

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

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

RAHMIN BUCKMAN, Respondent

Case No. 2-109081316

OAH No. 2023010491

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 27, 28, 29, and July 10, 2023, via videoconference.

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

Jay T. Jambeck, Attorney at Law, Leigh Law Group P.C., represented respondent, Rahmin Buckman.

The record was closed, and the matter submitted for decision on July 10, 2023.

SUMMARY

Complainant asks that respondent's certificate be revoked and his application for an additional teaching credential be denied due to his conduct in 2019 with students at a charter school where he was employed as a math and physical education teacher. Complainant did not prove by clear and convincing evidence that respondent engaged in any inappropriate behavior towards any students. The charges in the pleading are dismissed. Respondent's application for a certificate is granted as otherwise eligible.

PROTECTIVE AND SEALING ORDER

To protect the privacy of the students identified in this matter, witness identification key lists in Exhibits 9 and 10 and received into evidence are ordered sealed.¹ This sealing order governs the release of these documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517, may review the document subject to this order, provided it is protected from release to the public. In addition, to protect the privacy of students who testified in this matter, any transcription of the hearing will identify the student witnesses only by their initials.

¹ Parts of the record at Exhibit 11 have been redacted to remove the identification of students.

Jurisdictional Matters

1. On June 22, 2017, the Commission issued Clear Single Subject Teaching Credential with Authorizations in Physical Education and Foundational-Level Mathematics to respondent. The credential expired on July 1, 2022. Pursuant to Business and Professions Code section 118, subdivision (b), the Commission retains jurisdiction to proceed with this action against respondent. (Bus. & Prof. Code, § 118, subd. (b).)

On June 18, 2013, the Commission issued Preliminary Single Subject Teaching Credential to Respondent. The Preliminary Single Subject Teaching Credential was in effect until July 1, 2018.

On October 21, 2005, the Commission issued Certificate of Clearance to Respondent. The Certificate of Clearance was valid until July 1, 2017.

On September 25, 2012, the Commission issued an Emergency 30-day Substitute Teaching Permit to respondent. The Emergency 30-day Substitute Teaching Permit was in effect until October 1, 2013.

2. On September 9, 2020, the Commission received an application for a Clear Single Subject Teaching Credential, Added Authorization in Mathematics.

3. Complainant filed and served on respondent an accusation and statement of issues in this matter on June 16, 2022.

4. Claimant alleges that respondent, from July 2019 to November 19, 2019, while he worked as a physical education (PE) teacher and math teacher at Chula Vista Learning Community Charter (CVLCC), engaged in inappropriate conduct with nine female students in his math class as described in the pleading as follows, in summary:

he put his hand on their shoulders and back which made them feel uncomfortable; he took away a student's cell phone and blocked this student from leaving the class at the end of the class period; he kept a student after school for math review hours while her mother waited for her after the student told respondent she had to leave; he engaged in "prolonged and inappropriate glances" at another student during physical education class, which made her feel uncomfortable; and he stared at the breasts of another student. Complainant asserts as aggravating factors that respondent's conduct significantly harmed a child in his care, he engaged in multiple acts of wrongdoing, he was indifferent to the consequences of his actions, and he had warnings about similar conduct "from a reliable source."

Complainant's Evidence

5. Complainant alleges that respondent engaged in the inappropriate conduct identified in the pleading with students JE, DG, CDLC, NH, GO, AC, JF, FE, GO, and HJ. However, not all of these students testified; only students JE, NH, CDLC, AC, FE, HJ, and JF testified. A written statement from DG was submitted as evidence and discussed during the hearing. A written statement from student NH, who also testified, was submitted and discussed. Margaret Myers, Director of Human Resources for the Chula Vista Elementary School District, conducted an investigation of respondent's conduct as alleged and prepared a report that summarized the statements of the 10 students she interviewed and made findings. Her report was admitted as evidence. The Commission relied on Ms. Myers' report for its investigation of the matter. Ms. Myers retired and did not testify in this matter. Her successor, Jorge Mora, was called as a witness by complainant, but he was not involved in Ms. Myers's investigation.

