

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

In the Matter of the Accusation Against:

MAURICE WARREN MYERS,

Clear Single Subject Teaching Credential

Administrative Services Credential, Certificate of Eligibility

**Clear Crosscultural, Language and Academic Development
Certificate,**

Respondent.

Agency Case No. 2-72314216

OAH Case No. 2022030185

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on January 9, 10, and 11, 2023. The record closed and the matter was submitted for decision on January 11, 2023.

Deputy Attorney General Gillian E. Friedman represented complainant Mary Vixie Sandy, Ed. D., Executive Director, Commission on Teacher Credentialing (CTC), State of California. Ellen Doty, Attorney at Law, Rothschild Wishek & Sands LLP, represented respondent Maurice Warren Myers, who was present on all three hearing days.

Complainant seeks revocation of respondent's credentials, certificates, and authorizations based on allegations of unprofessional conduct, immoral conduct, evident unfitness for service, acts involving moral turpitude, and persistent defiance. Competent testimony and documents received in evidence failed to prove by clear and convincing evidence respondent engaged in conduct indicating his unfitness to teach.

FACTUAL FINDINGS

Procedural History and Jurisdictional Matters

1. The CTC is responsible for credentialing teachers and taking adverse action against applicants and credentialed holders. (Ed. Code, § 44000, et seq.; Calif. Code Regs., tit. 5, § 80001, et seq.)

2. On November 13, 1998, the CTC issued to respondent an Emergency 30-Day Substitute Teaching Permit, which was renewed in 2000, 2001, 2002, 2003, and 2005.

3. On June 19, 2006, the CTC issued to respondent a Preliminary Single Subject Teaching Credential. Upon respondent's completion of certain requirements, on July 22, 2008, the CTC issued to him a Clear Single Subject Teaching Credential, which was in full force and effect at all times relevant to the allegations in the Accusation. The Clear Single Subject Teaching Credential expires on August 1, 2023.

4. On April 17, 2008, the CTC issued to respondent a Clear Crosscultural, Language and Academic Development (CLAD) Certificate, which was in full force and effect at all times relevant to the allegations in the Accusation.

5. On September 23, 2010, the CTC issued to respondent an Administrative Services Credential, Certificate of Eligibility, which was in full force and effect at all times relevant to the allegations in the Accusation.

6. Effective August 15, 2019, respondent resigned from the Chino Valley Unified School District (District) in accordance with the terms of a Resignation Agreement and General Release he entered into with the District.

7. By electronic mail dated September 13, 2019, the District's Assistant Superintendent of Human Resources, Richard Rideout, provided the CTC with a *Notification of Credential Holder's Change in Employment Status Due to Allegations of Misconduct*, to which several documents were attached, including a Certification of Minutes recording the District's Approval of Settlement Agreement and the Resignation Agreement and General Release, which in turn attached respondent's Letter of Resignation. (Exh. 4 [A79-A91].)

8. By letters dated September 2, 2020, Inez Cordero, Associate Governmental Program Analyst, Division of Professional Practices at the CTC, requested Assistant Superintendent Rideout to provide additional information not already sent to the CTC and informed respondent the CTC was in receipt of information requiring an investigation of his fitness to hold a credential. The September 2, 2020 letter encouraged respondent to provide a written response within 30 days of the date of the letter. (Exh. 3 [A74].)

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9. Ms. Cordero prepared a Confidential Investigative Report, dated October 26, 2020. (Exh. 3 [A70-A73].)

10. Consistent with Education Code section 44242.7, subdivision (a), within one year of the CTC's receipt of the *Notification of Credential Holder's Change in Employment Status Due to Allegations of Misconduct*, the Committee of Credentials (Committee) commenced a timely review of the allegations respondent engaged in misconduct. The Committee is a subdivision of the CTC authorized to investigate such allegations.

11. By letter dated December 3, 2020, the CTC provided respondent with a *Notice of Formal Review* informing him the Committee reviewed his case and the Committee was scheduled to consider the information in the Confidential Investigative Report at its January 20-22, 2021 meeting. (Exh. 3 [A68].)

12. On January 21, 2021, the Committee conducted a formal review to determine whether information contained in the Confidential Investigative Report constitutes probable cause for adverse action. Respondent, represented by legal counsel, appeared before the Committee. (Exh. 3 [A63-A64].)

13. Acting pursuant to Education Code section 44242.5, subdivision (e)(1), the Committee recommended revocation of respondent's credentials and all other certification documents. On February 5, 2021, the CTC provided respondent with a *Notice of Committee Recommendation*, which informs him about the Committee's recommendation and of his options to request reconsideration of the recommendation or an administrative hearing to challenge the recommendation. The *Notice of Committee Recommendation* encloses a report titled *Findings of the Committee of Credentials* (Exh. 3 [A51-A62]), which, contrary to respondent's counsel's

contention at hearing, is not a confidential document protected from public disclosure. Education Code section 44242.5, subdivision (c)(3)(B), anticipates release of the *Findings of the Committee of Credentials* in administrative proceedings such as this when respondent requests an administrative hearing.

14. Respondent requested an administrative hearing.

15. On August 31, 2021, Ms. Friedman signed and caused the filing of the Accusation in an official capacity on behalf of Rob Bonta, the Attorney General of California. Pursuant to Government Code section 11507, paragraph 13 of the Accusation was amended by interlineation during the hearing to read as follows: "At all times relevant herein, Respondent was employed by the Chino Valley Unified School District (District) as a secondary teacher at Don Lugo High School and thereafter at Chino High School in Chino Valley, California."

16. On September 15, 2021, respondent filed a Notice of Defense.

17. All jurisdictional requirements are satisfied.

The District's Policy Bulletins and Certificated Employee Training

18. Ayala High School (Ayala), Don Antonio Lugo High School (Don Lugo) and Chino High School are among the several schools comprising the District. The size of the student population at the District in general and at each of these three schools in particular was not established by the evidence.

19. Concurrent with their hire, certificated employees of the District are informed about and receive training regarding District policies governing their conduct as professional educators. District training includes surveys of the laws governing mandated reporters, sexual misconduct, and sexual harassment. District

training additionally includes orientation to several policies adopted by the District's governing board.

20. For example, at the time of hire certificated employees, including respondent, are made aware of *District Board Policy 4119.21: Rules of Conduct for Professional Educators*, which provides the following:

The Board of Education expects District employees to maintain the highest ethical standards, exhibit professional behavior, follow District policies and regulations, and abide by state and federal laws. Employee conduct should enhance the integrity of the District and advance the goals of the District's educational programs. Each employee should make a commitment to acquire the knowledge and skills necessary to fulfill his/her contribution to the learning and achievement of district students.

The Board encourage District employees to accept as guiding principles the professional standards and codes of ethics adopted by the educational or professional associations to which they may belong.

Staff Conduct with Students

The Board expects all employees to exercise good judgment and maintain professional standards and boundaries when interacting with students both on and off school property. Inappropriate employee conduct shall include, but not limited to, engaging in harassing or

discriminatory behavior; engaging in inappropriate socialization or fraternization with a student; soliciting, encouraging, or establishing an inappropriate written, verbal, or physical relationship with a student; furnishing tobacco, alcohol, or other illegal or unauthorized substances to a student; or engaging in child abuse.

(Exh. 9 at p. 6 [A147].)

21. At the time of hire, certificated employees, including respondent, are made aware of *District Board Policy 4119.26: Employee/Student Interaction*, which provides the following:

It is the policy of the Chino Valley Unified School District that all District employees conduct themselves at all times in a manner that reflects the standards consistent with the law and the policies of the District. It is the purpose of this policy to make sure all District employees understand and demonstrate proper judgment observing the prohibitions in behavior, which must govern their conduct; and recognize the responsibility to respond appropriately to unacceptable behavior of students and or co-workers. Further, this policy will specify boundaries related to potentially sexual situations and conduct, which is contrary to accepted behavior and in conflict with the duties and responsibilities of District employees. In addition, this policy will alert all District employees about sensitive problematic matters involved in employee/student relationships, provide

guidance for employees in conducting themselves in a manner that reflects high standards of professionalism; and to give notice that potential improper action may have significant consequences. It is the intent and purpose of this policy to establish guidelines, which should be followed by all District employees when interacting with a student.

(Exh. 9 at p. 7 [A148].)

22. Assistant Superintendent Rideout's testimony established (a) the District provided no training to its employees regarding their conduct with former high school students who are now adults (hereinafter "former adult students of the District) and (b) the District provided no training to its employees relating to the use of legal marijuana with former adult students. Assistant Superintendent Rideout's testimony further established, prior to April 2019, the District did not warn respondent against smoking legal marijuana in the presence of former adult students of the District.

Respondent's Background as an Educator

23. Respondent has 23 years' experience as an educator. Prior to becoming an educator respondent engaged in misconduct resulting in two separate criminal convictions.

(a). In *People v. Maurice W. Myers* (Super. Ct., San Bernardino Cty. and Municipal Ct. Dist., 1993, No. MWV07101), respondent was convicted on his guilty plea of violating Penal Code section 484, subdivision (f)(2) (forging credit card information), a misdemeanor. The court withheld pronouncement of judgment and granted three years conditional revocable release with terms and conditions, including respondent serving 60 days (one day credit) in San Bernardino County Jail.

(b). In *People v. Maurice Warren Meyers* (Super. Ct., Los Angeles Cty. Municipal Ct. Citrus Judicial Dist., 1995, No. KA025583), respondent was convicted on his nolo contendere plea of violating Penal Code sections 470, subdivision (a) (unlawfully alter, falsify, forge, duplicate, reproduce and counterfeit a governmental agency driver's license and identification card with the intent the documents would be used to facilitate the commission of a forgery) and 459 (second degree commercial burglary), both felonies. The court found a factual basis for respondent's plea, suspended imposition of sentence, and placed respondent on three years formal probation with terms and conditions, including serving one day in Los Angeles County Jail.

24. The CTC was aware of respondent's criminal record when it issued to respondent the permits, credentials, and certifications discussed in Factual Findings 2 through 5.

25. According to respondent's testimony, his upbringing in Compton and Pomona informed his pursuit of a career in education. Teaching District students at Ayala, Don Lugo, and Chino High School in addition to students attending schools in other districts, respondent adheres to a philosophy of "if you want to make the world better, you have to make a better people." Thus, respondent takes "an individualized learning plan approach" to focus students' attention on "what do you want out of life and what can I do to help you get there." Respondent testified, "It is basically communicating with them to achieve in life. . . . A lot of times they don't really know what they want to do. In an inner city, lower income environment there are always exceptions but usually a lot of the kids just want a job to make ends meet. I understand that from where I was born and raised. I want them to see past that and see they have no limits just because they come from here. You want to make sure they

can see past their own environment. The only limits are the ones they put on themselves. That's my approach."

26. Michael Pass, whom respondent mentored at Ayala in 2012, testified favorably about respondent's interaction with students. "Students loved coming to his class because he was authentic with them. He spoke their language. He was convivial with them. . . . He absolutely conducted himself professionally with students. He was able to strike a balance. I learned from him how to maintain respect for authority as a teacher while respecting students. . . . Its reciprocal authority."

27. The impact of respondent's teaching philosophy is reflected in unsolicited messages of appreciation several District students sent respondent in October 2014, April 2015, February and November 2017, and July 2019, which were collectively entered in evidence as Exhibit E. The following is a representative exemplar:

Hey Mr. Myers I just really wanted to thank you! I have accomplished the biggest goal in my life that I'd NEVER believe I could in a million years! 2010 of my junior year is when I took a tour to University of La Verne with your Avid class. I know that the trip was probably just a part of your curriculum, but I'll never forget the tour because since then I knew that this is where I needed to be. After graduating from Ayala I was homeless, and kinda still am, due to my Grandfather "Papa" getting very sick, I had no support, nor any shelter for almost 2 yrs. I moved back to Inglewood and seeked shelter from a few childhood friends, my boyfriend at the time and parents that I'd babysit for. I managed to

graduate from El Camino College in Torrance, June of this year while working 2 jobs. Besides all of the trials that came with me trying to stay above water and graduate, I still managed to transfer to ULV, I'm guessing you know I'm here now. Saying all this to say, I wouldn't be here if it weren't for you! Your, "not taking anyone's shit" (scuse ma french) attitude really molded me to be stronger than I knew I could. You really forced me to appreciate the talents and skills that I have, and that's a lot coming from parents who only communicate to me on a conditional basis! Your class not only taught me how to be an organized leader, but to be fast paced, appreciative, thorough, efficient, and clear. Not to mention I had a great benefit from having you for English as well, so I may be meshing the two together lol! Seriously, thank you! I've came a longggg way, and there were plenty of other options, but I decided to follow my dreams....I love it here at ULV, the school is the best in California for Child Development Majors, I have a scholarship, and I'm involved in a little too many clubs/activities, I's love for you to attend my graduation June of 2016!! I still can't believe I'm a junior here! Sooo, from the bottom of my heart, I just want to Thank you, thou may not think you've done anything, but trust me, you have For everything!! [emoji heart and happy face]

(Exh. E at p. 3 [B11].)

28. Respondent has a history of deficiencies while he was teaching at Don Lugo. On June 6, 2016, the District issued to respondent a *Notice of Unsatisfactory Performance and Unprofessional Conduct Pursuant to Education Code section 44938 (2016 Notice)*, which details the following deficiencies:

(a) On December 17, 2015, respondent sent messages from his personal Twitter account during his preparation period.

(b) On January 2, 23, and 24, 2016, respondent attended the AVN Adult Entertainment Convention in Las Vegas, Nevada. Respondent posted on his personal Twitter account pictures of himself with adult entertainers and pictures of several adult entertainers whose commentaries were linked to sexually explicit or pornographic material. Unbeknownst to respondent, his personal Twitter account was accessible to the public. Several of respondent's students at Don Lugo who followed respondent on his personal Twitter account without his knowledge disseminated the pictures, commentary, and links to other Don Lugo students.

(c) During a discussion of Shakespeare's *Romeo and Juliet* respondent made statements to the effect that male actors "not having their balls dropped" played female roles.

(d) Respondent slapped the back of a student's neck, a gesture known as "necking" and undertaken to communicate the recipient of the slap said or did something considered foolish, thus provoking laughter.

29. The *2016 Notice* directed respondent to correct the above four deficiencies in his conduct within 45 days of the notice and deficiencies in his performance within 90 days of the notice. Among other rules, regulations and procedures governing respondent's conduct and performance as a District certificated

employee, the *2016 Notice* reminded respondent of *District Board Policy 4119.21: Rules of Conduct for Professional Educators* and *District Board Policy 4119.26: Employee/Student Interaction*, both of which were provided to respondent when he initially commenced his employment with the District, as discussed in Factual Findings 20 and 21.

30. The *2016 Notice* additionally provided respondent with the following 17 enumerated Directives for improving his conduct and performance:

1. Conduct yourself in a professional manner, in speech and action, at all times while on campus or while interacting with students, staff, or families.
2. Be mindful of your public role as a teacher and your commitment to modeling appropriate behavior for your students, even outside the classroom.
3. Provide a positive learning environment for your students, built on a climate of respect and fairness.
4. Use instructional time for instruction. Do not engage in personal entertainment such as accessing social media, personal email or personal websites during class time.
5. Refrain from inappropriate physical contact with students.
6. Refrain from making sexual, derogatory, denigrating, or other inappropriate comments to students, staff, or others.

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7. Refrain from using profanity and language that could be interpreted as offensive in the presence of students.
8. Refrain from discussing topics with students that are outside of the District's approved curriculum, including but not limited to sexually related topics.
9. Refrain from sharing personal information with students.
10. Be honest in all communications with District personnel.
11. Utilize good professional judgment at all times.
12. Effectively utilize instructional time to ensure instructional goals are met.
13. Develop and consistently utilize an effective, positive classroom management system.
14. Ensure your students are on task and follow-up with students who have been redirected.
15. Comply with all directives of the District and site administrators, including directives given to you in classroom observations summaries and evaluation.
16. Keep social media accounts private and do not allow students to fraternize with you.
17. Prior to the commencement of the 2016-2017 school year, meet with your supervisor to review District

expectations for professionalism, including appropriate interactions with students, staff, and community members.

(Exh. 9 at p. 9 [A150].)

31. Assistant Superintendent Rideout's testimony established none of the 17 enumerated Directives addresses (a) respondent's use of legal marijuana, (b) former adult District students' observation of respondent's use of legal marijuana, or (c) respondent's use of legal marijuana with former adult District students.

32. Assistant Superintendent Rideout specifically addressed Directive number 1, which requires respondent to conduct himself "in a professional manner." Assistant Superintendent Rideout invoked Standard 1 of the *California Standards for the Teaching Profession* to explain how articulating a definition of "good professional judgment" is challenging because "it is a difficult concept to get across to people." He nonetheless testified, "When we refer to judgment, we typically refer to things that are in the best interest to take care of the health and welfare of the students." He noted "it is more easy to say what is not good judgement" with regard to specific conduct in a particular case but "if you are looking for what is a defining line in all cases that would be a difficult one to define in one synopsis because each situation provides detail and context that is different from the other one."

33. Assistant Superintendent Rideout addressed Directive number 2, which requires respondent to model appropriate behavior. Assistant Superintendent Rideout testified discerning what constitutes appropriate behavior "would be circumstantial." He testified, "An exact definition for all situations I would not be able to provide." Asked how an educator is expected to predict ahead of time which conduct falls in the appropriate behavior category, Assistant Superintendent Rideout testified, "They

should through their training, their credentialing program, their knowledge of the *California Standards for the Teaching Professions*, and the trainings that the District has provided." Neither party offered the *California Standards for the Teaching Profession* in evidence.

34. Assistant Superintendent Rideout's testimony established the 17 enumerated Directives "remain in place in perpetuity."

35. During the 45-day improvement period, a summer school substitute principal reported observing respondent shouting, "Don't go into the classroom when there is no one there," to a student in the presence of parents, classified staff, and another student. As a consequence, on August 17, 2016, the District issued to respondent a *45-Day Improvement Plan Status Report* notifying him his conduct violated the Directives set forth in the *2016 Notice*. At hearing, on cross-examination, Assistant Superintendent Rideout acknowledged District rules forbid students' unsupervised presence in classrooms.

36. During the 90-day improvement period, an administrator at Don Lugo reported respondent (a) did not monitor students engaged in student group activities when only one or two of five to six groups of students actually worked on an assigned activity and (b) respondent did not enforce written rules prohibiting cell phones, food, and beverages in the classroom. As a consequence, on October 24, 2016, the District issued to respondent a *45/90-Day Improvement Plan Status Report* notifying him his conduct violated the Directives set forth in the *2016 Notice*.

37. After October 2016, there were no other allegations respondent violated the Directives set forth in the *2016 Notice*. Respondent continued discharging his duties and teaching responsibilities at Don Lugo. Among other things, respondent and

his colleague Annette Deming served as class advisors for the Don Lugo Class of 2017. Ms. Deming testified, "He is a great, agreeable man. He gave me wings to fly. He was very easy to work with. Kids liked him. . . . I never knew Mr. Myers to act unprofessionally toward students or colleagues. I think he is a very competent teacher. He was tasked with working with the most challenging students at Don Lugo. He has a way of commanding the room and making his expectations known. He was given classes with lower socioeconomic students. He had a way of speaking with them."

38. On a date not established by the evidence, respondent applied for a transfer from Don Lugo to Chino High School. John Miller, the principal at Chino High School, knew "there was an issue [respondent] had at Don Lugo" after speaking to the Don Lugo principal about respondent but "didn't get all the particulars of it." Principal Miller understood "there was some social media usage involved and it wasn't a good situation," respondent "was disciplined over it and served the time," and respondent "was trying to move forward from it." Principal Miller thought "maybe we can give him a fresh start at Chino High School." Principal Miller asked Don Lugo's principal about respondent's "pedagogy and how he was as a teacher." Principal Miller learned Don Lugo's principal "had good things to say" about respondent's teaching and ability to relate with colleagues. Principal Miller also recollected a summer school substitute principal told him the "only knock" against respondent is "he could have been more flexible handling late student work" otherwise "he was a solid instructor." Principal Miller testified, "I thought this would be a good fit for us."

39. In 2018, on a date not established by the evidence, the District transferred respondent's work site to Chino High School, where his duties and responsibilities included teaching, among other courses, English Language Arts.

40. In his English Language Arts courses, respondent engaged students in Socratic seminars discussing articles, books, social issues, or “things that would be in the news.” Respondent understood student debate about topical issues as consistent with California teaching standards. At hearing respondent explained, “With debates and Socratic seminars there are standards dealing with speaking and listening, research, writing, and reading informational materials.” Respondent described how he conducted his Socratic seminars testifying, “Usually students sit in a circle and the teacher is on the outside the circle . . . observing the discussion which is pretty much student led. . . . Generally, debate topics could be anything controversial.”

41. Respondent had no specific recollection of any Socratic seminar discussing the legalization of marijuana. He testified, “Thinking back specifically to Chino High School in 2019, I don’t remember discussing marijuana specifically, but we did talk about issues like gun control and abortion. So, I wouldn’t be surprised if legalization of marijuana would be one of those [debate topics]. Debates likely focused on the pros and cons of marijuana legalization and age limits.”

42. No District official advised respondent not to use marijuana as a debate topic.

43. Respondent credibly testified he never discussed his personal marijuana use with students in any of his classes.

44. A *Chino Valley Unified School District Teacher Evaluation Form with Rubric*, which both respondent and a vice principal in charge of evaluating English teachers signed on April 9, 2019, establishes for the 2018-2019 school year respondent received an overall evaluation rating of “Meets Element Expectation(s)” at Chino High School. (Exh. C.) At hearing, Principal Miller could not recollect any complaints against

respondent as a teacher at Chino High School. "There was nothing that jumped out at me in terms of Mr. Myers."

The April 2019 Marijuana Incident

45. In each of his four years as a Don Lugo student, N. was enrolled in classes respondent taught. Over time, respondent noted "an honest, fairly close relationship where he can come to me to talk" developed between N. and respondent. N. was a known to smoke marijuana. Respondent testified, "In his particular class there were a number of open smokers. I didn't demonize it. I told them they were old enough to know the health effects. Just don't let it take over your life. They knew I was open to smoking marijuana because I just didn't demonize it. They knew I wasn't adversely negative about it."

46. N. graduated from Don Lugo in June 2018. On a date not established by the evidence, N. sent respondent a friend request on Snapchat. Respondent accepted because, as he explained, "[N.] already graduated from high school." Respondent and N. kept in touch. N. informed respondent about what was going on in his life. They explored getting together but could not find a mutually agreeable time.

47. April 20 is known as "weed day" among cannabis advocates. On Saturday, April 20, 2019, N. invited respondent "to hang out" with him and C., another Don Lugo graduate. Respondent testified, "They were going to play me some of their music. We were going to smoke and listen to their music. So, I knew marijuana would be involved." Respondent accepted the invitation and drove to a residence where he picked up N., C., and a third individual who attended but did not graduate from Don Lugo and who at the time was not a matriculated District student. From the residence, respondent drove to a park where the four spent two hours listening to music and

smoking marijuana in his parked car. Respondent knew N. and C. had prescriptions for medical marijuana because, unprompted, they both announced it in his class when they turned 18 years old. Respondent assumed the other accompanying individual also had a prescription for medical marijuana "because he was their [meaning N. and C.'s] peer."

48. N. asked to video respondent smoking and respondent consented. N. "snapped" the video, which was immediately posted on social media. Against the backdrop of music, the video depicts respondent seated inside a smoked-filled vehicle with three occupants. One occupant makes an obscene gesture with his hand to the camera. Another occupant smokes a marijuana cigarette then passes it to respondent, who in turn holds it up to the camera before proceeding to smoke. An occupant cheers, "Mr. Myers, yaah!" (Exh. 6.) The video was uploaded to Snapchat with the caption "Do y'all smoke wit your fav teacher 4/20 tho?" (*Ibid.*)

49. On Monday, April 23, 2019, the video was anonymously disseminated, using AirDrop, a feature for transferring documents, pictures, videos, and other files, to the cell phone of students attending Chino High School. At hearing respondent testified, "When I first found out the video was making the rounds I felt embarrassed because students were viewing an aspect of my personal life and I like to keep my personal and professional lives separate. . . . Current students saw the video and think I was smoking with current students. I don't want to students to think it is okay to party with students. It undermines integrity in the classroom. . . . I don't want students' opinion of my personal life to impact their opinion of my professionalism."

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The District's Investigation of the April 2019 Marijuana Incident

50. "That video became very prominent on campus," Principal Miller testified. Principal Miller was initially concerned the three individuals occupying the car with respondent were "possible students or at least student age" because "they looked kind of young" and respondent was "hot boxing" with them.

51. Based on his experience as an educator, Principal Miller was concerned about "the disruption" the video caused. Principal Miller explained, "We have parents that had seen it and had commented to me about it. It was just worrisome that his effectiveness as a teacher and his credibility with his students would be in jeopardy based on their seeing that. . . The optics of that looked so bad it kind of put our school in a bad light in terms of the community. We are a pretty close-knit community out here in Chino. The town is not very large. I always joke around that everybody knows each other, and everybody's business is everybody's business in Chino. It was a concern that people may be questioning the integrity of our school and our staff with that."

52. Principal Miller opined even if respondent were sitting in the car alone smoking marijuana, respondent's conduct was still a concern. "If he is sitting in a car alone that is not a problem in of itself. If there is a video of one of our teachers smoking weed in a car and it is being Airdropped and the students are sharing it back and forth that is a concern for me." Principal Miller opined whether or not respondent consented to sharing the video, "it still disrupted the education environment."

53. Principal Miller explained how the video was disruptive. He testified, "When students are in class the idea is they are working on language arts, math, science, social science, not Airdropping videos to each other and sharing videos. That's

a disruption of the school activities. . . . And that kind of behavior [meaning smoking marijuana] is not what we want to promote to the kids. . . . It is our goal to hire teachers who are mentors for students, who students look up to and want to be like them. . . . There should be a level of professional behavior and when that is compromised, which I believe this video did compromise that, it disrupts the environment. It has students doing things like Airdropping the video in class when they should have been reading and writing and learning.” How long the “disruption” lasted at Chino High School was not established by the evidence.

54. Principal Miller noted respondent knew he was being filmed. “I would say, ‘What were you doing being there, being allowed to be videoed.’ That is a concern knowing what I know working at a high school and students videoing things and putting them out. It may not be a good situation to put yourself in.”

55. Principal Miller testified he received “emails from parents worried about disruption of the educational environment and the effect that would have on students’ grades and student achievement.” The emails Principal Miller claimed receiving from parents were not among the documents entered in evidence at the hearing.

56. Up until the time of the April 2019 marijuana incident, Principal Miller held a “favorable opinion” of respondent. Principal Miller testified, “He was good for us. He did a great job. Our particular population can be a challenge to work with sometimes based on our students’ socio-economic demographics. We often need teachers who are willing to think outside the box in their instruction and really work hard and Mr. Myers did that for us. He even took on a national honor society advisership role for us. Because of this incident, and the severity of it, I felt having him back here would be too much of a distraction based on how many people we believed had seen that video. It is kind of weird to say it, but he was great for us. He embraced

the fresh start, a new start from his time at Don Lugo. Up until this point we were going pretty good. There was an issue with him and another staff member where I thought the other staff member was inappropriate with him in a meeting in my office and he handled it very professionally. And then this incident happened. It kind of just went from zero to 100. We really enjoyed our time with Mr. Myers and thought our kids were benefiting from his instruction."

57. Principal Miller notified the District's Human Resources department about the April 2019 marijuana incident and "asked them to take over the situation" because "it definitely needed to be looked into." The District placed respondent on paid leave and assigned a long-term substitute teacher to assume respondent's instructional responsibilities for the remainder of the 2018/2019 school year. While on leave, respondent provided lesson plans to assist the substitute teacher and "continued the educational environment for students." Principal Miller testified, "We were very appreciative of that. . . . It is not guaranteed you will get a substitute teacher that knows the content area, so they will often need help. Mr. Myers was helpful that way for us."

58. Francisco Arce, who was the District's Director of Human Resources at the time of the April 2019 marijuana incident, watched the video and concluded he "had to investigate what exactly transpired and whether or not that was within our expectations for professional standards." During his review of respondent's personnel files, Director Arce discovered the *2016 Notice*. He noted, on one hand, the Directives included in the *2016 Notice* are "specifically related to or tailored based on the matter at hand," meaning respondent's prior deficient conduct or performance discussed in Factual Finding 28. But Director Arce also characterized the *2016 Notice* "as a

significant item” related to the District’s investigation of the marijuana incident because “all of the Directives are within the expectations for professional standards.”

59. Director Arce explained, “If another incident or another situation should surface after [*the 2016 Notice*], it is very common practice that Human Resources and members of management to reference the Directives that were provided in a notice of unprofessional conduct within a reasonable amount of time. From my perspective a notice of unprofessional conduct that had these specific Directives, and that was provided to him in June 2016, should still have the merit, the importance, the impact as it relates to an incident that occurred only about two years later. Some of the Directives from 2016 were relevant in this particular case.”

60. On May 2, 2019, in the presence of respondent’s union representative, Director Arce interviewed respondent. Director Arce asked respondent about the video and for his response to allegations of “inappropriate fraternization with students and/or previous students.” Respondent acknowledged his awareness of the video and told Director Arce one of the former students posted the video. Respondent further acknowledged the video showed him smoking marijuana with his former students. According to Director Arce’s testimony, respondent “responded in the affirmative” when asked “if it was his perception that it is okay to smoke with recently graduated students.” Respondent informed Director Arce none of his current Chino High School students “brought up the video to him.” Director Arce reminded respondent of the Directives in the *2016 Notice* and asked respondent whether his behavior captured in the video complied with Directives 1, 2, 10, and 16 (see Factual Finding 30), which Director Arce deemed “relevant to the issue at hand.” Respondent answered yes and noted his conduct involved adult, former students who were adults at the time of the incident.

61. At hearing, Director Arce opined on respondent's demeanor during the interview stating, "I was certainly convinced Mr. Myers had absolutely no remorse and no regrets related to this incident at hand. As a matter of fact, it was very concerning to me that Mr. Myers response was it is legal, and it is okay; they are former students and its okay. I quite frankly expected a different response. One of remorse, and that was not the case."

62. Director Arce noted the April 2019 marijuana incident "was not too removed from the time when marijuana use for recreational purposes was no longer considered illegal" but he nonetheless deemed the April 2019 marijuana incident concerning. He articulated his concerns in a variety of ways. In one instance, Director Arce testified, "My concern was that the statement he made to the effect that these are graduated students, this is not illegal so its okay raises a few flags for me. I found out during the investigation that, actually as it relates to legal aspects of it, you have to be 21 to engage in smoking marijuana for it not to amount to an illegal or illicit situation. The fact that his response was, 'They are graduated students. They are not current students,' gave me cause for concern. He seemed to really focus on the fact that these were former students and didn't seem to make the connection to the fact that these were recently graduated students. Yes, adults. But still not of a legal marijuana smoking age. There seems to be a really lack of understanding the implications of his behavior, of being regretful or remorseful." Director Arce did not specify the "implications" for which he asserted respondent lacked understanding.

63. In another instance, Director Arce articulated his concern about the April 2019 marijuana incident testifying, "The concerns that really stood out for us was the fact that this incident was captured in a social media video that was then being shared by multiple other students, including at the school where Mr. Myers was teaching; that

multiple community members were aware that this was going on. From the perspective of leadership at Chino Valley Unified School District, this was not up to par with the professional expectations that we have for teachers."

64. Director Acre additionally testified it was concerning the April 2019 marijuana incident involved "fraternization" with former students. "One of the concerns was that Mr. Myers, in his formal role as teacher, is privy to a lot of information related to students. He talks to students on a daily basis, and in that role and those types of conversations can determine which of his students engage in smoking marijuana. So, one of the concerns for us was if he identified these students in high school and then established a friendship and a relationship with them based on the fact that they were students who engaged in this kind of thing and that he would like to engage in this kind of thing with them. If that was the case that would be unprofessional. As school leaders we are tasked with trying to make sure our staff are positive role models for students and that they do not in any way take advantage of students and what they share as they go through our learning and education system."

65. No evidence offered at hearing proved Director Arce's concern that respondent fraternized with or groomed students to gain information for the purpose of taking advantage of them.

66. Director Arce also testified, "The concern at hand was never whether Mr. Myers smoked legal marijuana for recreational purposes outside of the school campus. The concern was smoking marijuana with recently graduated students, allowing yourself to be videoed engaging in this kind of behavior, and that obviously having some kind of negative implication in school settings as well."

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67. Director Arce admitted he was unaware of any District training or policy promulgated following the legalization of marijuana to address the conduct of District employees with recently graduated students. Director Arce also admitted the District did not issue any warnings against, or expectations for, respondent's conduct with his former students.

68. Director Arce maintained, however, *District Board Policy 4119.21* imposes ethical standards applicable to respondent's conduct with recently graduated students. He testified, "From our perspective we entrust teachers to have good judgement and make good decisions. Specifically, after getting a notice of unprofessional conduct that alludes to maintaining the highest of ethical standards, exhibit professional behavior, and things of that nature. Teachers are entrusted to make those types of decisions and know that it would probably be a bad idea to smoke marijuana with recently graduated students and allow themselves to be video recorded. . . . From our perspective it is not something of a high professional standard."

69. He further maintained *District Board Policy 4119.21* specifically indicates employee conduct should enhance the integrity of the District. "From our perspective his engagement smoking marijuana with students who are recently graduated does not enhance the integrity of the school district. It does not put his actions in a positive light. That does not rise to a high level of ethical standards."

70. Director Arce determined investigatory interviews were needed "to get more knowledge about what [Chino High School] students had seen from the social media post." Principal Miller assisted Director Arce to identify 21 students from different classes and with varied backgrounds, interests, and experiences at Chino High School. Principal Miller explained, "We wanted to see just how pervasive this was throughout the school. . . . Was this something just Mr. Myer's students knew about?"

Not only his current students for that year but maybe students from other classes that are coming into his classes in the future. How widespread was this?" Principal Miller thought it appropriate to determine whether students "have preconceived, negative connotations for [respondent] if they got placed in his class the following year."

71. Almost all 21 student interviewees either heard about or had seen the video. Interviewees commenting on the status of the three individuals with respondent in the car described them using phrases like "students," "former students," "young kid," "the kids were graduated already," "kids who graduated high school already," and "old students."

72. The interviewees' regard for respondent's conduct smoking marijuana with the three individuals in the car varied from "I believe that teachers should not behave that way, especially with their students. They need to know what's crossing the line and know when things aren't okay." to "I did find it kind of odd how he as teacher was doing such an act but did not take it to mind since he did not do it while he was teaching. . . . As a teacher he should be more cautious of his behavior," to "[U]pon seeing the video I was not shocked because it seemed like something he would do," to "In my opinion, if the students were older than 18 and graduated I think it's okay. If they're still in high school and younger than 18 it's not okay," to "I never thought it was nothing bad[.] They should've not record[ed] him but that was outside campus[;] it was on his free time," to "he can do whatever he want[s] with his free time as long as it doesn't affect his work from smoking." (See Exh 5 at pp. 12 [A103]-32 [A123].)

73. At hearing, Principal Miller acknowledged "it was a mixed bag" whether the student interviewees at Chino High School thought respondent's conduct was "inappropriate."

74. Director Arce learned the identity of the three individuals in the car with respondent. He confirmed all three individuals were age 18 or older and no longer enrolled in the District. Two of the three individuals had been students in classes respondent taught at Don Lugo. Director Arce conducted a telephone interview of one of the three individuals, who informed him they were "grown ass men." That individual additionally informed Director Arce they smoked marijuana obtained with a medical card from a dispensary prior to respondent's arrival at the residence.

75. Because two of the three individuals were respondent's former students, Director Arce surmised respondent groomed or befriended and established a prior relationship with them, knowing they were marijuana smokers, so that he could smoke with them after they graduated Don Lugo. Director Arce testified, "I recall there being some student statements that caused concern for us because the statements were related to something to the effect of Mr. Myers speaking his mind in regard to marijuana and how he felt it would be okay to smoke and kind of encouraging students to know that he would be okay with that. In our mind that is not appropriate discourse to be having in an educational setting. It is not related to the standards he is teaching so there is no real reason to engage with students on topics related to whether or not he would smoke with them."

76. The student comment Director Arce referenced states, "There was this video of Mr. Myers smoking with 3 students in the care on 4/20. I got it from twitter while I was at [illegible] many people posted it. I couldn't believe Mr. Myers did that with students and let it himself be recorded but it didn't surprise me because Mr. Myers would be like very open in class and say things that would give us a bad vibe. He would talk about how smoking would be okay he would talk to student how he would do it." (Exh 5 at p. 12 [A103].)

77. Director Arce did not seek any verification of the statements attributed to respondent as asserted by this one student out of approximately two dozen students selected from an unknown student population for the investigatory interviews.

78. Director Arce prepared a June 18, 2019 Investigation Report in which he concludes the allegation "Mr. Myers was unprofessional in his conduct by engaging in smoking marijuana with former Chino Valley Unified School District students; former students who are not yet of legal age to smoke marijuana" was "substantiated." (Exh. 5 at pp .2-4 [AA93-A95].) Director Arce further concludes "this matter is something that multiple students and community members are aware of." (Exh. 5 at p.4 [A95].) In addition, "Mr. Myers had received previous directives in a Notice of Unprofessional Conduct dated June 6, 2016, which he has failed to follow. . . . More specifically, Mr. Myers has been insubordinate by not abiding by the . . . directives provided him in his Notice of Unprofessional Conduct dated June 6. 2016[.] . . . The District feels that Mr. Myers lacks the professional judgement to carry out his duties at any of our school sites without having interactions with students that would have a negative impact on this role as an educator in our District." (*Ibid.*) Director Arce recommended dismissal of respondent from his position as a teacher in the District.

79. At hearing, Assistant Superintendent Rideout explained the District "looked at the process of going through termination" and engaged respondent in conversations. Assistant Superintendent Rideout testified, "We had a conversation related to it would be mutually beneficial to part ways. In this case, Mr. Myers and us agreed it would be mutually beneficial, and he ended up resigning with a settlement agreement." Assistant Superintendent Rideout further testified, "This video was seen by everybody. It was one of those things where Mr. Myers himself was willing to make a fresh start and we offered an amount to make that happen, where he could move on,

and we wouldn't have to go through the entire termination process. . . . We let Mr. Myers know what our intent was going to be. We would have much rather used the funds we were going to use to go down that termination route to help him land softly somewhere else."

80. Assistant Superintendent Rideout additionally explained the District considered but determined not to issue another notice of unprofessional conduct to respondent. He testified, "In this case, it was a little difficult seeing how widespread this was and being that we already had Mr. Myers on a notice of unprofessional conduct. We are really looking at judgment related issues. In terms of the District's position, we really couldn't see putting Mr. Myers back into a classroom. This was a pretty big deal."

81. According to Assistant Superintendent Rideout's testimony, the District made a connection between respondent's prior history of deficiencies in the District and the April 2019 marijuana incident. "We looked at the entire history with Mr. Myers. Some of the images going back to the 2016 case, I believe, had to do with a 4/20 party or something like that. There were postings from people whose accounts he connected with that referenced 4/20. So, now we had an ongoing pattern of desensitizing our kids to this type of imagery and this type of conduct. That crossed over with students in the classroom in the last case that had to do with marijuana, where he spoke about his beliefs related to marijuana. The District had extreme concerns that this behavior was now more prevalent than him making an error to his Twitter account, which was his explanation back in 2016. 'Look I did this stuff. I have my account. I thought it was private, but it was public.' That was the summary of the 2016. Then 2019 comes and the video, which is very clear that he is smoking with kids, and he admitted to us he is smoking with kids that were once his students at Don

Lugo. We had a real hard time seeing if we could put Mr. Myers back in the classroom. If we were going the 45/90 route we would have been considering putting him back in the classroom.”

82. As set forth in Factual Finding 6, effective August 15, 2019, respondent voluntarily resigned from the District in accordance with the terms of a Resignation Agreement and General Release.

Respondent’s Subsequent Employment as an Educator

83. Subsequent to his resignation from the District, respondent served as an English Language Arts educator at Grace Yokley Middle School (Grace Yokley) in the Mountain View School District in the Spring semester of the 2019/2020 academic year. In an April 21, 2020 recommendation letter to “Whom it May Concern,” the principal at Grace Yokley provides the following assessment of respondent’s interactions with students he taught:

Mr. Myers was an asset to educating our students. He consistently demonstrated excellent verbal communication skills, was extremely organized, met our deadlines in a timely manner, and worked tirelessly with each student placed in his charge. Because of his effectiveness, he was assigned additional responsibilities which he did with a welcoming attitude and with a high-level of proficiency and dedication. Mr. Myers always went above and beyond our expectations, and he was always willing to offer his assistance with students who needed extra help. He always

had an excellent rapport with students, teachers, and our staff.

(Exh. D at p. 1 [B6].)

84. Beginning with the 2020/2021 academic year, Magnolia Public Schools, a nonprofit organization, hired respondent to teach tenth and twelfth grade English at its Magnolia Science Academy-Santa Ana, which respondent testified is a Title 1 school, meaning a school with a high percentage of students from economically disadvantage communities. Respondent testified Magnolia Science Academy “has its challenges,” but he likes working there.

85. In a “To Whom It May Concern” letter, dated April 4, 2022, the Magnolia Science Academy English Department Chairperson, who observed respondent in classroom settings and discussed with respondent lesson plans, classroom strategies, and approaches to individual students, writes the following about respondent’s professionalism as an educator:

In all my interactions with Mr. Myers, he demonstrates a high level of professionalism and competency. His dedication to his students, combined with his relentless pursuit of new knowledge and teaching strategies make him a very strong candidate for any teaching position, middle or high school.

Our school is located in Santa Ana, with mobile home parks on three sides. I have heard many veteran teachers as well as administrators complain that our students are “difficult kids,” but I never heard anything like that from Mr. Myers.

He is a natural at effective classroom management. He seeks to understand the whole child, no matter what the student's background may be. He has learned strategies and methods of teaching English learners, who make up a very high percentage of our student body. He does not shy away from contacting parent to both compliment and correct their child's behavior and performance in class. . . .

Last year 20% of the school's student population consisted of students with IEPs, which is double the average in our local public school district. Mr. Myers works well with the special education teachers and paraprofessional assigned to work alongside him. He has demonstrated a talent for differentiating instruction to meet the needs of every student, including challenging those who perform well academically.

(Exh. D at p. 2 [B7].)

86. By his letter to the CTC, signed on November 29, 2021, respondent addressed the marijuana incident and his subsequent rehabilitative efforts and professional growth as follows:

My status as a teacher in the state is now in jeopardy due to a foolish decision that I made over two years ago involving a night of 'partying' with a group of post-grad former pupils.

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Due to completing a Professional Boundaries course several months ago, I have come to realize that the mistake made that night was not the result of a random, inane decision, but rather it was the culmination of allowing myself to become too involved in the lives of some of my former students over the past two decades. While there is nothing wrong with being available to former students who may approach you for job recommendations, proofreading needs, or just for life advice, there does need to be a line established separating that of being a professional mentor, of sorts, and being a personal friend. I realize that I broke that boundary and that the result caused me to be viewed more as a peer toward recently graduated students than as an older educator and role model in my community.

I understand now that the recently graduated students were still part of the same peer group as the current students. By engaging in partying behavior with them like I did, I was inadvertently causing my current students to lose respect for me as their teacher and an authority figure in their lives. I have seen that outcome and I do not want anything like it to repeat.

While I will always be available to future students as a professional resource, I can no longer be a trusted friend. Over the past year, this is the new approach that I have adopted towards the students who I now instruct (such as

refusing all inquiries by them to 'friend me' in the virtual place). My goal, as always, is to dedicate my various skills as a teacher to the education and empowerment of my "kids" so that each may pursue their own dreams and accomplish their own goals in their adult lives, a place where I may assist but never again intrude.

(Exh. A.)

LEGAL CONCLUSIONS

Applicable Law

1. Education Code (Code) section 44421, among other things, empowers the CTC to discipline a teaching credential as follows:

The Commission on Teacher Credentialing shall privately admonish, publicly reprove, revoke or suspend for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system, or for any cause that would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service.

2. Code section 44345, subdivision (e), authorizes the Commission to deny an application for a credential, or the renewal of a credential, made by any applicant who "[h]as committed any act involving moral turpitude."

3. "Unprofessional conduct" is conduct violating the rules or ethical code of a profession or which is unbecoming of a member of a profession in good standing. (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553.) The conduct in question must indicate unfitness to teach. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

4. "Immoral conduct" has been defined generally as "that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or a willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare." (*Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

5. Conduct constitutes moral turpitude for the purpose of professional licensure "if it shows a deficiency in any character trait necessary for the practice of [the profession], (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that [public] knowledge of the . . . conduct would be likely to undermine public confidence in and respect for the . . . profession. (*In re Lesansky* (2001) 25 Cal.4th 11.)

6. "Evident unfitness for service" means "'clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies.'" (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) Evident unfitness for service connotes a

fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district. (*Id.*)

7. "Persistent defiance" is more than a single violation of, or refusal to obey, the school laws or reasonable regulations prescribed by the governing board of a school district employing a teacher. (*Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77.) Persistent violation of, or refusal to obey, a district's governing board's reasonable regulations requires a "showing of intentional and continual refusal to cooperate." (*San Diego Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196.)

8. Abstract characterization of a teacher's conduct as "unprofessional" or "involving moral turpitude," for example, is an insufficient basis for discipline. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 235.) A rational connection or nexus must exist between alleged misconduct and competence or ability to teach effectively. The determinative test is whether conduct demonstrates unfitness to teach. (See *Board of Education v. Jack M.* (1977) 19 Cal.3d 691.) Unfitness to teach is a question of ultimate fact. (*Id.* at p. 698, fn. 3.)

9. *Morrison* identifies several relevant factors, formally codified at California Code of Regulations, title 5, section 80302, for determining unfitness to teach. They are as follows: the likelihood the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of adversity anticipated; the proximity or remoteness in time of the conduct; the type of credential held by the person involved; the extenuating or aggravating circumstances surrounding the conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood of recurrence of the questioned conduct; the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the

constitutional rights of the person involved, or other certified persons; and the publicity or notoriety given to the conduct.

10. All *Morrison* factors need not be present to reach a determination regarding fitness to teach. In other words, an item-by-item analysis of each established individual fact is not required. Rather, *Morrison* calls for a comprehensive analysis of the accumulated established facts. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence*, *supra*, 2 Cal.App.4th at 1457.)

Standard and Burden of Proof

11. Complainant bears the burden of proving by clear and convincing evidence to a reasonable certainty respondent is unfit to teach. (*Garner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035.)

12. A "clear and convincing" evidentiary standard means complainant must establish the charging allegations by 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.)

Discussion

13. Complainant seeks revocation of respondent's credentials to render him ineligible for employment as an educator in California based on allegations "on or about April 20, 2019, a video surfaced on social media that depicted Respondent smoking marijuana with multiple former students of the District." (Exh. 1.)

14. The fact of the video is not disputed. Respondent's private conduct smoking marijuana as depicted in the video is not disputed. The three individuals with

respondent were adults 18 years of age or older. Although all three individuals formerly attended District schools, none was a matriculated student at a District school on April 20, 2019. Two of the three individuals graduated from Don Lugo, a District high school. Respondent and the three individuals smoked marijuana obtained with a medical prescription.

15. Under the Compassionate Use Act of 1996, certain individuals meeting certain requirements can obtain and use marijuana legally with a doctor's recommendation. (See Health & Saf. Code, § 11362.5 et seq.) The Adult Use of Marijuana Act (Proposition 64), effective November 9, 2016, legalized specified personal use and cultivation of marijuana for adults 21 years of age or older. These developments in California law more than suggest a stable consensus that medicinal and recreational use of marijuana is permissible as it is consistent with prevailing societal norms about rectitude, good order, and protection of public health, safety, and welfare. Conduct considered to be anathema yesterday may be socially acceptable today. (See *Morrison v. State Board of Education*, *supra*, 1 Cal.3d at p. 226.) In short, although personal attitudes may differ, adults may legally smoke marijuana.

16. At hearing, as expressed through Director Arce's testimony, complainant maintained the video of respondent's private conduct smoking marijuana with recently graduated District students is a depiction of "unprofessional conduct." (Factual Findings 62, 63, and 67.) Respondent's actions cannot constitute unprofessional conduct unless his actions indicate his unfitness to teach. The same applies to complainant's assertions in the Accusation alleging respondent engaged in acts constituting immoral conduct, moral turpitude, evident unfitness for service and persistent defiance.

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17. In large measure, complainant relied on policies or standards promulgated by the District's governing body to define and identify "unprofessional conduct." Nothing in the sweeping language of those policies or standards, however, gives fair warning of specific kinds of conduct constituting "unprofessional conduct." Related District training offered to its employees, including respondent, did not address District expectations for its certificated employees' private legal conduct with graduated students in general, or expectations for engaging with graduated students in adult activities, including marijuana use, in particular. Yet, according to Director Arce's testimony, there is some kind of notion or understanding that District employees are entrusted to discern the particular actions constituting "unprofessional conduct" through the exercise of "good judgment" and "good decision." (See Factual Finding 68.) Such a notion fosters the uncertainty the *Morrison* court found condemnable when "unprofessional conduct" is identifiable only after it has occurred. "The knowledge that [a teacher] has erred is of little value to the teacher when gained only upon the imposition of a disciplinary penalty that jeopardizes or eliminates his livelihood." (*Morrison v. State Board of Education, supra*, 1 Cal.3d at p. 231.)

18. Based on Principal Miller's testimony, complainant appeared to maintain unprofessional conduct in this case manifested as a "disruption of the school activities" or "disrupted educational environment." (See Factual Findings 51 through 53.) Disruption resulting from knowledge or awareness of the video depiction of respondent's private conduct smoking marijuana with adult graduated students is undisputed. Principal Miller's testimony established students Airdropped the video during instructional time when they should have been reading and writing and learning. (Factual Finding 53.) No evidence established or even suggested the disruption had any long-lasting impact on or adversely affected the educational community. The video was a curiosity among the student population at Chino High

School, but no evidence of any related learning loss, for example, was presented at hearing. Principal Miller anticipated adverse consequences, including respondent's "effectiveness as a teacher and his credibility with his students would be in jeopardy" and "people may be questioning the integrity of our school." (See Factual Finding 51.) None of the evidence offered at hearing proved the realization those speculative consequences.

19. Complainant additionally asserted respondent's private conduct smoking marijuana with adult graduated students is part of a pattern of unprofessional conduct amounting to persistent defiance of the District's prior notice, warnings, or reprimands for similar conduct. In support of this assertion, Assistant Superintendent Rideout invoked respondent's Don Lugo deficiency arising from a social media post showing pictures of his activities at an adult entertainment convention and linked that deficiency to the April 2019 marijuana incident at Chino High School. He claimed observing a common reference to "4/20" in these matters and declared the existence of "an ongoing pattern of desensitizing our kids to this kind of imagery and type of conduct." (See Factual Finding 81.)

20. A three-year period of meritorious professional conduct interposed between the prior deficiencies and later-occurring April 2019 marijuana incident does not suggest any pattern of unprofessional misconduct. There is no evidence respondent intentionally and continually refused comporting himself with District warnings, reprimands, or notices, and in particular the *2016 Notice* with its 17 Directives during that time. There is no evidence respondent obstinately pursued a course of opposing action in violation of District policies and standards governing his conduct as an educator during that time. The assertion of a pattern of unprofessional conduct amounting to persistent defiance is unproven.

21. Complainant also asserted respondent's three-decade-old criminal record as a basis for discipline of respondent's credentials. The CTC has known about respondent's criminal record since at least 1998 when it first granted a permit to respondent on an emergency basis. The CTC subsequently issued renewed permits to respondent and ultimately credentialed and recredentialed respondent multiple times. The reasonable inference drawn from these circumstances is that the CTC determined respondent's criminal record did not render him unfit to teach. That record is unchanged and therefore not a basis for a different or contrary conclusion. Given the substantial passage of time, the evidentiary significance of respondent's criminal record is diminished. (See *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061.)

22. Credible evidence established respondent is a competent classroom teacher. The Don Lugo principal "had good things to say" when asked about respondent's pedagogy, according to Principal Miller. (See Factual Finding 38.) After imposition of the *2016 Notice* and close out of the *45/90 Day Improvement Plan Status Report*, the District returned respondent to the classroom at Don Lugo. A reasonable inference is the District did not consider respondent's return to the classroom a risk to the District's pupils or educational environment. Having resumed his teaching responsibilities at Don Lugo, respondent additionally served as one of two faculty advisors to the Don Lugo Class of 2017.

23. When respondent requested a transfer from Don Lugo to have a "fresh start," the District obliged and transferred him to Chino High School. A reasonable inference is that the District would not have granted respondent a transfer if doing so were inconsistent with District responsibilities for its pupils. At Chino High School, respondent discharge of his teaching responsibilities merited a "Meets Expectation(s)" rating. Principal Miller reported respondent was "great" for Chino High School.

Respondent was “willing to think outside the box,” he worked “really hard,” and he acted “very professionally” with staff. (See Factual Finding 56.) Notably, Principal Miller reported when respondent was placed on leave during the District’s investigation of the April 2019 marijuana incident, respondent “continued the educational environment for students” by supplying lesson plans for his students.

24. Since leaving the District, respondent has pursued teaching opportunities elsewhere. According to his immediate supervisor’s report, respondent continues to demonstrate competence in the classroom. He is dedicated to his students, he relentlessly pursues new knowledge and teaching strategies, and has a talent for differentiating instruction to meet the varying needs of children requiring individualized education plans. Absent any evidence of a deleterious effect on respondent’s competence as an educator, neither his prior history of deficiencies resulting in the *2016 Notice* or the April 2019 marijuana incident, separately or in the aggregate, supports a conclusion respondent is unfit to teach.

25. Without doubt, respondent’s carelessness maintaining a strict zone of privacy between the personal and the professional revealed his peccadillos. District students, teachers, and administrators were perhaps more aware than they needed to be about respondent’s adult activities. That exposure understandably invited inappropriate probing and commentary laden with the personal value perspectives of commentators, including District officials, about respondent’s conduct derisively referenced as “this kind of behavior” and “that kind of behavior.” (See Factual Findings 53, 64, and 81.) Having completed a course on professional boundaries, respondent has rezoned the borders demarcating with whom he pursues adult activities and the circumstances under which he makes his private adult activities accessible for public consumptions. (See Factual Finding 85.) Respondent’s carelessness is unlikely to recur.

26. As observed in *Morrison*, "The private conduct of a man, who is also a teacher, is a proper concern to those who employ him only to the extent it mars him as a teacher. . . . Where his professional achievement is unaffected, where the school community is placed in no jeopardy, his private acts are his own business and may not be the basis of discipline." (*Morrison v. State Board of Education, supra*, 1 Cal.3d at p. 225, citing *Jarvella v. Willoughby-Eastlake City School Dist.* (1967) 12 Ohio Misc. 288, 233N.E.2d 143, 145-166.)

27. With respect to the First Cause for Discipline, complaint did not prove by clear and convincing evidence respondent committed acts of unprofessional conduct warranting discipline pursuant to Code section 44421 of all credentials, certificates, and authorizations issued to respondent.

28. With respect to the Second Cause for Discipline, complainant did not prove by clear and convincing evidence respondent committed act of immoral conduct warranting discipline pursuant to Code 44421 of all credentials, certificates, and authorizations issued to respondent.

29. With respect to the Third Cause for Discipline, complainant did not prove by clear and convincing evidence respondent demonstrated evident unfitness for service warranting discipline pursuant to Code section 44421 of all credentials, certificates, and authorizations issued to respondent.

30. With respect to the Fourth Cause of Discipline, complainant did not prove by clear and convincing evidence respondent committed immoral acts involving moral turpitude warranting discipline pursuant to Code sections 44421 and 444345, subdivision (e), of all credentials, certificates, and authorizations issued to respondent.

31. With respect to the Fifth Cause of Discipline, complainant did not prove by clear and convincing evidence respondent intentionally and continually refused to obey prescribed District policies and standards warranting discipline pursuant to Code section 44421 of all credentials, certificates, and authorizations issued to respondent.

ORDER

The Accusation against Maurice Warren Myers in case number 2-72314216 is dismissed.

DATE: 02/15/2023

Jennifer Russell

JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings