

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

In the Matter of the Accusation Against:

JON CHRISTOPHER KLAUS,

Respondent.

Agency Case No. 2-2207373

OAH No. 2022120279

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 26 and 27, 2023.

Langston M. Edwards, Deputy Attorney General, appeared on behalf of complainant Mary Vixie Sandy, Ed.D., Executive Director of the California Commission on Teacher Credentialing (Commission).

John D. Bishop, Attorney at Law, represented respondent Jon Christopher Klaus, who was present.

Oral and documentary evidence was received. The record was held open to permit certain exhibits to be redacted by July 28, 2023. The record was closed and the matter was submitted for decision on July 28, 2023.

SUMMARY

In the Accusation, complainant seeks to revoke respondent's teaching credential for unprofessional conduct, immoral conduct, acts of moral turpitude, and evident unfitness for service. Complainant based those causes for discipline on allegations that respondent, in his capacity as Treasurer of the local teachers' union, engaged in improprieties concerning expense reimbursements.

Respondent admits making some errors as Treasurer but denies any wrongful intent. He has resigned from the office of union Treasurer. He taught high school physics while he served as Treasurer and continues to teach physics at the same school.

As set forth below, complainant has not clearly and convincingly established respondent's certificate should be subject to adverse action. The Accusation is dismissed.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On August 11, 1994, the Commission issued a Clear Single Subject Teaching Credential to respondent. The credential was in full force and effect at all relevant times; it was renewed on March 1, 2022, and is scheduled to expire on March 1, 2027. On January 16, 2008, the Commission issued respondent a Clear Certificate of Completion of Staff Development, which was in full force and effect at all relevant times and which does not expire.

2. On May 23, 2022, complainant brought an Accusation against respondent while acting in her official capacity. Respondent filed a notice of defense. All jurisdictional requirements have been met.

Respondent's Acts as Union Treasurer

3. Respondent has been teaching physics at Northview High School in Covina for about 30 years. He joined the Covina Unified Education Association (CUEA), the local teachers' union, when he began teaching at Northview High School. For 10 years, from about 2007 to August 2017, respondent served as Treasurer of the union, an elected position. Respondent resigned as Treasurer on August 11, 2017.

4. Respondent received no training to serve as Treasurer. He was responsible for, among other things, processing claims for reimbursement by union members who incurred expenses on the union's behalf. To process those claims, respondent developed the "greensheet," a form to fill out and submit when making a claim for reimbursement. The completed greensheet had to be approved by respondent and by another executive officer of the union, and all reimbursement checks had to be signed by respondent and the President and Vice President of the CUEA. The reimbursed expenses were listed on a report respondent made to the executive board every quarter.

5. Respondent himself incurred expenses and submitted reimbursement claims over the years of his tenure. He disclosed the basis for every claim on his greensheets to the executive board member whose signature he sought for approval and for countersigning the payment check. He itemized in detail each reimbursement claim on the back of each greensheet. He presented his reimbursement requests with any others in his quarterly Treasurer's report to the executive board. He was as

transparent about his expenses as one should expect of an officer responsible for union funds.

6. The union had no written policies regarding what expenses were to be reimbursed, or how mileage for travel on union business was to be recompensed. The union never instructed respondent on its expectations regarding travel or mileage reimbursement.

7. The executive board members who reviewed respondent's claims, countersigned his checks, and reviewed the quarterly reports at executive board meetings, exercised minimal oversight over respondent's claims.

8. A witness for complainant, Sita Rampershad, was on the CUEA's executive board from 2012 and presided over the board when she served as CUEA President for two school years, 2016-2017 and 2017-2018. Ms. Rampershad complained that respondent's reimbursement claims were fraudulent. She received a notice from the California Teachers' Association (CTA) around March 2017 that the CUEA had an unpaid printing bill for over \$3,000. Ms. Rampershad began investigating the union's finances.

9. Ms. Rampershad examined the greensheets respondent submitted for travel reimbursement and learned he claimed reimbursement for travel from his home to the union office. Ms. Rampershad did not believe that was appropriate, testifying that it is just "not done." She acknowledged, however, that the practice violated no CUEA policy and that she never discussed it with respondent when he submitted reimbursement claims. Ms. Rampershad also alleged some of the mileage respondent claimed was excessive; she acknowledged, however, that she did not know whether the

mileage included respondent having to go home from the school site to pick up materials before traveling to a meeting site.

10. Ms. Rampershad also alleged respondent claimed reimbursement for travel he did not engage in, based on records showing there was no substitute teacher requested to take his place in class while he was working on union business. She acknowledged that she did not know whether no substitute was listed because respondent was called to union business during the day, after he reported to the school site.

11. Ms. Rampershad testified respondent was reimbursed twice for the same expense of \$55.40, incurred at the Butter Bakery, and was reimbursed \$17.98 for a breakfast meeting that never occurred.

12. Ms. Rampershad discovered respondent had received a negotiator's stipend, in the summer of 2015, 2016, and 2017, to which she believes he was not entitled. She also testified she found duplicate payments for some of respondent's expenses and overpayment for consulting during part of the final month of respondent's tenure as Treasurer.

13. Ms. Rampershad acknowledged that the co-signor of respondent's checks, i.e., the President or Vice President, were responsible for ensuring the amounts to be reimbursed were appropriate. She acknowledged that respondent listed his travel expenses in the Treasurer's Report he presented quarterly to the executive board and that he was transparent about how he was spending union funds. "It's absolutely true we missed" what she believes were overcharges respondent disclosed to the board. According to Ms. Rampershad, Adam Hampton, currently the CUEA President, who when a member of the executive board co-signed many of

respondent's reimbursement checks, apologized to the board for failing to use greater diligence in reviewing respondent's submissions. Mr. Hampton confirmed he had apologized for his lack of oversight.

14. Ms. Rampershad reported her findings to respondent. Respondent told her he did not believe he had submitted any incorrect claims. Ms. Rampershad then reported her findings to the executive board. She invited respondent to address the board. Respondent declined. Instead, respondent resigned from his position as Treasurer. He remained a member of the faculty at Northview High School, where he continues to teach physics.

15. Ms. Rampershad filed an insurance claim to recover amounts she believed the union overpaid respondent. The union received the full amount from the carrier, \$6,309. The executive board authorized Ms. Rampershad to file a police report claiming respondent had embezzled union funds. With the CTA's guidance, the executive board notified union representatives of the police report; the report was not made public to the entire school community.

16. In the absence of any policy, training, or instruction as to union practices, and in view of respondent's complete transparency with the executive board members about the basis for his reimbursement claims, complainant did not establish any ethical culpability on respondent's part.

17. Respondent made errors that resulted in overcompensation to him. For example, he received submitted and received payment for duplicate reimbursement claims for the same expense. But the board members could have identified those mistakes at the time respondent submitted them had they properly performed their oversight functions. Complainant argues that respondent, while on union business,

should not have included in a mileage reimbursement claim the miles he traveled from his home to the school or the District office. That may seem sensible to complainant's witnesses, but again, no policy so stated and no instruction was provided to respondent. And respondent disclosed, on the back of all his greensheets, exactly how many miles he was seeking reimbursement for. The evidence did not establish respondent intended to deceive or schemed to defraud the union.

18. Mr. Hampton acknowledged CUEA had no policy or standard practice governing mileage expenses. He does not remember ever discussing travel reimbursement with respondent and acknowledged respondent could not have known of any CUEA policy on mileage reimbursement. Respondent would always write the miles he traveled on the greensheet for Mr. Hampton to review, and would include those figures in his Treasurer's report to the executive board. Mr. Hampton, who signed many of the reimbursement checks for respondent, does not believe respondent ever tried to conceal the basis for any of his travel reimbursement claims. Ms. Rampershad, too, acknowledged that she voted to approve reimbursement checks for respondent while she served as a member at large of the executive board.

19. Respondent testified he obtained Mr. Hampton's authorization to take a stipend for union negotiation work he performed during the summer. Mr. Hampton does not remember authorizing three years of negotiation team stipends for respondent. He is not certain about it, but does not believe he authorized the stipends, which must be part of the budget approved by the executive board. He does not know whether he told respondent it was alright for him to receive the stipends.

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Criminal Conviction

20. On February 16, 2021, in *People v. Klaus* (Super. Ct. L.A. County, 2018, No. KA119627), respondent pled nolo contendere to, and was convicted of, violating Penal Code section 484, subdivision (a) (theft), a misdemeanor. The court found a factual basis for and accepted respondent's plea. The court suspended imposition of sentence and placed respondent on one year's summary probation on terms including that respondent serve one day in county jail, with credit for one day served; pay assessments, costs, and fines totaling \$261; and pay restitution to the victim. (Ex. 5.)

21. The record does not explicitly reflect respondent's compliance with all terms of probation. But on March 21, 2022, the court granted respondent's petition for dismissal under Penal Code section 1203.4, ordered the plea of nolo contendere be set aside and vacated and a plea of not guilty be entered, and dismissed the case. (Ex. A.)

22. The facts and circumstances underlying the theft conviction are not explicitly stated in the record. A sheriff's department detective wrote in a booking report dated May 2, 2018, that respondent, in reply to an allegation he was responsible for the theft of \$6,265.52 through the use of unauthorized transactions, "confirmed discrepancies, but not an actual amount." (Ex. 5, p. A207.) The booking and arrest records do not reflect any admission of intent by respondent. Nor do the court records. Four felony charges were initially brought against respondent; two were dismissed on July 10, 2019, on a finding of insufficient cause, and the remaining two were dismissed on February 16, 2021, as part of a plea deal. (Ex. 5, pp. A 219, A239.) The misdemeanor theft charge, to which respondent pled nolo contendere in accordance with the plea deal, was added by amendment to the Information on February 16, 2021. (Ex. 5, p. A237.) The court minutes do not reflect the facts underlying the court's finding of a basis for respondent's plea.

Action Taken by School District

23. Michele Doll, Ed.D., Assistant Superintendent of Personnel Services, Covina Valley Unified School District, sent respondent a Notice of Unprofessional Conduct, dated February 26, 2021, as a result of respondent's criminal conviction. The notice included directives for respondent's improvement, directing respondent to maintain high ethical standards, refrain from stealing or misappropriating District funds, and refrain from serving as a faculty advisor for student organizations or leading extra-curricular activities, among other things. The notice provided that Dr. Doll would reassess respondent for sufficient improvement after 45 days.

24. Respondent complied with the directives and, after 45 days of monitoring, the school district identified no deficiencies. He has never since been alleged to have misappropriated any funds or property.

Mitigation and Rehabilitation

25. Respondent acknowledged having fallen short of his duty as union Treasurer and received money he was not entitled to due to his own errors. He feels that as Treasurer he occupied a position of trust with the union and his errors painted the school district in a negative light.

26. Respondent testified he regrets being defensive with Ms. Rampershad when she asked him to address the financial issues she identified. (See Factual Finding 14, *ante*.) He was frustrated with the allegations and felt unappreciated. He wishes that, instead of simply resigning as union Treasurer, he had met with Ms. Rampershad and the executive board and tried to resolve the issues. He acknowledges his failure to do so made the problem worse. He regrets that he focused on the allegations that were not true instead of on the items he was at fault for. Respondent knows he was

not a victim and believes requiring him to pay for his mistakes was appropriate because he failed in his responsibilities as Treasurer.

27. Respondent was not experiencing financial difficulties between 2014 and 2017. In addition to his teaching salary of about \$116,000, he was earning \$750 per month as union Treasurer, \$450 to \$500 per month as a union contract consultant, and \$275 per month as part of the union negotiation team.

28. Respondent acknowledged receiving money from the union's treasury he was not entitled to, though he denies intending to improperly benefit himself. No policy or officer of the executive board told respondent he should not claim reimbursement for travel from his home to meeting places, including the district's office, all of which claims he disclosed to the officers in detail. Respondent on occasion left the school site and went home to pick up files before traveling to a meeting on union business, and he asked for reimbursement for the miles from home to the meeting. He acknowledges now that it would have been better to keep the files in the union office. Respondent testified he was entitled to stipends he received based on direction from Mr. Hampton; respondent regrets not having that direction or authorization for that item from the executive board documented. Respondent admits he erroneously sought a duplicate reimbursement and reimbursement for a Saturday breakfast.

29. Respondent wants to continue to teach. He understands the Commission's concerns about his professionalism and honesty, but he assures the Commission he will not engage in similar conduct in the future in his role as a teacher. He has had a successful 30-year teaching career, feels he is an integral part of the campus community and of the school district, and has had continuing success once he returned to the classroom in the spring of 2021. He has received only positive

performance evaluations and has continued to work closely with his colleagues. He does not intend to hold any office with the union again or to serve the school district in any financial capacity.

