

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

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

**DUANE EVERETT FLANIGAN, Respondent**

**Agency Case No. 2-84522556**

**OAH No. 2021080275**

**PROPOSED DECISION**

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter by videoconference on June 7, 2022, from Sacramento, California.

Anahita S. Crawford, Deputy Attorney General, represented complainant Mary Vixie Sandy, Ed.D., Executive Director of the California Commission on Teacher Credentialing (Commission).

Respondent Duane Everett Flanigan appeared and represented himself. During Ms. Crawford's opening statement, respondent disconnected from the hearing without warning. After waiting approximately 45 minutes for him to reconnect to the hearing,

his default was entered and this matter proceeded as a default proceeding pursuant to Government Code section 11520.<sup>1</sup>

Evidence was received, the record closed, and the matter submitted for decision on June 7, 2022.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

#### **ISSUANCE OF CREDENTIALS**

1. The Commission issued respondent a single subject teaching credential with an authorization to teach English on December 31, 2018. The credential expires January 1, 2024, unless renewed. His credential authorizes him to teach English in 12th grade and below, including preschool, and in classes primarily for adults.

2. Respondent held multiple single subject teaching credentials with an authorization to teach English between June 22, 1983, and February 1, 2013. He also held a certificate of clearance from October 21, 1982, to November 1, 1987; an emergency limited assignment single subject teaching credential with an authorization to teach mathematics from November 16, 1983, to June 30, 1984; and an emergency

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<sup>1</sup> Respondent stated at the prehearing conference that he may not attend the hearing. Additionally, the Commission's investigator called respondent shortly after he left the hearing, and respondent confirmed he intentionally disconnected from the hearing and would not return.

education specialist instruction permit with an authorization to teach mildly to moderately disabled students from September 1, 2000, to October 1, 2001. Those credentials, certificates, and permits have expired and been revoked.<sup>2</sup>

## **PRIOR DISCIPLINE**

### **2007 Suspension**

3. On June 27, 2007, respondent entered into a Consent Determination and Order agreeing to the suspension of his credentials<sup>3</sup> for 150 days based on the Commission's evidence that:

A. On December 27, 2005, in the Los Angeles County Superior Court Respondent was convicted based on his nolo contendere plea, of a misdemeanor violation of Penal Code section 240 (assault). According to the police report Respondent had an altercation with a[n] off[-]duty police officer.

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<sup>2</sup> The suspension, expiration, or revocation of a credential, certificate, or permit does not divest the Commission of jurisdiction to discipline that credential, certificate, or permit. (Ed. Code, § 44440, subd. (b).)

<sup>3</sup> The term "credential" includes "any credential, certificate, life document, life diploma, permit, certificate of clearance, or waiver, or other document which authorizes the holder to perform services which require certification and was issued by the Commission." (Cal. Code Regs., tit. 5, § 80300, subd. (g).)

B. On January 26, 2005, the Board of Education for Inglewood Unified School District, voted not to re-elect Respondent because of his inappropriate and unprofessional behavior using profanity in his classroom.

C. On October 15, 2003, Respondent resigned his position with Santa Monica Unified School District, while allegations of misconduct were pending involving test question irregularities.

4. Respondent agreed the Commission's evidence, if true, constituted good cause to suspend his credentials, and he waived his right to produce evidence to the contrary. Complainant did not introduce any evidence of the truthfulness of the Commission's evidence. Nor did she introduce evidence of the specific laws governing public school teachers respondent violated.

5. Respondent served his suspension from July 27 through December 23, 2007.

## **2012 Revocation**

6. Effective April 14, 2012, the Commission revoked respondent's credentials based on his: (1) February 1, 2010 misdemeanor conviction for violating Penal Code section 243, subdivision (b), battery on an officer; (2) May 25, 2004 misdemeanor conviction for violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content of 0.08 percent or greater with a prior conviction; (3) January 18, 2000 misdemeanor conviction for violating Vehicle Code section 23103, reckless driving; and (4) 2007 suspension discussed above.

