

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

**In the Matter of the First Amended Accusation and Amended  
Statement of Issues Against:**

**JAMES JAY BYERLY, Respondent**

**Case No. 1-990890848**

**OAH No. 2021040921**

**PROPOSED DECISION**

Marcie Larson, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically and by video conference on October 18 and 19, 2021, from Sacramento, California.

Brent Jex, Deputy Attorney General, represented complainant Mary Vixie Sandy, Ed.D., Executive Director of the California Commission on Teacher Credentialing (Commission), State of California.

Michael Rothschild, Attorney at Law, represented respondent James Jay Byerly who appeared at the hearing.

Evidence was received, the record closed, and the matter submitted for decision on October 19, 2021.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. On May 31, 2005, the Commission issued respondent a Clear Multiple Subject Teaching Credential (Clear Credential), which will expire on June 1, 2025, unless renewed or revoked.

2 On June 30, 2012, the Commission issued respondent a Clear Education Specialist Instruction Credential (Specialist Credential), which will expire on July 1, 2022, unless renewed or revoked.

3. On October 5, 2018, the Commission received an application from respondent for an Administrative Services Credential, Certificate of Eligibility (application). Respondent certified under penalty of perjury to the truthfulness of all statements in the application.

4. On February 18, 2021, complainant, acting in her official capacity, signed and thereafter filed the Accusation and Statement of Issues. On October 11, 2021, complainant filed an Amended Accusation and Amended Statement of Issues. Complainant seeks to deny respondent's application and revoke all credentials, certificates, and authorizations issued to respondent, based on allegations that he engaged in misconduct related to two students in 2017 and 2018, while working for Glenn County Office of Education (Glenn County) and Colusa County Office of Education (Colusa County).

Generally, complainant alleged that after respondent heard M.B., a nine-year-old student, use a swear word, respondent slapped M.B.'s face and clamped his lips shut. Complainant also alleged that respondent did not let M.B. use the bathroom,

causing M.B. to wet his pants. Respondent then forced M.B. to stay in his wet clothes for several minutes. Complainant also alleged that respondent physically restrained student C.J., by grabbing C.J. by the face. Complainant alleged respondent failed to disclose on his application that he had resigned his employment with Colusa County while allegations of misconduct were pending. Complainant alleged respondent's conduct was unprofessional, immoral, demonstrated evident unfitness for service, constituted acts of moral turpitude and that he engaged in material deception and/or fraud.

In aggravation, complainant alleged: respondent's actions demonstrate a pattern of misconduct; his misconduct involved bad faith or dishonesty; his actions significantly harmed a child trusted to his care, as well as the public or educational system; respondent has demonstrated indifference toward the consequences of his actions; and respondent has had prior notice, warnings or reprimands for similar conduct.

5. Respondent timely filed a Notice of Defense and request for hearing. The matter was set for an evidentiary hearing before an Administrative Law Judge of the OAH, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

## **2017 Events at Plaza Elementary School**

### **SWEARING INCIDENT**

6. In 2017, respondent was employed as a special education teacher with Glenn County in a classroom located at Plaza Elementary School (Plaza). Respondent's special education class included 19 students ranging from third to eighth grade, with different types of disabilities and varying degrees of special needs. Respondent had at

least one student in a wheelchair. M.B. attended respondent's class starting in the spring of 2017. M.B. transferred from Willow Elementary School (Willow) to Plaza. M.B. was diagnosed with Intellectual Disability (ID), Attention Deficit Hyperactivity Disorder (ADHD), anxiety, and Obsessive Compulsive Disorder (OCD). M.B. was sometimes violent, swore at school, and urinated in his pants.

7. On the first or second day of school in August 2017, M.B. got off the school bus and was using profanity, yelling, and screaming. At one point, M.B. said "god damnit." Respondent heard the profanity. In response, with two fingers respondent tapped M.B. on the side of his face at his cheek. While doing so, respondent told M.B. that he did not like hearing the Lord's name "taken in vain."

8. Faith Thompson, a classroom aid in respondent's class, testified at hearing. Ms. Thompson explained that she was walking past the classroom when she heard M.B. yelling profanities. Ms. Thompson saw M.B. "out of control" swearing, yelling, screaming, and disturbing the class. Ms. Thompson observed respondent try to get M.B.'s attention. Respondent tapped M.B. on the cheek with two fingers. Ms. Thompson did not report the incident to anyone because she did not believe respondent's conduct towards M.B. was harmful or inappropriate.

### **BATHROOM INCIDENT**

9. In early to mid-October 2017, respondent's students were in the school cafeteria eating. There were classes in session near the cafeteria. M.B. was acting out and making noise. Respondent asked M.B. to go outside with him so M.B. would not disturb the other students eating or classes in session. Two classroom aids, including Ms. Thompson, remained inside the cafeteria with respondent's remaining students.

Respondent asked the aids to begin sending the remaining students outside in three minutes so that they all could return to the classroom together.

10. Respondent and M.B. stood outside waiting for the students to leave the cafeteria. Respondent told M.B. that they were going to wait outside for the students. M.B. told respondent that he needed to use the bathroom. Respondent told M.B. that he had not mentioned earlier that he needed to use the bathroom, which was near where they were standing. Respondent also told M.B. that "big guys have to hold it sometimes."