6. The summaries of the students in Ms. Myers's report track the allegations in the accusation and statement of issues. GO told Ms. Myers respondent patted her

on the shoulder and made her feel uncomfortable; KN said that respondent told her to jump during PE and stared at her breasts. In her statement, DG said respondent placed his hands on her shoulder and back, and he took her phone during class and blocked her from leaving the class at the end of the period.

7. The summaries of students in Ms. Myers's report, who did not testify are given minimal weight. Under Evidence Code section 412, weaker evidence of a fact may be viewed with distrust when the same party can produce stronger and more satisfactory evidence, but does not. (Evid. Code, § 412.) Complainant did not say why students KN, GO, and DG were not available and did not testify, or if efforts were made to obtain their testimony. As a matter of evidence, and consistent with complainant's burden to prove the allegations by clear and convincing evidence, their failure to testify is viewed with suspicion, and no weight is given to what KN, DG, and GO told Ms. Myers.²

² There is reason to view KN's statement to Ms. Myers in particular with suspicion. Ms. Myers did not substantiate the allegation, which KN made, that respondent directed students to perform exercises and then stared at their body parts. Ms. Myers in her report does not explain why she did not accept KN's statement, but it raises a question about the credibility of KN's complaint and maybe why complainant did not call her as a witness. Even though the Commission never interviewed KN and relied on Ms. Myers's report in its investigation, complainant charged respondent with KN's allegation anyway.

SUMMARY OF TESTIMONY OF STUDENTS

8. As noted, seven students testified, and their testimony is summarized as follows:

JE'S Testimony

9. JE testified that she graduated from CVLCC and was in respondent's math and PE classes. She said she encountered a lot of issues with respondent because he was very strict and required her to bring her uniform to PE. She said she "clashed with him." She also said she did not respect his instruction. During PE he touched her shoulder while instructing her regarding doing exercises correctly. She said this made her feel uncomfortable. He touched her shoulder in math class as well, which also made her feel uncomfortable. She said he invaded her "personal privacy bubble." JE repeated that she clashed with him a lot. In describing how he placed his hand on her shoulder JE said he did not keep his hand there for long. JE testified she told respondent to not invade her personal space. Respondent, in his testimony, denied JE said this to him. JE did not deny respondent touched her shoulder as a form of encouragement but, as she put it, nevertheless, he invaded her personal space and, in her view, was inappropriate and made her feel uncomfortable.

10. JE described an incident in PE where she said she felt respondent was glancing at her in a sexual way. She stated this incident occurred when the PE class was moved to the cafeteria due to the weather. He had the class perform stretching exercises, which they performed typically during the class. This time respondent stood inside the circle of students and had the students looking outside the circle. During this exercise, JE took a video of respondent instructing the class. She said the video showed that respondent was glancing at her inappropriately and "sexualized" the

exercise and showed respondent acting “creepy.” She showed the video to other students to support her claim that respondent looked at her inappropriately. JE testified, however, she lost the video when she obtained a new cell phone because her phone was broken.

11. JE complained to the school’s principal Ms. Tessier. As part of her complaint, she showed the video to Ms. Tessier that purportedly showed respondent inappropriately glancing at her. Ms. Tessier testified in this matter, and she said that the video was of poor quality, but it did not show respondent glancing inappropriately at JE. Ms. Tessier further testified she reprimanded JE for taking the video because it was not permissible, and she did not make a copy of it.³ Regardless, due to the circumstances surrounding the destruction of the video, a reasonable inference is drawn that the video showed that respondent acted appropriately during PE class towards JE.

Testimony of NH

12. NH was also in respondent’s PE and math classes during the 2019 school year. In addition to testifying, NH wrote a statement, which was admitted as evidence. Ms. Tessier had obtained this statement during her investigation of the matter.

³ Ms. Tessier did not reference this video in a letter she wrote to respondent on October 24, 2019, regarding the incident. Also, Ms. Myers interviewed Ms. Tessier as part of her investigation for the school district. There is no mention of the video in Ms. Myers’ report, and JE testified she lost the video. Ms. Myers, it is noted as a comment, did not substantiate JE’s complaint.

NH stated that she attended after school math office hour with respondent because she needed help with math. She went with a friend to his office. NH's mother was at the school waiting for her and texted NH she was waiting. NH feared her mother would be upset with her. Respondent was at the whiteboard and told her he wasn't finished with the instruction he was giving on the whiteboard at the front of the class. She waited about 10 to 15 minutes. In a statement she wrote regarding the incident, NH said respondent told her he was almost finished with the instruction, and she had to stay for another ten minutes. NH testified she felt she couldn't leave, but, NH also testified on cross examination she knew the instruction was voluntary and she could leave at any time, and NH left before respondent finished his instruction. She, further, never told respondent her mother was waiting for her, and she did not tell her mother she was in the after school class.

13. This allegation regarding respondent's conduct, as detailed in the pleading, is dismissed, based on NH's testimony. NH understood the after-school instruction was voluntary, and she could leave at any time. She, in addition, did not tell respondent her mother was waiting. She waited for 10 to 15 minutes, which is a reasonable time to wait for extra help. Further, respondent was trying to help NH with additional instruction, which NH acknowledged in her testimony. Complainant did not cite any school or district policy that respondent violated because NH waited 10 minutes for help with math after school. She was clearly not held against her will. It seems respondent was doing exactly what one would hope a good teacher would do to help a student.

14. Aside from the allegation regarding the after-school office visit, NH testified that respondent put his hand on her shoulder when passing out a paper, which she felt was "weird" or "creepy" and made her feel uncomfortable. In her

statement she said that respondent touched her when she did “something good” “for example do good [*sic*] on a test.” In response to a question on cross-examination, NH agreed respondent did this as a matter of encouragement. She couldn’t recall if that happened frequently, but she said it happened more than once. NH said she saw respondent touch the shoulders of other students the same way. NH also said that respondent didn’t make her feel uncomfortable in PE class.

Testimony of FE

15. FE graduated from CVLCC and was in respondent’s PE and math classes. FE testified first regarding the incident in the PE class in the cafeteria. She said respondent put on a video for the class to watch and was walking around the students as they watched the video. They were doing squats, as they normally did, during the class and they were facing outside the circle. During this exercise she said she saw respondent looking at JE’s “behind” in a certain way that made FE feel uncomfortable.

16. In math class, respondent once made her feel uncomfortable when he put his hand on her shoulder. FE acknowledged respondent appeared to do this as a form of encouragement and wasn’t doing this in a sexual way. She said she saw respondent put his hand on the shoulders of other girls in the class.

Testimony of JF

17. JF also graduated from CVLCC and was in respondent’s PE and math classes. She testified respondent touched her shoulder when he was handing her a test or paper. She said it wasn’t a hug. JF testified that she saw respondent touch other students, both boys and girls, during math class. JF recalled respondent touched JE once, and JE displayed an “annoyed” face. She also testified that in PE she did squat

exercises but was more comfortable facing respondent during these exercises than looking away from him.

Testimony of CDLC

18. CDLC was in respondent's PE and math classes with the other students. She testified that in math class respondent would "pat" shoulders a lot when a student got an answer correct or had a question. He touched her back or shoulder on more than one occasion.

CDLC testified regarding one incident in PE where respondent had the students do squats looking away from respondent. She later found out that a student recorded the incident, and the incident made CDLC feel uncomfortable when she learned about the recording. CDLC said she did not see the video JE took, but she talked to another student who saw the video. She said that after she learned about the video, the incident made her uncomfortable and the touching wasn't necessary. CDLC did not see respondent looking at JE.

Testimony of AC

19. AC graduated from CVLCC and was in respondent's PE and math classes.

In math class AC saw respondent "a little bit" touch students with pats on the back. She said this occurred on more than one occasion, but she isn't sure. AC testified that respondent appeared to touch the students when he said they did a good job. She couldn't say it made her uncomfortable, but she said it was "weird in a sense."

Testimony of HJ

20. HJ graduated from CVLCC. She was in respondent's PE and math classes.

HJ testified respondent very often “grabbed” students’ shoulders and this made her feel uncomfortable. She felt it was not just for doing a good job.

HJ testified regarding the PE class in the cafeteria, and said respondent seemed to be looking at JE’s butt when the students were doing squats. HJ testified she watched the video that JE made and talked to Ms. Tessier about it.

Testimony of Jorge Mora

21. As noted earlier, complainant called Jorge Mora, Executive Director of Human Resources for the Chula Vista Elementary School District. Mr. Mora was not involved in the district’s investigation of this matter, as also mentioned earlier. In his capacity as Executive Director of Human Resources, he is familiar with the guidelines for appropriate physical contact between teachers and students. He said all new employees are given a brochure the human resources department has prepared, which identifies these guidelines. Mr. Mora referenced the brochure during his testimony although a copy of it wasn’t offered as evidence.

Mr. Mora said that it is not wrong or inappropriate to touch a student, give them a quick pat on the back, or quick hug, or give a student a high five, a fist pump, et cetera. The district’s guidance does not identify a time frame for touching or putting an arm around a student. Mr. Mora acknowledged that the guidance is vague. He emphasized it is inappropriate to touch a student when the teacher is alone with the student or when the teacher is frustrated with the student.

TESTIMONY OF ALMA CHRISTINA TESSIER

22. As mentioned above, Ms. Tessier testified regarding her investigation into the allegations and the letter she sent respondent on October 24, 2019.

Ms. Tessier was the principal at CVLCC. Ms. Tessier was familiar with respondent and worked with him on curriculum development at the school.

JE made a complaint to her about unwanted touching from respondent and that he looked at her inappropriately. When she talked to Ms. Tessier about her complaint, JE was emotional and told Ms. Tessier she felt uncomfortable and unsafe in class. Ms. Tessier reached out to other students who may have witnessed the conduct JE described. However, she only obtained statements from DG and NH, though she talked to other students.

23. JE showed Ms. Tessier a video she took from her cell phone that she claimed "proved" respondent looked at her inappropriately. Ms. Tessier reviewed the video and testified it showed respondent "glancing" at JE during PE while instructing the students. She did not state the video substantiated JE's complaint and, in fact, seemed to dismiss it in her testimony. Ms. Tessier reprimanded JE for taking the video, which she said was impermissible. She did not make a copy of it, did not document her observations of it, and she did not reference having reviewed it in the warning letter regarding the alleged behavior she gave respondent on October 24, 2019. This all suggests the video JE took showed that respondent did nothing inappropriate, and Ms. Tessier knew this. As noted, JE testified the video was "lost"; this suggests JE destroyed the video after Ms. Tessier reprimanded her for taking it.

24. Ms. Tessier held an informal conference with respondent about the allegations sometime in October, the same month she wrote the letter to him after a formal conference she had with him. She told respondent the touching made students feel uncomfortable. He was surprised by the allegations and told her he touched the students as an affirmation. She then checked in with students, whom she didn't identify, and they told her the touching continued. She spoke to students individually.

When she reconnected with JE, JE was quite upset, as she put it, and felt she wasn't being protected. She vocalized her discomfort and went into more depth about how respondent looked at various parts of her body.

25. On October 24, 2019, Ms. Tessier met with respondent and handed him a letter. In that letter Ms. Tessier stated that respondent engaged in prolonged and sustained glances with a student that made her feel uncomfortable during PE, and he gave the student pats on the back as a form of encouragement, which the student told him made her feel uncomfortable. She directed respondent to refrain from physical contact with students, to have limited and professional contact with JE, and to work with the site administrator to build appropriate teacher-student relationships.

26. In the week after October 24, 2019, Ms. Tessier said she received more complaints, and on an unspecified date after October 24, 2019, she talked to JE. JE told Ms. Tessier that "the behavior had not changed," and she continued to feel uncomfortable and unprotected. It isn't clear what behavior JE was referencing.

After she interviewed additional students, Ms. Tessier placed respondent on administrative leave on November 19, 2019, because Ms. Tessier stated that respondent wasn't meeting the charter school's expectations regarding touching, and she received additional complaints about respondent. Respondent subsequently resigned on February 12, 2020.

Respondent's Testimony and Evidence

27. Respondent's testimony is summarized as follows:

Respondent studied physical education in college and earned a master's degree in education. Before he became a teacher he worked as a soccer coach, soccer referee,

graduate assistant, and behavioral technician. In 2012-2013, he obtained his teaching credential and taught middle and high school students. Respondent's first job as a teacher was as a math support specialist for the county in a school for foster children. Respondent is presently employed at the Poway Unified School District where he teaches sixth grade math.

In 2016 respondent was hired as a seventh-grade math teacher at CVLCC. He also taught PE as an elective.

28. Respondent testified he touched students on their shoulders and backs as a form of positive reinforcement. During his education to become credentialed, he was taught about affirmations of students, and pats on the back could be seen, as he noted Mr. Mora stated in his testimony, as a form of positive reinforcement. He said he has done this throughout his career, to both female and male students. As a soccer coach, respondent testified it was common to touch athletes on the back as a form of encouragement. Respondent denied that he continued this type of contact with JE after she told him to stop.

29. Respondent denied he looked inappropriately at JE during PE class. The PE class was in the cafeteria that day due to rain. He put on an exercise video and stood in the center of the students monitoring them as they watched the video. Respondent said that the students needed to look away from him because of the way the video was projected. He believes he didn't instruct the students to do so. Respondent said as a PE teacher, his job was to comment on the form of students performing the exercises and give them feedback, and this was what he did.

30. With regard to JE, respondent described her as a challenging student who engaged in defiant behaviors, she refused to perform exercises in class, and was

off task. He met with her parents in September in a conference regarding her behavior and performance. Earlier, in July, he met with Ms. Tessier and a second administrator to discuss JE's behavior.

Respondent testified he believes JE's complaint to Ms. Tessier that resulted in the October 24, 2019, warning was an act of retaliation and should have been handled in a different way by Ms. Tessier. Ms. Tessier knew, he said, that JE had behavior issues. He said he was surprised and taken aback by the letter. Nevertheless, after the October 24, 2019, letter, respondent had no interactions with JE. Respondent, as noted, was placed on administrative leave shortly afterwards on November 19, 2019.

31. After the letter, respondent limited physical contact with students to high fives and fist pumps. He did not give students pats on the back. Respondent recalled that Ms. Tessier told him she hadn't heard anything regarding his behavior a week or two after the October 24, 2019, letter. Respondent had no other conversations with Ms. Tessier before he was placed on administrative leave on November 19, 2019.

32. Respondent discussed in his testimony the allegation DG made that he blocked the door as she tried to leave the classroom. Respondent denied this. He testified that the issue he had with DG was her cell phone use in class. At the beginning of the school year, the school enacted a policy that allowed teachers to confiscate students' cell phones after a warning was given. If the conduct continued, teachers were to give the cell phone to the school office. DG used her cell phone during class and argued with respondent about it after respondent took the cell phone from her. At the end of class, respondent wanted to talk to DG, and he reminded her about the cell phone use policy. He warned her the next time she used a cell phone in class, he would give it to the office. Respondent then handed DG's cell phone back to her.

33. With regard to NH's allegation, respondent testified that NH struggled with the math concepts but put in a good amount of effort. Respondent remembered that NH came to the office after school for extra help. He noted that when he was teaching at the county, teachers were encouraged to provide this extra help. NH had failed a quiz, and respondent encouraged her to finish the assignment. Respondent did not recall if NH told him her mother was waiting for her. NH did not, however, tell respondent she had to go because her mother was waiting outside for her. He did not recall telling her she could not communicate with her mother.

34. After respondent was placed on administrative leave, he resigned in February 2020. He was unemployed for a time and decided to upgrade his credentials. At Poway Unified School District, respondent has had good performance evaluations. Respondent also had good performance evaluations while he was at the charter school.

35. Respondent submitted into the record performance evaluations he received as a teacher over the years which were uniformly positive.

36. Respondent called Josue Gonzalez as a witness. Mr. Gonzalez is a teacher with a single subject math credential, and was respondent's colleague at CVLCC in 2019.

Mr. Gonzalez shared space at the school with respondent and worked with respondent and the school's math team in planning the math curriculum for the school year. Mr. Gonzalez said respondent put much effort into preparing for the year.

Mr. Gonzalez has high regard for respondent's professionalism as a teacher. Respondent, he said, would take time to ensure that the lessons were of the highest quality. Respondent, he also said, genuinely cared for the students.

37. Mr. Gonzalez saw respondent interact with students in his classroom at the school and never saw him act inappropriately. He conducted himself professionally.

38. Respondent also submitted a letter from Brooke Klein, which was received as administrative hearsay. Ms. Klein is a friend of respondent's and a fellow teacher who has known respondent for several years. Ms. Klein stated that respondent is a dedicated teacher, who is very proud to be a teacher, and works hard to create creative and engaging lessons. Ms. Klein stated she is familiar with the allegations made in the pleading.

Parties' Arguments

39. Complainant argued in closing that respondent's certificate should be revoked, and his application denied based on the testimony of the seven former students and the statement of another. Complainant stated that six of the students said the touching made them feel uncomfortable and cited testimony of several of the students as follows: JE said the touching was unnecessary and made her feel uncomfortable; FE stated that respondent "stared" at JE for a few seconds several times in PE class; FE said the touching "felt weird," "felt strange," and made her feel "uncomfortable." CE stated the video JE took in PE showed respondent staring inappropriately at JE. Complainant further cited Ms. Tessier's testimony to support her claim that respondent continued touching students even after Ms. Tessier issued him a warning letter. She said Ms. Tessier was certain the touching continued even after the warning letter was sent to respondent. Complainant did not reference in closing the allegation that discipline is warranted because NH waited 10 to 15 minutes after school for additional math instruction or that respondent blocked DG from leaving the classroom.

Complainant acknowledged that Mr. Mora testified, as complainant put it, that some touching was permitted. But complainant said that was not the issue because respondent engaged in "prolonged touching."

40. Respondent submitted a closing brief in lieu of oral argument. Respondent's brief has been duly considered. Respondent argues in his brief that complainant has not proven by clear and convincing evidence that respondent is unfit to be a teacher and that his credential should be suspended or revoked because "touching students does not violate District policy," and there is no clear and convincing evidence that respondent violated a directive to refrain from touching JE.

Respondent further argued that concerning the matters of the after-school class for NH, and DG's complainant regarding the cell phone usage and respondent blocking her from leaving the classroom, these claims do not warrant discipline against respondent's credential because the evidence does not show that respondent acted in any way inappropriately with respect to either student.

Respondent noted that the District's findings do not include a finding or even allegation that respondent violated a directive to refrain from touching students.

Evaluation

41. Respondent testified credibly he put his hand on the shoulders and backs of students as a form of encouragement in the same way he would do as a sports coach, and there was nothing improper about this conduct. His testimony is consistent with the evidence of record and the students' testimony. Respondent told Ms. Tessier at their October 24, 2019, meeting that he touched the students on their shoulders as a form of "encouragement," and Ms. Tessier accepted his explanation, as she recorded in the letter she wrote to him dated October 24, 2019.

Students who testified acknowledged that respondent touched their shoulders as a form of encouraging them when they did well. Indeed, complainant did not argue that respondent put his hands on the shoulders of students in a sexual way; thus, complainant's theory regarding respondent's behavior that respondent acted inappropriately by putting his hand on the shoulders and backs of students is not clear. Complainant did not cite a district policy or standard that prohibited respondent from doing this.

Complainant's own witness in fact, Mr. Mora, the Executive District of Human Resources for the Chula Vista Elementary School District, testified that patting a student on the back as a form of encouragement was appropriate and consistent with district policy. During his testimony Mr. Mora referenced a district brochure, which complainant did not seek to admit as evidence, which seemed to confirm that such touching would be appropriate. In her closing argument, complainant incorrectly stated that respondent engaged in "prolonged touching," as opposed to the type of physical touching Mr. Mora said was appropriate. The record does not support this assertion.⁴

42. The evidence, in addition, does not support the inference that respondent continued this practice after Ms. Tessier's October 24, 2019, letter, in which Ms. Tessier directed him to stop such touching students. Ms. Tessier's testimony

⁴ Complainant tried to coax testimony from the former students that respondent's touching was something more than brief contacts. The questions, not infrequently, were leading. But the record is clear that the touching was brief and done in the context of encouraging the students, both female and male, in front of other students, in the classroom.

regarding the timeline of complaints she received was vague. Respondent testified he stopped doing this after October 24, 2019, and the evidence did not contradict his testimony.⁵ Respondent was also placed on administrative leave soon after October 24, 2019, in November 2019. And, it must be noted, as respondent points out in his closing brief, the District in its findings did not conclude that respondent ignored a directive to refrain from touching students.

43. With regard to the allegation that respondent looked at JE inappropriately in PE class, the evidence does not support even an inference he looked at JE, or any student, inappropriately. Respondent testified credibly he did not look at students or JE in a sexual way during PE class and was instructing students appropriately. Complainant did not offer evidence to suggest respondent's instruction to students during the PE class was not appropriate. Respondent explained he was monitoring students doing their exercises while they watched a video because the class was moved to the cafeteria. A video that JE took that supposedly showed respondent looking at her in a sexual way was not copied by Ms. Tessier, and Ms. Tessier reprimanded JE for taking it.

JE, additionally, was not a credible witness. During the hearing, she went beyond the scope of questions complainant asked her, and she did not testify truthfully regarding the video she took of the class. JE said her phone was broken when, in fact, Ms. Tessier told her she acted improperly by recording the class. After Ms. Tessier reprimanded her for taking the video, JE likely destroyed the video. JE's testimony that she saw respondent look at JE's "behind" does not support an inference

⁵ The students' testimony in general was vague and unclear about the time this touching occurred.

that respondent was looking at JE in a sexual way, and is not credited considering respondent's credible testimony he was instructing the class doing an exercise where the students were looking at a video. FE's testimony is too vague to credit. It is not possible to distinguish between respondent looking at JE to monitor her performance in PE class as her PE teacher, and his looking at her inappropriately. Neither JE nor FE are capable of reading respondent's mind based on his "glance." In addition, no evidence was presented that respondent's physical education instruction was improper or unprofessional.

44. With regard to the allegation with respect to KN, as discussed earlier, her statement to Ms. Myers is not credited because KN did not testify, and her statement is given no weight. Regardless, respondent testified credibly he did not inappropriately gaze at students during PE class.

45. With regard to the allegation regarding DG, DG's statement to Ms. Myers, as discussed earlier, is also not credited because she did not testify, and respondent credibly testified regarding the circumstances involving DG. He testified he took DG's cell phone during class because she violated the class rule, which the school adopted regarding using cell phones in class, and at the end of class he wanted to talk to her about her cell phone use. He was not preventing her from leaving the class as her statement suggested. His conduct was a reasonable effort to enforce the cell phone use policy in his classroom.

46. With regard to the allegation regarding NH, respondent testified credibly he was instructing her, in the office hour after school, on a math topic she failed on a quiz she took and was giving NH extra help. NH did not tell respondent her mother was waiting. Again, complainant's theory regarding why this behavior was inappropriate is unclear because there is nothing inappropriate about a student

waiting 10 to 15 minutes for after class instruction for the student to get extra help. NH was not being held against her will. Respondent, here, was acting as one would hope a teacher would act. Complainant cited no policy or standard that would indicate otherwise.

LEGAL CONCLUSIONS

1. In an administrative hearing, the party asserting the affirmative of an issue bears the burden of proof. (*Southern Cal. Jockey Club v. Cal. Horse Racing Board* (1950) 36 Cal.2d 167, 177.)

Complainant has the burden of proof with respect to the charges in the accusation. Complainant is required to prove cause for discipline of a teaching permit by "clear and convincing proof to a reasonable certainty." (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

Applicable Statutes

2. Education Code section 44421 provides 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.

3. Education Code section 44345 sets forth specific categories upon which the Commission may deny an application for the issuance of a credential.

Cause Does Not Exist to Impose Discipline Against Respondent's Certificate

4. Complainant alleges that cause exists to discipline respondent's certificate under four different categories: unprofessional conduct, immoral conduct, evident unfitness for service, and moral turpitude. These causes are analyzed in the order presented in the pleading.

5. Complainant alleges in the First Cause for Discipline unprofessional conduct pursuant to Section 44421. (Ed. Code, § 44421.) This section authorizes the Commission to impose discipline for unprofessional conduct. It does not, however, define unprofessional conduct. In her trial brief, complainant cites the court of appeal's decision in *Board of Education v. Swan* (1953) 41 Cal.2d 546, 553 for a definition. The court in that decision gives this definition of unprofessional conduct: "[u]nprofessional conduct is 'conduct that violates the rules or ethical code of a profession or is unbecoming a member of a profession in good standing.'" (*Swan, Id.*) (Also, see for guidance regarding the meaning of unprofessional conduct, *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, at p. 575.)

Thus, for purposes of this matter, any conclusion regarding unprofessional conduct requires a finding that respondent either violated laws governing the teaching profession based on the other causes for discipline or denial as discussed immediately below or acted unbecoming of a member of his profession in good standing. Neither has been established in this case.

6. In the Second Cause for Discipline, complainant alleges that respondent committed acts, or an act, of immoral conduct subjecting his certificate to disciplinary action. (Ed. Code, § 44421.)

"Immoral conduct," pursuant to sections 44932, subdivision (a)(1), and 44939,⁶ has been defined to mean conduct that is 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. It is sometimes used 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.) Immoral conduct can be construed according to common usage. "The term 'immoral' has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare." (*Palo Verde Unified School District of Riverside v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

Complainant did not prove by clear and convincing evidence, and consistent with the definitions of immoral conduct in the decisional law, that respondent engaged in immoral conduct, as found above.

⁶ These sections of the Education Code apply to dismissal actions against credentialed teachers.

7. In the Third Cause for Discipline complainant alleges that respondent is evidently unfit to serve as a teacher pursuant to Section 44421, and discipline against his certificate should be imposed as a result. (Ed. Code, § 44421.) "Evident unfitness to serve" . . . properly means "clearly not fit, not adapted to or unsuitable . . . ordinarily by reasons of temperamental defects or inadequacies." (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th1429, at p. 1444, citations omitted.)

Complainant did not prove by clear and convincing evidence that respondent has a temperamental defect that makes him evidently unfit to serve as a teacher. Cause thus does not exist to find that he is evidently unfit to serve as a teacher.

8. In the Fourth Cause for Discipline, complainant alleges that respondent committed an act or acts of moral turpitude that warrant the imposition of discipline because he inappropriately touched students. (Ed. Code, § 44435, subd. (e).)

Complainant did not prove by clear and convincing evidence that respondent inappropriately touched students based on the above findings. Cause thus does not exist to find that respondent engaged in conduct involving moral turpitude.

Cause Does Not Exist to Deny Respondent's Application for a Credential

9. The Commission may deny the application of a person who commits acts of moral turpitude. (§§ 44421, 44345, subd. (e).) Complainant alleges that respondent's application for a credential should be denied because respondent engaged in acts of moral turpitude when he inappropriately touched students in a way that made them feel uncomfortable.

For the reasons found above, cause does not exist to deny respondent's application under section 44345, subdivision (e), on the basis he committed acts of moral turpitude. As found above respondent did not inappropriately touch students and did not engage in any acts of moral turpitude.

Other Matters

10. Complainant did not prove that respondent engaged in multiple acts of wrongdoing or misconduct, that his conduct significantly harmed a child, that he showed indifference towards the consequences of his action, or that he ignored warnings for similar conduct from a reliable source.

11. Because cause does not exist to impose discipline against respondent's certificate or deny respondent's application for a credential, it is not necessary to address the factors detailed in California Code of Regulations, title 5, section 80300, and *Morrison v. State Bd. of Education* (1969) 1 Cal.3d 214, p. 235.

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ORDER

The accusation and statement of issues against Rahmin Buckman are dismissed. Upon proof of his compliance with all other requirements, respondent's application for a Clear Single Subject Teaching Credential, Added Authorization in Mathematics, shall be granted.

DATE: August 3, 2023


Abraham M. Levy (Aug 3, 2023 08:04 PDT)

ABRHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings