

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

In the Matter of the Accusation Against:

JOSE ANGEL ORTIZ, Respondent.

Agency Case No. 2-105110665

OAH No. 2022030201

PROPOSED DECISION

Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on August 8 and 10, 2022.

Vivian Cho, Deputy Attorney General, represented complainant.

Fredrick M. Ray, Attorney, Ray & Bishop, PLC, represented Jose Angel Ortiz (respondent).

The record was held open after the conclusion of the hearing for respondent to submit medical documentation described during his testimony, and for complainant to respond. The events that transpired while the record was held open are described in the ALJ's order marked as Exhibit Z. The record closed and the matter was submitted for decision on August 31, 2022.

SUMMARY

Complainant seeks to discipline respondent's teaching credential based on his 2019 conviction for driving under the influence of a drug (methamphetamine), and three instances in Fall 2018 when he left students unsupervised for a matter of minutes, either in the classroom or on the school yard. During one of those instances, school staff detected the odor of marijuana emanating from respondent after he returned to his classroom from his absence, later confirmed by a toxicology screening in which respondent tested positive for marijuana. However, it was not clearly and convincingly established that respondent was under the influence of marijuana at the time.

Application of the *Morrison* factors indicate respondent's leaving students unsupervised in Fall 2018, and intentionally violating school district policy one of those times, have a direct relationship to his fitness to teach. However, those factors indicate respondent's 2019 conviction does not relate to his fitness to teach, and therefore cannot support discipline in this matter.

Much of respondent's misconduct was related to disruptive events in his personal life, which by now have resolved. Respondent also has shown a satisfactory level of rehabilitation, including abstaining from drug use and continuing employment with the same school district without incident; in fact, respondent has impressed his new supervisor. Respondent already has served a 15-day suspension from his employer for the Fall 2018 incidents. Under these unique circumstances, discipline less than a suspension will not jeopardize public protection. Instead, a public reproof is warranted.

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FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant is Mary Vixie Sandy, Ed.D, the Executive Director of the California Commission on Teacher Credentialing (the Commission). (Ex. 1.)

2. On March 2, 2005, the Commission issued a Clear Multiple Subject Teaching Credential (credential) to respondent. The credential has been regularly renewed and was last issued on April 1, 2020. The credential was active at all times relevant and will expire on April 1, 2025, unless renewed. Respondent's credential allows him to teach all subjects in a self-contained class and, as a self-contained classroom teacher, to team teach or to regroup students across classrooms, in grades 12 and below. (Ex. 3.)

3. Respondent also possesses a bilingual, cross-cultural, language and academic development (BCLAD) authorization. This authorization allows respondent to provide specified services to limited-English-proficient pupils. (Ex. 3.)

4. The Commission first authorized respondent to teach in July 1997, when it issued him an Emergency Long Term Multiple Subject Teaching Permit. Thereafter, the Commission issued respondent a Pre-Intern Certificate (2001-2003), and an Intern Multiple Subject Teaching Credential (2003-2005). (Ex. 3.)

5. On December 7, 2021, complainant, in her official capacity, brought the Accusation against respondent. (Ex. 1.)

6. Respondent timely filed a Notice of Defense, which contained a request for a hearing to challenge the Accusation. (Ex. 1.)

Respondent's Pertinent Background Information

7. Respondent is a 56-year-old man. As discussed in more detail below, he separated from his wife of over 20 years in April 2018. Respondent has two adult children. (Testimony [Test.] of respondent.)

8. Respondent has always been interested in teaching, particularly for those in Spanish-speaking migrant communities. After he graduated from the University of California, Santa Barbara, with a major in Latin American Studies and a minor in Spanish, respondent remained in the Santa Barbara area working as a teacher assistant in classes attended by migrants while he studied for his credential. (Test. of respondent.)

9. In July 1997, the Los Angeles Unified School District (LAUSD) hired respondent to teach at Denker Avenue Elementary School (Denker). Respondent has only taught at Denker during his tenure with LAUSD. He has taught all grades from kindergarten through fifth grade at Denker. Respondent particularly enjoys teaching classes attended by students who are English-Language Learners. (Test. of respondent.)

10. Before the events discussed below, respondent had no disciplinary history with the Commission; the record does not contain any evidence of prior disciplinary history with LAUSD. (Test. of respondent; Exs. 2, 3, 6.)

Respondent's June 2018 Arrest and 2019 Conviction

ARREST

11. On June 21, 2018, at approximately 6:00 a.m., respondent was driving his vehicle in the number one lane of the northbound Interstate-5 (I-5) in Fresno County,

California, while under the influence of methamphetamine, which he had smoked earlier. Respondent fell asleep briefly, and when he woke up, he jerked the steering wheel, which caused the vehicle to swerve into the dirt median. The vehicle began to overturn and roll several times through the median and across the lanes of the southbound I-5. It came to rest on its side on the shoulder of the southbound I-5. No other cars were involved in this accident, and respondent sustained only minor injuries. (Test. of respondent; Ex. 4.)

12. When a California Highway Patrol (CHP) officer responded to the scene, he found a shattered glass pipe near respondent's vehicle. Respondent exhibited clear signs of intoxication and failed field sobriety tests. Respondent was arrested for suspicion of driving under the influence of drugs or alcohol. A CHP drug recognition expert evaluated respondent and determined he had been driving under the influence (or DUI) of methamphetamine. Respondent submitted to a blood test, which was positive for methamphetamine and amphetamine. (Test. of respondent; Exs. 4, 8.) Criminal charges were filed against respondent for driving under the influence of a drug. (Ex. 5.)

CRIMINAL CONVICTION

13. On April 2, 2019, in the Superior Court of the State of California, County of Fresno, respondent was convicted, following his plea of nolo contendere, of one misdemeanor count of driving under the influence of a drug in violation of Vehicle Code section 23152, subdivision (f). (Ex. 5.)

14. Imposition of sentence was suspended, and respondent was placed on probation for three years under terms including that he complete a three-month first-offender alcohol program, pay fines and fees, and serve 180 days in jail, of which 170

days were stayed. Respondent was ordered to enroll in the Adult Offender Work Program to complete the remaining balance of custody time. (Ex. 5.) Respondent testified he has successfully completed the terms of his probation.

LAUSD's DISCIPLINE

15. LAUSD was advised of respondent's arrest and his subsequent criminal conviction. On October 29, 2019, respondent was issued a Letter of Reprimand by LAUSD as a result of the conviction. (Ex. 6, p. A233.)

16. The Letter of Reprimand provided, in relevant part:

Since most employees operate motor vehicles on and/or near District worksites during their daily commute and in some instances, while on the job, employees are expected to comply with laws relating to safe operations of motor vehicles and the licensing of drivers of motor vehicles.

The District has issued this Letter of Reprimand as a warning that you must always act in a manner which is in the best interest of the District. Unlawful conduct demonstrates your lack of commitment to standards important to the success of the District and can have a direct impact on the well-being and learning environment of our students.

(Ex. 6, p. A233.)

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Respondent's Conduct in Fall 2018

OCTOBER 25, 2018

17. On October 25, 2018, respondent left the Denker campus for lunch. He was late returning to campus. This meant his students were left unsupervised on the school yard while waiting for respondent to take them back to their classroom.

Denker's principal at the time, Judy Manyweather, became aware of the situation and directed School Coordinator Sharlene Scott to pick up respondent's class from the school yard, take them back to their classroom, and wait there until respondent returned. (Test. of Manyweather, Scott; Ex. 6.)

18. Respondent returned to campus from his lunch break five to ten minutes late. He went to his classroom and apologized to Ms. Scott for being late. Ms. Scott smelled marijuana emanating from respondent. He also looked disheveled, and his eyes were red and watery. Ms. Scott left respondent's classroom and immediately reported to Principal Manyweather her concern that respondent may be under the influence of marijuana. (Test. of Scott; Ex. 6.)