M.B. looked at respondent in a defiant and angry manner. M.B. then urinated in his pants. Respondent told M.B. that they had to wait for the remaining students to go back to the classroom. Within a minute, the remaining students and aids exited the cafeteria. Respondent, the students, and aids, including M.B., walked back to the classroom together. The distance from the cafeteria to the classroom was approximately 200 yards. When M.B. returned to the classroom, he retrieved a change of clothes from his backpack. He used the bathroom in the classroom to change. Ms. Thompson estimated that M.B. was able to change his clothes within two minutes of returning to class. Respondent did not require M.B. to stay in his soiled clothes.

### **COMPLAINT BY M.B.'S GRANDFATHER**

11. In 2017, M.B. lived with his grandparents. M.B.'s grandfather Stephen Sailsbery, testified at hearing. Mr. Sailsbery was employed as a principal at Willow Unified School District. On or about October 16, 2017, M.B. informed his grandparents that respondent had slapped him in the face and pinched his lips together for using "red words" at school, a term M.B.'s family used to describe swear words. M.B. also told his grandparents that respondent would not let him use the bathroom and told

him that “big boys hold it.” M.B. shared that he “messed his pants” because respondent would not let him use the bathroom.

Mr. Sailsbery explained that he was very concerned about whether M.B. was being truthful because he was making serious allegations against respondent. Mr. Sailsbery explained that he spent a lot of time questioning M.B. about his allegations. He asked M.B. to repeatedly share the details of the incidents. Mr. Sailsbery also asked M.B. questions to determine if he was telling the truth.

12. After Mr. Sailsbery felt assured that M.B. was telling the truth, he contacted the administration at Plaza to report the information M.B. shared about respondent. In response, Aaron Koch, Ph.D., an administrator for Glenn County, met with respondent to discuss the allegations. Respondent denied that he slapped M.B. Respondent admitted to Dr. Koch that he tapped M.B. on the cheek because he was not comfortable with the swear words that M.B. was using. Respondent explained that he is a Christian and that the words M.B. used violated his beliefs. Respondent also stated that he was concerned M.B. swearing would “rub-off” on other students and teach the students to use profanity.

13. Respondent also addressed the incident involving M.B.’s soiled pants. Respondent explained the situation involving the cafeteria. Respondent also admitted that he told M.B. words to the effect that “real men need to learn how to hold it.” In response, M.B. “scrunched up his face” showing that he was urinating in his pants. M.B. had to wait to return to the classroom to change his clothes. Respondent explained that he was trying to use the situation as a “teachable moment” so that he would not make the same choice in the future.

14. Dr. Koch explained that Plaza had a student discipline policy, which provides that it is never appropriate to touch a student as a form of discipline, including tapping a student's cheek. He also explained that it is never appropriate to make a student endure an unsanitary condition. Respondent was placed on administrative leave while the matter was being investigated. Plaza contacted the Glenn County Sheriff's Office and reported the incident.

### **EVENTS AFTER OCTOBER 2017**

15. In November 2017, while respondent was on administrative leave, Glenn County superintendent Tracy Quarne contacted respondent and asked him to accept a teaching position at the Tehama County Court School. Respondent agreed to accept the position, which he started on November 16, 2017.

16. On February 1, 2018, respondent was interviewed by two detectives from the Sheriff's Office. The interview was transcribed. The detectives asked respondent to explain what had occurred between he and M.B. Respondent explained that he was aware of two incidents M.B. complained of involving tapping the side of his face and not allowing him to go the bathroom.

Respondent first described his understanding of M.B.'s complaint involving the incident in October 2017, when M.B. urinated in his pants while standing outside the cafeteria. Respondent described the series of events, including that he told M.B. he would need to wait to go the bathroom until the other students were ready to walk back to the classroom, that M.B. looked at respondent in the face and pushed out his urine, wetting himself. Respondent also explained that within minutes, the students returned to the classroom and M.B. changed his clothes.

A detective asked respondent if requiring M.B. to wait for the remaining students in the cafeteria before walking back to the classroom to change his clothes, was a "teaching moment." Respondent explained that he was not ready to take M.B. back to the classroom until the remaining students were ready. Respondent wanted to keep the students' routine by returning to the classroom as a group. Respondent also stated that he "suppose[d] deep in his heart" he felt that M.B. deserved to wait for the rest of the class.

Respondent also described the incident at the beginning of August 2017, when M.B. was swearing and used the Lord's name in vain. Respondent explained that he tapped M.B. on his cheek and told him to "watch his mouth." Respondent explained that he had autistic students and if they hear swear words, they will repeat the words.

A detective asked respondent if he pinched or held shut M.B.'s lips. Respondent stated that he did not and would not do so to a child. Respondent explained that he would not punish a child or do anything to hurt a child. Respondent also stated that there was a "hands off" policy in Glenn County and he knew that he was not supposed to touch students.

17. On February 8, 2018, the same two detectives from the Sherriff's office who interviewed respondent also interviewed M.B. Mr. Sailsbery was also present. The interview was videotaped. One of the detectives started the interview by asking M.B. if he understood the difference between the truth and a lie. M.B. stated he did not. The detective gave M.B. two examples of lies, and M.B. recognized both as lies. M.B. also stated that he understood that it was bad to lie. M.B. stated that he would only tell the truth to the detectives.



A detective asked M.B. to describe what respondent had done to him. M.B. stated that respondent had slapped him. The detectives asked M.B. to demonstrate the slapping. M.B. touched the side of one of the detective's cheeks with his hand. M.B. also stated the respondent "hit him" because he "liked to." When asked, M.B. repeatedly denied that he had used any "red words" prior to respondent slapping his face. M.B. stated that respondent hit him for no reason. M.B. stated that he "promised" that he had not said any red words prior to respondent hitting him. M.B. also stated there was a time when respondent would not let him go to the bathroom. M.B. did not say anything about respondent pinching his lips together.

18. By letter dated March 14, 2018, Judy Corum, Superintendent Designee for Glenn County, informed respondent that his services would not be required for the 2018-2019 school year. Respondent was notified his employment would end on June 30, 2018. Respondent was also informed of his right to request a hearing regarding whether there was cause not to re-employ him for the 2018-2019 school year. Respondent requested a hearing. In response Glenn County filed an Accusation against respondent with OAH.

19. On April 17, 2018, respondent and Glenn County entered into a settlement agreement, resolving the Accusation filed against respondent. Respondent agreed to resign his employment from Glenn County. In exchange, Glenn County agreed in part, to pay respondent \$10,000 and withdraw the Accusation. Glenn County also agreed to assign an administrator to assist respondent in finishing the requirements for his administrative credential.

20. On May 25, 2018, a criminal complaint was filed against respondent in the Superior Court of California, County of Glenn. Respondent was charged with one count of willfully and unlawfully using force or violence against M.B. while on school

property, a violation of Penal Code section 243.2, subdivision (a), a misdemeanor. In response, respondent agreed to participate in a court diversion program, by completing a 12-hour anger management course and community service. As a result, the criminal complaint against respondent was dismissed.

21. Mr. Sailsbery filed a civil lawsuit on behalf of M.B. against respondent and Glenn County. Mr. Sailsbery is seeking one million dollars in damages for alleged injury inflicted on M.B. by respondent. Mr. Sailsbery believes that M.B. is more anxious and insecure since the incident involving respondent. However, Mr. Sailsbery admitted that M.B. had these same problems before the incidents. He also admitted M.B. had a long history of defiant, violent, and aggressive behavior, extensive use of profanity, and urinating himself, before being assigned to respondent's class. M.B.'s mental health providers have not opined that any increase or change in M.B.'s psychiatric conditions are related to incidents involving respondent.

Mr. Sailsbery also admitted that M.B.'s has made new allegations against respondent, including that respondent called him a "snotty rag," threw him down on the ground and stomped on his head. Mr. Sailsbery did not report M.B.'s allegations to anyone or request that the new allegations be investigated, presumably because he did not believe them to be true.

## **2018 Burchfield Primary School**

22. In fall 2018, respondent accepted a teaching position with Colusa County at Burchfield Primary School (Burchfield) in Colusa, California. Respondent served as a special education teacher to approximately 10 students with varying ages and degrees of disabilities including ID, autism, and emotional disabilities. Ryan Copeland and

Ashely Page were Behavior Technicians assigned to respondent's classroom to assist with student behavior issues.

23. On October 1, 2018, Burchfield had a "lockdown drill." The purpose of the lockdown drill was to have staff and students practice hiding in their classrooms in the event of an active shooter or other campus threat. When the lockdown drill was announced and children were directed to hide, J.C., a nine-year-old student diagnosed with ID, began running around the classroom yelling "lockdown drill." Respondent approached J.C. placed both of his hands on both sides of J.C.'s face and stated words to the effect of "it is just a drill."

24. Mr. Copeland and Ms. Page testified at hearing. Both were present in respondent's classroom during the lockdown drill. They were approximately 10 to 15 feet away from respondent when he placed his hands on J.C.'s face. Ms. Page explained that she was "shocked" to see respondent "grab" J.C.'s face with both hands because teachers are not allowed to touch students. Mr. Copeland and Ms. Page believed that respondent looked stressed and agitated when he was speaking to J.C. However, Ms. Page stated that J.C. was "not at all injured" by respondent.

25. Later the same day, Mr. Copeland and Ms. Page informed their supervisor of respondent's conduct. Mr. Copeland and Ms. Page each completed written reports with Child Protective Services about the incident. Mr. Copeland and Ms. Page believed that respondent's conduct was improper and he should have not grabbed J.C.'s face. They did not believe J.C. or any student was in danger as a result of J.C.'s conduct, so it was not appropriate to touch J.C. to stop him from running and shouting in the classroom.

26. On October 2, 2018, Chuck Wayman, respondent's supervisor, told respondent that he was being put on unpaid leave while a complaint against him was being investigated. Mr. Wayman did not tell respondent what the complaint was concerning. The same day, respondent sent an email to Mr. Wayman resigning his position at Burchfield. Respondent did not receive any further information regarding whether an investigation was conducted. He was never contacted by CPS.

## **Application**

27. On or about October 5, 2018, the Commission received an application from respondent for an Administrative Services Credential. Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations contained in the application.

28. The application requested respondent to answer yes or no to the following question:

Have you ever been dismissed, non-reelected, suspended without pay for more than ten days, retired, resigned from, or otherwise left school because of allegations of misconduct or while allegations of misconduct were pending?