30. Respondent was arrested in the principal's office on campus on May 2, 2018, after the executive board reported him to the Los Angeles County Sheriff. No other staff members were present. Respondent does not know whether the district made students or parents aware of the arrest. Respondent was released by law enforcement officials. The school district placed him on a brief leave and then returned him to the classroom. Respondent was again arrested in December 2018 based on the same allegations and was criminally charged. From December 2018 to February 2021, the district had respondent report to the central office instead of to the classroom; during that time, respondent worked to develop the curriculum for Advanced Placement physics and conceptual physics.

31. Respondent offered the testimony of a character witness, Ryan Rienstra, a math teacher at Northview High School who has known respondent for about 30 years. Though he has not observed respondent teaching in the classroom, he shares many students with respondent and hears respondent interact with staff. Mr. Rienstra testified respondent has a very positive reputation among the students for helping them succeed in physics. Respondent is well-respected by and has an excellent reputation among his colleagues and among all staff. Respondent told Mr. Rienstra of the criminal conviction and of this proceeding, as well as the union's having alleged he embezzled about \$6,000. Nevertheless, Mr. Rienstra holds respondent in high regard and finds him to be truthful and trustworthy. Mr. Rienstra testified respondent's arrest was not a subject of conversation at teacher meetings.

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32. Respondent also offered in evidence numerous character reference letters.

33. Manuel Burciaga, respondent's principal for four years, was present when respondent was arrested. Mr. Burciaga wrote respondent told him about the criminal conviction and is "sincerely remorseful." (Ex. E.) Respondent had no disciplinary action against him and received all positive evaluations while Mr. Burciaga was principal. "Students enjoy his classes and his innovative and engaging physics lessons. He had great attendance and his colleagues liked working with him. I never had any issues with him regarding money or anything else." (*Ibid.*)

34. Leo Magallon, the principal at Northview High School, has served as respondent's supervisor and evaluator for the last two years as an assistant principal. Mr. Magallon has observed respondent in the classroom, where respondent interacts with students "in a positive and constructive manner." (Ex. F.) He has been "a team player," agreeing on short notice to take on extra teaching responsibilities. "Every time that I've needed him to take on an additional task, [respondent] has been there to serve our students. Respondent recently participated in a physics teacher summer institute and researched new physics teaching tools to implement in his classroom. He "has a deep connection with all of our staff," and has encouraged and supported Mr. Magallon throughout his two years at Northview High School. (*Ibid.*)

35. Major Anderson II taught physics at a different high school in the same district until he recently retired; he has known respondent for more than 25 years. The two of them have worked on many improvements to the district's science curriculum; without respondent's "insight, determination and reputation," many improvements would not have occurred. (Ex. G.) As a union representative, respondent demonstrated good judgment and empathy. Respondent discussed his criminal conviction and this

proceeding with Mr. Anderson, who wrote, "it is my belief that [respondent] would not be a risk to our profession or to our students, in fact I fully believe that he will be a positive asset to both groups. I hope my testimony of [respondent's] mental, social and moral qualities will allow you to permit [him] to continue to be a highly contributing member of our profession when determining the outcome of his case. (*Ibid.*)

36. Teresa Humphreys, a counselor at Northview High School, has known respondent for 30 years. She wrote he is "a hard-working teacher who truly cares about his students and our school community. [¶] He told me about his conviction and I know he is very regretful about the whole situation. I understand that his credential is in jeopardy of being revoked. Regardless of what happened regarding his conviction, I completely trust Jon in his profession, to teach the students at our school, and even to teach my own children. I would also trust him with my finances and my personal information." (Ex. I.)

37. Robert Ewing, a family friend, a Lieutenant with the Claremont Police Department, and a former financial crimes detective, has known respondent for 15 years and believes respondent to be "an upstanding, thoughtful, and intelligent individual who gives the utmost of himself, whether it is to his family and friends or to his career. (Ex. H.) Mr. Ewing, who knows of respondent's criminal conviction, believes respondent "would never take advantage of his position for personal gain." (*Ibid.*)

38. Pamela Smith, a math and computer teacher at Northview High School for 24 years, knew respondent was kept out of the classroom for almost two years but "was returned to the classroom where he has continued to serve his students to the highest level. . . . Through everything that he has been through his passion for what he teaches and who he teaches has remained at the same high level. Even this year when

he was asked to teach an AP and a regular class during the same period, while also teaching 6 classes. [Respondent] is a benefit to his students and to our school." (Ex. K.)

39. Janice Klaus, respondent's wife of 22 years, wrote of respondent's caring and generous character. "He takes great pride in teaching his students Physics, but also in teaching them about having goals and reaching for them. He shares with them that no matter where you begin, if you have a dream there is a path to achieve it. I cannot even begin to tell you how many students and former students over the past 20 years that I have witnessed telling [him] about how he helped them succeed not just in the classroom, but in life. We literally run into people all the time who thank him." (Ex. J.) She asked for consideration of "how much good he has brought to his family, his friends, colleagues, thousands of students, and to countless numbers of people in the community." (*Ibid.*)

Discussion

40. Complainant's evidence in support of its allegations underlying the charges of unprofessional conduct, immoral conduct, acts of moral turpitude, and evident unfitness for service, that respondent acted deliberately to steal from the union, was not convincing.

41. It is true that respondent pled nolo contendere to and was criminally convicted of a misdemeanor. But for every travel transaction for which respondent sought reimbursement, he documented the mileage and locations, gave receipts to the union President, who co-signed respondent's checks, and then disclosed the expenses on quarterly Treasurer reports he presented to the executive board. After respondent's disclosures, the officers and then the board approved the reimbursement requests, and various officers signed his checks. Neither Ms. Rampershad nor Mr. Hampton ever told

respondent he could not seek reimbursement for the mileage he claimed, nor did any union policy prohibit it. It is unlikely, based on this record, that respondent intentionally committed theft when he presented checks to Mr. Hampton or other officers for signature, all while disclosing what the checks were for. The record also fails to clearly establish the other alleged misdeeds, such as whether the stipends paid to respondent were authorized, due to conflicting testimony, none of which is authoritative. Respondent has admitted to two errors, double-billing for one expense and erroneously billing for a non-union-related breakfast.

42. The court documents do not identify the conduct for which respondent was convicted, other than that he pled nolo contendere to petty theft. Respondent's criminal conviction for theft by itself does not clearly support any of the individual allegations complainant made in the Accusation. Complainant did not provide a factual basis for the court's acceptance of respondent's plea, or for the basis for the two felony charges that remained after two others were dismissed, and which were themselves dismissed as part of respondent's plea deal. The court record of the conviction fails to identify the dollar amount of the theft or of the amount of restitution respondent was to pay. (Ex. 5, p. A239.)

LEGAL CONCLUSIONS

Applicable Authority

1. Under the Education Code, commencing with section 44000, and California Code of Regulations, title 5, commencing with section 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. "Adverse action" includes the suspension or revocation of a credential or the private admonition or public reproof of a credential holder. (Ed. Code, § 44000.5; Cal. Code Regs., tit. 5, § 80300, subd. (a).)

2. The Commission "shall" take adverse action against an individual's teaching credentials "for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system, or for any cause that would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service." (Ed. Code, § 44421.) One cause that may warrant the denial of an application is if the applicant "[h]as committed any act involving moral turpitude." (Ed. Code, § 44345, subd. (e).)

3. "The term 'immoral' has been defined generally 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 wilful, 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. [Citation.]" (*Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740; see also *Board of Education of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811 (*Weiland*).)

4. "Unprofessional conduct" has been described as "'that which 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 of the City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553, quoting 66 Corpus Juris 55, overruled in part on another ground in *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575, 587, fn. 7.) For example, conduct that produced serious friction in the school and showed a teacher's insubordination and refusal to conform to the instructions and requirements of

superiors has been held to be unprofessional conduct. (*Johnston v. Taft School Dist.* (1937) 19 Cal.App.2d 405.)

5. "Moral turpitude is a concept that 'defies exact description' [citation] and 'cannot be defined with precision' [citation]." (*In re Grant* (2014) 58 Cal.4th 469, 475-476.) "Our Supreme Court has defined moral turpitude as 'an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.' [Citation.] Moral turpitude has also been described as any crime or misconduct committed without excuse, or any 'dishonest or immoral' act not necessarily a crime. [Citation.] The definition depends on the state of public morals and may vary according to the community or the times, as well as on the degree of public harm produced by the act in question. [Citation.]" (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027; see also *Ricasa v. Office of Administrative Hearings* (2018) 31 Cal.App.5th 262, 281; *Golde v. Fox* (1979) 98 Cal.App.3d 167, 185.) Moral turpitude has also been described as the "'general readiness to do evil.' [Citation.]" (*Donley v. Davi* (2009) 180 Cal.App.4th 447, 458.)

6. For purposes of disciplining a credential holder, 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*)). The *Morrison* court identified factors to consider in making this determination. Those factors have been codified in a regulation, which provides that 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, only the pertinent ones. (*West Valley – Mission Community College Dist. v. Concepcion* (1993) 16 Cal.App.4th 1766, 1777.)

7. The Accusation also alleges evident unfitness for service. 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 Unified School Dist. of Riverside County v. Hensey* (1970) 9 Cal.App.3d 967, 973.)

8. The Commission may also consider aggravating factors, such as whether the misconduct demonstrates a pattern of misconduct, was surrounded by bad faith or dishonesty, or significantly harmed the public or the educational system. (Cal. Code Regs., tit. 5, § 80300, subd. (b).)

9. Because this case involves a professional license, the burden of proof is on complainant to establish cause for adverse action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.) This means the burden rests with complainant to offer proof that is clear, explicit, and unequivocal, "so clear as to leave no substantial doubt" and "sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487; citations omitted.)

Cause for Discipline

10. Cause does not exist to take adverse action against respondent's credential under Education Code section 44421 for unprofessional conduct, as set forth in Factual Findings 3 through 42.

11. Cause does not exist to take adverse action against respondent's credential under Education Code section 44421 for immoral conduct, as set forth in Factual Findings 3 through 42.

12. Cause does not exist to take adverse action against respondent's credential under Education Code section 44421 and 44345, subdivision (e), for committing acts of moral turpitude, as set forth in Factual Findings 3 through 42.

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13. Cause does not exist to take adverse action against respondent's credential under Education Code section 44421 for committing an act or acts constituting evident unfitness for service, as set forth in Factual Findings 3 through 42.

14. All admissible evidence and applicable statutes and regulations, including the *Morrison* factors, have been considered. Complainant failed to establish by clear and convincing evidence that respondent engaged in unprofessional or immoral conduct, committed acts of moral turpitude, or is evidently unfit for service. (See Factual Findings 3-42.)

15. Respondent's errors led to a criminal conviction, which for a while adversely affected the educational community, or at least union members and staff who knew about it. But there is no evidence on the record that students knew of the conviction. Nor has complainant established that respondent's continued presence on campus has adversely affected teachers and union members. Respondent is still on the faculty and has continued to teach since he returned to the classroom in after February 2021. The school district seems satisfied with respondent's continued presence on campus; the district only gave respondent a written warning and a 45-day directive when he returned to the classroom, and respondent complied.

16. There is no risk of a chilling effect upon the constitutional rights of the person involved, and the conduct received some publicity and notoriety.

17. There were, however, mitigating circumstances surrounding the conduct, including the lack of any policy or guidance about claims for travel reimbursement.

18. The record fails to establish respondent acted out of any blameworthy motive; to the contrary, any such motive is belied by respondent's open disclosures of his expenses to the executive board and the union's officers. Respondent accepted

responsibility for his conduct; the evidence established that he made errors, but it did not establish that he was morally culpable.


19. The conduct, which occurred from 2014 to 2017, was fairly remote in time; and there is virtually no likelihood the questioned conduct could recur. (See, e.g., *In re Conflenti* (1981) 29 Cal.3d 120, 124-125.) Respondent is no longer Treasurer of the union and is not in a position of financial responsibility in his capacity as a physics teacher.

20. Ultimately, there is no evidence on this record that respondent should not be permitted to continue his status as a credentialed teacher. He has an excellent reputation as a teacher and serves the student community well, and his continued credentialing is in the best interests of the public.

ORDER

The Accusation against Jon Christopher Klaus, Clear Single Subject Teaching Credential, Clear Certificate of Completion of Staff Development, is dismissed.

DATE: 09/07/2023


Howard W. Cohen (Sep 7, 2023 11:26 PDT)

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings