

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

In the Matter of the Accusation against:

KURT JOSEPH WILKINS, Respondent

Agency Case No. 2-72314178

OAH No. 2021110315

PROPOSED DECISION

Erin R. Koch-Goodman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on May 9, 2022, by videoconference from Sacramento, California.

Mabel Lew, Deputy Attorney General, represented Mary Vixie Sandy, Ed.D. (complainant), Executive Director, California Commission on Teacher Credentialing (CTC or Commission).

Matthew H. Smith, Attorney at Law, represented Kurt Joseph Wilkins (respondent), who appeared at hearing.

Oral and documentary evidence was received, the record closed, and the matter was submitted for decision on May 9, 2022.

FACTUAL FINDINGS

Jurisdictional Matters

1. On May 31, 1999, the CTC issued a Single Subject Teaching Credential (Credential) to respondent. The Credential authorizes respondent to teach grades 12 and below, including preschool and in classes organized primarily for adults in Introductory English and Social Studies. The Credential must be renewed every five years, and will expire on June 1, 2024, unless renewed or revoked.

2. On April 15, 2010, the CTC issued a Crosscultural Language and Academic Development Certificate (Certificate) to respondent. The Certificate authorizes respondent to teach limited-English-proficient pupils, with specifically designed content instruction delivered in English, to grades 12 and below, including preschool and in classes organized primarily for adults in Introductory English and Social Studies. The Certificate is not renewed but remains in force as long as the valid prerequisite credential or permit is held concurrently.

Accusation

3. On May 21, 2021, complainant issued an Accusation against respondent, alleging he acted unprofessionally, engaged in immoral conduct, displayed moral turpitude and an evident unfitness for service while working as a teacher and athletic coach for Corning Union High School (CUHS). Complainant seeks to revoke respondent's Credential, and accompanying Certificate, because he repeatedly took money for his own personal use from a CUHS boys' basketball checking account and continued to do so even after being instructed by CUHS District (District) personnel to close the account.

4. On or about May 28, 2021, respondent appealed and requested an administrative hearing pursuant to Government Code sections 11505 and 11506. This hearing followed.

Conduct at Issue

5. At all times relevant, respondent taught Government and Economics; was the faculty Senior Class Advisor; and the Head Coach for the Varsity Boys Basketball and Golf teams at CUHS. In or about April 2014, a retiring basketball coach transferred respondent control of a Banner Bank checking account (account) designated for the CUHS boys' basketball program. Respondent has managed the account ever since. In 2015, respondent began making withdrawals from the account and using the money for his own personal needs; in most instances, respondent would then deposit money back into the account before withdrawing money again. He withdrew money approximately 30 times for a total of approximately \$9,000, until 2019, when District personnel discovered his conduct.

6. In or about April 2019, Justine Felton, CUHS Associate Principal and District Athletic Administrator, questioned respondent about the funds he was using to pay for the basketball team's frequent pizza lunches; she told him she had not seen a purchase order (PO) come through the Associated Student Body (ASB) account for the same. Respondent reported using funds from the account for the pizzas. Ms. Felton was unaware a private account existed to fund any school sports and believed the account did not comply with the statewide education and athletic reporting requirements. Ms. Felton spoke to Jared Caylor, District Superintendent, and shared her concerns about the account. Mr. Caylor agreed and directed the account be closed and the monies transferred to a CUHS ASB or Boosters account.

7. On May 8, 2019, Ms. Felton sent respondent an email, directing him to close the account and deposit any further boys' basketball money into a CUHS ASB or Sports Boosters account; or, he could convert the account into a "503C non-profit" boosters account and have no one associated with the basketball program designated as a signatory.

8. On May 10, respondent wrote a check from the account to Cardinal Apparel for \$300 and on May 12, respondent wrote a check from the account to Northstate Shooting Academy for \$250. At the same time, Ms. Felton made additional requests for respondent to close the account, until respondent did so on May 22, 2019. Thereafter, Ms. Felton and Mr. Caylor made repeated requests for respondent to provide copies of the monthly statements for the account.

9. On June 20, 2019, Mr. Caylor again emailed respondent demanding the monthly account statements by June 21, before 2:00 p.m. Respondent complied, providing Mr. Caylor with monthly statements for the account for the previous three years; the bank had been purchased three years before and did not have access to the previous bank records. Respondent delivered the monthly statements to Mr. Caylor and said, "you're not going to like what you see here." Mr. Caylor reviewed the monthly statements and found, in the past three years, respondent had made \$3,900 in cash withdrawals; written checks to: himself for a total of \$4,930.30; his wife for \$344.48; a made-up vendor – Cardinal Apparel for \$1,302.50; his son's baseball team for \$100; Northstate Shooting Academy, a gun range, for respondent's use of the facility for \$250 and to LSGR (Lake Shasta Golf Resort), a vacation rental location his family visited, for \$401. In addition, the account had incurred \$848.60 in overdraft fees from respondent's cash withdrawals and check writing.

10. On June 24, 2019, and July 31, 2019, Mr. Caylor met with respondent regarding his use of the account. At the July 31, 2019 meeting, respondent admitted, between 2015 and June 2019, he took money from the account approximately 30 times for a total of \$9,000 for his own personal use, but he had also repaid the account each time, totaling \$7,450 to date. On August 2, 2019, respondent resigned from his position with CUHS, effective December 31, 2019.

11. In March 2020, the District and respondent agreed to a \$50/month repayment plan for the remaining balance respondent owed to the account totaling \$2,348.69 (\$1,500 in withdrawals and \$848.69 in overdraft fees). Between March and January 2021, respondent made seven payments to the District totaling \$2,400.

Respondent's Evidence

12. Respondent admits "borrowing" money from the account approximately 30 times but repaying the same before withdrawing money again. He only "borrowed" from the account when he found himself in a "financial hardship" and was unable to support his family. His family's finances became strained when his wife became ill in 2010 and she was unable to work; she remained unable to work through 2016, having been diagnosed with multiple diseases including breast cancer in 2015 and undergoing five reconstructive surgeries in 2016. Without her income, respondent became unable to meet their family's monthly debts. Initially, respondent took a high interest loan to get cash quickly, but the family remained unable to make ends meet. Then, in 2019, respondent's father got sick, and in April 2019, he passed away. On April 30, May 1 and 3, respondent took bereavement leave. Respondent admits being embarrassed he could not meet his family's financial needs and he has always had a hard time asking for help.

13. At hearing, respondent acknowledged what he did was wrong. He described his actions as “poor choices, not smart, [and] regretful.” He accepted responsibility for his conduct by resigning from his position at CUHS and repaying all monies owed to the account. He “did not run” from his conduct, but instead, stayed in the Corning community to face people and “make it right.” Ultimately, respondent believes no students were harmed by his conduct and he should be permitted to retain his Credential. He is a good teacher and is committed to his students. Currently, respondent is teaching at the Buckeye School of the Arts and Mountain Lakes High School/Gateway Educational Options in the Gateway Unified School District (Gateway), as well as Las Plumas High School in the Oroville Union High School District (Oroville). He was forthcoming in his interviews with Gateway and Oroville about his conduct and resignation from CUHS.

CHARACTER LETTERS

14. Respondent offered five letters of support from academic professionals: from Angela Gonzales, Principal, Buckeye School of the Arts, signed and dated May 5, 2021; Charlie Troughton, Associate Principal, CUHS, signed and dated July 19, 2021; Larry Glover, Head Varsity Coach, CUHS, signed but not dated; Jessica Libbee, Principal, Mountain Lakes High School/Gateway Educational Options, signed and dated June 11, 2021; and Dr. Lamar T. Collins, Principal, Las Plumas High School, Oroville Union High School District, signed and dated March 4, 2022.

Uniformly, the authors describe respondent with positive attributes: he is “honest and moral”; a “great teacher and coach”; someone who “connects with students”; he has a “passion for teaching”; and he “builds respect and positive relationships” with students and colleagues alike. They describe respondent as “contrite” and note he has “grow[n]” since his conduct at CUHS. All letters

acknowledge respondent made "poor choices" but note that "no one was harmed" by his conduct and he should be permitted to continue to teach.

15. In addition, respondent offered two emails and one letter from former students: from Les Pitner, athlete and assistant athletic coach, sent an email dated June 20, 2021; Manuel Garcia, student, CUHS Class of 2015, sent an email dated July 20, 2021; and Noah Zoppi, student, CUHS Class of 2018, offered a letter dated July 21, 2021. None of the three former student statements were signed and Mr. Garcia and Mr. Zoppi made no mention of respondent's conduct at issue in this case. Notwithstanding, the former students described respondent as a "mentor, role model [and] leader"; someone who taught "teamwork" and modeled "trustworthiness."

16. Finally, respondent offered a letter from Don Scherba, Marriage and Family Therapist, signed and dated June 21, 2021. Mr. Scherba reported monthly visits with respondent for "several years" with bi-monthly meetings for approximately one year beginning in 2019. Mr. Scherba described respondent as "under a great deal of stress as a result of numerous psychosocial stressors" at the time of his "professional indiscretion." Mr. Scherba believes respondent has taken "complete ownership for his behavior without rationalizations or justifications for his actions." "Having guided [respondent] through this I have seen significant growth as it pertains to him being more accountable and self-disclosing with me and others close to him regarding how he manages himself during times of stress." Mr. Scherba concludes: "[i]t is my view that this was an isolated event whereby [respondent's] judgement was skewed do to the stress he was under."

Analysis

17. Teachers, as well as athletic coaches are role models for their students. They are responsible for guiding students in the right direction and modeling good behavior and judgement. "There are certain professions which impose upon persons attracted to them, responsibilities and limitations on freedom of action which do not exist in regard to other callings. Public officials such as . . . schoolteachers fall into such a category." (*Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820, 824.)

18. While acting as a teacher and coach, respondent withdrew at least \$9,000 from a checking account dedicated to support the activities/needs of CUHS basketball players for his own personal use. His behavior was not a one-time, isolated incident, but rather, repeated failures to make good choices: withdrawing funds from the account at least 30 times and ignoring Ms. Felton's demand to close the account by writing two additional checks for his own benefit; with one being to the made-up vendor showing further subterfuge. Ultimately, each time respondent took money from the account, he displayed exceptionally poor decision making, a complete lack of good judgment, and an absolute disregard for the needs of his student athletes and the boosters supporting CUHS.

19. Respondent not only withdrew funds from the account under his name and his wife's name, he also created fraudulent athletic expenses from a made-up company (e.g., Cardinal Apparel), and even brazenly wrote checks from the account directly to businesses/organizations associated with his family's discretionary needs (e.g., his son's baseball team, Northstate Shooting Academy, and LSGR for a vacation). Respondent's conduct was dishonest, fraudulent, and corrupt. In addition, respondent's withdrawals knowingly allowed the account to go into arrears, causing the account to accrue \$848.60 in overdraft fees.

20. At hearing, respondent acknowledged the wrongfulness of taking money from the account. However, he dismissed the same as insignificant, because he returned all of the money he "borrowed" from the account. He does not believe he harmed anyone by "borrowing" money from the account and paying it back. Instead, he believes he is still capable of teaching and coaching.

21. Respondent's self-assessment lacks substantial insight. He fails to acknowledge the obvious effects his continued leadership will have on students (i.e., it is acceptable to take what does not belong to you, as long as you pay/put it back; and students should do as I say and not as I do) and boosters (i.e., they will be reticent to donate again because of the lack of accountability, transparency, and risk of the same or similar behavior occurring again with other teachers or District personnel). Moreover, his failure to see the damage caused by his conduct evidences an inability to guide students in the "right" direction and/or model good behavior and judgment.

22. Respondent offered many letters of support. They each speak to his ability to teach and coach. However, here, respondent's teaching and coaching ability is not at issue. It is his judgment and decision making that is in question. Based on the evidence, respondent lacks the necessary judgment required to continue to be trusted by the CTC to protect the interests of students and the educational community going forward.

23. Based upon the Factual Findings as a whole, respondent is subject to discipline by the Commission, and his Credential and Certificate should be revoked. Respondent's misconduct was dishonest, fraudulent, and corrupt and represents a serious violation of trust and leadership at a time when he was serving as a teacher and coach. For all the foregoing reasons, respondent cannot be regarded as fit to

teach or resume a position of authority and trust within the California educational system. Therefore, revocation of his Credential and Certificate is warranted.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In an administrative proceeding in which a licensing agency seeks the suspension or revocation of an existing, professional license, the standard of proof is clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 583.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Brooks* (2008) 169 Cal.App.4th 176, 190.)

2. The burden of proving the charges rests upon the party making the charges. (*Lopez v. Imperial County Sheriff's Office* (2008) 165 Cal.App.4th 1, 4.) Therefore, complainant bears the burden of proving the existence of grounds for disciplining respondent's Credential and Certificate, and such evidence must be clear and convincing to a reasonable certainty. (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 proceedings to discipline a teacher's credential, whereas the lesser preponderance of the evidence standard applies to proceedings to dismiss a teacher from particular employment].)

Causes for Discipline

3. The Commission may revoke a teaching credential for unprofessional conduct, immoral conduct, evident unfitness for service and acts of moral turpitude. (Ed. Code, § 44421.)

IMMORAL OR ACTS OF MORAL TURPITUDE

4. In general, the term "immoral" is defined 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 an inconsiderate attitude toward good order and the public welfare." (*The Bd. Of Education Of The San Francisco Unified School Dist. et al. v. Marilyn Weiland* (1960) 179 Cal.App.2d 808, 811.) The immoral conduct of a teacher has been compared to the moral turpitude of an attorney. "Moral turpitude is sometimes used synonymously with dishonesty or a high degree of unfairness." (*Ibid.*)

UNPROFESSIONAL CONDUCT AND FITNESS TO TEACH

5. Unprofessional Conduct is "conduct that violates the rules or ethical code of a profession or is unbecoming a member of a profession in good standing." (*Bd. of Ed. v. Swan* (1953) 41 Cal.2d 546, 553.) For teachers, the phrase "unprofessional conduct" is conduct such to indicate an unfitness to teach. (*Perez v. Commission On Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.) The California Supreme Court has delineated the factors for determining whether particular conduct demonstrates unfitness to teach – *Morrison* Factors. (See, *Morrison v. State Bd. of Ed.* (1969) 1 Cal.3d 214, 229-230 [analyzing former Ed. Code, § 13202, predecessor to Ed.

Code, § 44421.) The Commission has adopted the *Morrison* Factors in California Code of Regulations, title 5, section 80302, subdivision (a).

- (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.

6. "Evident unfitness for service" means clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1969) 2 Cal.App.4th 1429, 1444-1445.) Unlike unprofessional conduct,

evident unfitness for service connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet professional standards. (*Ibid.*) First, the *Morrison* Factors must be analyzed as a threshold matter to determine if the conduct indicates unfitness for service. (*Ibid.*) If the *Morrison* Factors are met, the next step is to determine if the teacher's unfitness is "'evident'; i.e., whether the offensive conduct is caused by a defect in temperament." (*Ibid.*)

Causes for Adverse Action

7. Based upon the Factual Findings as a whole, cause exists under Education Code section 44421, for adverse action against respondent's Credential and Certificate on the grounds of immoral acts and acts of moral turpitude. Respondent repeatedly, at least 30 times, withdrew funds from an account dedicated to the activities/needs of the CUHS boys' basketball program, totaling at least \$9,000, for his own personal use.

8. Based upon the Factual Findings as a whole, cause exists under Education Code section 44421, for adverse action against respondent's Credential and Certificate on the grounds of unprofessional conduct and evident unfitness for service. Applying the *Morrison* Factors, respondent's conduct shows an unfitness to teach and coach. From 2015 through 2019, respondent used his Credential to teach and coach at CUHS. His Credential gave him access to an account holding money dedicated to student athlete activities/needs. Respondent took money from the account at least 30 times. His conduct was dishonest, not only in taking the money for his own personal needs, but because he repeatedly acted with deceit, writing checks to himself, his wife, to a made-up vendor for alleged athletic expenses, and for discretionary needs of himself and his family. Respondent's conduct exhibited a complete lack of good judgment and decision making.

Moreover, at hearing, respondent failed to see the clear consequences of his behavior on students, faculty, the District, and the Corning community. As a teacher and coach, he is a role-model and leader for students and athletes. However, his conduct tells students it is acceptable to take from others, as long as you pay/put it back; and going forward, he would disingenuously direct students to do as I say and not as I do. In addition, his conduct causes mistrust in his fellow teachers and coaches, because again, it is acceptable to take from others, as long as you pay/put it back. His behavior also causes mistrust in teachers and the District and will affect booster contributions going forward, because with respondent, the District was unable to maintain and account for funds donated by boosters and may not be able to do so in the future; thereby discouraging future endowments to CUHS and the District.

Finally, respondent's conduct evidences several aggravating factors¹, including: multiple acts of wrongdoing or a pattern of misconduct (taking money at least 30 times and continuing to write checks from the account for his own personal needs, even after being directed to close the account); the misconduct included bad faith or dishonesty (writing checks to a made-up vendor for alleged athletic expenses and for his family's discretionary wants); harmed a child entrusted to the care of a credential holder, or significantly harmed the public or the educational system (students who view respondent as a role model will follow respondent's conduct and boosters may

¹ An "[a]ggravating factor" is an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession.

never again provide sponsorship to the CUHS). (Cal. Code Regs., tit. 5, § 80300, subd. (b)(2) - (4).)

9. Ultimately, the evidence established respondent lacks the good judgement and decision making required to continue to teach and coach students. Moreover, he lacks the insight necessary to believe he can make better and more trustworthy decisions going forward. The CTC must protect the public and cannot risk respondent again failing to see the wrongfulness of conduct before he acts inappropriately.

10. Complainant seeks revocation of respondent's Credential and Certificate. Based upon the Factual Findings as a whole, complainant has proven respondent engaged in immoral acts or acts of moral turpitude, as well as unprofessional conduct and possesses an evident unfitness for service. For all the above reasons, the public interest and safety requires that respondent's Credential and Certificate be revoked.

ORDER

Respondent Kurt Joseph Wilkins's Single Subject Teaching Credential and Crosscultural Language and Academic Development Certificate are hereby REVOKED.

DATE: June 8, 2022



ERIN R. KOCH-GOODMAN

Administrative Law Judge

Office of Administrative Hearings