29. Respondent responded "yes" to the question and explained the allegations against him at Plaza. He did not disclose that he resigned from Burchfield while allegations of misconduct were pending against him.

## **Respondent's Evidence**

30. Respondent worked in various teaching position before he began teaching at Plaza in 2009 as a special education teacher. He obtained his Specialist Credential while working as a special education teacher. Respondent submitted his performance evaluations from Glenn County that demonstrated he consistently met or exceeded performance expectations.

31. Respondent was assigned to work with students with moderate to severe disabilities. The types of disabilities were varied and could include physical, mental and emotional disabilities. Respondent taught students ranging in age from 7 to 14 years old. The students assigned to respondent stayed in the same class together, regardless of their age.

### **INCIDENTS AT PLAZA**

32. Concerning M.B., respondent explained that they had a good relationship. M.B. was violent at times and would swear. However, most of the time when respondent was near M.B. he had relatively good self-control. Respondent explained that he did not tap M.B. on the cheek to punish him for swearing. Rather, he wanted M.B. to understand that the swear language coming out of his mouth was inappropriate. Respondent admitted that he was particularly sensitive to hearing M.B. use the Lord's name in vain, which respondent described as his "kryptonite." Respondent explained that he viewed the use of tapping the side of M.B.'s face with his two fingers as a "modality" and a "teaching moment." Respondent did not learn this technique as part of his teaching program and would not use it on a "mainstream" student.

33. Respondent also explained that he was not punishing M.B. by asking that he wait to use the bathroom until all the students returned to the classroom. Respondent explained the efforts that were required to maintain a routine with his students, which included all returning together from the cafeteria to the classroom. Respondent believed that M.B. could have waited to use the bathroom until they returned to the classroom. However, when respondent told M.B. that he would need to wait to use the bathroom, M.B. appeared to purposefully wet himself. Respondent did not require M.B. to sit in wet clothes, nor did respondent require M.B. to stay in his wet clothes as punishment. Rather, when all the students walked from the cafeteria to the classroom. M.B. immediately retrieved clean clothes and changed.

34. Respondent denied slapping M.B. or clamping his lips shut. Respondent was not aware of M.B.'s allegation that respondent clamped his lips shut until after he requested his employment file from Glenn County. Respondent explained that he would never clamp a student's lips shut because such conduct is "mean." He also denied that he ever threw M.B. to the floor and stomped on his head or called him a "snotty rag" as M.B. later reported to his grandparents.

### **INCIDENT AT BURCHFIELD**

35. Concerning J.C., respondent also explained that during a lockdown drill it is difficult to get students to comply with the instructions for hiding. It is more difficult to get students to cooperate when a student is yelling. Respondent explained that he placed his hands around J.C.'s face to get his attention and stop him from yelling. He told J.C. that it was "just a drill" so he would calm down. Respondent felt that J.C. was causing a safety issue for himself and other students. Respondent did not intend to harm or punish J.C. for his conduct. Respondent admitted that he was stressed, which likely showed on his face.

36. Respondent explained that he was told there was a complaint about him at Burchfield, but no one told him why he was being placed on administrative leave on October 2, 2018. Respondent had never signed an employment contract to work for Colusa. Respondent resigned his position because he found it difficult to establish himself as a teacher without being told the nature of the complaint against him so that he could respond. Respondent did not learn about the nature of the complaint until the Commission conducted an investigation. To respondent's knowledge, Colusa never conducted an investigation.

### **APPLICATION**

37. Respondent did not disclose his resignation from Colusa on his application because he was not sure if there was an investigation being conducted. He also did not feel that he had resigned due to allegations of misconduct because he did not know what misconduct was being alleged against him. He also believed that if Colusa conducted an investigation, the Commission would be informed. Respondent explained that he was not intentionally making a false statement to the Commission about his resignation from Colusa, but in hindsight he should have disclosed his resignation.

38. Respondent has not taught since he left Colusa in 2018. Respondent did not want to work at another school with allegations pending against him by the Commission. However, respondent would like to continue working in education. In June 2018, respondent completed the courses for his Administrative Credential. In January 2019, respondent completed his master's degree in Educational Leadership. Respondent believes that he will be a better educator as a result of what he has learned over the last several years.

## CHARACTER EVIDENCE

39. Ms. Thompson testified as a character witness on behalf of respondent. In addition, respondent submitted four affidavits.<sup>1</sup> Ms. Thompson worked in respondent's classroom at Plaza for nine years. She never observed respondent verbally or physically abuse a student. Ms. Thompson explained that respondent treats students with respect. Ms. Thompson observed respondent's interactions with M.B. She believed that M.B. "loved" respondent and would complete tasks to earn time with respondent. Ms. Thompson only saw respondent tap M.B. on his cheek on one occasion. She never observed respondent doing this with any other student.

40. Patrick Conklin, Superintendent and Principal at Plaza, submitted an affidavit in support of respondent. Mr. Conklin worked with respondent from 2014 through 2017. He explained that the special education program respondent was in charge of was "one of the most challenging in education." He explained that respondent's "competence, patience, and deep understanding of special education, resulted in a safe and nurturing program for his students."