19. Not long thereafter, respondent was summoned to the office, where he met with Principal Manyweather. She also detected an odor of marijuana emanating from respondent, and she observed he was disheveled, and his eyes were red and glassy. Principal Manyweather also suspected respondent may be under the influence of marijuana. (Test. of Manyweather; Ex. 6.)

20. During the office visit, Principal Manyweather asked respondent if he had consumed marijuana that day. At some point in the discussion, respondent admitted that he smoked marijuana the prior evening to help him sleep and that he was sure his clothes smelled of marijuana for that reason. Respondent also told Principal

Manyweather he could do what he wanted during his free time. Principal Manyweather construed that statement to mean respondent believed he could smoke marijuana during his duty free lunch break, but it was not clearly and convincingly established that is what respondent actually told her or what he meant to say. Respondent testified he had not smoked marijuana during his lunch break that day and had left campus to get food at a nearby McDonald's. (Test. of Manyweather, respondent.)

21. After consulting with the LAUSD Local District office serving Denker, Principal Manyweather referred respondent to have a toxicology screen that day. LAUSD police were called to the office when there was a question over transporting respondent to the testing facility, but respondent provided his own transportation. The test ultimately was positive for marijuana metabolites. However, the toxicology test result only establishes respondent had marijuana in his system at the time of the testing, not when respondent had consumed the marijuana. (Test. of Manyweather, respondent; Exs. 6, 10.)

22. LAUSD and Denker policy includes maintaining a drug and alcohol-free workplace; prohibiting the use of illicit drugs and alcohol by employees in all workplaces; and prohibiting employees from appearing at work, or performing their school duties, while under the influence of drugs or alcohol. (Test. of Manyweather; Ex. 6, pp. A106-114.)

23. For the reasons explained below, it was not clearly and convincingly established that respondent was under the influence of marijuana when he returned to campus from lunch.

As discussed above, the positive toxicology test did not establish when respondent had consumed marijuana.

Principal Manyweather and Ms. Scott were reasonably suspicious that respondent was under the influence of marijuana when he returned from the lunch break. But in light of respondent's categorical denial to using marijuana that day, Principal Manyweather's and Ms. Scott's suspicions do not clearly and convincingly establish respondent was under the influence of marijuana. For example, the record does not contain sufficient foundation establishing either person has a particular expertise or experience determining whether another person is under the influence of marijuana. Moreover, respondent was not observed by either person attempting to perform a duty at school, which observation may have demonstrated an impairment, such as altered speech, slowed reactions, nervousness, or reduced concentration. In fact, Principal Manyweather and Ms. Scott did not mention in their testimony seeing respondent engage in any unusual behavior or mannerism.

Finally, respondent's disheveled appearance could have been caused by his scrambling back to the classroom after realizing he was late. Respondent testified he has a chronic medical condition causing his eyes to be red. Respondent also plausibly explained his clothes that day smelled like marijuana because he consumed marijuana the prior evening in his bedroom, which is where he stores his wardrobe.

OCTOBER 31, 2018

24. On October 31, 2018, at approximately 10:45 a.m., respondent left his class unattended and unsupervised, and failed to provide instruction, for approximately six to seven minutes. (Test. of Manyweather, respondent; Ex. 6, pp. A103-105.) Respondent testified he briefly left the classroom to retrieve from his car a caterpillar he found at home, which he wanted to show his class as part of instruction. Respondent left the front door of his classroom open so teachers in the classrooms across the hall could monitor the situation if students became disruptive.

25. As respondent was leaving the parking lot on his way back to the classroom, he was seen by Principal Manyweather, Local District Superintendent Michael Romero, and another LAUSD employee. About that time, Principal Manyweather heard a school radio call by Denker Supervision Aide Malik Hawkins that respondent's students were sitting in their classroom reading without an adult present. Mr. Hawkins was requested to remain in the classroom until respondent returned, which was several minutes later. (Test. of Manyweather, Hawkins, respondent; Ex. 6, pp. A103-105.)

26. Denker school policy requires staff to sign out of Denker's Leave Campus Notebook when leaving campus. Because respondent had not left campus, but rather went to the parking lot, he did not violate this school policy. However, never leaving children unsupervised, either on the school yard or in the classroom, is a well-known LAUSD and Denker policy. Respondent testified he knew of that policy and made the regrettable decision to violate it by leaving the classroom on this day. (Test. of Manyweather, respondent.)

NOVEMBER 7, 2018

27. November 7, 2018, was a minimum day at Denker, meaning the lunch break was shorter. However, respondent forgot that when he left for lunch. On the way out of the parking lot, he accidentally hit another person's car with the parking lot gate while opening it. Respondent spoke to the owner of the other car. He then drove to McDonald's and got lunch for himself and the man who owned the other car. (Test. of respondent.)

28. Respondent returned to school well after the lunch break ended. His students again were alone on the school yard waiting to be taken to their classroom.

Principal Manyweather saw respondent's students unsupervised, so she took them to their classroom and began their instruction. Respondent arrived in his classroom 17 minutes late. He had food and beverages from McDonald's with him on a tray. He told Principal Manyweather about the accident with the other car. (Test. of Manyweather, respondent; Ex. 6, pp. A103-106.)

29. On this day, respondent violated Denker school policy by failing to sign out in Denker's Leave Campus Notebook when he left campus for lunch. (Test. of Manyweather, respondent; Ex. 6, pp. A103-106.)

LAUSD's DISCIPLINE

30. On November 9, 2018, a conference was held to discuss these three incidents, attended by respondent, Principal Manyweather, another administrative member of Denker, and respondent's union representative. (Ex. 6, pp. A103-106.) Respondent was advised LAUSD deemed his actions during the events in question constituted unsatisfactory performance. (*Ibid.*) A conference memorandum confirming the office conference was later sent to respondent. (*Ibid.*)

31. On November 30, 2018, LAUSD issued respondent a Notice of Unsatisfactory Acts based on the three Fall 2018 incidents, as well as his arrest for driving under the influence of a drug, and five absences from work Principal Manyweather deemed to be "unprotected." (Ex. 6, pp. A100-165.)

32. On November 30, 2018, LAUSD issued respondent a Notice of Suspension for the period of 15 days based on the three Fall 2018 incidents. (Ex. 6, pp. A166-231.) Respondent did not appeal his suspension. Principal Manyweather delayed the suspension until 2019 and broke it up into non-consecutive intervals of one to three days. Respondent served the suspension. (Test. of Manyweather; Ex. 6, p. A232.)

PROBLEMS CAUSED BY RESPONDENT DURING THESE THREE INCIDENTS

33. Leaving children unsupervised, either on the school yard or in the classroom, poses obvious safety concerns. Moreover, teachers at LAUSD are required to teach from bell-to-bell. When respondent was absent from the classroom, or his absence from the school yard at the end of the lunch break caused students to be returned to the classroom late, the students lost important instructional time. (Test. of Manyweather, Scott.)

34. Respondent's failure to sign out in Denker's Leave Campus Notebook when he left campus for lunch on November 7, 2018, caused confusion for Principal Manyweather because she did not know where respondent was after noticing his students were unsupervised. (Test. of Manyweather.)

35. One week or so after the October 25, 2018 incident, respondent confronted Ms. Scott on the school yard and accused her of acting like an administrator instead of someone whose job it was to help teachers. Respondent got loud and some students heard the commotion. Ms. Scott walked away. Respondent was not justified in making such a scene in front of students or causing an awkward situation for Ms. Scott. She had reasonably suspected respondent was under the influence of marijuana and properly reported her concern to her supervisor, Principal Manyweather.

Findings Based on Evidence Presented by Respondent

36. Respondent's drug use and irresponsible behavior at Denker are related to his emotional devastation when his wife of over 20 years left him in April 2018 and took their two children with her. Respondent was so distraught he sought medical

treatment and took a leave of absence from Denker from May 4 through May 25, 2018. (Test. of respondent; Exs. D, E.)

37. Respondent's June 2018 I-5 accident and DUI arrest were precipitated by respondent's wife and her family members forcing respondent to vacate the family house earlier that morning. Depressed and with nowhere to go, respondent decided to drive to his mother's house in Salinas at 2:30 a.m., and he made the more unfortunate decision to smoke methamphetamine to sooth his depression and anxiety.

38. In 2018 respondent smoked marijuana in the evenings to cope with anxiety and help him sleep. (Test. of respondent, Jose Guadalupe Ortiz [respondent's brother]; Exs. D, E, G.)

39. Respondent credibly testified he never smoked methamphetamine again after realizing how lucky he was to survive his crash on the I-5. He also stopped smoking marijuana after the commotion caused by the October 25, 2018 incident, when LAUSD police were called to Denker's office after Principal Manyweather decided to refer respondent for the toxicology screening. Respondent now uses over-the-counter sleeping pills recommended to him by his treating physician. (Test. of respondent.)

40. Respondent now is in a much better state emotionally. He sought therapy to help him with his depression and anxiety. He is at peace with his marriage ending and his wife has filed legal divorce proceedings, which respondent is not contesting. Respondent regularly sees his two adult children. Respondent's brother, Jose Guadalupe Ortiz, helped respondent buy a new car after the I-5 accident and find an apartment. Mr. Ortiz reports respondent keeps his apartment clean and is in good

spirits, so much so that Mr. Ortiz is comfortable with his wife and children visiting with respondent. (Test. of respondent, Ortiz; Ex. G.)

41. It is clear that respondent and Principal Manyweather had a strained relationship. Nonetheless, Principal Manyweather had given respondent a favorable evaluation for the 2017-2018 school year. Although respondent was critiqued in that evaluation for being late 13 times that school year, he was given a performance grade of “developing” in that area. Principal Manyweather testified respondent continued to have a problem with late arrivals and absences after the events in Fall 2018, but no documentation was presented corroborating the same, and she admitted respondent was improving in those areas before she retired in 2021. (Ex. 6, pp. A158-164.)

42. Principal Manyweather was replaced at Denker by Evelia Perea. Principal Perea and respondent have a good relationship. Principal Perea gave respondent a favorable evaluation in 2022, and she also wrote a favorable letter of support for respondent to be used in this proceeding. (Exs. A, B.) Principal Perea concluded her letter, “Overall, Mr. Ortiz has served as a great teacher to our school community.” (Ex. B.)

43. Respondent disputes he had five “unprotected absences,” as Principal Manyweather characterized them. He testified he took his father to medical appointments on the days in question, but that he arranged for a substitute teacher and gave Denker advance notice of his absences. Regardless, respondent’s father passed away a few years ago, and the record indicates respondent no longer has an absence problem at Denker. (Test. of respondent; Ex. F.)

44. Respondent’s brother, Mr. Ortiz, testified in support of respondent. He observed respondent is now positive, out-going, emotionally stable, and is doing well.

Mr. Ortiz testified his brother has always loved teaching and that it is the only thing he knows how to do. Respondent also presented a character reference letter from his sister-in-law, Cristina Mota, who is a therapeutic behavior manager. Ms. Mota has known respondent for over 30 years. She believes respondent has resolved the difficulties he experienced from his separation and supports respondent retaining his credential. (Test. of Ortiz; Ex. H.)

45. Respondent expressed sincere remorse in his testimony at hearing. He understands LAUSD's concern with his behavior in 2018. He explained the various lessons he learned from his therapy, as well as the High Gain Program required as part of his criminal probation. (Ex. C.) He realized how destructive using drugs was, so he stopped using them. He now rarely leaves campus for lunch because he does not want to be late returning to campus. He also described how surviving the I-5 accident rekindled the spirituality he lost in college. He now reads the Bible on weekends. Overall, respondent's demeanor and testimony were consistent with someone who has rehabilitated from the emotional troubles in 2018 that led to some of the events in question.

LEGAL CONCLUSIONS

Jurisdiction

1. Pursuant to Education Code section 44000 et seq., and California Code of Regulations, title 5, commencing with section (Regulation) 80001, the Commission is responsible for credentialing teachers in public schools in California, including issuing credentials, and taking adverse action against applicants and credential holders. (Undesignated statutory references are to the Education Code.)

2. Section 44421 authorizes the Commission to take adverse action against an individual's teaching credential for, among many specified causes, unprofessional conduct, evident unfitness for service, and refusal to obey the laws regulating the duties of persons serving in the public school system.

3. Regulation 80336, subdivision (a)(1), provides that a certificated person shall not perform or attempt to perform any duties or services authorized by his or her credential during any period in which he or she knows or is in possession of facts showing that "his or her mental or intellectual faculties are substantially impaired for any reason, including but not limited to use of alcohol or any controlled substance." Regulation 80336, subdivision (b), defines substantial impairment to mean "a visible inability to perform the usual and customary duties of the position in a manner that does not represent a danger to pupils, employees, or school property."

Burden and Standard of Proof

4. Complainant has the burden of establishing by clear and convincing evidence to a reasonable certainty cause for adverse action against respondent's credential because it is considered to be a professional license. (See *Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.)

5. Clear and convincing evidence is "of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the fact for which it is offered as proof." (*Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 847.)

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Fitness to Teach

6. The amorphous legal concepts of evident unfitness or unprofessional conduct are so general that they must be given meaning in relation to the particular profession involved. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 227–228 [*Morrison*].) In *Morrison*, the California Supreme Court held that adverse action may not be imposed against a teacher in the absence of evidence showing his or her unfitness to teach. The *Morrison* court articulated a number of factors to be considered in determining whether the misconduct in question relates to a teacher's fitness to teach and therefore can lead to adverse action against a teacher's credential.

7. For purposes of determining the relationship between the misconduct proven and a credential holder's fitness, competence, or ability to effectively perform the duties authorized by the credential, the various factors enumerated in *Morrison* have been codified at Regulation 80302, subdivision (a).

8. In this case, the causes for discipline of unprofessional conduct and evident unfitness must be analyzed by the criteria of Regulation 80302, subdivision (a). The causes for discipline of refusal to obey school laws and performing school duties while under the influence have a direct relationship to one's fitness to teach and therefore need not be so analyzed.

THE LIKELIHOOD THAT THE CONDUCT MAY HAVE ADVERSELY EFFECTED STUDENTS, FELLOW TEACHERS, OR THE EDUCATIONAL COMMUNITY, AND THE DEGREE OF SUCH ADVERSITY ANTICIPATED

9. Respondent's DUI accident in a distant county had no adverse effect on the Denker community. However, respondent's three instances of leaving his students

unsupervised decreased their instructional time. While no actual injury to a student was proven, there was the potential a student could have injured herself or others while no adult was present. Respondent's actions also caused Denker administrators and staff to waste their time and resources covering for him. (Factual Findings 11-35.)

THE PROXIMITY OR REMOTENESS IN TIME OF THE CONDUCT

10. The misconduct supporting discipline occurred in 2018, four years ago. (Factual Findings 11-35.) A period of five years or less has been viewed as not remote for this purpose. (*Broney v. California Com. on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 477.) However, it has been enough time to allow respondent to meaningfully reform.

THE TYPE OF CREDENTIAL HELD BY THE PERSON INVOLVED

11. Respondent's credential puts him in contact with younger students, which is of concern because those students require greater supervision. (Factual Findings 11-35.)

THE EXTENUATING OR AGGRAVATING CIRCUMSTANCES SURROUNDING THE CONDUCT

12. Regulation 80300, subdivision (b), enumerates various circumstances the Commission deems to be aggravating. Some of those circumstances apply to this case. For example, respondent had been late to class 13 times during the 2017-2018 school year, and his conduct in Fall 2018 continued that pattern. Thus, respondent also ignored a prior warning he had received about that behavior. He also displayed reckless indifference to the safety of the motoring public by deciding to drive on a

freeway in the early morning hours without proper rest or sleep, and after smoking methamphetamine. (Factual Findings 11-43.)

13. On the other hand, there also are facts mitigating the severity of respondent's misconduct. He had no prior record of discipline by LAUSD or the Commission. Respondent's actions largely stemmed from personal problems and temporary drug use, both of which have been remediated. No evidence was presented of any subsequent misconduct. Respondent has impressed his current LAUSD supervisor by his teaching. He also has timely complied with the terms of his criminal probation. (Factual Findings 11-42.)

THE PRAISEWORTHINESS OR BLAMEWORTHINESS OF THE MOTIVES RESULTING IN THE CONDUCT

14. Though it is clear why respondent acted as he did, he still deserves only blame for his DUI accident and leaving his students unsupervised three times. (Factual Findings 11-44.)

THE LIKELIHOOD OF THE RECURRENCE OF THE QUESTIONED CONDUCT

15. It is unlikely respondent will repeat his misconduct. He has remediated the personal turmoil leading to his drug use and irresponsibility at school. He no longer uses drugs, and he mostly stays on campus during lunch breaks. Respondent's current supervisor, Principal Perea, has detected none of the issues leading to respondent's prior problems. Moreover, respondent has expressed sincere remorse for his past misconduct and gave the appearance of someone who has satisfactorily rehabilitated himself. (Factual Findings 11-45.)

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**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**

16. The outcome of this case will have no chilling effect on credentialed teachers exercising their constitutional rights.

THE PUBLICITY OR NOTORIETY GIVEN TO THE CONDUCT

17. Respondent's lack of supervision obviously was known to his students, Principal Manyweather, Ms. Scott, and Mr. Hawkins. Respondent republished the October 25, 2018 event to Ms. Scott by improperly chiding her about it in front of others. However, no evidence presented indicates anyone else learned of respondent's DUI accident or conviction. In any event, the record in this case does not tend to show respondent's future on-campus relationships will be impaired by whatever publicity or notoriety was generated by his misconduct. In fact, he is doing well now at Denker. (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1463.) (Factual Findings 11-45.)

OVERALL CONCLUSION

18. On balance, the *Morrison* factors demonstrate a direct nexus between respondent's three instances of leaving his students unsupervised and his fitness to teach. In fact, almost all of the *Morrison* factors apply to that misconduct, in varying degrees. That some of the applicable factors only faintly apply can be reconciled by determining the requisite level of adverse action. (Legal Conclusions 6-17.)

19. However, the *Morrison* factors do not demonstrate a sufficient nexus between respondent's DUI accident/conviction and his fitness to teach. Very few of the

Morrison factors apply to that misconduct; none of the more significant ones apply. For example, respondent's DUI incident did not harm the Denker community. The record does not show it was known to anyone at Denker other than a few administrators. Respondent no longer uses drugs and therefore is not likely to repeat that misconduct. He also presented mitigating facts explaining why that event happened. Because respondent's DUI accident/conviction does not sufficiently relate to his fitness to teach, it may not be a basis for any adverse action in this case. (Legal Conclusions 6-17.)

Cause for Adverse Action

UNPROFESSIONAL CONDUCT

20. Unprofessional conduct in the teaching profession has been defined as that which violates the rules or ethical code of the profession or is unbecoming of a member of the profession in good standing. (*Board of Educ. of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553, overruled on other grounds by *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575.)

21. In this case, it was clearly and convincingly established that cause exists for adverse action against respondent's credential pursuant to section 44421 for unprofessional conduct. On three separate occasions, respondent abandoned his students in the classroom or on the school yard, leaving them unsupervised, and delaying their instructional time. This pattern of behavior over the course of a few weeks was unbecoming of a teacher in good standing. (Factual Findings 11-35.)

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EVIDENT UNFITNESS

22. Evident unfitness is premised on the notion that a teacher's misconduct occurred by reason of temperamental defects or inadequacies. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) " '[E]vident 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.*)

23. Cause for adverse action against respondent's credential pursuant to section 44421 for evident unfitness was not clearly and convincingly established. Respondent's misconduct occurred during a few months in Fall 2018, and was related to problems in his personal life and his poor judgment in using drugs as a response. However, respondent has regained his emotional stability and composure, and no longer uses drugs. Thus, it cannot be concluded respondent has a fixed character trait that is not remediable. In fact, there is no evidence respondent engaged in any misconduct after he received LAUSD's Notice of Unsatisfactory Acts, which put him on notice that his conduct failed to meet LAUSD's expectations. (Factual Findings 11-42.)

PERFORMANCE OF DUTIES WHILE UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE

24. Cause for adverse action against respondent's credential pursuant to Regulation 80366 for performing duties while under the influence of a controlled substance was not clearly and convincingly established. While the events of October 25, 2018 were suspicious, it was not clearly and convincingly established that respondent was under the influence of marijuana when he returned to school from his lunch break. Even if so, it was not clearly and convincingly established that respondent

attempted to perform his duties while substantially impaired by marijuana, as required by Regulation 80366. (Factual Findings 11-23.)

REFUSAL TO OBEY LAWS REGULATING THE DUTIES OF PERSONS SERVING IN A PUBLIC SCHOOL SYSTEM

25. It was clearly and convincingly established that cause exists for adverse action against respondent's credential pursuant to section 44421 for his refusal, in one instance, to obey the laws regulating the duties of persons serving in the public school system.

26. Use of the word "refusal" in the statute signals a violation of it must be intentional. A violation of school rules or school district policies are tantamount to violating a school law. (See *San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.)

27. In this case, it is clear that on October 31, 2018, respondent consciously decided to violate LAUSD and Denker policy prohibiting teachers from leaving students unattended when he left his classroom to retrieve a caterpillar from his car. However, respondent's lateness in picking up students from the school yard after lunch was inadvertent, not purposeful. While debatable, his failure to sign out when he left campus for lunch on November 7, 2018, could have been just as much inadvertence as an intentional decision to ignore that rule. (Factual Findings 17-29.)

Disposition

28. Licensing disciplinary matters like this are not designed to punish an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, a licensing

agency should be primarily concerned with protecting the public. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

29. Regulation 80300 provides the Commission can take the following adverse action against a teacher's credential: a private admonition, public reproof, suspension, or a revocation of one or more credentials. Regulation 80300, subdivision (t), specifies a suspension can be stayed and/or actual, and can last for one year or longer.

30. Respondent's misconduct warranting adverse action can be boiled down to three instances when he left students unsupervised for several minutes at a time; one of those times, he intentionally violated a well-known district and school policy in doing so. In light of the modest nature of this misconduct, revocation of respondent's credential would be beyond punitive.

31. Respondent's employer already has punished him for those misdeeds (and others) by suspending him without pay for 15 days, a punishment respondent has already served. As discussed above, respondent's misconduct was an isolated set of aberrant acts, spanning a few months, which occurred almost four years ago. The purpose of this proceeding is not to replicate the punishment respondent has already suffered, but rather to protect the public. Respondent's employer is comfortable with him teaching its student body with no further restrictions or discipline. Thus, no other known purpose would be served by again suspending respondent, other than punishing him.

32. Under these circumstances, the public can be adequately protected by giving respondent a public reproof for his misconduct. Such public reproof will confirm to respondent his past actions were unprofessional and unacceptable to the

Commission; and serve as notice that more serious adverse action will be warranted in the unlikely event respondent repeats this misconduct. (Factual Findings 1-45; Legal Conclusions 1-31.)

ORDER

Respondent Jose Angel Ortiz is hereby issued a public reproof for his three instances in Fall 2018 of leaving students unsupervised, either in the classroom or on the school yard, and for one of those instances intentionally violating a school law prohibiting a teacher from leaving students unsupervised. A copy of the public reproof shall go in respondent's permanent file with the Commission.

DATE: **09/13/2022**



Eric C. Sawyer (Sep 13, 2022 13:40 PDT)

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings