cause does not exist to discipline respondent's credentials, certificates, and authorizations for evident unfitness for service, pursuant to Education Code section 44421.

Cause for Denial of Application

15. Respondent proved by a preponderance of the evidence he is entitled to reissuance of the permit he seeks. Complainant did not prove respondent committed acts of moral turpitude. Thus, cause to deny his application does not exist pursuant to Education Code section 44345, subdivision (e).

Conclusion

16. Discipline for unprofessional conduct can consist of private admonishment, public reproof, suspension of the credential, or revocation of the credential. (Ed. Code, § 44421.) As discussed above, when all the evidence is considered, a public reproof of respondent would adequately protect the public, students, and the profession.

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ORDER

Respondent Johnnathen Blake Tonozzi is PUBLICLY REPROVED. His application for reissuance of his Emergency 30-Day Substitute Teaching Permit is GRANTED.

DATE: May 24, 2024



PATRICE DE GUZMAN HUBER

Administrative Law Judge

Office of Administrative Hearings