41. John Lovell, a sixth-grade teacher at Plaza, also prepared an affidavit. Mr. Lovell worked with respondent for 10 years. Mr. Lovell explained that respondent's passion for teaching was evident from the first day he arrived at Plaza. Mr. Lovell stated that respondent's "calm demeanor allowed for a positive learning environment in his classroom and on campus." Mr. Lovell also described that respondent dedicated his free time to contribute to the Plaza community through activities such as "completing multiple construction projects to improve the school" and volunteering at

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<sup>1</sup> The affidavits were admitted pursuant to Government Code section 11514.



the “school carnival, pancake breakfast and sporting events.” Mr. Lovell stated that respondent created a “lasting rapport with [the] community that is sorely missed.”

42. Vicki Nagos Shadd is a Retired Assistant Superintendent of Student Services and former director of the Special Education Local Plan Area (SELPA). Ms. Shadd served as respondent’s supervisor. She observed respondent “working with students who have mild, moderate and/or severe disabilities both at the elementary and high school levels as well as high school at risk students in classroom and community-based experiences.” She explained that respondent “approaches his work with directness and clarity.” She further described respondent as a teacher who is “continuously willing to learn new skills and implement them as he learned them.” Ms. Shadd stated that respondent is hard working and committed to serving as an educator. Ms. Shadd would place her child in respondent’s classroom “without reservation” and requested that respondent be allowed to retain his credential.

43. Nicole Elder provided an affidavit in support of respondent. Ms. Elder’s children attended Plaza. Ms. Elder has known respondent and his family for many years. She described respondent as a “kind, honest, trustworthy person and has very high morals.” She also explained that respondent has “always gone over and above his duties as a special ed[ucation] teacher even so far as dedicating his own time to make sure the kids he teaches have what they need.” For example, respondent “spent a summer pouring concrete for a wheel chair ramp and helping with upgrades in the classroom for his students to have the best.” Ms. Elder explained that if respondent’s credential was revoked it “would be detrimental to [their] youthful community.”

## Analysis

44. Complainant seeks to revoke respondent's credential and deny his application based on several allegations, including that he slapped M.B., clamped his lips shut, refused to allow him to use the restroom, and forced him to stay in his wet clothes for several minutes. M.B. did not testify at hearing. Respondent and Ms. Thompson were both present during the events and testified at hearing.

Evidence Code section 780 sets forth factors to consider in determining the credibility of a witness: the demeanor and manner of the witness while testifying; the character of the testimony; the capacity to perceive at the time the events occurred; the character of the witness for honesty; the existence of bias or other motive; other statements of the witness that are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified; and the attitude of the witness toward the proceeding in which the testimony has been given.

The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Finally, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)

45. Respondent's testimony and statements regarding his conduct towards M.B. has been consistent and as a result has been given great weight. When Mr. Koch

informed respondent that M.B. complained that respondent had slapped him and refused to allow him to go the bathroom, respondent immediately explained his version of the events. Respondent described how he tapped M.B. on the cheek with two fingers. He also described the circumstances in which he requested M.B. to wait to go the bathroom. Respondent explained that he told M.B. he would need to wait until they returned to the classroom. M.B. immediately wet himself. The student walked back to the classroom and M.B. changed his clothes. Respondent did not require M.B. to stay in his clothes as punishment as Mr. Sailsbery alleged on behalf of M.B.

Respondent credibly testified that he did not learn about the allegation that he clamped M.B.'s lips shut until after he requested his personnel file. Respondent credibly denied he engaged in such conduct, which respondent described as "mean."

Ms. Thompson's testimony corroborated respondent's version of events. She witnessed respondent tap M.B. on the cheek. Ms. Thompson did not report the incident because she did not believe respondent's conduct was improper. Likewise, Ms. Thompson confirmed that M.B. was not required to stay in his soiled clothes. He changed his clothes as soon as he entered the classroom.

46. In contrast, M.B.'s version of events is inconsistent based on the information reported from Mr. Sailsbery and M.B.'s recorded interview. M.B. reported to his grandparents that respondent slapped him. However, when asked by the officers during his interview to demonstrate how respondent slapped him, he gently touched the side of the officer's face with his fingers. M.B. also repeatedly denied that he had used "red words" before respondent allegedly hit him, despite previously admitting to his grandparents he had used red words. M.B. did not tell the officers that respondent clamped his lips shut. M.B. also did not tell the officers that respondent made him stay in his soiled clothes.

M.B.'s allegations against respondent have grown, which further affects his credibility. M.B. alleged respondent threw him to the ground and stomped on his head. He also alleged respondent called him a "snotty rag." Mr. Sailsbery did not report these allegations to be investigated, because he did not believe them to be true.

47. Concerning the remaining allegations, respondent admits that he placed his hands around J.C.'s face to stop him from screaming "lockdown drill" in class. Respondent also admitted that he did not disclose on his application that he resigned his position with Colusa while allegations of misconduct were pending. However, he denied intentionally providing the Commission false information.

48. The criteria to be reviewed in determining whether a teacher is unfit to teach for purposes of granting a teaching credential or disciplining one already issued, are set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214., and have been codified in California Code of Regulations, title 5, section 80302, subdivision (a). The factors are:

- (1) the likelihood that the conduct may have adversely affected students or fellow teachers, and the degree of such adversity anticipated;
- (2) the proximity or remoteness in time of the conduct;
- (3) the types of credentials held or sought by the person involved;
- (4) any extenuating or aggravating circumstances surrounding the conduct;

(5) the praiseworthiness or blameworthiness of the motives resulting in the conduct;

(6) the likelihood of recurrence of the questioned conduct;

(7) the extent to which disciplinary action may have an adverse impact or chilling effect upon the constitutional rights of the person involved, or other teachers; and

(8) the publicity or notoriety given to the conduct.

### **LIKELIHOOD OF ADVERSE EFFECTS ON STUDENTS OR FELLOW TEACHERS**

49. Respondent's conduct of tapping M.B. on the side of the face had an adverse effect on M.B. Respondent should not have touched M.B.'s face in response to M.B. swearing. Respondent was aware that Glenn County had a policy that prohibited that type of touching of students. Respondent should have used a different type of "teaching moment" to address M.B.'s swearing.

50. Complainant failed to establish respondent's instruction to M.B. that he needed to wait to return to the classroom to use the bathroom had an adverse effect on M.B. Respondent reasonably believed the M.B. could wait to walk back to the classroom with the students to use the bathroom in the classroom. Instead, M.B. made the decision to urinate himself in defiance. Respondent allowed M.B. to immediately change his clothes when he entered the classroom.

51. Complainant also established that respondent's conduct of placing his hands on J.C.'s face had an adverse effect on Mr. Copeland and Ms. Page. Both were so concerned about respondent's conduct that they filed reports with CPS. However, there was insufficient evidence to establish that J.C. was adversely affected. In fact, Ms.

Page testified that J.C. was “not at all” injured. While respondent’s intention was to diffuse what he observed as a safety issue, he should have done so without touching J.C.

52. Respondent’s failure to disclose his resignation from Colusa had an indirect potential for adverse effects on students or teachers. As an educator, respondent is expected to set a good example and be a positive role model. Respondent’s conduct demonstrates poor judgment and dishonesty.

### **PROXIMITY OR REMOTENESS IN TIME**

53. Respondent conduct occurred in 2017 and 2018. Respondent’s misconduct is more proximate than remote in time.

### **TYPES OF CREDENTIALS HELD AND SOUGHT**

54. Respondent holds Clear Multiple Subject Teaching Credential and Clear Education Specialist Instruction Credential. He seeks an Administrative Credential. The credentials respondent holds and is seeking to renew require both teaching competence and administration of school functions.

### **EXTENUATING OR AGGRAVATING CIRCUMSTANCES**

55. Neither the Education Code nor the applicable regulations specify what constitutes “extenuating circumstances.” However, California Code of Regulations, title 5, section 80300, subdivision (m), defines “mitigating factor” as “an event or circumstance which demonstrates that the public, school children and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever.” Respondent presented significant mitigating evidence. Notably, respondent taught at Plaza for several years prior to his resignation in 2018.

Respondent's performance evaluations demonstrate that he is a competent and knowledgeable teacher. The authors of the affidavits, who include a past supervisor, describe respondent as a caring, honest, and dedicated teacher.

56. California Code of Regulations, title 5, section 80300, subdivision (b), lists aggravating factors, the presence of which indicate a greater degree of discipline is necessary to protect students and the teaching profession. These factors include, in pertinent part: (1) the misconduct in question involved multiple wrongful acts; and (2) the misconduct significantly harmed the educational system. Respondent's misconduct involved two wrongful acts including touching two students and providing false information on an application he submitted to the Commission. However, complainant failed to establish that respondent's conduct significantly harmed the educational system.

#### **PRAISEWORTHINESS OR BLAMEWORTHINESS OF MOTIVES RESULTING IN THE MISCONDUCT**

57. Respondent's conduct was blameworthy in several respects. Respondent's decision to touch the faces of two students came from his intention to address conduct issues of the students. Respondent was attempting to address swearing by M.B. and a potential safety issue by J.C. However, after the incident involving M.B. respondent should have been more aware of his conduct and how he approached students. However, he again engaged in inappropriate touching of J.C. Glenn and Colusa Counties had policies prohibiting the type of touching respondent used on the students. Respondent knew he was not supposed to touch the students in such a way but did so anyway. Additionally, respondent lied on his application. Respondent should have disclosed his resignation from Colusa because he resigned while facing allegations of misconduct. He failed to do so.

## **LIKELIHOOD OF RECURRENCE**

58. The likelihood of recurrence of respondent's misconduct is minimal. Respondent has been through a criminal matter and administrative proceeding. Respondent clearly values his role as an educator and has continued his education so that he may serve as an administrator. Respondent is self-reflective and honest. He would like to use his conduct as a learning experience, which he hopes will make him a better educator.

## **ADVERSE IMPACT OR CHILLING EFFECT**

59. There is no evidence that discipline would adversely impact or chill respondent or any other teacher in the free exercise of their constitutional rights.

## **PUBLICITY OR NOTORIETY OF MISCONDUCT**

60. No evidence was presented that respondent's conduct was either publicized or notorious.

## **CONCLUSION**

61. For the reasons stated above, and considering all the *Morrison* factors, complainant established by clear and convincing evidence that cause exists to discipline respondent's credentials and deny his application. Respondent's conduct related to M.B. and J.C constituted unprofessional conduct. Respondent's acts of touching these students on the face violated policies and constituted conduct unbecoming of a teacher.

However, respondent's conduct does not constitute immoral conduct, rise to the level of moral turpitude, or demonstrate that he is unfit to teach. Respondent has



been consistently honest and forthcoming about his actions towards M.B. and J.C. His conduct was not motivated by a desire to harm or punish the students. Rather, respondent believed he was addressing inappropriate behavior by M.B. and potentially unsafe behavior J.C.

Respondent's conduct in failing to disclose to the Commission that he left Colusa while allegations of misconduct were pending was dishonest, constitutes unprofessional and immoral conduct, and rises to the level of moral turpitude. Respondent acknowledged that he was aware that there were allegations of misconduct pending against him when he resigned from Colusa. He made the decision to not disclose this information to the Commission. While no investigation was ultimately conducted, the application provided clear direction to respondent about the type of information he was required to disclose. However, complainant failed to establish that his failure to disclose the information demonstrates that respondent is unfit to teach. Complainant failed to establish that respondent has a fixed character trait that cannot be remedied.

62. However, respondent's misconduct must be balanced against evidence explaining the motivation for respondent's actions and his long history as a dedicated teacher. Respondent presented character evidence that demonstrated he is a respected and admired educator who should be afforded another opportunity to demonstrate that he will not repeat his past conduct.

63. Based on the foregoing, the appropriate discipline in this case is to place respondent's credentials on a period of probation under specified terms and conditions that will protect the public. Respondent's application should be denied at this time to ensure that he focuses his efforts on teaching and abiding by the terms of his probation.

## LEGAL CONCLUSIONS

### Burden of Proof

1. Complainant has the burden of proving the allegations in the Amended Accusation by clear and convincing evidence to a reasonable certainty. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Brooks* (2008) 169 Cal.App.4th 176, 190.)

2. Concerning the Amended Statement of Issues, respondent has the burden of proving by a preponderance of the evidence that he is entitled to the credential he seeks. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205; *Coffin v. Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 476.) Preponderance of the evidence means "more likely than not." (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1388.)

### Applicable Law

3. Pursuant to the Education Code, commencing with section 44000, and California Code of Regulations, title 5, commencing with section 80000, the Commission is responsible for credentialing teachers in public schools in California, including issuing credentials and taking adverse action against applicants and credential holders.

4. Education Code section 44345 provides, in part:

The commission may deny any application for the issuance of a credential or for the renewal of a credential made by any applicant who falls under any of the following categories:

[1] ... [1]

(e) Has committed any act involving moral turpitude.

[1] ... [1]

(g) Has intentionally practiced or attempted to practice any material deception or fraud in his or her application.

[1] ... [1]

Any denial pursuant to subdivisions (a) to (e), inclusive, shall be based upon reasons related to the applicant's fitness to teach or fitness to perform other duties for which that applicant is certificated, or competence to perform the duties which the credential would authorize the applicant to perform.

5. Education Code section 44440 provides:

(a) No applicant who is under review by the commission shall be allowed to withdraw his or her application for a credential without the written consent of the commission.

The commission shall retain its authority over those

applicants to proceed with the denial of the credential upon any ground provided by law, or to enter an order denying the credential upon any ground provided by law.

(b) The suspension or expiration of any credential, its surrender without the written consent of the commission, or a revocation pursuant to Section 44423 does not deprive the commission of its authority to do any of the following:

(1) Institute or continue a disciplinary proceeding against the credential holder upon any ground provided by law.

(2) Enter an order suspending or revoking the credential.

(3) Issue a public reproof or private admonition to the credential holder.

6. Education Code section 44421 provides in part:

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.

7. California Code of Regulations, title 5, section 80300 states in part that:

(a) "Adverse action" is a denial, a private admonition, public reproof, suspension or a revocation of one or more credentials.

(b) "Aggravating factor" is an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession.

Aggravating factors may include, but are not limited to, the following:

[1] ... [1]

(2) that the misconduct evidences multiple acts of wrongdoing or demonstrate a pattern of misconduct;

(3) that the misconduct was surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators;

[1] ... [1]

(c) "Applicant" is an individual applying for a credential, permit, waiver or other certification document issued by the Commission on Teacher Credentialing.

8. California Code of Regulations, title 5, 80302, subdivision (a), provides the factors to consider to "determine the relationship between the alleged misconduct

and the applicant's or holder's fitness, competence, or ability to effectively perform the duties authorized by the credential."

9. The California Supreme Court has recognized that the terms "immoral conduct" and "unprofessional conduct" substantially overlap one another and conduct that constitutes one often includes the other. (*Morrison v. State Bd. of Ed.*, *supra*, 1 Cal.3d 214, 221, fn. 9.) "Unprofessional conduct" includes "'that which violates the rules of ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing.'" (*Board of Education of the City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553; quoting, 66 Corpus Juris, p. 55.) Additionally, in *San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, the court explained:

Moreover, the definition of immoral or unprofessional conduct must be considered in conjunction with the unique position of public school teachers, upon whom are imposed "responsibilities and limitations on freedom of action which do not exist in regard to other callings." [Citation.]

(*Id.* at p. 1466.)

10. Immoral conduct is sometimes considered as synonymous with "dishonesty" or a high degree of unfairness. (*Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811.) The court explained in *Palo Verde Unified School District of Riverside v. Hensey* (1970) 9 Cal.App.3d 967, 972:

The term "immoral" has been defined as that which is hostile to the welfare of the general public and contrary to

good morals. Immorality includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare.

11. Moral turpitude has been defined as "everything done contrary to justice, honesty, modesty or good morals." (*Rice v. Alcoholic Beverage Appeals Board* (1979) 89 Cal.App.3d 30, 36.) It includes any crime or misconduct committed without excuse, or any dishonest act not necessarily a crime. (See *Golde v. Fox* (1979) 98 Cal.App.3d 167, 181.)

12. "Evident unfitness for service" means a teacher is clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) "Unlike 'unprofessional conduct,' 'evident unfitness for service' connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Id.*)

## **Cause for Discipline**

13. As set forth in the Factual Findings as a whole, complainant established by clear and convincing evidence that respondent committed acts of unprofessional conduct. Cause exists to discipline respondent's credentials pursuant to Education Code section 44421.

14. As set forth in the Factual Findings as a whole, complainant failed to establish by clear and convincing evidence that respondent committed acts demonstrating evident unfitness for service. Therefore, no cause exists to discipline respondent's credentials pursuant to Education Code section 44421.

15. As set forth in Factual Findings 22 through 29, and 61, complainant established by clear and convincing evidence that respondent committed acts that consist of immoral conduct. Cause exists to discipline respondent's credentials pursuant to Education Code section 44421.

16. As set forth in Factual Findings 22 through 29, and 61, complainant established by clear and convincing evidence that respondent committed acts of moral turpitude. Cause exists to discipline respondent's credentials pursuant to Education Code sections 44421 and 44435, subdivision (e).

17. As set forth in Factual Findings 22 through 29, and 61, complainant established by clear and convincing evidence that respondent practiced material deception or fraud in his application. Cause exists to discipline respondent's credentials pursuant to Education Code sections 44421 and 44345, subdivision (g).

### **Cause for Denial**

18. As set forth in Factual Findings 22 through 29, and 61, respondent committed acts of moral turpitude. Cause exists to deny respondent's application for an Administrative Credential pursuant to Education Code section 44345, subdivision (e).

19. As set forth in Factual Findings 22 through 29, and 61 respondent practiced material deception or fraud in his Administrative Credential application.



Cause exists to deny respondent's application for an Administrative Credential pursuant to Education Code sections 44421 and 44345, subdivision (g).

## **Conclusion**

20. Considering the evidence as a whole, respondent's application is denied. Respondent's Clear Multiple Subject Teaching Credential and Clear Education Specialist Instruction Credential are placed on probation for three years pursuant to terms and conditions that will protect the public.

## **ORDER**

1. Respondent's application for an Administrative Services Credential is DENIED.

2. Respondent's Clear Multiple Subject Teaching Credential and Clear Education Specialist Instruction Credential are REVOKED. However, the revocation is stayed and those credentials are placed on probation for a period of three years under the terms and conditions set forth below.

a. Respondent shall obey all federal, state and local laws and regulations, including, but not limited to, the statutes and regulations of the Commission on Teacher Credentialing (Commission). A full and detailed account of any and all arrests or citations for any violation of law (except minor traffic offenses) shall be reported to the Commission, in writing, within 30 days of the arrest or citation.

b. Respondent shall fully comply with the terms and conditions of this Order and cooperate with representatives of the Commission in its monitoring and

investigation of his compliance. Any credentials issued to respondent during the period of probation shall be subject to the conditions contained herein.

c. During the period of probation, respondent shall appear in person at interviews or meetings as directed by the Commission or its representatives upon reasonable notice.

d. Respondent must provide written notice to the Commission within 15 days of any change of residency or address. Periods of residency outside of California shall not apply toward completion of the probationary period.

e. Respondent shall submit quarterly reports, under penalty of perjury, in a form designated by the Commission, certifying and documenting compliance with all terms and conditions of probation. Respondent shall execute release of information forms that may be reasonably required by the Commission or its representatives.

f. During the period of probation, respondent shall inform the Commission, in writing, of all his employment that requires a credential. Respondent shall inform his employer of the reason for, and the terms and conditions of, his probationary status and shall provide a copy of the Commission's Decision to his employer and immediate supervisor. Respondent shall authorize his employer to submit performance evaluations and other reports requested by the Commission. Respondent shall notify the Commission in writing within 72 hours after cessation of any employment that requires a credential. The notification shall contain a full explanation of the circumstances surrounding the cessation of employment.

g. The Commission shall retain jurisdiction over respondent's case during the period of probation. If respondent violates any term or condition of this Order, after giving him written notice and an opportunity to be heard on the issue of his

violation of probation, the Commission may set aside the stay order and impose the revocation of respondent's credentials. If an accusation or petition to revoke probation is filed against respondent during probation, the probation period shall automatically be extended until a final decision is made on the accusation or petition.

h. Upon successful completion of the terms of this probation, the stay order shall become permanent, and respondent's credentials shall be fully restored.

DATE: November 12, 2021

*Marcie Larson*  
Marcie Larson (Nov 12, 2021 15:24 PST)

MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings