

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

In the Matter of the Accusation Against:

ERIC ANTHONY MELANSON, Respondent.

Agency Case No. 1-989735393

OAH No. 2021030074

PROPOSED DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on February 15, March 18, April 19, April 20, and August 2, 2022.

Lisa A. Miller, Deputy Attorney General, represented complainant.

Ellen Doty, Esq., represented Eric Anthony Melanson (respondent), who was present.

Peter Reagan, Esq., represented witness N.C. during her testimony. Witness N.C. is identified by her initials to protect her privacy.

Oral and documentary evidence was received. The record was held open for the parties to file closing briefs as follows: complainant's brief was due by August 30, 2022; respondent's brief was due by September 27, 2022; and complainant's reply brief, if any, was due by October 4, 2022. The parties timely filed their briefs, which were

marked as follows: complainant's closing brief was marked as Exhibit 7; respondent's closing brief was marked as Exhibit V; and complainant's rebuttal closing brief was marked as Exhibit 8. The record closed and the matter was submitted for decision on October 4, 2022.

During the hearing, complainant offered only pages A83 to A85 of Exhibit 6, which were admitted, and the remaining pages of Exhibit 6 were not admitted. Respondent's counsel requested that complainant present a duplicate version of Exhibit 6 containing only pages A83 to A85. Subsequently, complainant uploaded to Case Center a duplicate version of Exhibit 6 containing only pages A83 to A85, which is hereby marked and admitted as Exhibit 6A.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant Mary Vixie Sandy, Ed.D., brought the Accusation in her official capacity as Executive Director of the California Commission on Teacher Credentialing (Commission). Respondent filed a Notice of Defense and requested a hearing to allow him to present his defense to the charges in the Accusation.

2. On August 9, 1994, the Commission issued respondent a clear single subject teaching credential, which has an authorization for music. The credential was in full force and effect at all relevant times, and will expire on November 1, 2022, unless renewed. On January 18, 2008, the Commission issued respondent a clear cross-cultural, language, and academic development certificate.

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3. At its April 17 through 19, 2019 meeting, the Commission's Committee of Credentials determined there was probable cause to recommend that respondent's credentials be revoked. The recommendation was based on allegations that respondent had an inappropriate relationship of a sexual nature with a student in 1996-1997. Respondent was notified the recommendation may be adopted by the Commission, and of his right to request an administrative hearing.

Respondent's Background

4. Respondent has been an educator in California since 1995. Respondent has taught music classes in grades 7 through 12. Respondent is currently a music teacher at Claremont High School. He also teaches jazz band at El Roble Intermediate School. Respondent's performance evaluations from the Claremont Unified School District for 2014 and 2016 rate his performance as a music teacher as "meets standards." (Exhs. E, F.)

5. The Accusation is based on alleged incidents that occurred in 1995 to 1997, when respondent was employed by Los Angeles Unified School District (LAUSD) as a music teacher at Woodrow Wilson High School (WWHS).

Testimony of N.C.

6. N.C. is currently a high school special education teacher. She has been a teacher for about 20 years. She received her teaching credential in 2005. She holds a special education credential (mild to moderate) and a general education credential in history.

7. N.C. attended WWHS when respondent was employed there as a music teacher. N.C. was a student in respondent's sixth period orchestra class for both of

semesters of her junior year, during the 1995-1996 school year. N.C. was a student in respondent's music class for the first semester of her senior year, during the 1996-1997 school year. N.C. graduated from WWHS in 1997.

8. Twenty-one years later, in 2018, N.C. made a report to the Los Angeles Police Department (LAPD) that she had an inappropriate sexual relationship between 1995 and 1997 with respondent, while she was a student at WWHS. N.C. also reported allegations against another former teacher, Jesus Cervantes. In August 2018, N.C. was interviewed by the LAUSD Student Safety Investigation Team regarding her allegations against respondent and the other teacher, Mr. Cervantes.

9. On September 26, 2018, N.C. signed a sworn affidavit regarding alleged acts of misconduct by respondent. N.C. described her interactions with respondent. Respondent gave her rides home after band performances. They attended non-school related events with other students. They spent time sitting in respondent's truck and talking. They drove to other neighborhoods and cities, where they sat in respondent's truck and would cuddle and respondent massaged her back. On one occasion, they parked two cities over and respondent took N.C.'s fingers and placed them in his mouth, and he brushed his fingers over her lips. On another occasion, while they were cuddling in respondent's parked truck, N.C. felt a wetness on respondent's pants, in the crotch. In the affidavit, N.C. indicated her encounters with respondent were "documented in my journal and copies have been provided." (Exh. 4, p. A45.)

10. In the affidavit, N.C. also wrote: "Throughout this 'relationship,' I definitely felt like I was a puppy in love. I followed him, and his wife everywhere. They took me to their church, introduced me to their friends, and we all hung out socially at their home in Whittier. There was a little part of me that felt bad in her presence,

because I secretly wanted to be her, and her husband was becoming intimate with me." (Exh. 4, pp. A44-A45.)

11. CTC Special Investigator Susan Sadler prepared a Memorandum of Interview dated December 12, 2018, which summarized her interview of N.C. regarding her allegations against respondent. During the interview, N.C. disclosed that "she was romantically pursued in her junior year of high school by her music teacher, [respondent] and they maintained a romantic relationship from approximately 1996-1997." (Exh. U.) During the interview, N.C. indicated that later in life, "she found herself in destructive, abusive relationships and it was only through therapy that she realized that she was taken advantage of at a young age and was truly a victim." (*Ibid.*)

12. N.C. testified her relationship with respondent started off as a normal teacher-student relationship but then "gradually" changed into an inappropriate romantic relationship. However, in her affidavit, N.C. noted respondent was the new music teacher at the start of her junior year in high school, and then wrote: "He had a vintage vibe about him and I caught his eye. I'm not going to lie, he caught mine too." (Exh. 4, p. A44.)

13. N.C. testified regarding her interactions with respondent while she was in high school. N.C. testified respondent took her to an In-N-Out restaurant for the first time, as well as to a rib joint. Respondent took her on other outings, such as to Pasadena and the beach. Some of the outings included respondent's wife, while others included N.C.'s classmates and friends. N.C. testified there were also outings when she and respondent were alone. N.C. testified respondent drove her to and from outings because she did not drive in high school.

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14. N.C. testified her interactions with respondent involved inappropriate touching, such as respondent caressing her face, inserting his fingers in her mouth while telling her he was trying to feel her tongue. N.C. testified respondent was careful not to kiss her while she was still in high school and told her he would kiss her on her graduation night. N.C. testified respondent hugged her in intimate ways on several occasions. She described respondent's hugs as lingering, face-to-face hugs where he would put his arms over N.C.'s shoulders and "envelop" her.

15. N.C. testified regarding an incident where she and respondent were cuddling in his parked truck, he told her to close her eyes, and she felt a wetness on the crotch of his pants, which N.C. believed to be respondent ejaculating. N.C. testified about another incident on the night of N.C.'s high school graduation. Respondent and N.C. met up in a dark area outside of the band room. N.C. testified respondent kissed her three times and then told her, "Not bad."

16. N.C. testified she wrote about her interactions with respondent in a "Key to My Heart" diary. N.C. testified she wrote about respondent in her diary while she was a high school student. N.C. provided the Commission with excerpts from the diary containing the entries she made regarding her interactions with respondent. N.C. testified she received the diary for her birthday in 1990. She wrote in the diary throughout the 1990s and made her last entry in 1998. N.C. testified, for the diary excerpts she provided to the Commission, she copied the pages in the order they appeared in the diary. She did not manipulate the order of the pages.

17. In an entry dated October 13, 1995, N.C. noted that respondent started as the new music teacher and she described her feelings as follows: "Suddenly, I have these feelings in me, as I felt for Cervantes all those years ago. I find myself hanging on his words, and philosophies as I did with Cervantes." (Exh. 5, p. A50) In the same

entry for October 13, 1995, N.C. described feeling jealous when observing respondent's interaction with another teacher: "Earlier this day, Mrs. Micgahlen [sp?] came in, and he seemed to talk to her as a 'bud.' I guess I was a bit jelous [*sic*] at the way that they were all 'buddy, buddy' with each other. Then he walked behind her, and put his hand on her neck, and shook her. I wanted him to do that to me, which he did later on." (*Id.*, at p. A52.)

18. N.C. testified regarding some of the events described in the diary excerpts. In an entry dated April 20, 1996, N.C. described having a conversation with respondent about where their relationship was going. She testified there was no conclusion to the conversation about where the relationship was going. (Exh. 5, p. A55; Exh. N, p. B234.) In the same entry, N.C. wrote that respondent told her that if he was not married, he would have asked her out, but not officially until she was 18 years old. (Exh. 5, p. A56.) In an entry dated May 24, 1996, N.C. wrote that she expressly told respondent of her feelings for him. He responded that he knew and caressed her face and lips, before bringing his forehead to touch hers. When N.C. tried to look down, respondent had his hands under her chin and would not let her look away. He kept asking her what she was thinking and placed his nose against her lips. (Exh. 5, p. A62.)

19. N.C. testified she did not tell anyone about her interactions and relationship with respondent because she was "too embarrassed" and "too ashamed." However, N.C. also admitted that being with respondent made her happy. N.C. testified the last time she saw respondent while she was a teenager was in 1997, on the night of her high school graduation. N.C. testified the next time she saw respondent was in 2007, when she met a former WWHS teacher and respondent at a restaurant after a football game. N.C. testified she wanted to see respondent out of curiosity and because she cared for respondent and wanted to see him.

20. After she graduated from high school, N.C. felt embarrassed and ashamed about her relationship with respondent and did not talk about it. It was only recently, two to three years ago, that N.C. told some personal friends about the relationship, and also briefly mentioned it to her sister. N.C. explained she kept her relationship with respondent secret from her close friends and family until recently because she was too embarrassed and afraid of being judged.

21. N.C. testified the first time she told a therapist about her relationship with respondent was in 2012. N.C. and her then-husband were approaching a break-up and were going to therapy. N.C. went to one session "solo" without her husband. N.C. disclosed to the therapist she had an inappropriate relationship with a math teacher (Mr. Cervantes). N.C. testified divulging that information "led me to the realization that the things that went on between [respondent] and I were inappropriate as well." (Exh. N, p. B209.) N.C. testified the therapist told her what she experienced with her math teacher "was inappropriate and it was sexual abuse." (*Ibid.*) N.C. testified she realized her next relationship with respondent was along similar lines. N.C. testified that going to therapy was instrumental to her understanding what happened to her.

22. N.C. was 38 years old when she reported her relationship with respondent to authorities in 2018.

23. On cross-examination, N.C. testified, as a teacher, she has been a mandated reporter since 2005, which means she must report to proper authorities any reasonable suspicion of abuse involving her students or anybody. N.C. acknowledged she has known throughout her teaching career that it is misconduct for a teacher to engage in any romantic or sexual interactions with students. Despite her training as a mandated reporter, N.C. explained she did not realize she had been a victim of abuse in high school until after 2012, as a result of therapy. N.C. explained she was trained as

a mandated reporter to identify sexual abuse between teachers and other students, but not trained to reflect on her own abuse and trauma. She came forward about her abuse in 2018 because she wanted to protect other children from becoming victims of abuse.

24. On cross-examination, N.C. testified she never contacted respondent after she graduated from high school. She denied calling respondent after being non-re-elected from a teaching job, asking “Why would I do that?” Further, N.C.’s diary describes an outing at the beach, which N.C. initially testified was most likely Seal Beach. She corrected her testimony that the outing was most likely Venice Beach, after seeing documents that refreshed her memory.

25. On cross-examination, N.C. testified she made an insertion to an entry dated June 17, 1996, which spanned seven pages of the diary. (See Exh. 5, pp. A67 to A70.) On the fourth diary page of the entry (Exh. 5, p. A69), N.C. wrote an insertion in smaller writing than the rest of the original entry. N.C. testified she wrote the insertion within one month of June 17, 1996. As discussed below, respondent’s expert noticed that an entry for March 1998 appeared to be out of order, as it was inserted between entries dated January 1996 and April 1996. On direct examination, N.C. had explained that one of her pet peeves is her love of documenting detail. As she ruminated over things going on in her life, she would remember a detail. So, she added an entry to include a detail she remembered in March 1998 that happened in January 1996.

Testimony of N.C.’s Therapists

26. Pursuant to subpoenas from respondent’s counsel, Thuy Bui and Diane Lee testified at the hearing. Dr. Bui and Dr. Lee were identified by N.C. as therapists with whom she discussed having a romantic relationship with respondent.

27. Dr. Bui testified at the hearing on April 20, 2022. She is a licensed clinical psychologist. Dr. Bui testified she provided treatment for N.C. as a patient from 2012 to 2019. Dr. Bui testified her primary treatment for N.C. focused on sex addiction involving her now ex-husband and the impact of that on her life.

28. Dr. Bui produced treatment notes in response to a subpoena from respondent's counsel. Dr. Bui confirmed she produced all therapy notes relevant to this matter. Dr. Bui also confirmed there is no mention in her therapy notes of N.C. claiming she was sexually abused in high school. Dr. Bui testified N.C. disclosed she was the victim of abuse to another therapist prior to N.C.'s first meeting with Dr. Bui. According to Dr. Bui, N.C. provided an email regarding the disclosure to her previous therapist. The email is not part of Dr. Bui's therapy notes. Dr. Bui testified N.C. did not provide her with the name of her previous therapist.

29. As a result of Dr. Bui's testimony, N.C. was ordered to provide the name of the therapist with whom she previously discussed respondent. N.C. identified Dr. Lee. Dr. Lee testified at the hearing on August 2, 2022. Dr. Lee testified she provided treatment to N.C. as a patient in 2012.

30. In early summer 2022, Dr. Lee received a subpoena from respondent's counsel, Ms. Doty, and also spoke to her by telephone. When she spoke with Ms. Doty, Dr. Lee indicated she had no recollection that N.C. was her patient, and she signed a declaration to that effect. Later on, after being contacted by N.C., Dr. Lee remembered that N.C. was, in fact, her patient. On July 7, 2022, Dr. Lee sent Ms. Doty an email which stated in pertinent part:

[N.C.] provided me with copies of emails we exchanged and
I now recall meeting with [N.C.] in 2012.

In our meetings she shared with me that she had been in a relationship with a teacher when in high school. I let her know that the relationship she described would be considered sexual abuse since she was minor.

(Exh. R.)

31. At hearing, Dr. Lee recalled N.C. discussing a sexual relationship with a teacher while she was in high school. Dr. Lee admitted, however, she does not recall a great deal of her interaction with N.C. as a patient, due to the intervening years. Dr. Lee testified she did not recall N.C. saying she had relationships with two teachers. Dr. Lee testified it would be memorable if a patient disclosed having a romantic relationship with a teacher. Dr. Lee testified N.C.'s disclosure was memorable, and she only forgot about N.C. because she did not recognize N.C.'s name. Dr. Lee has been a therapist for 22 years and, during that time, only once has a patient disclosed having a romantic relationship with teachers while a minor high school student.

32. N.C. testified she saw Dr. Lee first, and then she transitioned to seeing Dr. Bui. N.C. testified she started seeing Dr. Bui in December 2012. She did not remember what she told each therapist. Her main focus at the time was on her mental health status and her marriage. N.C. testified her treatment with Dr. Lee was brief and the bulk of her therapy was with Dr. Bui. N.C. credits Dr. Bui with giving her experience with respondent a label. N.C. testified sexual abuse was not a big focus with Dr. Bui. N.C. testified it took a long time for her to process what happened.

Testimony of Beth Chrisman

33. Beth Chrisman testified as respondent's expert witness regarding her examination of N.C.'s diary. Ms. Chrisman has been a forensic document examiner for

16 years. Her education, training, and experience were established by her curriculum vitae presented at the hearing. (Exh. S, pp. B377-B378.) Ms. Chrisman's testimony was explained and supplemented by her written reports dated December 20, 2021 (Exhibit H), January 26, 2022 (Exhibit I), March 9, 2022 (Exhibit M), and July 25, 2022 (Exhibit S).

34. Ms. Chrisman examined N.C.'s actual diary on two occasions, both times subject to limitations imposed by the ALJ, after balancing N.C.'s right to privacy in her diary and respondent's right to present his defense to the allegations made against him.

35. Ms. Chrisman's first examination of the diary occurred on January 13, 2022. Ms. Chrisman was allowed to inspect actual diary but only the specific excerpted pages N.C. provided to the Commission and one page preceding and one page following the excerpted pages. (See Exh. I, p. B53.) Based on the first examination, the only opinion Ms. Chrisman could render was the diary was "an original diary," meaning that "it contains original ink on paper handwriting and is not a reproduction aka photocopy." (*Id.*, P. B54.) In her written report, Ms. Chrisman stated she could not determine if the diary was written in a sequential manner due to the limited pages available for examination, and she could not determine if the entries were written in 1996, 1997, and 1998, as no comparison handwriting by N.C. was submitted for that time period.

36. Ms. Chrisman conducted a second examination of the diary on June 22, 2022, where she was allowed to examine the entire diary. She documented her findings in her written report dated July 25, 2022. (Exh. S.) Ms. Chrisman's report states her assignment "was to determine, if possible, if the questioned original 'Key to My Heart Diary' was written in the purported years of 1995 and 1996, or it is possible the diary was written at a later time." (*Id.*, p. B374.)

37. Ms. Chrisman, in testimony, explained that sequential writings are writings that happen over a period of time, such as a restroom cleaning schedule, where the employee writes the time of inspection, or medical records. Ms. Chrisman explained sequential writing that is authentic will have similar letter formation, height and proportions; there is similarity but not an absolute match in the writing; and the habits of writing are similar but do not appear to have been written at the same time. Ms. Chrisman explained that, to determine if a writing was done as a teenager versus as an adult, she would need writing samples from both time periods (adolescent and adult). Also, the comparison sample and the questioned writing must be written in the same style, e.g., cursive writing, etc.

38. Ms. Chrisman's written report documented her observations from the second examination of the diary. She noted there was one observable entry that was inconsistent and out of sequence. She noted there was one entry that was in sequential order by date, where the date was written numerically as "3-16-98" instead of spelled out in words as in other entries, and the number "8" in the date was written in a snowman formation instead of a "figure 8" as in all the other entries. Ms. Chrisman testified she saw blank pages in the diary, but she did not log where they fell between the diary entries; she was focused on analyzing the sequential writing.

39. Ms. Chrisman found the samples of N.C.'s handwriting made available to her were not sufficient to make a comparison to the diary. Some of the writing was a combination of cursive and printed writing. Some of the documents only had N.C.'s signature. Ms. Chrisman did not have a page of N.C.'s fluid cursive writing. She testified that, to have a good comparison, she typically requests 10 pages of signature and handwriting samples.

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40. Based on her examination of N.C.'s entire diary, Ms. Chrisman's opinion was stated in her report as follows: "Based on a thorough analysis of the examination of the entire diary, the only opinion I can render is it is an original diary with one inconsistent entry. [¶] The word original means it contains original ink on paper handwriting and is not a reproduction aka photocopy." (Exh. S, p. B376.) At hearing, Ms. Chrisman testified she was unable to determine the time frame when the diary was written.

Testimony of Jesus Cervantes

41. Jesus Cervantes testified at the hearing. Mr. Cervantes first met N.C. when he was a teacher at El Sereno Junior High School. N.C. was a student in his seventh grade class. While N.C. was a student, Mr. Cervantes was aware that she wrote fictional stories, which N.C. asked him to read. Mr. Cervantes recalls reading a short story by N.C. called "Starting Over," which was about a young woman usurping the role of the wife in a couple's relationship.

42. Mr. Cervantes had a romantic relationship with N.C. when she was an adult. The relationship began near the end of 1997 and ended in approximately April 2005. Mr. Cervantes testified he knows N.C. well. When asked for his opinion about N.C.'s character for honesty, Mr. Cervantes testified there were two times he could recall when he caught her in a lie. The first example is Mr. Cervantes' neighbors told him N.C. spent a great part of the day in Mr. Cervantes' home when he was at work, but N.C. denied spending a lot of time in his home. The second example is when N.C. told Mr. Cervantes she was going to one place and not a party, and Mr. Cervantes later saw pictures of N.C. at the party N.C. told him she did not attend. Mr. Cervantes remembered these two examples because they were significant to their relationship at the time.

43. N.C. testified she has known Mr. Cervantes for over 15 years. She knew him as her teacher for one year, nine months, when she was 11 years old. N.C. testified she wrote fictional stories in junior high school. N.C. testified she wrote a story about a married man that was inspired by her teacher, Mr. Cervantes. N.C. testified she does not recall the details of the story, but it had to do with fictional normalizing of a scenario that played out during a relationship with her math teacher at the time. N.C. testified the main character was based on her feelings for Mr. Cervantes. N.C. shared the story with Mr. Cervantes. N.C. testified she wrote the story as a form of creative expression, and not because she believed it was true.

Respondent's Testimony

44. Respondent testified at the hearing. Respondent denied inappropriately touching N.C. or having a romantic relationship with her. Respondent acknowledged giving N.C. a ride home in his truck on a couple of occasions. Respondent denied the totality of N.C.'s allegations. He denied sitting in his truck with N.C. for more than one minute. He never touched N.C. while they were both in the truck. He never kissed N.C. or told her she was attractive. He testified N.C. never touched his crotch. He never put his fingers in her mouth or put her fingers in his mouth. He never caressed her face. Respondent testified he never had a romantic relationship with N.C. while she was student. Respondent testified he feels "disappointed" by N.C.'s allegations against him.

45. Respondent testified that after N.C. graduated from WWHS in 1997, she contacted him a couple of times. The first time was when she applied for a job at an In-N-Out restaurant, and she used respondent and his father-in-law for a reference. Respondent testified N.C. called him early in 2000, when she was not elected to return the next school year for her first teaching job in El Monte. Respondent testified N.C. was upset and called him to vent.

LEGAL CONCLUSIONS

Legal Principles

1. Pursuant to the Education Code, commencing with section 44000, and California Code of Regulations, title 5, commencing with section 80000 (Regulation), the Commission is responsible for credentialing teachers in public schools in California, including issuing credentials and taking adverse action against applicants and credential holders. (All undesignated statutory references are to the Education Code unless otherwise indicated.)

2. "Adverse action" is defined in Regulation 80300, subdivision (a), as "a denial, a private admonition, public reproof, suspension or a revocation of one or more credentials." However, Regulation 80300, subdivision (t), provides that a suspension may be stayed "on conditions of probation," indicating that adverse action may also take the form of placing a credential on probation subject to terms.

3. Section 44421 authorizes the Commission to take adverse action against an individual's teaching credentials for immoral or unprofessional conduct, or for evident unfitness for service, or for any cause that would have warranted the denial of an application for a credential. Pursuant to section 44345, subdivision (e), the Commission may deny an application for the issuance of a credential by any applicant who has "committed any act involving moral turpitude." These are all grounds upon which the Commission requests adverse action against respondent.

4. There is broad discretion in determining what constitutes unfitness to teach, in determining what constitutes immoral conduct, and in deciding whether the teacher should be sanctioned. (*California Teachers Ass'n v. State of California* (1999) 20

Cal.4th 327, 343.) The proven conduct should be looked at in the aggregate. It is not necessary to determine if each and every act demonstrates unfitness; it is proper to examine the totality of the offensive conduct. "When the camel's back is broken we need not weigh each straw in its load to see which one could have done the deed." (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1457.)

5. Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or non-existence of which is essential to the claim for relief or defense that the party is asserting. (Evid. Code, § 500.)

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

Analysis

7. In this case, complainant failed to meet her burden of proving cause for adverse action by clear and convincing evidence to a reasonable certainty. The Accusation shall be dismissed.

8. Complainant's only witness in this matter was N.C. Complainant contends N.C. was a credible witness, and her testimony should be credited over respondent's testimony denying her allegations, because N.C.'s testimony was corroborated by the

testimony of her therapists and by contemporaneous evidence in the form of entries from her diary. Complainant's contention is not persuasive.

9. The testimonies of Dr. Bui and Dr. Lee provided only limited corroboration regarding the timeline for N.C.'s disclosure to her therapists of having an inappropriate relationship with a teacher. Dr. Bui and Dr. Lee provided no details to corroborate the substance of N.C.'s testimony that respondent engaged in an inappropriate romantic relationship with her. Complainant acknowledged that Dr. Lee's value as a witness was limited due to her poor recollection. At most, Dr. Lee's testimony corroborated N.C.'s timeline that she disclosed having an inappropriate relationship with a teacher to a therapist in 2012. However, Dr. Lee did not recall N.C. disclosing relationships with two teachers, or the name of the teacher. Similarly, Dr. Bui's testimony established N.C. disclosed being the victim of abuse to another therapist (Dr. Lee) prior to her first meeting with Dr. Bui. However, Dr. Bui provided no details of the abuse or the identity of the abuser. Neither Dr. Bui or Dr. Lee identified respondent as the teacher having an inappropriate relationship with N.C.

10. Further, Dr. Bui and Dr. Lee, in their respective testimonies, did not corroborate or explain N.C.'s testimony that she was impacted by feelings of shame and embarrassment as a result of an inappropriate relationship with respondent, and which caused her to keep the relationship secret from her family and close friends. The therapists' testimonies did not provide any insight to explain or corroborate N.C.'s claim that it was only through therapy she came to understand she was a victim of abuse. N.C. has been a mandated reporter since she began her teaching career in 2005. There was no evidence to explain or corroborate her claim that she did not realize she may have been the victim of abuse until 2012.

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11. Complainant contends that N.C.'s testimony should be credited over respondent's testimony because it is corroborated by the excerpts from her diary. This contention is not persuasive. The diary alone is not sufficient corroboration that respondent engaged in an inappropriate relationship with N.C. during the period 1995 to 1997. Given that 20 years passed until N.C. first reported her allegations against respondent, it is reasonable and appropriate for the trier of fact to look for independent corroborating evidence to support N.C.'s claims. The diary is not independent corroborating evidence, given that N.C. is the source of the information in the diary. Complainant presented no independent objective evidence to verify the accuracy of the information asserted in the diary excerpts. Nor was any evidence presented by N.C.'s family, friends, and acquaintances who could vouch that N.C. kept the diary in high school.

12. The record in this case plausibly suggests some diary entries may be a reflection of N.C.'s aspirations and fantasies. N.C.'s diary includes entries acknowledging her feelings when respondent became the new music teacher, and that she felt jealous watching respondent interact with a female teacher. In her affidavit, N.C. recounted spending time with respondent and his wife and that she secretly wanted to be her, and how respondent caught her eye as the new music teacher. N.C. wrote a story in junior high, based on her feelings for her math teacher, about a girl usurping the role of the wife in a couple's relationship. None of these things would excuse or justify respondent having an inappropriate relationship with N.C. while she was a high school student. These circumstances, however, highlight the need for independent evidence to verify the matters asserted in the diary. N.C. corroborating the entries in her own diary is not sufficient.

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13. In summary, the record in this case failed to clearly and convincingly establish to a reasonable certainty that respondent engaged in the acts of misconduct that are the basis for the causes for adverse action alleged in the Accusation.

14. Therefore, cause does not exist for adverse action against respondent's credentials pursuant to section 44421 for unprofessional conduct, immoral conduct, and evident unfitness for service, and pursuant to sections 44421 and 44345, subdivision (e), for acts of moral turpitude. (Factual Findings 1-45; Legal Conclusions 1-13.)

ORDER

The Accusation, No. 1-989735393, filed against Eric Anthony Melanson is dismissed.

DATE: **11/04/2022**

Erlinda G. Shrenger
Erlinda G. Shrenger (Nov 4, 2022 11:53 PDT)

ERLINDA G. SHRENGER

Administrative Law Judge

Office of Administrative Hearings