

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

In the Matter of the Accusation against:

LEE RODNEY HAMMOND, Respondent

Agency Case No. 1-600350693

OAH No. 2019070342

PROPOSED DECISION

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on February 13, 2020, in Visalia, California.

Andrew M. Steinheimer, Deputy Attorney General, represented complainant Mary Vixie Sandy, Ed.D., Executive Director of the California Commission on Teacher Credentialing (Commission).

John Sarsfield, Attorney at Law, represented respondent Lee Rodney Hammond, who was present.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on February 13, 2020.

FACTUAL FINDINGS

Jurisdiction and Procedure

1. From May 16 to 18, 2018, the Commission's Committee of Credentials determined that probable cause existed to recommend that the Commission bring an adverse action against respondent's credential.¹ Respondent timely requested an administrative hearing challenging that recommendation.

2. On March 12, 2019, complainant, acting solely in her official capacity, signed the Accusation. The Accusation seeks to discipline respondent's credential based on his alleged immoral conduct, unprofessional conduct, evident unfitness for service, and commission of acts involving moral turpitude.

3. The Accusation is based on several incidents in which respondent 1) acted inappropriately with one or more female students, and 2) falsely claimed to be dismissed from his teaching position in an unemployment benefits claim, when in fact, he was only suspended from his position at the time. As aggravating factors, complainant further alleged respondent was disciplined in two prior adverse actions against his credential.²

¹ Education Code section 44002 defines "credential" as any "credential, certificate, life document, life diploma, permit, certificate of clearance, or waiver issued by the commission."

² Respondent has held a Single Subject Teaching Credential since approximately June 2003.

Commission's Evidence

4. The Outside Creek Elementary School District (District) operates Outside Creek Elementary School (School), a public school serving students from kindergarten through eighth grade, in Visalia. The District employed respondent as a teacher at the School from October 14, 2013, until June 30, 2017.

STIPULATION TO FACTS

5. At hearing, the parties stipulated in writing to the following facts:

During the 2015-2016 school year, [r]espondent frequently asked three female students (Student A, Student B, and Student C),³ to stay in his classroom during recess and would ask students to close the door.

During the 2015-2016 school year, [r]espondent allowed Student A to use her cell phone to access Snapchat⁴ during instructional time.

In the Spring of 2016, [r]espondent was alone with Student A in his classroom during lunch recess with the door locked. During this time, [r]espondent asked Student A to pull up a chair next to him.

³ The names of students are withheld to preserve their privacy rights.

⁴ Snapchat is a mobile messaging application used to share photos, videos, text, and drawings.

On the morning of September 14, 2016, [r]espondent kissed Student A on the head in the presence of other students.

The stipulation included the following provisions:

Respondent does not concede that there is a basis for discipline against his credential and neither party waives their right to argue in favor or against an appropriate level of discipline, if any. Further, each party maintains the right to call witnesses and present additional evidence.

MAY 31, 2016 CAFETERIA INCIDENT

6. Lori Kelly is a cook at the School and was present in the kitchen and cafeteria area on May 31, 2016. The school year was nearly over and she and several students, including Student A, were preparing handmade ice cream sandwiches alone. Ms. Kelly left the preparation area, which was near the cafeteria lunch line area, and retrieved more ice cream. When she returned, she saw respondent, who was standing in the lunch line area, attempt to toss a wad of paper in the direction of Student A, whose back was turned from him. Ms. Kelly noted respondent was aiming to "shoot" the paper into the exposed "crack" at the top of student A's rear-end (i.e., the gluteal cleft). Ms. Kelly testified that respondent, who was smirking, had "no reason" to be present in the cafeteria at the time. She noticed a few other wads of paper lying on the floor beside Student A. When Student A turned around, she made a funny face at respondent; she then saw Ms. Kelly and made an expression as if she "was in trouble."

7. Later that day, Ms. Kelly orally reported the incident to the secretary for the School's principal, Derrick Bravo. Mr. Bravo, who is also the District Superintendent, did not interview Ms. Kelly about the incident immediately. Rather, he interviewed her

approximately three months later, in August 2016, which was the start of the next school year.

8. Ms. Kelly recalled also noticing respondent sitting “too close” to female students at picnic tables on campus on several occasions. She felt his behavior was inappropriate because he was sitting so close to female students that there was “nothing between them.” She also reported this issue to Mr. Bravo.

AUGUST 10, 2016 IN-CLASS INCIDENT

9. On August 10, 2016, during lunch recess at the School, Mr. Bravo visited respondent’s classroom and observed the classroom door to be closed. He opened the door, entered the classroom, and found respondent present with several students.

10. Mr. Bravo testified that respondent’s act of meeting with students behind closed doors during lunch was in violation of District policy and a student handbook rule which did not allow students to be present in classrooms under such circumstances. In addition, District policy required that in the exceptional event when a student and teacher were present during recess and lunch periods, classroom doors were to remain open.⁵ Mr. Bravo had reiterated this District policy during a School staff meeting only two days earlier, on August 8, 2016.

11. Mr. Bravo observed a similar incident involving respondent and Student A several months earlier, in the spring of 2016. That day, Mr. Bravo visited respondent’s classroom when during a recess and found the door locked. When Mr. Bravo unlocked the door, respondent was alone in the classroom seated next to

⁵ Mr. Bravo allowed for exceptions, but only with his prior permission.

Student A. Mr. Bravo reminded respondent of District policy and school rules regarding being in a classroom with students, and propped open the classroom door.

12. Following the August 8, 2016 incident, Mr. Bravo issued a Letter of Reprimand to respondent, dated August 11, 2016. In the letter, Mr. Bravo noted he "opened the door during lunch recess to find you and students in the classroom." He reiterated the student handbook rules that students were not to be in classrooms during recesses, but in the event they were present, "the classroom door needed to be open." Mr. Bravo warned respondent that he had explained these directives to respondent in prior years, and if respondent failed to comply with them, he could be disciplined and dismissed.

13. Respondent wrote a response to the Letter of Reprimand, dated August 18, 2016. In the response letter, respondent contended the incident occurred during morning recess rather than lunch recess. Respondent stated eight or 10 male and female students were present, some "just saying hello" but others helping respondent with various tasks. Respondent said he was busy at the time "and the new rule about the door had completely escaped my mind." Respondent speculated that "someone must have closed" the door but respondent did not notice or think about it. Respondent denied having intentionally broken "the new school-wide rule you mentioned at our meeting on [August eighth]." Respondent apologized and promised to "try to be more vigilant," but said he was shocked and hurt by the reprimand. He believed the reprimand was undeserved because he committed an "honest oversight" and was not deliberately defiant.

14. Upon receipt of respondent's response letter, Mr. Bravo reviewed a campus videotape of the hallway outside respondent's classroom. By a "Letter of Response" dated August 30, 2016, he stated the video showed him entering

respondent's classroom at 12:16 p.m., at which time there were five female students present in respondent's classroom. Mr. Bravo recounted that during the 2015-2016 school year, another teacher assigned to an adjacent classroom reported that respondent's classroom door was closed while one or more female students was present. Mr. Bravo also reiterated the spring 2016 incident described above in Finding 11.

UNEMPLOYMENT CLAIM

15. On January 15, 2017, the Commission suspended respondent's credentials for 90 days, effective January 15 through April 14, 2017, in a case entitled *Accusation against Lee Rodney Hammond*, Case No. 1-46155972 (2017 suspension).⁶ During his suspension, respondent applied for unemployment benefits through the Unemployment Development Department, State of California (EDD).

16. Although respondent's application for unemployment benefits was not produced at hearing, complainant submitted a copy of the "Notice of Unemployment Insurance Claim Filed" (Notice of Claim) the EDD sent to the School, which was admitted in evidence. The Notice of Claim states respondent's date of claim was January 8, 2017, and his last day worked was January 13, 2017. Under "Reason for Separation," the Notice of Claim states: "I was told I would be dismissed. Then I was placed on unpaid leave." The Notice of Claim requests that the employer report certain facts regarding respondent's job status on an attached reporting form; specifically, the employer is asked to provide an "Explanation for Separation."

⁶ The alleged misconduct underlying the 2017 suspension is recounted below under Additional Evidence.

17. Mr. Bravo received the EDD Notice of Claim, reviewed respondent's personnel file, and reported, under "Explanation for Separation," that "[respondent] was suspended by [the Commission], which resulted in unpaid leave." The reporting form further asks the employer to provide the employee's date of separation; Mr. Bravo wrote: "No separation; placed on paid leave September 19, 2016."

18. Respondent testified that by the time he filed for unemployment benefits, he had been told several times in writing "that I was going to be dismissed." He was first placed on paid leave, then went on unpaid leave during his suspension, then was dismissed when the suspension concluded.

19. At hearing, Mr. Bravo could not recall whether he had told respondent, at some time prior to his dismissal, that respondent was going to be dismissed. Mr. Bravo did recall sending a letter to respondent on an unspecified date, informing respondent not to speak with others regarding pending allegations, and advising that if respondent spoke with others, he could be dismissed.

20. California Unemployment Insurance Code section 1256 states, in pertinent part:

An individual is disqualified for unemployment compensation benefits if the director finds that he or she left his or her most recent work voluntarily without good cause or that he or she has been discharged for misconduct connected with his or her most recent work.

An individual is presumed to have been discharged for reasons other than misconduct in connection with his or her work and not to have voluntarily left his or her work without

good cause unless his or her employer has given written notice to the contrary to the department as provided in Section 1327, setting forth facts sufficient to overcome the presumption. The presumption provided by this section is rebuttable.

[¶] . . . [¶]

ADDITIONAL EVIDENCE

21. On July 11, 2009, the Commission issued a public reproof upon respondent's resignation from West Park Charter Academy (West Park). At the time respondent resigned, students were alleging that respondent had made multiple inappropriate comments toward them while employed at West Park. One female student alleged respondent made several sexually provocative remarks toward her. Complainant alleged this prior adverse action as an aggravating factor.

22. The 2017 suspension referenced in Finding 15 was due to respondent's alleged misconduct involving inappropriate treatment of students while employed at Woodlake Unified School District (Woodlake). Respondent allegedly made sexually suggestive comments and jokes, made inappropriate facial gestures, attempted to look down female students' blouses, treated an obese student unprofessionally, disrespected a staff member, and made a discriminatory comment about Mexican-American students. Respondent also allegedly was alone with a female student in his classroom with the door locked and made the student hide in a supply closet when other students knocked on the classroom door. Respondent resigned from Woodlake while disciplinary charges were pending. Complainant alleged this prior adverse action as an aggravating factor.

23. As a principal, Mr. Bravo has received training on the concept of “grooming” from the County of Tulare. He defined grooming as when a person in authority builds a special relationship with a student that increases in closeness, increasing the possibility that the relationship will become inappropriate. Mr. Bravo opined that respondent engaged in instances of grooming behavior over a period of several years while employed by the District. In 2014, respondent helped female students with their spelling after school. On another occasion, he took fourth and fifth grade students on an approved field trip to a waterpark the day after school ended. However, Mr. Bravo later learned respondent allowed an older female student to come on the field trip, and took her to his home. Respondent also brought gifts from a personal vacation and gave them to three female students. Mr. Bravo opined that this kind of personal attention to students was a preparatory process akin to grooming.

Respondent’s Evidence

24. Respondent worked for the District from approximately October 2013 until May 2017. He began his teaching career in 2000 and taught at various schools until 2005, when he moved to Colorado. He returned to California and began teaching again in January 2007. From 2008 to 2009 he worked in Los Angeles in the film and entertainment industry, then returned to teaching in the fall of 2009.

25. Respondent acknowledged the disciplinary history set forth in Findings 21 and 22. He did not discuss any particular allegations, but asserted he was “given a hard time” when employed by Woodlake.

26. Respondent considered the incident in which his classroom door was closed during a break with students inside as “fairly common.” His classroom door key “didn’t lock or unlock” the door for a certain period of time, but he did not deny that

the door "may have been closed" at times. He stated that after the District's policy regarding keeping classroom doors open was set out, he complied. He did "not purposely" sit near students. The School did not have a teacher's lounge, so teachers either ate lunch in their classrooms or with the students on the school grounds. Sometimes students would ask respondent if they could sit with him. Respondent had no recollection of the May 2016 cafeteria incident.

27. Respondent recounted the incident in which he kissed student A on the forehead in significant detail. He had spent the previous night at the hospital with his gravely ill father. Medical caregivers told respondent his father had terminal cancer but his father did not yet know. Respondent, as his father's only child, was grappling with how to break the news to his father. Respondent did not want to go to school the next morning and knew a substitute teacher had been called in to teach his class for the day, but Mr. Bravo required respondent to "check in." When respondent got to his classroom other teachers and students were present, including Student A. Respondent recalled Student A as being empathetic, asking him questions about his father, and at one point hugging him, "which was common" between respondent and students. He does not recall kissing her on the head but accepts responsibility for doing so because other witnesses said it happened. Respondent "meant nothing special by it," as he kisses his nieces and nephews regularly. "You're with kids eight hours per day," having taught them "two to three years straight," he explained. "They're like your family."

28. On cross-examination, respondent denied singling out Student A for special treatment, but admitted he had given small presents to some female students, including Student A. Respondent does not want to lose his teaching credential and has continued working as a substitute teacher, most recently for Fresno Unified School District.

Initial Findings re Accusation

ALLEGED MISCONDUCT

29. With the exception of the charges involving respondent's EDD application, complainant established by clear and convincing evidence all other alleged facts set forth in the Accusation, as follows. During the 2015-2016 school year, respondent frequently asked female students (Students A, B, and C) to stay in his classroom during recess and asked them to close the door. He also allowed Student A to use her personal cell phone to access Snapchat, a popular social media application, during instruction time. In spring 2016, he was alone with Student A in his classroom, with the door locked, during lunch recess, and asked her to pull up a chair next to him.

30. In May 2016, the School cook witnessed respondent tossing a wad of paper toward Student A's gluteal cleft while Student A made ice cream sandwiches. Respondent had no reason to be present. Although the cook only witnessed respondent tossing one wad of paper, she noted two other wads of paper on the floor near Student A. Thus, a reasonable presumption may be made that respondent made repeated attempts to toss wads of paper at Student A's backside. Although respondent said he did not recall this incident, Ms. Kelly's testimony was persuasive and credible.

31. During a staff meeting on August 8, 2016, Mr. Bravo reiterated the District policy and student handbook rules that students are not allowed in classrooms during breaks, but if an exception is approved and they are present with a teacher during a break, the classroom door must remain open. Despite this reiteration, on August 10, 2016, Mr. Bravo observed respondent in his classroom with students during lunch recess, with the classroom door closed.

32. The Accusation did not allege respondent's misconduct was evidence of "grooming" one or more students, nor did complainant establish by clear and convincing evidence at hearing that such grooming had occurred. Nonetheless, respondent's misconduct was inappropriate and disciplinable as discussed further below.

33. Complainant did not establish by clear and convincing evidence that respondent's claim for unemployment benefits provided a basis for disciplining his credential. While complainant is correct in alleging respondent was not yet "dismissed" from his position when he submitted his application, complainant did not prove respondent's act of applying was tantamount to unprofessional conduct, immoral conduct, moral turpitude, or evidence of his unfitness to teach. The application itself was not offered at hearing, but the EDD Notice of Unemployment Insurance Claim File informed the District that respondent's reason for separation was "I was told I would be dismissed. Then I was placed on unpaid leave." The Accusation specifically alleges respondent "did not disclose that he was placed on unpaid leave due to the suspension of his teaching credential." This allegation was not established by the documents admitted in evidence, and could not be reasonably inferred by clear and convincing evidence as follows.

Respondent had not worked as a teacher for the District, was not receiving pay, and reasonably believed he would never again be a paid District employee. The applicable employment law presumes an applicant is eligible unless the applicant's employer reports facts and circumstances establishing ineligibility. This is precisely what happened, and, following the District's response, the EDD denied the application. The evidence indicated that EDD treated this outcome in a routine fashion, concluding respondent was ineligible and advising him of his appeal rights.

AGGRAVATION

34. Respondent has a prior record of adverse action, as set forth in Findings 21 and 22. Both actions involve allegations similar to those alleged in the Accusation in this matter; as such, both demonstrate a greater degree of discipline is necessary to protect the public, students, and the profession.

MITIGATION

35. At hearing, respondent characterized his defense as consisting solely of an effort to present mitigating evidence, rather than to deny the charges. On this count he was only marginally successful, stipulating to the truth of many alleged facts but consistently deflecting responsibility for his misconduct.

36. The District's policy regarding students in classrooms during breaks is reasonable and sensible, yet respondent repeatedly defied the policy, reasoning that the School had no teacher lounge, and sometimes students asked him to have lunch with them. He also characterized the policy as "new" despite persuasive evidence that the policy was a reiteration of established protocol. Similarly, he downplayed his kiss of Student A, justifying the act because she had shown empathy for him when he described an emotional situation he had just experienced. Respondent attempted to normalize such physical contact, likening his kiss with Student A as on par with kissing his nieces and nephews, and openly revealing his sharing hugs with students as a "common" occurrence. Noting that he spends years teaching certain students, respondent heightened his teacher-student relationships to the level of closeness one shares with "family."

37. Respondent's justification for maintaining such physical and emotional closeness with students indicates his insensitivity to the issues his misconduct raises.

As a teacher of young, vulnerable students, respondent enjoys a substantial power differential between himself and his charges. He is a leader, mentor, and authority, a grown-up among adolescents; comparatively, he has vastly more educational, social, and general life experience than they. In addition, he is literally grading his students' performance on a daily basis. But at hearing, respondent displayed no appreciation for the heightened responsibility he has as such a powerful, influential authority figure among mere children. Instead, he minimized his mistakes. Most notably, he analogized his conduct with behavior he considers acceptable between blood relatives and "family." This indicates respondent's fundamental lack of insight into his primary professional function: that he is a teacher of *students*. How respondent might interact with a niece or nephew is irrelevant – as an educator, he must adhere to the appropriate boundaries between a teacher and his students. He repeatedly failed to do so, and offered no assurances that he presently appreciates those failures.

MORRISON FACTORS

38. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, the California Supreme Court concluded that a teaching credential cannot be disciplined for immoral conduct, unprofessional conduct, or conduct involving moral turpitude "unless that conduct indicates that the [educator] is unfit to teach." (*Id.* at p. 229.) The Court outlined factors for consideration when determining whether an educator's conduct demonstrates unfitness to teach (*ibid.*), and the Commission adopted those factors by enacting California Code of Regulations, title 5, section 80302.

Likelihood of Adverse Effect on Students or Fellow Teachers

39. As a teacher of young, impressionable children, respondent held a position of supreme authority, requiring behavior beyond reproach and sound judgment. Respondent's acts of misconduct, as established, violated District policy, demonstrated behavior inimical to the well-being of students, and showed a lack of judgment. His conduct portrayed the teaching profession in a negative manner, and had the potential of portraying his colleagues in a similar light by association.

Type of Credentials Held

40. Respondent's Single Subject Teaching Credential authorizes him to teach General Education in a single classroom setting. He should exemplify the type of good character and behavior society wants emulated by students, and possess sound judgment. Teaching fourth and fifth-grade students, as respondent was doing when the incidents occurred, would require a teacher to maintain appropriate personal boundaries and exercise superior self-control.

Respondent's underlying conduct raised concerns over whether he possesses these necessary character traits.

Praiseworthiness or Blameworthiness of Motives Resulting in the Misconduct

41. Respondent's conduct was not praiseworthy in that the multiple personal boundary violations were unacceptable. His only apparent motive was to suit himself and his personal standards, at the expense of District protocol. This conduct was blameworthy due to its inappropriateness.

Extenuating or Aggravating Circumstances

42. Neither the Education Code nor the regulations adopted by the Commission specify what constitutes "extenuating circumstances." However, California Code of Regulations, title 5, section 80300, subdivision (m), defines "mitigating factor" as "an event or circumstance which demonstrates that the public, school children and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever."

43. Respondent engaged in the misconduct in this case approximately four to five years prior to hearing. Although complainant contended respondent was "grooming" one or more students, the evidence did not establish this, or that his misconduct would therefore logically extend to serious abuse. Respondent took responsibility for engaging in most of the acts alleged in the Accusation, yet showed no apparent insight into his misconduct. Taken together, these factors do not indicate a more lenient degree of adverse action should be applied.

44. The Commission's regulations also define "aggravating factor." California Code of Regulations, title 5, section 80300, subdivision (b), defines that term as "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, school children or the profession."

45. Complainant established respondent had two adverse actions as a teacher, as set forth in Findings 20 and 21. This suggests a pattern of behavior in which respondent exercised the same poor judgment under similar circumstances.

Likelihood of Recurrence

46. At hearing, respondent defended himself in a manner that suggested he had little insight into his misconduct. His prior history indicates that he has struggled with allegations involving inappropriate boundaries between himself and students over the balance of his teaching career. Although respondent admitted most of the misconduct alleged, he displayed a fundamental lack of awareness that his behavior was wrong. In sum, the evidence indicates that without intervention by the Commission, respondent is likely to continue engaging in such incidents.

Extent to which Disciplinary Action May Inflict an Adverse Impact or Chilling Effect Upon Constitutional Rights of Person Involved or Other Certified Persons

47. This factor does not apply.

Publicity or Notoriety of Misconduct⁷

48. No evidence was presented to indicate the notoriety or publicity accorded to respondent's misconduct.

⁷ "The publicity or notoriety given to the conduct" was not one of the original *Morrison* factors, and was first articulated in *Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 701, fn. 5, and subsequently adopted by the Commission. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(8).)

LEGAL CONCLUSIONS

Applicable Standard/Burden of Proof

1. Complainant bears the burden of proving the existence of grounds for disciplining respondent's credentials and certificate, and she must do so by clear and convincing evidence to a reasonable certainty. (*Daniels v. Department of Motor Vehicles* (1983) 33 Cal.3d 532, 536 ["When an administrative agency initiates an action to suspend or revoke a license, the burden of proving the facts necessary to support the action rests with the agency making the allegation"]; *Gardener 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].) "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.)

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. (*Morrison v. State Bd. of Ed.*, *supra*, 1 Cal.3d 214, 221, fn. 9.) "Unprofessional conduct" includes "'that which violates the rules of 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.)

The court in *San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, said this 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.)

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. “[T]he 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.)

3. “Evident unfitness for service” means a teacher is 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* (1992) 2 Cal.App.4th 1429, 1444.) “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 the expectations of the employing school district." (*Ibid.*)

Cause for Discipline

4. The Commission may discipline a credential for unprofessional conduct. (Ed. Code, § 44421.) As set forth in Factual Findings 5 through 7, 9 through 14, and 26, clear and convincing evidence established respondent engaged in unprofessional conduct. Therefore, cause exists to discipline his credential pursuant to Education Code section 44421.

5. The Commission may discipline a credential for immoral conduct. (Ed. Code, § 44421.) As set forth in Factual Findings 5 through 7, 9 through 14, and 26, complainant established by clear and convincing evidence that respondent engaged in immoral conduct. While respondent's misconduct did not generally display elements of evil, corruption, or depravity, his repeated isolation of female students, combined with the cafeteria incident, evidenced behavior indicating a lack of good morals. Therefore, cause exists to discipline his credential pursuant to Education Code section 44421.

6. The Commission may discipline a credential for evident unfitness for service. (Ed. Code, § 44421.) As set forth in Factual Findings 5 through 7, 9 through 14, 26, and 35 through 37, the clear and convincing evidence established respondent is not fit, not adapted to or unsuitable for teaching, or possessed of temperamental defects or inadequacies indicating unfitness for service. Therefore, cause exists to discipline his credential pursuant to Education Code section 44421 for evident unfitness for service.

7. An application for a credential may be denied if the applicant “has committed any act involving moral turpitude.” (Ed. Code, § 44345, subd. (e).) Terms such as immorality, moral turpitude, and unprofessional conduct are so general that they must be given meaning in relation to the particular profession involved. (*Morrison v. State Bd. of Ed.*, *supra*, 1 Cal.3d 214, at 220.) While not all the evidence established that respondent’s conduct rose to the level of moral turpitude, his repeated isolation of female students, combined with the cafeteria incident, evidenced behavior indicating licentiousness and a lack of good morals tantamount to moral turpitude. Therefore, cause exists to discipline his credential pursuant to Education Code section 44421, as that statute relates to Education Code section 44345, subdivision (e), as set forth in Factual Findings 5 through 7, 9 through 14, and 26.

8. As set forth in Factual Findings 15 through 20, and 33, cause does not exist to discipline respondent’s credential based on his filing an EDD unemployment benefits application.

Conclusion

9. Complainant established multiple causes to discipline respondent’s credential based on multiple acts of misconduct. The purpose of a disciplinary action such as this one is not to punish the licensee, but rather to protect the public. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161; *Small v. Smith* (1971) 16 Cal.App.3d 450, 457.) Complainant seeks revocation of respondent’s credential. The question is whether the public will be adequately protected by an order of less than revocation.

10. Respondent’s misconduct was not, on its face, so serious or extensive as to require revocation outright. However, respondent displayed no apparent recognition of his misconduct, nor appreciation for how, and in what respects, he

acted wrongly. Respondent also has a history of adverse actions dating back many years, and based on similar allegations to the misconduct proven herein. This indicates his lack of judgment and insight is long-standing, and that he would not be readily rehabilitated under a term of probation. In sum, respondent represents an ongoing danger to students should he continue teaching, even on a probationary basis. For all these reasons, public protection necessitates the following order.

ORDER

Respondent Lee Rodney Hammond's Clear Single Subject Teaching Credential, with an authorization in General Education, is revoked.

DATE: March 16, 2020

DocuSigned by:
John DeCure
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JOHN E. DeCURE

Administrative Law Judge

Office of Administrative Hearings