

**BEFORE A
COMMISSION ON PROFESSIONAL COMPETENCE
FOR THE COLTON JOINT UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

IN THE MATTER OF THE DISMISSAL OF:

JOHN HOANG, RESPONDENT

OAH NO. 2019031000

DECISION

On July 30 and 31, 2019, a Commission on Professional Competence (Commission) heard this matter in Colton, California. The Commission consisted of the following members: Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings; Deborah Bowers, Adelanto Elementary School District; and Kimberly Binning-Chevlin, Murrieta Valley Unified School District.

Mark W. Thompson, and Brooke E. Jimenez, with Atkinson, Adelson, Loya, Rudd & Romo (AALRR), represented complainant, Ingrid Munsterman, Assistant Superintendent, Human Resources Division, Colton Joint Unified School District (district).

Carlos R. Perez and Alejandra Gonzalez-Bedoy, Law Offices of Carlos R. Perez, represent respondent, John Hoang.

The record was closed and the matter submitted for decision on July 31, 2019.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent is a certificated elementary school teacher employed by the district as a fourth grade teacher at Alice Birney Elementary School (Alice Birney).
2. On January 23, 2019, complainant signed and sent to respondent a Notice of Proposed Recommendation for Suspension Without Pay and Dismissal and Statement of Charges (Statement of Charges).
3. Respondent was given the opportunity to discuss the matter at a *Skelly*¹ meeting on January 28, 2019. Respondent did not elect to attend the meeting.
4. On February 21, 2019, complainant presented the Statement of Charges to the district's governing board. The board approved the recommendation to suspend respondent without pay pending his dismissal. Complainant notified

¹ In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that in order to satisfy due process, an agency considering disciplinary action against a public employee must accord the employee certain "pre-removal safeguards," including "notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." The Supreme Court's directive gave rise to an administrative procedure known as a Skelly hearing, in which an employee has the opportunity to respond to the charges upon which the proposed discipline is based.

respondent of the board's decision and provided respondent with 30 days to request a hearing.

5. On February 26, 2019, respondent timely requested a hearing on his dismissal.

6. The Statement of Charges alleged the following causes for dismissal: immoral conduct (Ed. Code, § 44932, subd. (a)(1)); dishonesty (*id.* at subd. (a)(4)); and conviction of a felony or of any crime involving moral turpitude (*id.* at subd. (a)(9)).²

7. The Statement of Charges listed the following "specific acts and omissions" substantiating the causes for discipline: On November 2, 2018, respondent pled guilty to a misdemeanor violation of Penal Code section 182, subdivision (a)(1), conspiracy to commit grand theft, which complainant alleged was a crime involving moral turpitude. Complainant alleged respondent admitted guilt to engaging in a criminal conspiracy with Carol Chau Nguyen by attempting to employ a deceitful scheme to abuse the Pechanga Resort and Casino (Pechnaga) Player's Club system and defraud the casino of \$3,600.

8. Additionally, complainant alleged that on November 7, 2018, respondent made the following false statements to the district's Director of Human Resources: 1)

² The Statement of Charges also alleged immoral conduct as grounds for immediate suspension under Education Code section 44939. Although respondent's suspension was subsequently reversed by an administrative law judge, that decision "shall not be considered by the commission in determining the validity of the grounds for dismissal, and shall not have any bearing on the commission's determination regarding the grounds for dismissal." (Ed. Code, § 44939.)

respondent initially claimed that he did not know and/or never met Ms. Nguyen; 2) respondent then stated that he only had lunch with Ms. Nguyen and the two did not have a romantic relationship; 3) respondent claimed that Ms. Nguyen unilaterally placed points and/or money on his Player's Club card without respondent's knowledge or request; and 4) respondent represented that the criminal matter concluded with him only needing to pay a \$150 fine.

9. On June 21, 2019, the district served respondent with an Amended Statement of Charges. The Amended Statement of Charges added the following causes for dismissal: unprofessional conduct (Ed. Code, § 44932, subd. (a)(2)), evident unfitness for service (*id.* at subd. (a)(6)), and persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed by the district's governing board (*id.* at subd. (a)(8)). Under the heading "prior relevant employment history" the district alleged that on November 27, 2012, the district issued respondent a Notice of Unprofessional Conduct (NUC) pursuant to Section³ 44938, which listed the grounds for the notice and specific directives to adhere to board policies. The district also alleged that on June 5, 2014, it issued respondent a second Notice of Unprofessional Conduct and Unsatisfactory Performance. The Amended Statement of Charges alleged that respondent's conviction and dishonesty with a district official violated the district's regulations and the directives contained in the two NUCs.

³ All future statutory references are to the Education Code unless otherwise specified.

Pre-hearing Motions

MOTION TO DISQUALIFY COMMISSION MEMBER

10. On May 10, 2019, the District designated Deborah Bowers, an employee of the Adelanto Elementary School District (AESD), as a member to serve on the Commission in accordance with Education Code section 44944, subdivision (c)(3). On May 13, 2019, respondent filed an objection to the District's designation of Ms. Bowers on the basis that Ms. Bowers was not qualified within the meaning of Section 44944, subdivision (c)(4), due to a conflict of interest. On May 21, 2019, the objection was overruled and the request to disqualify Ms. Bowers was denied because respondent failed to establish that Ms. Bowers was not qualified within the meaning of Education Code section 44944 subdivision (c)(5)(A).⁴

On May 22, 2019, respondent filed a second objection to the District's designation of Ms. Bowers as a commission member. By order dated, respondent's objection was again overruled on the same grounds. On June 9, 2019, respondent filed a motion to strike Ms. Bowers from the Commission. Respondent alleged that the firm representing the district in this case, AALRR, represented Ms. Bowers's employer, AESD, in an unrelated claim before the Public Employment Relations Board (PERB). In that case, a teacher filed a complaint against AESD based on actions by Ms. Bowers, who was the teacher's school principal and supervisor. During the hearing before the

⁴ That provision provides that the designated member must not be related to respondent, must not be employed by the district, and must hold a currently valid credential and have at least three years' experience within the past 10 years in the discipline of respondent.

PERB, AALRR called Ms. Bowers as a witness. Respondent contended that there was an extended attorney-client privilege between AALRR, and consequently, Ms. Bowers would be more inclined to trust the representations by AALRR in this matter. Respondent argued that for Ms. Bowers to serve on the Commission, at the very least, creates an appearance of conflict.