7. The facts underlying respondent's 2010 conviction occurred on October 18, 2008, when police officers responded to a disturbance at Whittier College. Campus security had already detained and handcuffed respondent by the time the police arrived. Respondent was severely intoxicated, and security said he had been picking fights with others at a party. A police officer was in the process of removing respondent's handcuffs when respondent kicked him in the knee.

8. Complainant did not introduce evidence of the factual basis for respondent's 2000 or 2004 convictions. Nor did she introduce evidence of the specific laws governing public school teachers respondent violated when his credentials were revoked or he engaged in the underlying conduct.

### **Petitions for Reinstatement**

9. The Commission denied respondent's petition for reinstatement of his credentials at its December 12 and 13, 2013 meeting based on: (1) "the serious and prolonged nature of [his] misconduct"; (2) his failure to accept responsibility for that conduct; and (3) his failure "to address what steps [he had] taken to ensure [his] continued sobriety." The Commission concluded respondent "had not sufficiently demonstrated rehabilitation" from his prior misconduct.

10. The Commission denied respondent's petition for reinstatement at its February 9 and 10, 2017 meeting based on: (1) "the serious and prolonged nature of [his] misconduct"; (2) the limited amount of time that had elapsed since he accepted responsibility for that conduct; and (3) "concern regarding [his] ability to maintain sobriety absent a sober living environment." The Commission concluded he "had not sufficiently demonstrated rehabilitation."

11. Complainant did not introduce evidence of the specific laws governing public school teachers respondent violated by failing to prevail on either of his first two petitions for reinstatement.

12. The Commission granted respondent's petition for reinstatement at its September 26 and 27, 2019 meeting.

### **Respondent's Teaching Assignment at Lassen High School**

13. Kelly Herrmann began teaching special education students at Lassen High School (LHS) at the beginning of the 2019/2020 school year. The Lassen County Office of Education (LCOE) has jurisdiction over the school. Respondent was included on the LCOE's substitute teacher list from October 21 through November 5, 2019, and he was assigned to LHS as Ms. Herrmann's substitute during her absence on October 30 and 31, 2019.

### **RESPONDENT'S INTERACTIONS WITH GH**

14. GH was a sophomore at LHS during the 2019/2020 school year, and Ms. Herrmann was his computer lab teacher. On October 30, 2019, respondent taught GH's computer lab class.

15. Respondent was provided access to the school's computer network through a substitute teacher's account. However, he encountered difficulties accessing the account and asked GH for his login credentials. After accessing the network with GH's credentials, respondent asked the class aloud how to access "porn" on the school's computers. GH did not know how many students other than himself heard respondent's question, but he made eye contact with a few others and exchanged perplexed looks over the question.

16. During the same class, respondent asked GH and another student to leave class and buy something for him from the grocery store across the street from the school. Neither student obliged respondent because students were not allowed to leave campus during class.

17. Respondent was “constantly” yelling at GH and his classmates during class and regularly used profanity. GH did not recall any specific words respondent uttered, but he recalled respondent using “foul language” when talking to the class in general.

18. School officials asked GH to document respondent’s October 30, 2019 behavior in writing, which he did six days later. At hearing, he did not recall preparing a written statement, and he did not recognize his statement when shown a copy. He explained he recalled respondent’s behavior almost three years later because the behavior was so unusual and he had never heard a teacher use profanity prior to respondent. Also, no teacher has ever asked for GH’s login credentials for the school’s computer network. GH explained he “wouldn’t want [respondent] again as a teacher.” He graduated from LHS this past school year.

### **RESPONDENT’S INTERACTIONS WITH KB**

19. KB was a freshman at LHS during the 2019/2020 school year, and Ms. Herrmann was his math teacher. On October 31, 2019, respondent taught KB’s math class.

20. KB was sitting down in class while respondent was talking to another student. A classmate threw a crumpled piece of paper across the room, which respondent saw out of the corner of his eye. He thought KB threw the paper and told KB to leave the classroom. KB said he did not do anything but left the classroom. He

returned without permission about five minutes later. When respondent noticed KB had returned, he ordered KB to “get the fuck out.” KB went to the classroom next door, told the teacher what had happened, and was sent to the front office to provide a written statement.

21. KB completed his junior year at LHS this past school year. He explained at hearing he remembered respondent’s behavior because he thought it was “unprofessional and unusual” for a teacher to behave that way, and he had never been sworn at or kicked out of class by a teacher before respondent.

### **RESPONDENT’S INTERACTIONS WITH SS AND KP**

22. Ms. Herrmann had SS and KP for different classes during the 2019/2020 school year. Additionally, her classroom was KP’s “safe spot” whenever KP became overwhelmed and needed a break from her assigned classroom.

23. SS and KP provided written statements to LHS’s principal documenting their interactions with respondent on October 31, 2019. That morning, respondent approached SS and KP and asked them to come to his classroom during second period to help paint his face green because he was dressed as the Incredible Hulk for Halloween. They agreed and returned to his classroom during second period. Respondent called SS’s and KP’s teacher and said they were taking a quiz in his class so they would be excused from the classes they were supposed to be in.

24. SS and KP were wearing long shirts and fish net leggings for Halloween. While they were painting respondent’s face, SS noticed he “was looking at [our] legs.” That made SS uncomfortable, and she and KP began to hurry so they could finish painting respondent’s face and leave.



25. While SS and KP were painting respondent's face, he began disclosing personal information. For instance, he said he was lonely, it was hard being a 60-year-old substitute teacher, and SS and KP were his only friends. He invited them to lunch off-campus later that day. When SS and KP both said they did not have money for lunch, respondent said he had money, was lonely, and wanted to hang out with them.

26. At some point, respondent suggested that they share secrets or gossip with each other. KP volunteered that she did not like one of her teachers at LHS. Respondent said his ex-girlfriend broke up with him because he shoplifted from stores and used methamphetamine, although he had not used methamphetamine in a week because it made him dizzy. He also said his ex-girlfriend called him a rapist after he shared a story he had written for her.

27. Respondent asked SS and KP to take a picture of him after they finished painting his face. He then took a picture of them. He said the three of them needed to make up a lie so they could all go to lunch. SS and KP excused themselves to the restroom, left respondent's room, and did not return.

### **Termination of Respondent's Services at LHS**

28. Courtney Russell was Lassen Union High School District's (LUHSD)<sup>4</sup> human resources manager and executive assistant to the superintendent during the 2019/2020 school year. Sometime around Halloween 2019, either the school principal or his secretary informed Ms. Russell of various complaints the school had received about respondent's classroom behavior.

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<sup>4</sup> LUHSD is a small public school district in Susanville, California, that includes LHS.

29. Ms. Russell discussed the complaints with LHS's principal, and he decided respondent's services "were no longer needed." On October 31, 2019, Ms. Russell informed respondent his services were no longer needed at LHS.

### **Students' Complaints About Respondent's Behavior**

30. Ms. Herrmann returned to school on November 1, 2019. Various students approached her during the first two class periods and complained about respondent's bizarre behavior the previous two days. She initially did not pay much attention to the complaints because she has learned to take student complaints about teachers "with a grain of salt." But Ms. Herrmann began noticing similarities in the stories being told. She began asking subsequent classes if anything happened during her absence about which she should know.

31. Ms. Herrmann documented the complaints she received in an email to Ms. Russell. The complaints included respondent reviewing his social media page during class, his profile page containing a naked picture of him, and GH's, KB's, SS's, and KP's interactions previously discussed.

### **Respondent on Social Media**

32. Ms. Russell received Ms. Herrmann's email on November 4, 2019, and searched the Internet to determine respondent's presence on social media. She found his Facebook page and was able to access his posts without being invited or accepted as a "friend," entering a password, or complying with any security protocols. His Facebook page was "public" for anyone to see. She did not find any naked pictures of him, but his profile page included a picture of him from the shoulders up, his shoulders were bare, and he was wearing sunglasses and smoking a cigarette.

33. Respondent wrote the following in a May 21, 2018 post: "Gonna take the specs below to a factory and have a blow-up doll made of the perfect woman, something to hold onto close at night; the perfect woman!" He included computer-generated pictures of two women, one wearing a bikini and another wearing a bodysuit or one-piece swimsuit.

34. On May 29, 2018, respondent posted the following on his Facebook page:

NANCY PELOSI AND THE DEMOCRATS TOTALLY FUCKED UP in defending the MS-13 ANIMALS as being "DIVINE" human beings and scored trumps [*sic*] 40 million strong followers extra reasons to support his opinions. For example, the MS-13 favorite way to murder people is to pull out their guts while they are alive. There is nothing humane or "divine" about such torture. The democrats will never win any election with such stupid PC attitudes about the MS-13 murderers. And then there is their child rape and trafficking, drug dealing, etc. Plain stupid to defend such non-human animals...

(Capitalization original.)

35. The post includes a picture of a man from his head to his knees. He is laying naked in the supine position with his shoulders and head propped up against the wall. There is a cage over his midsection, and he appears to have been disemboweled.

## Respondent's Written Statements

36. Respondent did not offer any evidence at hearing, and none was offered on his behalf.<sup>5</sup> However, complainant introduced several statements respondent wrote responding to the allegations against him that were provided or sent to the Commission. One statement addressed his use of profanity with KB on October 31, 2019. Respondent described KB's alleged misconduct in class that day, and explained he asked KB to wait outside the classroom multiple times before KB complied. KB returned without permission shortly thereafter. Respondent continued:

From what Administrators [*sic*] have told me, when he came in a third time I said the "f" word in my comment for him to wait outside. I wrote a note to this effect about him to Ms. Herrmann (it is in her top drawer). Sorry about this incident.

37. Respondent subsequently wrote a letter to the LCOE expressing "deep remorse" for using profanity with KB. He claimed to "know that it was wrong to use foul language regardless of the mitigating circumstances involved." He described himself as "usually not a person who curses."

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<sup>5</sup> Prior to hearing, respondent uploaded 92 proposed exhibits to Case Center, used for digitally uploading hearing exhibits. He did not offer or withdraw any of the proposed exhibits at hearing before leaving the hearing, and none was included in the record or considered for any purpose. (*Higgins v. Los Angeles Gas & Electric Co.* (1911) 159 Cal. 651, 656-657 [only evidence received in open court may be considered]; *Guadalupe A. v. Superior Court* (1991) 234 Cal.App.3d 100, 108-109 [a judge acting as factfinder may consider only evidence received in open court].) Consequently, respondent's proposed exhibits are not part of the administrative record.

38. In his statements, respondent did not specifically deny any of the allegations against him. Instead, he relied on fallacious reasoning as evidence of their falsity. For instance, he facetiously thanked the Commission members for “waiting nine months to inform [him] of the allegations.” He claimed prejudice due to his memory fading during the delay and argued, “On the contrary, the two delinquent, criminal students (minors smoking marijuana is a misdemeanor, if tried in adult court) S[redacted] and K[redacted] had five days to coordinate, collaborate and disseminate their storyline.”

39. Respondent explained he left the Santa Monica Unified School District due to “the incompetent and corrupt VP named Gloria Martinez [accusing him] of providing [his] students with salacious and pornographic materials.” He accused the Commission of siding “with a lying administrator, a former Catholic Nun [s/c] who illegally proselytized students on campus, was incompetent with ordering textbooks for my classes in the summer months and had peculiar opinions on education.” Respondent concluded, “There is nothing in your list of charges that have anything to do with my teaching proficiency.”

40. Respondent engaged in victim shaming by rhetorically asking why SS did not immediately seek help from another adult if she truly was the victim, explaining “this is such bullshit.” He described KP as “not just a delinquent, pot-smoking criminal, but also a pathetic liar.” He espoused unsupported conspiracy theories about a LHS “teacher or administrator [hacking] into [his] facebook [s/c] account” to view his May 21, 2018 post. He further argued “it appears to me that administrators at Lassen High, perhaps even teachers, counselors, parents in collusion and collaboration sought to ruin my name with the complete package of illogical lies, distorted comments made by

me, and most venal of all, that I am a 'leering' pedophile, an extremely serious legal accusation."

## **Notice of Respondent's Termination and CTC's Subsequent Investigation**

41. On November 5, 2019, the LCOE removed respondent from the countywide substitute teacher list based on allegations of misconduct. The LCOE sent the Commission notice of respondent's removal the following month. The LCOE provided the Commission Ms. Herrmann's email, copies of respondent's May 21 and 29, 2018 Facebook posts, and GH's, KB's, SS's, and KP's written statements.

42. Jeffrey Osborne was the Commission's special investigator assigned to investigate respondent's alleged misconduct. He reviewed the Commission's files on respondent's prior adverse actions and the documentation the LCOE provided. On July 1, 2020, he sent respondent "a letter of inquiry." Respondent provided written responses addressing the allegations. Mr. Osborne did not interview any witnesses because he believed he had multiple statements corroborating the allegations of misconduct, and he did not believe it was necessary to talk to any witnesses. Mr. Osborne prepared an investigation report summarizing the documents he reviewed and presented it to the Committee of Credentials for consideration.

## **Committee of Credentials's November 18-20, 2020 Meeting and Subsequent Accusation**

43. The Committee of Credentials considered Mr. Osborne's investigation report at its November 18 through 20, 2020 meeting and concluded probable cause existed to recommend that the Commission revoke respondent's credentials. The

Commission gave respondent notice of the Committee of Credentials's recommendation and advised of his right to request reconsideration or an administrative hearing challenging the recommendation. Respondent requested an administrative hearing.

44. On June 9, 2021, complainant signed the Accusation solely in her official capacity. The Accusation alleges cause to revoke respondent's credentials based on: (1) unprofessional conduct; (2) persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in public school systems; (3) immoral conduct; (4) conduct that would have warranted the denial of an application for a credential or renewal of a credential – acts of moral turpitude; (5) conduct that would have warranted the denial of an application for a credential or renewal of a credential – revocation of certification document; and (6) evident unfitness for service. The Accusation does not allege the specific laws governing public school teachers respondent persistently defied and refused to obey.

## **Analysis**

### **CAUSE FOR DISCIPLINE**

45. The persuasive evidence established respondent engaged in unprofessional conduct, immoral conduct, and acts of moral turpitude while working as a substitute teacher at LHS. His conduct also demonstrated evident unfitness for service. Additionally, the Commission revoked his credentials in 2012.

### **October 30, 2019**

46. On October 30, 2019, respondent asked GH for his login credentials for LHS's computer network because respondent was having difficulty accessing the

network with the credentials provided to him. After accessing the network, GH overheard respondent ask the classroom how to access pornography on the school's computers. Later, respondent asked GH and another student to go to the grocery store across the street to buy groceries for him during class.

47. Respondent "constantly" yelled at GH and his classmates during class, and regularly used profanity. GH did not recall any specific words respondent uttered, but he recalled respondent using "foul language" when talking to the class in general.

### **October 31, 2019**

48. On October 31, 2019, respondent asked KB to wait outside the classroom during class because he thought KB was misbehaving. KB briefly left the classroom but returned without respondent's permission. When respondent saw KB, he ordered KB to "get the fuck out" of the classroom.

49. That same day, respondent asked SS and KP to come to his classroom during second period to paint his face green because he was dressed as the Incredible Hulk for Halloween. When SS and KP came to respondent's classroom, he called their teachers and told them SS and KP were taking a test in his classroom, even though they were not.

50. While SS and KP were painting respondent's face, he said they should share secrets or gossip with each other. He proceeded to tell them his ex-girlfriend broke up with him because he used methamphetamine, he shoplifted from stores, and she thought he was a rapist because of a story he wrote for her. Respondent also told them they were his only friends and invited them to lunch later that day. When SS and KP said they had no money for lunch, respondent said he would pay, was lonely, and



just wanted to hang out with them. SS and KP made up a story that they had to use the restroom, left respondent's classroom, and did not return.

### **Facebook Posts**

51. On May 21, 2018, respondent posted inappropriate comments and pictures objectifying women in a sexual manner. The following week, he posted graphic pictures and comments about disemboweling people while they are still alive. Though there was no evidence any student viewed either post, both were publicly available and easily accessible when Ms. Russell searched respondent's Facebook page on November 4, 2019. Additionally, there were complaints he accessed social media during class.

### **2012 Revocation**

52. The Commission revoked respondent's credentials, effective April 14, 2012, because of his prior convictions for reckless driving, driving with an excessive blood alcohol content, and battery on an officer and the prior suspension of his credentials.

### **NO CAUSE FOR DISCIPLINE**

53. Complainant alleged cause to discipline respondent's credentials based on his persistent disobedience of, and refusal to abide by, laws regulating public school teachers. However, she failed to allege in the Accusation the specific laws he supposedly disobeyed and refused to abide by. (See, e.g., *Wheeler v. State Board of Forestry* (1983) 144 Cal.App.3d 522, 526-527 [discipline may be imposed only on factual and legal grounds alleged in accusation].) Furthermore, complainant failed to prove which laws respondent disobeyed and refused to abide by while working as a

substitute teacher at LHS or when his credentials were disciplined in 2007 or 2012 or his petitions for reinstatement were denied in 2013 or 2017.

### **FITNESS TO TEACH**

54. The Commission may take adverse action against a credential only when the underlying conduct demonstrates an unfitness to teach. (See *Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 473.) The California Supreme Court has delineated factors for determining whether misconduct demonstrates an unfitness to teach. (See *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230 [analyzing former Ed. Code, § 13202, predecessor to Ed. Code, § 44421].) The Commission adopted the *Morrison* factors by enacting California Code of Regulations, title 5, section 80302. "Only the pertinent *Morrison* factors need to be analyzed." (*Broney v. California Commission on Teacher Credentialing, supra*, 184 Cal.App.4th at p. 476.)

### **Adverse Effect on Students**

55. Students are impressionable, and many try to emulate their teachers. Therefore, it is essential that an educator's behavior be beyond reproach, and he be capable of exercising sound judgment. He must be even-tempered. Respondent exercised extremely poor judgment when he engaged in the conduct described above while teaching at LHS and engaging in the conduct underlying the Commission's prior revocation of his credentials.

56. Being an effective educator requires one to command the respect of others, and one cannot gain the respect of others if one does not show respect oneself. Respondent's mistreatment of KB demonstrated a complete lack of respect for his feelings.

57. The ability to foster productive relationships with students is essential to being an effective educator. GH never wants another teacher like respondent.

### **Type of Credential Held**

58. Respondent holds a single subject teaching credential with an authorization to teach English “in grades twelve and below, including preschool, and in classes organized primarily for adults.” (Cal. Code Regs., tit. 5, § 80004, subd. (a).) He may be the only teacher the students assigned to him have for the duration of such assignment. Therefore, it is imperative that he exemplify the behavior society wants emulated by students, possess sound judgment, have respect for, and command respect of, others, and be able to foster productive relationships. The fact he may teach special education students makes having those character traits that more essential.

### **Aggravating Factors**

59. The Commission has defined an “aggravating factor” as conduct or an occurrence that demonstrates more severe discipline “is needed to adequately protect the public, schoolchildren or the profession.” (Cal. Code Regs., tit. 5, § 80300, subd. (b).) Aggravating factors include a history of prior discipline and underlying misconduct that demonstrates repeated acts or a pattern of misconduct. (*Id.*, subd. (b)(1) & (2).) Respondent’s credentials were suspended for 150 days in 2007, and they were revoked five years later. Two petitions for reinstatement were denied before his credentials were finally reinstated in 2019. Additionally, the current Accusation is based on multiple acts of misconduct which demonstrate a pattern of inappropriate behavior.

## **Likelihood of Recurrence of Misconduct**

60. Though respondent claimed to “have experienced deep remorse” over his use of foul language with KB, he attempted to justify his misconduct by referencing “the mitigating circumstances involved.” Seven months later, he wrote the Commission a letter proclaiming he was “an excellent teacher and professor and there [was] nothing in [the Commission’s] list of charges that [had] anything to do with [his] teaching proficiency.” The complete lack of insight into a teacher’s duties and responsibilities that statement demonstrates shows the danger respondent poses if allowed to continue working in public education.

## **Notoriety of Respondent’s Behavior**

61. Ms. Herrmann received numerous complaints about respondent’s behavior when she returned to school on November 1, 2019. Initially, she did not pay much attention to the complaints because previous experience taught her to take student complaints “with a grain of salt.” But she received multiple complaints about the same types of behavior, and she began to take notice. She reported her concerns to Ms. Russell.

62. Both GH and KB had sufficient recollection of respondent’s behavior that they were able to testify from memory almost three years later. GH recalled respondent’s behavior because he has never seen a teacher behave in a similar manner. KB has never been cursed at or kicked out of class by a teacher before respondent.

## LEGAL CONCLUSIONS

### Applicable Burden/Standard of Proof

1. Complainant has the burden of proving the grounds for discipline alleged in the Accusation by clear and convincing evidence to a reasonable certainty. (*Daniels v. Department of Motor Vehicles* (1983) 33 Cal.3d 532, 536 [an administrative agency seeking to discipline a license has the burden of proving the grounds for discipline alleged in the accusation]; see *Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1036, 1039-1040 [recognizing that the clear and convincing evidence standard applies to disciplining a teaching credential].) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind [citations]. It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

### Applicable Law

2. The California Supreme Court has recognized that the terms "immoral conduct" and "unprofessional conduct" substantially overlap one another and that conduct which constitutes one, often includes the other. (See *Morrison v. State Board of Education, supra*, 1 Cal.3d 214, 221, fn. 9.) "Unprofessional conduct" includes "'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, p. 55.) In describing what constitutes "immoral conduct" within the context of the Education

Code, the court in *Board of Education of San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, said:

In *Orloff v. Los Angeles Turf Club*, 36 Cal.2d 734, at page 740 [227 P.2d 449], the Supreme Court quotes with approval the following statement from Words and Phrases, permanent edition, volume 20, pages 159-160: "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 has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare."

(*Id.*, at p. 811.)

3. The court in *San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, said the following about the definition of immoral or unprofessional conduct:

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

(*Id.*, at p. 1466.)

4. And while “conduct constituting ‘evident unfitness for service’ will often constitute ‘unprofessional conduct[,]’ . . . the converse is not true.” (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1445.) “‘Evident unfitness for service’ requires that unfitness for service be attributable to a defect in temperament — a requirement not necessary for a finding of ‘unprofessional conduct.’” (*Ibid.*)

5. The following has been said about the analysis for determining whether particular conduct constitutes sufficient cause for taking adverse action against a credential:

*Goldsmith v. Board of Education*, 66 Cal.App. 157, 168 [225 P. 783], quoted in *Board of Education v. Swan*, 41 Cal.2d 546, 553-554 [261 P.2d 261], found that the standards for judging the propriety of a teacher’s conduct, and the extent to which that conduct may be the basis for the revocation of a credential, involves many aspects.” . . . [*sic*] the teacher is entrusted with the custody of children and their high preparation for useful life. His habits, his speech, his good name, his cleanliness, the wisdom and propriety of his unofficial utterances, his associations, all are involved. His ability to inspire children and to govern them, his power as a teacher, and the character for which he stands are matters of major concern in a teacher’s selection and retention.”

(*Moser v. State Board of Education* (1972) 22 Cal.App.3d 988, 991.)

## **Cause for Discipline**

6. The Commission shall discipline a credential “for . . . unprofessional conduct.” (Ed. Code, § 44421.) Respondent engaged in unprofessional conduct as discussed in Factual Findings 45 through 52. Such conduct demonstrates an unfitness to teach as explained in Factual Findings 54 through 62. Therefore, cause exists to discipline respondent’s credentials pursuant to Education Code section 44421 for such conduct.

7. The Commission shall discipline a credential “for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system.” (Ed. Code, § 44421.) No cause exists to discipline respondent’s credentials based on such conduct for the reasons discussed in Factual Finding 53.

8. The Commission shall discipline a credential “for immoral . . . conduct.” (Ed. Code, § 44421.) Respondent engaged in immoral conduct as discussed in Factual Findings 45 through 52. Such conduct demonstrates an unfitness to teach as explained in Factual Findings 54 through 62. Therefore, cause exists to discipline respondent’s credentials pursuant to Education Code section 44421 for such conduct.

9. The Commission shall discipline a credential if the holder engaged in conduct that would have constituted cause to deny an application for a credential or to renew a credential. (Ed. Code, § 44421.) An application for a credential or to renew a credential may be denied for acts of moral turpitude. (Ed. Code, § 44345, subd. (e).) Respondent engaged in acts of moral turpitude as discussed in Factual Findings 45 through 52. Such conduct demonstrates an unfitness to teach as explained in Factual Findings 54 through 62. Therefore, cause exists to discipline his credentials pursuant to



Education Code section 44421 as that statute relates to Education Code section 44345, subdivision (e).

10. An application for a credential or to renew a credential may be denied if the holder or applicant "has had a certification document revoked." (Ed. Code, § 44345, subd. (f).) The Commission revoked respondent's credentials in 2012 as discussed in Factual Findings 45 through 52. Such conduct demonstrates an unfitness to teach as explained in Factual Findings 54 through 62. Therefore, cause exists to discipline his credentials pursuant to Education Code section 44421 as that statute relates to Education Code section 44345, subdivision (f).

11. The Commission shall discipline a credential "for evident unfitness for service." (Ed. Code, § 44421.) Respondent demonstrated evident unfitness for service as discussed in Factual Findings 45 through 52. Such conduct demonstrates an unfitness to teach as explained in Factual Findings 54 through 62. Therefore, cause exists to discipline his credentials pursuant to Education Code section 44421 for such conduct.

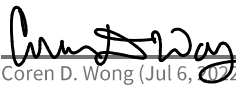
## **Conclusion**

12. Cause exists to discipline respondent's credentials for the reasons explained in Legal Conclusions 6 and 8 through 11, individually and collectively. Respondent introduced no evidence of his continued ability to perform the duties and responsibilities of a public school teacher in a manner consistent with public health, safety, and welfare. Therefore, his credentials should be revoked.

## ORDER

Respondent Duane Everett Flanigan's single subject teaching credential with an authorization for English and all other credentials, certificates, and authorizations the Commission issued him are REVOKED.

DATE: July 6, 2022

  
Coren D. Wong (Jul 6, 2022 13:52 PDT)

COREN D. WONG

Administrative Law Judge

Office of Administrative Hearings