

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

In the Matter of the Accusation Against:

JONATHAN DAVID MESISCA,

Clear Multiple Subject Teaching Credential

Preliminary Career Technical Education Teaching Credential

Emergency 30-Day Substitute Teaching Credential

Certificate of Clearance

Preliminary Multiple Subject Teaching Credential

Respondent.

Agency Case No. 2-271483897

OAH No. 2023040691

PROPOSED DECISION

Carmen D. Snuggs-Spraggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 24, 2023.

Mary Vixie Sandy, Ed.D. (Complainant), Executive Director of the California Commission on Teacher Credentialing (Commission) was represented by Diana Petikyan, Deputy Attorney General.

Jonathan David Mesisca (Respondent) was represented by William Y. Sheh, Attorney at Law, Reich, Adell & Cvitan.

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

Protective Order

At the hearing, the Complainant requested that Exhibits 2 and 3a be sealed. Exhibit 2 is a copy of a sexually explicit video depicting a minor whose face is exposed, and Exhibit 3a is a video of Instagram messages that contains the names of minor students. To prevent the disclosure of explicit and confidential information, the ALJ issued a Protective Order concurrent with this Proposed Decision placing Exhibits 2 and 3a under seal following their use in the preparation of the Proposed Decision. These exhibits shall remain under seal and shall not be opened except by order of the Commission, OAH, or a reviewing court. A reviewing court, parties to this matter, their attorneys, or a government agency decision maker or designee under Government Code section 11517 may review the documents subject to the Protective Order, provided that such documents are protected from release to the public.

SUMMARY

Complainant seeks to revoke Respondent's teaching credential based on allegations of immoral conduct, unprofessional conduct, evident unfitness for service,

and moral turpitude relating to Respondent's conduct during the fall of 2020. Complainant proved Respondent, while teaching at a high school, sent a video of a minor female engaged in a sexual act to a student.

Respondent does not dispute the allegations of the Accusation. He asserts that his intent in sending the video was to determine whether the person in video was a student who attended the high school where Respondent was teaching, and whether the student video knew about the video so that she could remove it from the internet. Respondent has no history of prior discipline, and he submitted evidence of rehabilitation and mitigation.

The evidence demonstrates Respondent's lapse in judgment resulted in egregious misconduct. However, the revocation of Respondent's credentials because of such misconduct would be unduly punitive considering Respondent's reputation as a stellar teacher. Because public protection, not punishment, is the primary goal of these proceedings and because Respondent is in a position of trust as a teacher in daily contact with a vulnerable student population, stayed revocation and a period of probation with appropriate conditions to protect students and the educational community is warranted in this matter.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 19, 2018, the Commission issued a Clear Multiple Subject Teaching Credential to Respondent. The Clear Multiple Subject Teaching Credential will expire on August 1, 2028, unless renewed. On February 28, 2020, the Commission issued a Preliminary Career Technical Education Teaching Credential to Respondent.

The Preliminary Career Technical Education Teaching Credential expired on March 1, 2023.

2. Respondent previously held the following certification documents: Emergency 30-Day Substitute Teaching Credential, issued on September 1, 2008, and expired on August 1, 2019 (held intermittently); Certificate of Clearance, issued on August 13, 2007, and expired on August 1, 2013; and Preliminary Multiple Subject Teaching Credential, issued on June 30, 2008 and expired on July 1, 2013.

3. The expiration of any credential does not deprive the Commission of its authority to institute or continue a disciplinary proceeding against a credential holder or enter an order suspending or revoking the credential. (Ed. Code, § 44440, subd. (b).) "Credential" is any credential, certificate, certificate of clearance or other document which authorizes the holder to perform services which require certification and was issued by the Commission. (Cal. Code Reg., tit. 5, § 80300, subd. (g).)

4. On December 1, 2021, the Commission informed Respondent that it was in receipt of information requiring an investigation of his fitness to hold a credential and that the matter would be considered by the Commission of Credentials (Committee). On April 29, 2022, the Commission informed Respondent that the Committee found probable cause existed to recommend issuance of a public reproof.

5. On July 29, 2022, the Commission informed Respondent that at its June 16-17, 2022 meeting, the Commission voted to remand Respondent's matter back to the Committee. At its July 20-22, 2022 meeting, the Committee reconsidered Respondent's matter and recommended revocation of his teaching credentials and all certification documents.

6. Respondent timely requested an administrative hearing.

7. Complainant, in her official capacity, served the Accusation on Respondent on February 2, 2023. The Accusation seeks to revoke all credentials, certificates, and authorizations issued to Respondent or take other appropriate adverse action in response to Respondent's conduct in the fall of 2020.

8. On February 9, 2023, Respondent timely filed a Notice of Defense.

9. All jurisdictional requirements have been met.

General Background

10. Respondent obtained bachelor's and master's degrees from the University of Southern California (USC), and he is currently in the process of obtaining his administrative services credential from USC. He is married and has a three-year-old daughter. He currently works as a high school drama teacher with the Hacienda-La Puente Unified School District. At all times relevant to the allegations in the Accusation, Respondent worked as a drama teacher and taught a screenwriting course at John Glen High School (JGHS) within the Norwalk-La Mirada School District (District).

11. Respondent was rated as proficient in all areas, meaning he met or exceeded expectations, on his Teacher Evaluations from the District for the period from August 15, 2018, to May 3, 2019. (Ex. A.) Ten of Respondent's former students wrote letters of appreciation and thank you notes in 2019 and 2021 describing Respondent as supportive, motivating, positive, hardworking, and a role model. (Ex. B.) He was awarded the Teacher of the Year Award by JGHS for the 2021-2022 school year. (Ex. D.) Several teachers and two assistant principals, both from JGHS, submitted letters attesting to Respondent's dedication to his students and effectiveness as a teacher while at JGHS and in New York. The letters written by the JGHS assistant

principals are dated April 16, 2019, and June 1, 2021. (Ex. C.) One of Respondent's former students and former president of the drama club at JGHS, wrote a letter to the Commission pursuant to Respondent's request. The student described Respondent as easy-going and professional and attributed the success of the theater department to Respondent. The student denied that Respondent ever made inappropriate comments to or about students. (Ex. E.) Respondent has no history of discipline by the District or the Commission.

12. On February 3, 2021, the District became aware of allegations concerning Respondent's comments and communications to students, including the provision of a pornographic video to JGHS student BT. (Students and their parents are identified by their initials for privacy purposes.) The video contained a sex scene involving a minor.

13. Respondent was placed on administrative leave of absence beginning February 3, 2021, while the District conducted an investigation of the allegations of misconduct.

14. On June 17, 2021, the District notified Respondent that its Governing Board had decided not to re-employ him for the 2021-2022 school year.

Evidence of the Alleged Misconduct

15. On November 17, 2020, Respondent messaged student BT on Instagram inquiring whether student BT knew student KM and her boyfriend. Respondent then informed student BT that he saw an inappropriate video purportedly depicting student KM. BT inquired whether the video was a "P vid" - to which Respondent replied, "Well, it's the girl pressed up against the sink (clothed) but yes . . . Screaming - tell me I'm better than B." (Ex. 3, p. 40.)

16. Respondent subsequently sent student BT a screenshot of the video, informed student BT not to take screenshots, and told BT that the female in the video resembled student KM. Respondent then asked student BT if she wanted to see the video as follows: "You want to see it? But delete right away. Don't save it. Okay. Go to quiet [*sic*] place or plug headphones in. Adult Language and content." (Ex. 3, p. A43.)

17. Student BT did not immediately reply to Respondent's messages, but Respondent still sent student BT the full video.

18. After sending the video, Respondent messaged student BT several times asking questions in attempt to determine if student KM was in the video including whether student BT recognized the sink that can be seen in the video. Student BT replied that she recalled an incident where student KM and her boyfriend went into student BT's bathroom. Respondent asked student BT to take a picture of her sink and also asked student BT to not "say anything," to which student BT replied that she would not.

19. Respondent asked student BT if she was "convinced" the person in the video was student KM. (Ex. 3, p. A46.) Respondent also asked, "she's what 15?" in reference to student KM, followed by a series of three flushed face emoji icons. (*Ibid.*)

DISTRICT INVESTIGATION

20. Mike Garcia, the District's Director of Human Resources, testified at the hearing. He explained that the District's investigation was conducted from February 2021 to June 2021. Mr. Garcia did not recall whether anyone from the District interviewed Respondent as part of its investigation.

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21. According to Mr. Garcia, Respondent's contract with the District terminated on June 3, 2021. Because of Respondent's inappropriate communications with student BT, District elected not to have Respondent return to the District.

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT INVESTIGATION

22. On February 3, 2021, the District notified the Los Angeles County Sheriff's Department (LACSD) of the allegations. LACSD Detective Larry Flores investigated the allegations of misconduct from February 3, 2021, through July 28, 2021, and prepared a report of his findings. (Exhibit 3.) As part of his investigation, Detective Flores interviewed student BT, Sharon Cruz, JGHS's Assistant Principal, and Mike Garcia, the Director of Human Resources for the District, and issued a search warrant to obtain Instagram messages between student BT and Respondent and the videos that had been exchanged.

23. Student BT provided Detective Flores with a digital copy of the conversation between her and Respondent. Detective was unable to review the video Respondent sent to student BT because it did not load. The results of the search warrant did not include conversations between student BT and Respondent. However, Detective Flores observed a screen shot from the video which showed "a young female bent over laying across an unknown object." Ex. 3, p.A33.)

24. Based upon Detective Flores' investigation, he determined Respondent distributed obscene mater of a minor in violation of Penal Code section 311.2, subdivision (d), and provided information from his investigation to the District Attorney. The District Attorney declined to press charges against Respondent.

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COMMISSION INVESTIGATION

25. On July 16, 2021, the District notified the Commission of the allegations of misconduct against Respondent. A Commission Investigator investigated the allegations by interviewing student KM, MM (KM's father), and student BT, and prepared Confidential Investigative Reports. (Exs. 6 and 7.) (The interview summaries contained in the reports constitute administrative hearsay; thus, under Government Code section 11513, subdivision (d), their contents are considered only to the extent they supplement or explain direct evidence.)

26. Respondent provided a written statement to the Commission. Respondent wrote the following in his statement:

[¶] . . . [¶]

When I saw the video, I reached out to one of her close friends, [BT], out of concern for [KM]. At the time, I had a newborn baby at home, who was my first child, and all I could think about was if it had been my child in this crude video that had been posted to Reddit. I did not want that video to circulate the internet because I knew that [KM] wanted a career in the arts and I was not positive whether the individual in the video was her or not. The people in the video were all fully clothed. However, there was some suggestive dialogue in the video, I told [BT] that the content was crude in nature, and I expressed to her my concern regarding whether it was [KM] in the video or not. To be honest, I was in a complete state of shock when I saw the

video and this whole incident occurred within a matter of minutes because I was truly concerned about [KM], and I wanted to make sure it was her in the video before I pursued the matter any further. After months and months of isolation, virtual communication, and makeshift protocols of advisement from school leadership, which affected my judgment because, among other things, everything seemed a bit more detached when dealing with people virtually, I stupidly sent the video to [BT]. As an adult and educator, I should not have done so, and I regret any harm that I caused in sending the video to [BT]. In sending the video clip, however, there was absolutely no inappropriate intent on my part. Instead, I reached out because I was concerned whether my former student, [KM], was the individual in this video. There was nothing malicious or sexual in my intent or motives.

. . . My honest intention was to get the video taken down, by whoever had posted it or by Reddit, if it turned out that it was my former student in the video. I went about it the wrong way, and to this day I live wishing that I would have taken more time to process the whole situation in a more thoughtful manner, with my brain, instead of immediately reacting to the situation, with my heart, without taking the time to think things over or consult with my wife first, because I was concerned about my former student.

(Ex. 7, pp. A90-A91.)

Allegations of Aggravating Factors

27. A. Complainant alleged and established the following as aggravating factors for consideration when determining the appropriate level of discipline in this case:

B. Respondent misconduct constitutes multiple acts of wrongdoing and demonstrated a pattern of misconduct.

C. Respondent misconduct was surrounded by a violation of the law governing educators.

D. Respondent did not establish that Respondent's misconduct was surrounded by or followed by bad faith or dishonesty, Respondent's misconduct significantly harmed a child entrusted to his care, or that Respondent demonstrated indifference toward the consequence of his misconduct.

Respondent's Evidence

28. Respondent's testimony at the hearing regarding how he happened upon the video and why he sent it to student BT was consistent with his written statement to the Board described in Factual Finding 26. He asserted that he told student BT not to save a screenshot of the video because he did not want her to save it and circulate it. After his text exchange with student BT, he did not communicate whether any further about the video.

29. Respondent called his friend and mentor Christopher Leach, who is also a teacher in New York, and disclosed his interactions with student BT. According to

Respondent, Mr. Leach told him that he should not have sent the video to student BT, and Respondent agreed. Similarly, Respondent disclosed his interactions with student BT to his wife when she returned home from work. Respondent's wife was not convinced that it was student KM in the video but understood why Respondent thought it could be.

30. Respondent did not communicate with student KM about the video because after "the smoke settled," it was determined that it was not her and he did not feel the need to proceed any further.

31. Respondent continued teaching after being let go from the District. He taught theater and Honors English to high school students in the Irvine Unified School District for one year. Respondent then worked as a theater teacher for seventh and eighth grade students for one year in the Saddleback Valley Unified School District. He did not inform the administrators at his current school district nor the administrators at the Irvine and Saddleback Valley Unified School Districts about the incident at JGHS.

32. Since leaving JGHS, Respondent won an award for the best play in Orange County and his students were voted the best ensemble. Respondent has not been disciplined or received any student complaints since the incident with student BT.

33. Respondent wants to continue to work in the education field. He intends to study for and take the exam to obtain his administrator's credential. Respondent asserted that he would like to use his skills and passion to make a positive impact on teachers and students.

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CHARACTER EVIDENCE

34. Jenifer Mesisca has been married to Respondent for five years and testified on Respondent's behalf. Mrs. Mesisca became familiar with student KM when Mrs. Mesisca she worked on costumes and choreography for the drama department in 2018.

35. When Mrs. Mesisca arrived home on November 17, 2020, Respondent appeared distraught. According to Mrs. Mesisca, Respondent stated he had made a mistake and did something he should not have. He explained that he saw student KM in a video on Reddit and sent it to another student to ask if the student also thought it was student KM.

36. Respondent showed Mrs. Mesisca the video and his text exchange with student BT. Mrs. Mesisca saw the resemblance between student KM and the person in the video but did not believe it was student KM and told Respondent so.

37. Mrs. Mesisca agreed that Respondent made a mistake in sending the video to student BT. In her opinion, it appeared as if Respondent was responding to the video as a peer and not a teacher. Mrs. Mesisca believes Respondent was sincere in his belief that the person in the video may have been student KM. She denied that Respondent had malintent and believes he was genuinely concerned about whether the video was posted without student KM's knowledge, and the potential consequences to student KM of having a video like that posted on the internet.

38. Christopher Leach, who testified on Respondent's behalf, has been in a teacher with the New York City of Department of Education for 24 years, and has been an elementary school physical education teacher for 15 years. He has known Respondent since 2009, when they worked in New York for four years. During that

time, he interacted with Respondent daily during recess and lunch, and observed Respondent teaching drama students. Mr. Leach also assisted Respondent with drama rehearsals.

39. Mr. Leach described Respondent as a great teacher who was loved by everyone and had a good rapport with students and parents.

40. Respondent sent Mr. Leach a text about his interactions with student BT the day it occurred. Respondent told Mr. Leach that he saw a video on the internet of an individual who might have been his student engaged in "some kind of activity." Mr. Leach stated that Respondent also told him that he notified a friend of the student of what Respondent saw. He does not recall if Respondent described the video or the messages to student BT.

41. Mr. Leach advised Respondent that what he did "was not a good idea." Mr. Leach asserted that he believed Respondent thought he was acting in the best interest of the student and was trying to help her. Mr. Leach believed Respondent acted out of haste and did not have any ill intent.

42. Mr. Leach denied any concerns regarding Respondent retaining his credential and stated he would not hesitate to work with Respondent in the future.

43. Kevin Somers, who testified on Respondent's behalf, was Respondent's college roommate and has known Respondent for 19 years. They have remained in contact over the years and Respondent has talked to him about his work as a drama teacher.

44. Respondent told Mr. Somers that he sent a video to a student while acting in the best interest of another student, and that he made a mistake. Respondent

did not describe the video to Mr. Somers and Mr. Somers did not ask. Respondent did not tell Mr. Somers that the video was sexual in nature nor did he describe the messages to student BT However, he does not believe Respondent was motivated by improper intent.

45. Mr. Somers described Respondent as dedicated to his job and being a teacher, honest, and a good father and husband.

46. Peter Mares, who testified on Respondent's behalf, is a fourth-grade teacher with the Santa Ana Unified School District (SAUSD) and has worked for SAUSD for 25 years. He has known Respondent for 14 years and met him when they were fourth grade teachers during the 2008-2009 school year.

47. Mr. Mares has observed Respondent's interactions with students in the past. He described Respondent as responsible, positive, friendly, motivating to students, and caring.

48. Mr. Mares is aware that Respondent sent an inappropriate video to a student's friend. Respondent did not describe the video or his messages to BT to Mr. Mares. Respondent told Mr. Mares that he was concerned about the student because the video was compromising, and he wanted the student to know about the video so that she could get the video removed from the internet. Mr. Mares believes that Respondent's motives were good because he is a compassionate enthusiastic and caring person who likes to help people.

49. Mr. Mares stated he would have no concern if Respondent retained his credential and that he would love to work with Respondent again.

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LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant is required to prove cause for discipline of a teaching permit by "clear and convincing proof to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) To the extent Respondent contends mitigation or rehabilitation, it is his burden to prove those contentions by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

2. For purposes of teacher discipline, conduct cannot be characterized as immoral, unprofessional, or involving moral turpitude unless it indicates a teacher is unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229 (*Morrison*)). In making this determination, the Commission may consider such matters as: "(1) The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated; [¶] (2) The proximity or remoteness in time of the conduct; [¶] (3) The type of credential held or applied for by the person involved; [¶] (4) The extenuating or aggravating circumstances surrounding the conduct; [¶] (5) The praiseworthiness or blameworthiness of the motives resulting in the conduct; [¶] (6) The likelihood of the recurrence of the questioned conduct; [¶] (7) The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons; [¶] (8) The publicity or notoriety given to the conduct." (Cal. Code Regs., tit. 5, § 80302, subd. (a); *Morrison, supra*, 1 Cal.3d at p. 229.) Not all *Morrison* factors need be examined to determine fitness to teach, only the pertinent ones. (*West Valley–Mission Community College Dist. v. Concepcion* (1993) 16 Cal.App.4th 1766, 1777.)

First Cause for Discipline (Unprofessional Conduct)

3. The Commission may discipline the credential of a person who commits unprofessional conduct. (Ed. Code, (Code) § 44421; see § 44345.)

4. "Unprofessional conduct" is conduct that "violates the rules or ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing." (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553 [citation omitted], overruled, in part, on another ground in *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575, 588, fn. 7.)

5. On November 7, 2020, Respondent sent student BT a screen shot from a video depicting a minor female engaged in a sexual act, and then sent the student BT the full video despite acknowledging that the video contained adult language and content. (Factual Findings 15-26 and 29.) These acts were unbecoming of a teacher and constitute unprofessional conduct. Cause was established to discipline Respondent's credentials under section 44421, based on unprofessional conduct.

Second Cause for Discipline (Immoral Conduct)

6. The Commission may discipline the credential of a person who commits acts of immoral conduct. (§ 44421.) "The term 'immoral' has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals." (*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811 [citation omitted].)

7. Respondent's act of sending to student BT a screen shot from a video depicting a minor female engaged in a sexual act, and then sending student BT the full video despite acknowledging that the video contained adult language and content, constitutes immoral conduct under section 44421. (Factual Findings 15-26 and 29.)

Cause was established to discipline Respondent's credentials under section 44421, based on his acts of immoral conduct.

Third Cause of Discipline (Evident Unfitness for Service)

8. 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 Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 (*Woodland*)). 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.*) On this cause for discipline, the criteria for unfitness in *Morrison* "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 etc. Sch. Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 973.)

9. Although Respondent's actions were unprofessional, Complainant did not establish by clear and convincing evidence they were the result of a temperamental defect or fixed character trait that cannot be remedied. (See *Woodland, supra*, 2 Cal.App.4th at pp. 1444-1445.) Respondent displayed poor judgment in initiating Instagram messages with student BT on November 17, 2020, regarding his suspicion that student KM was depicted in the sexually explicit video, and then sending student BT both a screenshot from the video depicting a minor

female and the full video despite acknowledging that the video contained adult language and content. (Factual Findings 15-26 and 29.) However, Respondent has no prior disciplinary history, and Complainant presented no evidence of a pattern of similar behavior. Respondent established through the letters written by colleagues that he does not possess any deviant personality trait, or defect of character that makes him unsuitable for teaching. Cause was not established by clear and convincing to discipline Respondent's credentials under sections 44421 for evident unfitness for service.

Fourth Cause for Discipline (Moral Turpitude)

10. The Commission may discipline the credential of a person who commits acts of moral turpitude. (§§ 44421, 44345, subd. (e).) Moral turpitude has also been described as "any crime or misconduct committed without excuse, or any 'dishonest or immoral' act not necessarily a crime." (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027.)

11. Respondent's acts of sending to student BT a screen shot from a video depicting a minor female engaged in a sexual act, and then sending student BT the full video despite acknowledging that the video contained adult language and content constitutes acts of moral turpitude in that it was an immoral act not necessarily a crime. (Factual Findings 15-26 and 29.) Cause was established by clear and convincing evidence to discipline his credentials under sections 44421 and 44345, subdivision (e), for acts of moral turpitude.

***Morrison* Factors**

12. Pursuant to *Morrison*, the Commission shall determine whether a teacher's conduct indicates such unfitness to teach as to warrant disciplinary action.

13. The first *Morrison* factor focuses on the “likelihood” the conduct “may have” adversely affected students, teachers, or the educational community, and the degree of adversity anticipated. (Cal. Code Regs., tit. 5, § 80302, subd. (a.) Although here was no direct evidence that students KM or BT were harmed as they did not testify at the hearing, and there was no other direct evidence of how Respondent’s conduct affected them, it is likely that Respondent’s conduct adversely affected the students. This factor suggests unfitness to teach.

14. Respondent’s conduct was committed less than three years go. Therefore, it was not remote in time. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(2).) This factor suggests unfitness.

15. Respondent holds a clear multiple subject teaching credential. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(3).) Respondent’s credentials allow him to teach high school students for whom he must serve as an appropriate role model. As these students are not as particularly impressionable as elementary and middle school children, this factor does not suggest unfitness.

16. The fourth *Morrison* factor examines the extenuating or aggravating circumstances surrounding the conduct. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(4).) “Aggravating factors” are circumstances demonstrating that a greater degree of adverse action is needed to adequately protect the public, schoolchildren, or the profession, including a prior record of adverse action; that the misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct; that the misconduct significantly harmed a child entrusted to the care of the credential holder; and that the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source. (§ 80300, subd. (b).) Respondent committed multiple

acts of wrongdoing and his misconduct violated the law governing educators. These are aggravating circumstances.

17. "Mitigating factors" are circumstances demonstrating that the public, schoolchildren, and the profession would be adequately protected by a more lenient degree of adverse action. (Cal. Code Regs., tit. 5, § 80300, subd. (m).) Potential mitigating factors include: (1) absence of any prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious; (2) lack of harm to the person who is the object of the misconduct; (3) emotional or physical difficulties suffered by the holder which substantially contributed to the misconduct, provided that the difficulties were not the product of illegal conduct such as illegal substance abuse, and further provided that the holder has established through clear and convincing evidence that he or she no longer has such difficulties; (4) attestations to the holder's good character by individuals from the educational or general community who are aware of the extent of the holder's misconduct; (5) objective action by the holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing designed to timely make amends; (6) proximity or remoteness in time of the misconduct relative to the seriousness of the misconduct; and (7) the nature and extent of subsequent rehabilitation. (*Ibid.*)

18. Respondent has shown mitigating factors. Respondent has no previous or subsequent record of teacher discipline. The formal evaluations of his teaching show his teaching performance has always met or exceeded expectations. Respondent provided supporting character testimony and letters. Also mitigating is Respondent's deletion of the video and cessation of communication with student BT immediately

after sending the Instagram messages. In further mitigation, Respondent disclosed his conduct with his wife and mentor and sought their advice.

19. Although he exercised extremely poor judgment, Respondent's behavior was not motivated by any malicious intent in that Respondent suspected student KM was included in the sexually explicit video that had been uploaded to the internet unbeknownst to her and wanted to warn her about it if that was indeed the case. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(5).)

20. Based upon the evidence in the record, it appears unlikely that Respondent will reoffend. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(6).) He evidenced significant remorse for and insight into the wrongfulness of his conduct.

21. Disciplinary action against Respondent would not inflict an adverse impact or chilling effect on Respondent or others, because there is no constitutionally protected speech or behavior in the conduct at issue. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(7).)

22. There is no evidence of notoriety in Respondent's local community about this conduct. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(8).)

23. Application of the *Morrison* factors in this matter establishes that Respondent's conduct indicates such unfitness to teach as to warrant disciplinary action.

Determination of Discipline and Application

24. Cause for discipline having been established, the remaining question is what level of discipline is necessary to protect the public, schoolchildren, and the

profession. The Commission may privately admonish, publicly reprove, suspend, or revoke the credential of a credential holder. (§ 44421.)

25. Respondent's conduct was serious and not remote in time. However, his teaching performance has been rated positively throughout his career. Respondent appears to be a good candidate for probation and outright revocation of his credential is not necessary to protect the public. Revocation, stayed with a three-year period of probation, will be sufficient to ensure protection of students, the public, and the profession.

ORDER

The credentials issued to Respondent Jonathan Mesisca are revoked. However, the revocation is stayed and Respondent is placed on probation for three years subject to the following terms and conditions:

1. Severability Clause: Each condition of probation contained herein is a separate and distinct condition. If any condition of probation, or part thereof, or any application thereof, is declared by a court of competent jurisdiction to be unenforceable in whole or in part, or to any extent, the remaining conditions of probation, and each of them, and all other applications thereof, shall not be affected. Each condition of probation herein shall be separately valid and enforceable to the fullest extent permitted by law.

2. New Credentials Subject to Order: Any new credential issued by the Commission to Respondent during the period of probation shall be subject to this order, and Respondent shall be subject to the same terms and conditions of probation with respect to any such new credentials, as set forth herein.

3. Compliance with Probation: Respondent shall fully comply with each and every term and condition of probation. During the entire period of probation, Respondent shall submit quarterly declarations under penalty of perjury, on forms provided by the Commission, stating whether there has been full compliance with the terms and conditions of probation. Respondent shall submit a full and detailed description of any violation of any term or condition of probation on the quarterly declaration. Respondent shall submit the quarterly declarations not later than 10 days after the end of each quarter which, for purposes of this term and condition, are: March 31st, June 30th, September 30th, and December 31st.

4. Cooperation with Commission: During the entire period of probation, Respondent shall fully cooperate with the Commission in its monitoring and investigation of Respondent's compliance with probation.

5. Interviews with Commission: During the entire period of probation, Respondent shall be available for interviews either in person or by telephone, with or without prior notice, with the Commission.

6. Notification: Within five days of the effective date of this order, Respondent shall provide a true and correct copy of this decision, together with a true and correct copy of the First Amended Accusation, to Respondent's employer as defined by the California Code of Regulations, title 5, section 80300, subdivision (j), if any, and to Respondent's immediate supervisor at that employer. Within five days of complying with this notification requirement, Respondent shall submit proof of compliance to the Commission.

If Respondent changes employment at any time during probation, Respondent shall again comply with this notification requirement within seven days of accepting

new employment and shall again submit proof of compliance to the Commission, as required herein, within five days of complying with this notification requirement. Respondent shall comply with this notification requirement, and proof of compliance, as described herein, each and every time Respondent changes employment during the probationary period.

Within seven days of this order, Respondent shall also notify the Commission in writing of the name and address of the current employer with whom Respondent has contracted or is otherwise engaged to perform education services. Respondent shall provide this same information to the Commission within seven days of any change in employment and, in addition, shall also provide a full and complete explanation of the facts and circumstances surrounding the cessation of employment with the former employer.

7. Maintain Active, Current Credentials: During the entire period of probation, Respondent shall maintain active, current credentials with the Commission, including during any period of suspension.

8. Maintain Current Contact Information: Within seven days of the effective date of this order, Respondent shall notify the Commission of a current mailing address, current email address, and current telephone number where voicemail or text messages may be left. Within 72 hours of any change of mailing address, email address, or telephone number, Respondent shall notify the Commission of the new mailing address, email address, and telephone number.

9. Obey All Laws: Respondent shall obey all federal, state, and local laws, including all laws governing the education profession in California, and shall remain in

full compliance with all court orders, criminal probation, or parole, and shall make all court-ordered payments.

Except for minor traffic infractions, within 72 hours of any incident resulting in Respondent's arrest, the filing of any criminal charges, or citation issued, Respondent shall submit a full and detailed description of the incident to the Commission. For purposes of this condition, a "minor traffic infraction" includes only traffic violations which are punishable by a maximum fine of \$250, and do not subject the offender to incarceration or probation. (See Veh. Code, § 42001; Pen. Code, §§ 17, subd. (d), 19.6, and 19.8.)

Within 72 hours of receiving notice of any violation of any court order, criminal probation or parole, or failure to make any court-ordered payment, Respondent shall submit a full and detailed description of the incident to the Commission.

To permit monitoring of Respondent's compliance with this condition, Respondent shall ensure that fingerprints are on file with the Commission. Respondents residing outside of California can also comply with this fingerprint requirement by submitting, within 30 days of the effective date of this order, two fingerprint cards (FD-258) and payment of the additional applicable fingerprint fee.

10. Violation of Probation: Failure to fully comply with any term or condition of probation, or any part thereof, shall constitute a violation of probation. If Respondent violates any term or condition of probation, or any part thereof, in any respect, the matter will be referred to the Office of the Attorney General for preparation of a Petition to Revoke Probation. After giving Respondent notice and an opportunity to be heard, the Commission may revoke probation and impose the order that was stayed, i.e., revocation of Respondent's credentials. If a Petition to Revoke

Probation is filed against Respondent during probation, or the Attorney General's Office has been asked to prepare a Petition to Revoke Probation against Respondent, the Commission shall have continuing jurisdiction until the matter is final, and the period of probation shall be automatically extended until the matter is final.

Respondent's credentials may also be subject to immediate suspension for any specified violation of probation as provided in this order. If Respondent does not comply with any part of a probation condition that includes a consequence of suspension for failure to comply, the Commission will notify Respondent in writing that Respondent's credentials are immediately suspended. Thereafter, the suspension of Respondent's credentials shall not be lifted until the effective date of a final decision of the Commission on a Petition to Revoke Probation to be filed against Respondent.

If a Petition to Revoke Probation is not filed against Respondent within 30 days of issuance of the written notification from the Commission to Respondent that Respondent's credentials are immediately suspended, or Respondent is not provided with an administrative hearing within 30 days of a written request for a hearing, unless Respondent stipulates to a later hearing, the suspension shall be dissolved. The deadlines established herein shall be computed pursuant to the provisions of sections 12 through 12c of the Code of Civil Procedure. Where an original suspension has dissolved, nothing shall prohibit issuance of another suspension for any additional or subsequent violation by Respondent as a condition of probation.

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11. Completion of Probation: Upon completion of probation, Respondent's credentials shall be fully restored.

DATE: 08/23/2023

Carmen Snuggs-Spraggins

CARMEN D. SNUGGS-SPRAGGINS

Administrative Law Judge

Office of Administrative Hearings