11. Prior to the start of the hearing, the Commission decided respondent's motion in accordance with Government Code section 11512, subdivision (c).⁵ That provision provides in relevant part:

An administrative law judge or agency member shall voluntarily disqualify himself or herself and withdraw from any case in which there are grounds for disqualification, including disqualification under Section 11425.40. . . . Any party may request the disqualification of any administrative

⁵ Education Code section 44944, subdivision (b)(1)(B), provides, in part, that teacher dismissal hearings are to be initiated and conducted "in accordance with Chapter 5 (commencing with Section 11500) of Part I of Division 3 of Title 2 of the Government Code [administrative adjudication provisions of the Administrative Procedure Act (APA)] and the Commission on Professional Competence shall have all of the power granted to an agency pursuant to that chapter." Under the APA, a Commission member is an "agency member" within the meaning of Government Code section 11500, subdivision (e), and a "presiding officer" within the meaning of Government Code section 11405.80. A presiding officer is subject to disqualification for "bias, prejudice, or interest in the proceeding." (Gov. Code, §§ 11425.10, subd. (a)(5); 11425.40, subd. (a).)

law judge or agency member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that the administrative law judge or agency member is disqualified. Where the request concerns an agency member, the issue shall be determined by the other members of the agency. . . .

Ms. Bowers made the following disclosure to the Commission: Ms. Bowers is a school principal. One of the teachers Ms. Bowers supervised filed a complaint with PERB against Ms. Bowers's employer, AESD. The complaint involved Ms. Bowers in the capacity as the employee's supervisor. Attorneys from AALRR represented AESD in the matter. Ms. Bowers's interaction with these attorneys was extremely limited. Although an attorney interviewed Ms. Bowers, Ms. Bowers did not think she could even remember who the attorney was or what she looked like. The complaint against AESD was dismissed by PERB. The complaining teacher continues to work at Ms. Bowers's school site. Ms. Bowers described her as an "excellent" teacher and the two now enjoy a strong working relationship. Ms. Bowers believed she could be fair and impartial in this matter and would not be influenced by the fact that the firm representing the district in this matter also represented her employer, AESD.

The remaining member of the Commission and administrative law judge considered Ms. Bowers's disclosure and arguments by respondent. They unanimously determined that grounds did not exist to disqualify Ms. Bowers as a presiding officer and denied respondent's motion.

MOTION TO EXCLUDE EVIDENCE

12. Prior to the hearing, both parties filed motions *in limine* seeking to exclude evidence. Many of the issues were decided in a July 23, 2019, order. One issue that was not resolved was based on respondent's motion to exclude any evidence to events occurring more than four years before service of the Statement of Charges in accordance with Section 44944. Specifically, respondent sought to bar the introduction or consideration of the two NUPs, which occurred more than four years before the service of the Statement of Charges.

The district initially argued that the introduction of the NUCs was required to satisfy the statutory notice requirements contained in Section 44932, subdivision (a)(2), which is a prerequisite for dismissing an employee for unprofessional conduct. In addition, the district argued the NUCs served as evidence in support of the charge of persistent violation or refusal to obey regulations under Section 44932, subdivision (a)(8). Finally, the district argued that the NUCs were regularly maintained in respondent's personnel file, served to show "directives, progressive discipline, and evidence related to the *Morrison factors*" and were admissible under Section 44944.

Telephonic oral arguments on respondent's motion were heard on July 23, 2019. In the order scheduling oral arguments, the parties were asked to address the applicability of Section 44934, subdivision (d), which prohibits amending charges less than 90 days before the hearing except upon a showing of good cause.

The district argued that during a prehearing conference on June 10, 2019, the district gave notice of its intention to amend the charges. The district contended that the administrative law judge conducting the prehearing conference requested that the district delay amending the charges while settlement discussions were occurring. A

second prehearing conference was held on June 20, 2019. At this time, the district again indicated its intention to amend the charges to include reference to the two NUCs. Respondent offered no objection to the amendments and the administrative law judge ordered that any amended Statement of Charges must be filed by June 24, 2019.⁶ This, the district argued, was the administrative law judge's permission for the district to file the amended charges.

Respondent, in rebuttal, opposed the amendments to the Statement of Charges. However, he did not oppose the admission of the two NUCs so long as the nature of the underlying misconduct was redacted and not considered by the Commission.⁷

A decision on whether to accept the Amended Statement of Charges was deferred until the conclusion of the hearing in order for the district to preserve the ability to make arguments and present evidence in support of the additional three causes for dismissal and make any arguments on the record to establish good cause for filing the amendments within 90 days prior to the hearing.

⁶ A Prehearing Conference Order was not issued until June 24, 2019, requiring that an amended Statement of Charges was to be filed by that date.

⁷ At the hearing, respondent objected to admission of several un-redacted portions of a NUC. Although respondent's objection was overruled, for reasons discussed below, the NUCs were not considered by the Commission in reaching a decision in this matter.

Good Cause Did Not Exist to Amend the Statement of Charges

13. Section 44934, subdivision (d), provides:

If the governing board of the school district has given notice to a certificated employee of its intention to dismiss or suspend him or her, based upon written charges filed or formulated pursuant to this section, the charges may be amended less than 90 days before the hearing on the charges only upon a showing of good cause. If a motion to amend charges is granted by the administrative law judge, the employee shall be given a meaningful opportunity to respond to the amended charges.

The district initially argued that the administrative law judge conducting the prehearing conference authorized the district to amend the Statement of Charges and respondent offered no objection. While Amended Statement of Charges in the prehearing conference order did not address the requirements of Section 44934, subdivision (d), the prehearing conference order cannot supersede statutory requirements, which requires a motion to amend charges and a showing of good cause. There was no evidence that the issue of "good cause" was raised during the prehearing conference. The order only provided a deadline for the district to file an amended Statement of Charges; this was not an implicit finding of "good cause" as suggested by the district.⁸

⁸ It is noted that the prehearing conference order occurred within 90 days of the commencement of the hearing, so the district was not prejudiced by relying on the

At the hearing, the district argued that the Amended Statement of Charges did not run afoul of Section 44934, subdivision (d), because the "charges" referenced in that provision were never amended. The district contended that the "charges" in this case were the allegations that respondent pled guilty to a criminal offense and was dishonest with a campus administrator. The Amended Statement of Charges added three additional "causes for discipline" but these did not constitute "charges." Instead, complainant contends the amendments should be permitted to conform to proof, which is permitted in civil proceedings.

14. The district's arguments were unpersuasive. In civil litigation, amendments are allowed with great liberality and no abuse of discretion is shown unless, by permitting the amendment, new and substantially different issues are introduced in the case or the rights of the adverse party prejudiced. (*Garcia v. Roberts* (2009) 173 Cal.App.4th 900, 909.) In contrast, Section 44934, subdivision (d), requires "good cause" to amend the charges within 90 days of the hearing, which reflects a legislative intent to ensure that a district provides certificated employees sufficient opportunity to provide a defense to the charges.

While it is true that Section 44932 references "causes for dismissal" rather than "charges," Section 44934, subdivision (d), reflects the Legislature's unambiguous intent to limit *any* amendments to the charging document within the 90-day window except for good cause. In addition, in amending the Statement of Charges, the district did not

order. The district was provided the opportunity at the hearing to argue good cause for filing the amendment, and the Amended Statement of Charges was provisionally accepted until a final decision was made by the administrative law judge at the conclusion of the hearing.

just add three additional causes for discipline to conform to proof, but also made the factual allegation that respondent previously received two NUCs. These NUCs contained allegations of prior misconduct and directives to remedy his performance. As a "charge" the district alleged respondent failed to follow district directives and regulations contained in the NUCs, which constituted willful and/or persistent refusal to follow regulations. Thus, the amendments constituted additional allegations.

Accordingly, because the Amended Statement of Charges was served on respondent on June 21, 2019, which was within 90 days of the hearing, the district was required to establish good cause to amend. In this case, good cause was not established as there was no reason the district could not have amended the Statement of Charges prior to the 90-day window, as the district was always in possession of the two NUCs that were subject of the amendments. Nor was there good cause to excuse the district's failure to include all possible causes for discipline in the original Statement of Charges. As such, only the original Statement of Charges was considered by the Commission in reaching a decision in this matter.

Respondent's Criminal Conviction

15. On November 2, 2018, in the Superior Court of California, County of Riverside, in the case of *People v. Carolchau Nguyen and John Bao Hoang*, Case No. SWF1700568, respondent pled guilty and was convicted of a misdemeanor violation of Penal Code section 182 subdivision (a)(1), conspiracy. The court placed respondent on summary probation for 36 months; ordered him to serve two days in custody with credit for two days' served; ordered him to have no contact with Pechanga Casino; and ordered him to pay fines, fees, and restitution.

The single count felony criminal complaint alleged that from January 2015 through February 2016, respondent and Ms. Nguyen, conspired together to commit the crime of grand theft, in violation of Penal Code section 487, subdivision (a). As the overt act for committing the conspiracy, the complaint alleged respondent and Ms. Nguyen "fraudulently rated reward and promotional status leading to victim's loss of over \$3,600 with transactions of retail goods, gasoline and food."

Respondent, who was represented by counsel, signed a misdemeanor plea form on November 2, 2018. In that form, respondent acknowledged the following: "I agree that I did the things that are stated in the charges that I am admitting."

The District's Investigation

16. Ingrid Munsterman, who testified at the hearing, has worked for the district for the past 39 years. She has been the Assistant Superintendent for Human Resources for the past 13 years, prior to which she was the Director of Human Resources, a principal, and a teacher. Ernesto Calles, who testified at the hearing, was until recently the district's Director of Human Resources for four years. He has also held positions with the district as a principal, assistant principal, and teacher.

17. On October 20, 2018, Ms. Munsterman received an electronic notification from the California Department of Justice that respondent had been arrested on a felony charge of conspiracy. The district immediately placed respondent on paid administrative leave pending its investigation. Mr. Calles notified respondent that he was being placed on administrative leave; however, he did not discuss with respondent the reasons for the decision or respondent's arrest.

18. On November 7, 2018, Mr. Calles held a meeting with respondent. Also present at the meeting were Robert Lemoine, respondent's union representative, and

Azelin Davis, a district Human Resources Technician who took notes of the meeting. Prior to the meeting, Mr. Lemoine emailed Mr. Calles a copy of respondent's misdemeanor plea memorandum. This was the only conviction document that Mr. Calles had received at the time of the meeting.

Mr. Calles testified that his first question to respondent was about the arrest notification and he asked respondent what happened. Respondent replied that he was pulled over for a traffic violation and was arrested. Respondent said there was a warrant that he did not know about because it had been sent to the wrong address. Respondent said "they took [respondent] in and [respondent] paid a \$150 fine and that was it." Mr. Calles then asked respondent, "Tell me about Pechanga." Respondent replied, "I play there." Respondent did not say anything else. Mr. Calles then asked, "Do you know anyone who works at Pechanga?" Respondent replied, "I don't know anyone who works at Pechanga." Respondent did not say anything else. Mr. Calles then asked respondent who was Carol Nguyen. Respondent answered, "Oh, she is a floor supervisor at the casino." Respondent then volunteered that he bought Ms. Nguyen lunch before, but he also bought lunch for other employees as a courtesy. Respondent then stated that Ms. Nguyen put credit or money on his player's card that he did not know about. Mr. Calles then asked if there was anything else respondent wanted to share. Respondent answered there was nothing else and the meeting concluded.

Mr. Calles testified that the meeting was extremely brief and would have been shorter had Mr. Calles not continued to try and elicit additional information from respondent. Mr. Calles could not recall if respondent said anything about the guilty plea. He did recall asking respondent about the fine and whether it was part of his plea from a felony to misdemeanor. Respondent said that it was not. Mr. Calles did not

review with respondent any specifics regarding his guilty plea or discuss with him the conviction record. Mr. Calles testified that he felt respondent was dishonest at the meeting because he did not tell the whole story. Mr. Calles felt respondent would share pieces of information, but ultimately it did not match the information that Mr. Calles had received, namely that respondent had pled guilty to conspiring to defraud the casino. For example, Mr. Calles believed respondent was dishonest because when Mr. Calles questioned him about Pechanga Casino, respondent only said he played there and did not mention the conviction. He believed respondent was dishonest when he said he did not know anyone who worked at Pechanga but, admitted that he knew Ms. Nguyen only after Mr. Calles asked respondent about her. Mr. Calles testified that he asked respondent open-ended questions in hopes that respondent would be forthcoming. However, Mr. Calles's impression of the meeting was that it was more a "cat and mouse" game where respondent wanted to see how much Mr. Calles actually knew.

Ms. Davis, who testified at the hearing, took notes of the meeting, which were received as evidence. Ms. Davis and Mr. Calles both testified that the notes were not a verbatim account of the meeting. Ms. Davis testified that she was instructed to record the "main points." Mr. Calles testified that the notes were accurate but not a complete account of what was discussed. He said there was more conversation than what was contained in the summary. Ms. Davis provided Mr. Calles the notes for his review the same day of the meeting. Mr. Calles testified that he did not see any problem with the notes and reiterated that they were accurate but not a word-for-word account of what was said at the meeting. Mr. Calles did not take any additional notes or prepare any other record concerning his conversation. His testimony was based on his independent recollection of the events. The notes indicated that the meeting lasted 17 minutes. The notes are reproduced in their entirety as follows:

Issues:

I. Pechanga

- a. John admits that he bought lunch for the security guard, but allegedly did nothing illegal.
 - i. He is part of a rewards program.
- b. Because John bought food [for] the supervisor, the casino claims she purposely put more reward points on his card.
 - i. Ernesto Asked when John realized he had way more points than normal.
 - 1. John replied it was a while after lunch.
- c. Ernesto asked about the \$150 fine and if it was a plea bargain.
 - i. John clarified that the \$150 fine was just given to him.
- d. Robert added that the supervisor[']s case was settled before John[']s.
 - i. Court sent a notice to appear for John in 2017 went to the wrong apartment. That is why he was arrested.

e. Ernesto asked if John bought the supervisor lunch because she is helpful to John.

i. John clarified that he buys lunch for other employees as well, not just that supervisor.

19. Mr. Calles testified that after his meeting with respondent, he had a heightened concern about respondent's honesty. Mr. Calles met with Ms. Munsterman and shared his concerns that respondent had been dishonest in the interview. Ms. Munsterman met with the district's superintendent. In discussing the matter with the superintendent, the district decided that dismissal was appropriate based on the criminal conviction and the belief that respondent was dishonest in his interview with Mr. Calles. In addition, respondent had received two previous NUCs, which indicated to Ms. Munsterman an inability to comply with the prior directives. Ms. Munsterman testified that the superintendent had highlighted that teachers are held to a higher standard and respondent's actions implicate his ability to be a positive role-model for his students. Mr. Calles noted that at no time did respondent ever tell him or the district that he was innocent of the charges or that he did not commit the crime for which he pled guilty.

20. Neither Ms. Munsterman nor Mr. Calles were aware of any complaints by parents regarding respondent's arrest and conviction. They were not aware if any parents or students were made aware of the arrest, or if there was any printed or social media publicity regarding the conviction.

Testimony of Jessica Gomez

21. Jessica Gomez has been the principal at Alice Birney for the past 11 years and is respondent's supervisor. In addition to his duties as a fourth grade teacher,

respondent was the lead teacher for afterschool programs. Ms. Gomez evaluated respondent's performance twice. Her last evaluation was during the 2014/2015 school year. His last evaluation was satisfactory in all categories.⁹ Ms. Gomez was not involved in the decision to dismiss respondent and was not aware of the pending discipline. The district notified her in October 2018 that respondent was being placed on administrative leave, but she was not told the reason for that decision. After respondent was placed on leave, three other teachers at Alice Birney expressed concern to Ms. Gomez that they were unable to reach respondent. Their concern was that they attempted to contact him but he was not responding. One teacher reported that there were rumors about respondent but did not say what those rumors were.

Respondent's students did ask Ms. Gomez where respondent was and when he would return. In addition, parents had asked respondent's substitute teacher why respondent was gone and when he would return. The substitute did not have an answer and informed the parents that she would speak to Ms. Gomez.

As an administrator, Ms. Gomez expressed concern that respondent pled guilty to a theft-related criminal charge. She explained that teachers have responsibility for handling money and personal equipment. She had concern about respondent's ability to make moral decisions. The allegations of dishonesty were concerning because it made her wonder if there were other times when respondent had not been honest

⁹ Respondent submitted a performance evaluation from the 2015/2016 school year indicating that respondent was "satisfactory" in all categories and was "appropriate and effective" during Ms. Gomez's classroom observation.

with her or whether he would be honest in the future. Ms. Gomez believed it was important for teachers to be honest and trustworthy and comply with the law.

Ms. Gomez testified that in the last four years she had no other reason to question respondent's honesty. Respondent was designated as an administrator designee, which meant that he acted as the campus administrator when Ms. Gomez and the assistant principal were off-site. In light of the charges, Ms. Gomez would no longer make respondent an administrator designee. She expressed that it is a position of trust and she is not 100 percent confident that respondent would be truthful and honest. Ms. Gomez testified that no parents or students ever indicated to her knowledge of respondent's arrest or conviction.

Testimony of Carol Chau Nguyen

22. Ms. Nguyen's testimony is summarized as follows: She has worked as a real estate agent since December 2017. From July 2011 through 2015 she worked as a floor supervisor at Pechanga Casino. Her responsibilities included monitoring the floor games. She was also involved with the Player's Club, a system that the casino maintained to award frequent players. When a member of the Player's Club came to the casino, the person would present a card or identification to Ms. Nguyen. Ms. Nguyen would then record information about how long the person played, how much the player bought in, how much the player bet, and how much was won or lost. Based on this information, the casino would award the individual points that could be redeemed at the casino's restaurants, gift-shop, or gas station. The points had a dollar value but could only be redeemed at the casino. Ms. Nguyen was not involved in determining how many points a player would receive; her only role was to input information about the player's gambling time and bets. However, she knew that if a

player only bet the minimum, he or she would not receive many points. Players who bet larger amounts and played longer received more points.

Ms. Nguyen met respondent at the casino. She could not recall when exactly she met respondent but estimated it was the last two years she worked at the casino. Respondent was a regular. Sometimes she would see him weekly, but there would be periods where he would not come in for several weeks. For example, respondent told her that he had knee surgery. She and respondent sometimes communicated by phone outside of her work. On one occasion, he knew that she was sick and called to ask how she was feeling. She estimated that they spoke over the phone less than 10 times. She met respondent a couple times face-to-face outside of the casino. Once, she was getting gas at the casino's gas station after work and respondent was also there. Another time, respondent knew that she was getting off work and said he would meet her at the gas station. Respondent purchased gas for Ms. Nguyen.

Ms. Nguyen would log respondent into the points system. She admitted that she would log respondent in for more time than he actually played. She explained that in general, a player could lose several thousand dollars and still not receive enough complimentary points to get a meal. Ms. Nguyen would increase the time for respondent and other regular players so they could get something to eat. Ms. Nguyen did not know how many times she did this for respondent, but estimated it was fewer than 10. Most of the time respondent would use his points to purchase food. After getting a meal for himself, respondent would use the value of the points left over to purchase food for Ms. Nguyen and other employees, such as the dealer. Ms. Nguyen testified that respondent gave her food that he had purchased with the points. Respondent also gave Ms. Nguyen some gifts from the gift shop. This included three rings, two necklaces, and a watch. All the gifts were on a single occasion around the

Chinese New Year. She estimated the value of the necklace was \$75, but noted that the prices at the gift shop were much higher than actual market value. Respondent also paid for her gas twice.

23. Ms. Nguyen testified that she told respondent that she had put extra time on his account. In response, respondent said that he did not want Ms. Nguyen to get into trouble. Ms. Nguyen did not think that she was doing anything wrong because the amount of points was minimal. Ms. Nguyen's manager knew what she was doing and did not think it was a big deal. However, another employee reported respondent to the tribe because she believed Ms. Nguyen was showing favoritism to respondent. Ms. Nguyen was fired from her job. Ms. Nguyen went to a hearing before the tribe in order to retain her casino license and job, but she lost her appeal. Approximately a year later Ms. Nguyen was notified that she had to go to court. She went to court twice, pled guilty, and was placed on probation. Ms. Nguyen was aware that respondent was also charged. However, she expressed that respondent did nothing wrong and had never asked for any special treatment or extra points. She never created a plan with respondent, and there was never any discussion that respondent would give Ms. Nguyen anything in return. Ms. Nguyen did not believe there was any quid pro quo for her adding more time to his account. She did not believe there was any loss to the casino anywhere near \$3,600 as alleged in the criminal complaint. She just viewed his actions as being nice. Ms. Nguyen has not spoken to respondent since she worked at Pechanga.

Respondent's Testimony

24. Respondent's testimony is summarized as follows: respondent has taught for the district for 13 years at two different school sites. He has spent the last six years at Alice Birney teaching fourth grade. He began teaching on an emergency credential

after graduating from college. He then obtained his Masters of Education and eligibility to obtain an administrator credential. He has been designated as an administrator designee, allowing him to serve as acting administrator in the absence of the principal and assistant principal. He is also in charge of the Saturday Academy, a program that allows students with multiple absences to make-up the lost time.

Respondent was arrested in October 2018. His fiancée at the time, as a condition of marriage, wanted respondent to self-exclude himself from casinos. This meant that respondent would go to a casino and inform security that he wanted to be barred from entering. Respondent went to a casino in Palm Springs for this purpose. When the guard ran his identification, the guard took him into custody. The police came and arrested him on an outstanding warrant for conspiracy. He spent the night in jail until he could be bonded out. The arrest was a complete surprise to respondent. He had never been arrested and the experience of being in jail was awful.

Respondent explained that he never received the original order to appear in court because the apartment number had been omitted on the summons. Consequently, a bench warrant was issued. After the district placed him on administrative leave, respondent went to court so that his case could be advanced. He wanted to get back to work. At his second court appearance, he was represented by a public defender. Respondent was charged with a felony. He was scared of ever having to return to jail, he did not want to go to trial, and wanted to get back to work. Consequently, he accepted the plea to a misdemeanor and probation. He was not advised of the consequences of his plea or that it could affect his employment. At the time the plea sounded good. Although he signed a plea agreement indicating that there was a factual basis for his plea this was not true.

25. In 2014 and 2015 respondent frequented the Pechanga Casino. Respondent knew Ms. Nguyen as "CC," who was a floor supervisor. He was aware that the floor supervisor rated players, and based on the ratings, players would receive rewards that could be used for food, gifts, or gasoline. When respondent received points he would have to use all the points or they would be lost. Rather than have points go to waste, he bought food for employees, including Ms. Nguyen. He would not sit and eat with the employees as they were required to eat in their own breakroom. Instead, he would purchase food and give it to them. Respondent gave Ms. Nguyen some items he purchased from the gift store with his reward points. This was a one-time occurrence for Chinese New Year. He explained that for him, Chinese New Year is similar to Christmas, where he gives presents to elders as a way of showing appreciation. He typically spends up to \$2,000 every year buying gifts for friends and family. He believes he gave Ms. Nguyen two or three rings, a necklace, and a watch. These items cost approximately \$150, which he purchased with reward points. The gifts were meant to be a surprise for Chinese New Year. Ms. Nguyen did not expect the gifts, but she was the only employee who he purchased gifts for. Respondent did run into respondent on an occasion and purchased approximately \$40 worth of gasoline for her using his complimentary rewards.

Respondent was unaware of how the points were awarded to him. He would give his player's card to the supervisor when he went to a table. He only asked how many points he had when he wanted to buy something. Respondent was never told that Ms. Nguyen was doing anything improper. If he had, he would have not wanted her to do it so she would not get in trouble.

26. After respondent received the sentencing memorandum, he brought it to the union president, Mr. Lemoine. Mr. Lemoine emailed the sentencing memorandum

to Mr. Calles and then called him on speakerphone with respondent present. Mr. Calles made a joke that respondent should stay away from casinos but said the conviction should not be a problem as long as it did not involve kids or drugs.

At the meeting on November 7, 2018, Mr. Calles asked respondent what happened. Respondent explained that he had gone to a casino for a self-exclusion, which respondent explained to Mr. Calles. Respondent told Mr. Calles that he was arrested at the casino and spent 11 hours in jail before bonding out. Mr. Calles asked respondent if he knew anyone at Pechanga. Respondent answered "no" because "knowing someone is on a personal level" and he knew Ms. Nguyen only as "CC" from the casino. Mr. Calles asked respondent specifically about Ms. Nguyen, and respondent said he did not have a romantic relationship with her but knew her as the floor supervisor who rates players at Pechanga Casino. Mr. Calles asked respondent if he bought Ms. Nguyen lunch and he answered that he bought other employees lunch and not just her. Mr. Calles thought that respondent took her out to lunch and respondent explained that he never met her outside of the casino, and he did not have any kind of romantic relationship with Ms. Nguyen. Respondent testified that he never socialized with Ms. Nguyen whatsoever. Mr. Calles never asked respondent about a romantic relationship specifically. Mr. Calles asked respondent how much he had to pay. Respondent said he had to pay \$150 based on what was on the sentencing memorandum. Mr. Calles asked if it was part of the plea bargain. Respondent said "no" because the \$150 was ordered as part of the sentencing memorandum. Respondent thought the question involving the plea bargain itself and the amount of the fine was never negotiated.

The meeting was short. Mr. Calles had the sentencing memorandum with him at the meeting. Mr. Calles never asked respondent about any specifics involving the plea

or underlying conduct. Mr. Calles did not recall if Mr. Calles asked about buying any gifts for Ms. Nguyen. Respondent felt he was forthcoming with Mr. Calles. Respondent did not attend the *Skelly* meeting because he thought it was optional.

27. Respondent currently gambles very little. He has been in education for 19 years and loves working with kids and helping them.

28. On cross-examination, respondent testified that he signed and initialed the plea agreement, which indicated that "he agreed that he did the things he was charged with." However, this was not a true statement. Respondent signed the document because he wanted to return to work. He did not really understand the document at the time. He was facing a felony charge with possible jail time. Respondent provided the sentencing memorandum to Mr. Lemoine to provide to the district. Respondent did not tell anyone at the district that the plea agreement he signed contained a false statement that he admitted to doing the things he was charged with.

29. Respondent knew that when he gave Ms. Nguyen his player's card she was rating his play. He was aware that this involved keeping track of the amount of time he was playing. Respondent initially testified that he did not recall if Ms. Nguyen ever told him that she was adding additional time to his play rating. He never had any other knowledge that Ms. Nguyen had added additional time to his play rating. Ms. Nguyen's testimony at the hearing was the first time that he heard that she had added additional time. Respondent did not recall ever expressing to Ms. Nguyen that he had concerns about her getting in trouble for the way she rated his play; it never crossed his mind that she would get in trouble.

30. Respondent had been gambling at Pechanga Casino before meeting Ms. Nguyen. He never noticed a difference in the points he was receiving after meeting Ms. Nguyen. He explained that he was wagering and losing more. There was nothing about the amount of points he was receiving that he believed was out of the ordinary. Respondent testified that contrary to Ms. Nguyen's testimony at the hearing, he never had a conversation with her about her crediting him with more time. Respondent purchased lunch for other employees even before he met Ms. Nguyen. Respondent denied there was every any quid pro quo with Ms. Nguyen for her to increase his time, and in return, he would provide her with remuneration.

31. Respondent does not believe he violated any ethical standards of the teaching profession as it relates to his conviction because he did not conspire to commit grand theft. Respondent believed that during the meeting with Mr. Calles he told Mr. Calles everything he remembered at that time. Respondent does not think he ever asserted his actual innocence to Mr. Calles or anyone else at the district.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The standard of proof in a teacher disciplinary proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that one is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

Applicable Law

2. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44932, 44934, & 44944.)

3. When a school board recommends dismissal for cause, a Commission on Professional Competence may only vote for or against the dismissal; the Commission may not dispose of a charge seeking dismissal by imposing probation or an alternative sanction. (Ed. Code, § 44944, subds. (c)(1)-(3).)

4. A permanent certificated teacher may be dismissed for the following: immoral conduct, dishonesty, and conviction of a felony or of any crime involving moral turpitude. (Ed. Code, § 44932, subds. (a)(1), (a)(4), & (a)(9).)

5. Education Code section 44009, subdivision (c), provides:

A plea or verdict of guilty, or finding of guilt by a court in a trial without a jury, or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of Sections 44836 and 45123, irrespective of a subsequent order for probation suspending the imposition of a sentence or an order under Section 1203.4 of the Penal Code allowing the withdrawal of the plea of guilty and entering a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusations or information. The record of conviction shall be sufficient proof of conviction of a crime involving moral turpitude for the purposes of Section 44907 and Sections 44932 to 44947, inclusive, relating to the dismissal of permanent employees.

Evaluation

CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE

6. Respondent pled guilty to a misdemeanor violation of Penal Code section 182, subdivision (a)(1). Respondent's plea of guilty is conclusive evidence of a conviction for purposes of Section 44932, subdivision (a)). (Ed. Code, § 44009, subd. (c.) Respondent attempted to impeach the conviction and argued that he was innocent and not aware that his guilty plea could have consequences for his employment. Despite respondent's testimony regarding the facts and circumstances underlying the conviction, respondent pled guilty to the charges. Irrespective of the reason that he entered the plea, respondent is not permitted to attack or impeach the conviction in this administrative proceeding; the conviction stands as conclusive evidence of respondent's guilt of the offense charged. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

7. Whether the conviction involved moral turpitude is solely determined by the elements of the crime, not by extrinsic evidence. (*People v Castro* (1985) 38 Cal.3d 301, 316-317). Respondent pled guilty to a misdemeanor criminal count of conspiracy. Under Penal Code section 182, subdivision (a)(1), a conspiracy occurs when two or more persons conspire to commit any crime. A conviction of conspiracy requires proof that the defendant and another person had the specific intent to agree or conspire to commit an offense, as well as the specific intent to commit the elements of that offense, together with proof of the commission of an overt act . . . in furtherance of the conspiracy." (*People v. Smith*, 337 P.3d 1159, 1168 (Cal. 2014) [internal quotation marks omitted]). In this case, respondent pled guilty to conspiracy to commit grand theft. "Grand theft reflects dishonesty and is a crime involving moral turpitude."

(*People v. Wheeler* (1992) 4 Cal.4th 284, 289.) Thus, respondent's conviction is a crime of moral turpitude within the meaning of Section 44932, subdivision (a)(9).

IMMORAL CONDUCT AND DISHONESTY

8. Respondent argued that his conviction does not conclusively establish that he engaged in immoral conduct. He contended that the district failed to present factual evidence that respondent engaged in immoral conduct. Instead, he relied on his own and Ms. Nguyen's testimony that there was no conspiracy to commit a crime or any immoral conduct on part of respondent.

Respondent's argument is misplaced. A particular act or omission may constitute more than one cause for dismissal under Section 44932. (*Tarquin v. Commission on Prof. Comp.* (1978) 84 Cal.App.3d 251, 260.) Here, immoral conduct (Ed. Code, § 44932, subd. (a)(1)) and dishonesty (*id.* at subd. (a)(6)) are established by virtue of the conviction of a crime involving moral turpitude (*id.* at (a)(9)). Put another way, one cannot be convicted for conspiracy to commit grand theft, a crime involving moral turpitude, without having engaged in immoral conduct and dishonesty. (*Wheeler, supra.*)

9. The district also alleged that respondent was dishonest with Mr. Calles regarding the circumstances of the offense. The Statement of Charges specifies the following statements in support of the allegation: 1) respondent initially claimed that he did not know and/or never met Ms. Nguyen; 2) respondent then stated that he only had lunch with Ms. Nguyen and the two did not have a romantic relationship; 3) respondent claimed that Ms. Nguyen unilaterally placed points and/or money on his Player's Club card without respondent's knowledge or request; and 4) respondent

represented that the criminal matter concluded with him only needing to pay a \$150 fine.

10. A preponderance of the evidence did not establish that respondent was dishonest in his meeting with Mr. Calles. Regarding whether respondent knew or met Ms. Nguyen, respondent initially told Mr. Calles that he did not know anyone at Pechanga Casino. This statement was false. When Mr. Calles next asked respondent who Ms. Nguyen was, respondent answered that she was a floor supervisor at the casino. Respondent testified that he initially denied knowing anyone at the casino because he did not know anyone "on a personal level." This explanation was not persuasive considering that respondent, only a week before, pled guilty to a criminal conspiracy involving Ms. Nguyen. Furthermore, even if he did not consider her a friend "on a personal level," the relationship was close enough that he bought her gifts, food, and gasoline. Despite his initial answer denying knowing anyone at the casino, it was not established that respondent attempted to deceive Mr. Calles. After Mr. Calles specifically asked about Ms. Nguyen, respondent elaborated on his association with her. Respondent knew that Mr. Calles was aware of the conviction as respondent had provided Mr. Calles the sentencing order through Mr. Lemoine. It would not be unreasonable for respondent to have read more into the question than what was being asked. Indeed, in his next answer, he volunteered to Mr. Calles that he was not in a romantic relationship with Ms. Nguyen. This suggests that respondent did in fact view Mr. Calles's question about knowing anyone at Pechanga as relating to something more than simply an acquaintance.

11. The Statement of Charges alleged that respondent represented that the criminal matter concluded with him only needing to pay a \$150 fine. This was not Mr. Calles's testimony. Mr. Calles testified that he asked respondent if the fine was part of

his plea from a felony to a misdemeanor, to which respondent answered it was not. Respondent testified that he understood the question to relate to the plea bargain itself, which made no reference to a fine. Instead, the court assessed the fine at sentencing. Respondent's testimony on this point was credible, and it was not established that his answer to Mr. Calles was dishonest.

12. The district alleged that respondent was dishonest to Mr. Calles in his assertion that Ms. Nguyen put points on his player's card without his knowledge. The district argued that this was dishonest in light of his guilty plea, in which he admitted to the factual basis of the conspiracy with Ms. Nguyen. Respondent maintained at the hearing that he had no knowledge that Ms. Nguyen had credited him with playing more time than he actually played and denied ever conspiring with her to defraud the casino.

The fact that respondent pleaded guilty to a crime but maintained his innocence does not amount to dishonesty. The consistent refusal to retract claims of innocence in order to show remorse can also reinforce, rather than undercut, a showing of good character. (*Hall v. Committee of Bar Examiners* (1979) 25 Cal.3d 730.) Whether the failure to retract claims of innocence will reinforce or undercut a respondent's claim of good character depends on the facts of each case. Although respondent cannot collaterally attack the conviction itself, the fact that he maintains his innocence does not automatically equate to dishonesty.

Here, both respondent and Ms. Nguyen denied conspiring to commit a crime. Other than the fact that both pled guilty to conspiracy, there was no other extrinsic evidence challenging either respondent's or Ms. Nguyen's testimony on this regard. Their testimony differed only as to whether Ms. Nguyen told respondent that she was adding extra time to this account. Ms. Nguyen testified that she told respondent and

he expressed concern that she might get into trouble. Respondent denied any knowledge whatsoever, and testified that he believed he received the extra points because he was playing more and losing more. Ms. Nguyen's testimony was more credible than respondent's on this point. Ms. Nguyen testified that she did not believe the rewards system adequately compensated players who lost large amounts of money. Consequently, she added time to respondent's account so that he would obtain more credits. Although she did not believe that she was doing anything wrong, and denied complicity with respondent, it is more believable that she would inform respondent what she was doing rather than keeping it a secret from him. It is also reasonable that respondent would then express a desire that she not get into trouble for her actions.

Notwithstanding the negative credibility finding as to respondent's testimony that he had no knowledge that Ms. Nguyen was adding extra time to his account, this was insufficient for the Commission to find respondent was dishonest with Mr. Calles. Of particular concern is the fact that Mr. Calles's testimony about the meeting, for the most part, was not reflected in the contemporaneous notes recorded by Ms. Davis. The district's contention that the notes were not intended to capture everything that was said is specious considering most of the allegations about respondent's dishonest answers are not contained in the notes. Considering the likelihood of future litigation, the purpose of having a note-taker at such meetings is to accurately and *completely* record what transpired. Either Mr. Calles's recollection of exactly what was said was not correct, or the notes were woefully incomplete. Either way, there was sufficient doubt as to both for the Commission to find that respondent was dishonest at the meeting.

RELATIONSHIP TO FITNESS TO TEACH

13. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 235, the Supreme Court held that "an individual can be removed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher." The court delineated the following criteria to determine whether a teacher's conduct indicates that he or she is not fit to teach: (1) the likelihood that the conduct may have adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of the conduct; (4) the type of teaching certificate held by the teacher; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct in question; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the recurrence of the conduct in question; and (8) the extent to which disciplinary action may inflict an adverse impact or have a chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Id.* at pp. 229-230.) "These factors are relevant to the extent that they assist the board in determining . . . the teacher's fitness to teach, i.e., in determining whether the teacher's future classroom performance and overall impact on his students are likely to meet the [school district's] standards." (*Id.* at pp. 229–230.) There must exist a "factual nexus between [the teacher's misconduct] and unfitness to teach." (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1982) 135 Cal.App.3d 278, 288.) The statutory definition of immoral 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.'" (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466) [citation omitted].

14. Not all of the *Morrison* factors must be considered, only the most pertinent ones. (*West Valley-Mission Community College District v. Conception* (1993) 16 Cal.App.4th 1766, 1777.) Additionally, the *Morrison* factors may be applied to all the charges in the aggregate. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1456-1457.) In *Board of Education v. Jack M.* (1970) 19 Cal.3d 691, the Supreme Court detailed the process to be considered in determining fitness to teach. In addition to the *Morrison* factors, the court provided additional factors that may be considered to determine whether there is a nexus between the conduct and a teacher's fitness to teach: (1) likelihood of recurrence of the questioned conduct; (2) the extenuating or aggravating circumstances, if any; (3) the effect of notoriety and publicity; (4) impairment of teachers' and students' relationships; (5) disruption of educational process; (6) motive; (7) proximity or remoteness in time of conduct. (*Id.* at fn. 5.)

15. In considering the relevant *Morrison* factors in conjunction with the sustained allegations the following conclusions are reached.

Likelihood conduct adversely affected students and teachers: There was no evidence that any parents, students, or other teachers were aware of respondent's conviction or that there was any notoriety associated with the conviction. However, the district appropriately placed respondent on administrative leave after receiving notification of his felony arrest, which took him out of the classroom until his suspension was reversed. Ms. Gomez testified that some parents questioned respondent's whereabouts and when he would return to the classroom. Although there was no evidence on the effect of respondent's absence on his students, it can be presumed that the long-term absence of their teacher and replacement with a substitute would not be a positive influence on the learning environment.

The degree of such adversity anticipated: This case does not represent the most extreme form of teacher misconduct, but is nonetheless, moderately serious. While there was no evidence that news of respondent's conviction has reached fellow teachers or students, that is not to say that the possibility that this information would come to light in the future is remote. Criminal records are easily accessible online and more than a hypothetical possibility that a parent or another teacher would look-up respondent. Even if respondent ultimately obtains an expungement, he is scheduled to remain on criminal probation until November 2021. Respondent's conviction for conspiracy to commit grand theft involved moral turpitude. Students, especially elementary students are impressionable. Their knowledge of the existence of the conviction would certainly be adverse to an appropriate and productive learning environment.

The proximity or remoteness in time of the conduct: The conviction occurred in November 2018, during the previous school year. Respondent is scheduled to remain on criminal probation until November 2021. The events were therefore very recent.

Exenuating or aggravating circumstances: Respondent maintained that he was innocent of the conduct that resulted in his commission. While both Ms. Nguyen and respondent testified that they never conspired to defraud the casino, their testimonies varied as to respondent's knowledge that Ms. Nguyen was adding time – and thus redeemable points – to his player's account. As previously discussed, Ms. Nguyen's testimony that respondent was aware of this fact was more credible. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the

wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) While a candid admission of misconduct and full acknowledgment of wrongdoing is a necessary step in the rehabilitation process, it is only a first step; a truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he or she is once again fit to teach. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.)

While it is not expected that respondent would be falsely penitent (*Hall, supra*), it is expected that he would engage in meaningful introspection about the events that occurred. Thus, the Commission did not believe that respondent was entirely candid in these proceedings, which is an aggravating factor. In similar fashion, while it was not established that respondent was overtly dishonest with Mr. Calles during their meeting, he was not forthcoming. The district had an obligation to its students and employees to explore the appropriateness of returning respondent to the classroom in light of his conviction. Although Mr. Calles's questions were open-ended, it would be expected that respondent would convey to him a complete account of what transpired. Instead, it appears that respondent provided very minimal details in terms of explanation.

The praiseworthiness or blameworthiness of the motives resulting in the conduct: Respondent's conduct was not praiseworthy. While respondent might not have believed that he was engaging in criminal conduct, he at the very least was aware that Ms. Nguyen was doing something for his benefit that could expose her to trouble with her employer.

The likelihood of the recurrence of the conduct in question: It is unlikely that respondent will again engage in similar misconduct.

16. Most of the factors in the case of *Jack M., supra*, parallel those factors listed in *Morrison, supra*. However, two factors - impairment of the teacher/student relationship and disruption of educational process - are relevant. Respondent's conduct impaired the student/teacher relationship and disrupted the educational process to the extent that he was absent from the classroom for an extended period of time, which forced the district to obtain a long-term substitute. Ms. Gomez testified that she has lost trust in respondent, specifically as it relates to his honesty. Where a principal loses confidence in a teacher's role modeling ability toward students, this constitutes evidence of an adverse impact upon the teacher's perceived professionalism.

17. Respondent has been a teacher for the district for 13 years. However, based on the conviction of a crime involving moral turpitude, the *Morrison* factors, and factors relevant from *Jack M.*, a nexus between respondent's conduct and his fitness to teach at the district was well-established. Respondent provided no other evidence of good character or teaching ability other than a "satisfactory" performance evaluation and Ms. Gomez's testimony that he was an administrator designee and she had no issues with respondent in the preceding four years. Accordingly, on this record, the district's request to dismiss respondent must be upheld pursuant to Education Code section 44932, subdivisions (a)(1), (a)(4), and (a)(9).

ORDER

Respondent John Hoang's appeal from his dismissal of employment by the Colton Joint Unified School District is denied. The district's request to dismiss respondent is upheld.

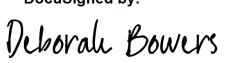
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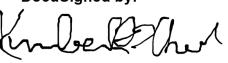
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Office of Administrative Hearings

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