

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

In the Matter of the Accusation Against:

RAUL MARTIN, Respondent

Case No. 2-196071450

OAH No. 2022050526

PROPOSED DECISION

Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on July 25 and 26, and August 1, 2022, from Sacramento, California.

Jeff Stone, Deputy Attorney General, represented complainant Mary Vixie Sandy, Ed.D. (complainant), Executive Director of the California Commission on Teacher Credentialing (CTC or Commission).

Joshua F. Richtel, Attorney at Law, represented Raul Martin (respondent) who was present.

Evidence was received, the record closed, and the matter submitted for decision on August 1, 2022.

FACTUAL FINDINGS

Background and Jurisdictional Matters

1. On May 5, 2003, the Commission issued a Certificate of Clearance to respondent, valid until June 1, 2008. On May 14, 2004, the Commission issued a Preliminary Single Subject Teaching Credential to respondent, valid until June 1, 2009. On March 26, 2009, the Commission issued a Clear Single Subject Teaching Credential to respondent, which was in full force and effect at all times relevant to the charges, and will expire on April 1, 2024, unless renewed or revoked.

2. On February 15, 2022, complainant, acting in her official capacity, signed and thereafter filed the accusation in this matter. Complainant seeks to revoke all credentials, certificates, and authorizations issued to respondent, based on allegations that he engaged in conduct with high school students that was unprofessional, immoral, and involved moral turpitude, and that his conduct displayed evident unfitness for service. Respondent timely filed a notice of defense, and this hearing followed.

Complainant's Evidence

TESTIMONY OF STEPHANIE GIANNINI

3. Stephanie Giannini is employed as a special investigator for the Commission. She conducted an investigation of this matter, including interviewing witnesses and gathering documents and written statements. She testified regarding her investigation in this matter, including interviews of the witnesses AL, EA, and AS, whose testimony is summarized below.

TESTIMONY AND WRITTEN STATEMENT OF AL

4. AL is a young woman who attended Central High School East (Central High East) in Fresno during 2013 through 2017. During her sophomore year, she was a student in respondent's world history class. She was also in respondent's class during her junior year and during summer school after her junior year. During her senior year, she served in respondent's class as a teacher's assistant (TA).

5. During her sophomore year, AL thought respondent was a friendly teacher. He would sometimes touch students on their shoulders, including hers. During her junior year, respondent started sending her messages on Instagram and Snapchat. Respondent would confirm his identity during electronic communications by asking who had sent her the message.

6. During her junior year, a male student asked AL if respondent made her feel uncomfortable. The male student told AL to "lure" respondent. AL did not initially agree to participate, then decided to send messages to respondent to see how he responded.

7. During AL's junior year, on March 31, 2016, late at night, respondent sent AL a Snapchat voice recording in which he said her middle name. AL had asked him to do so a few moments earlier so she could confirm it was respondent. AL recognized respondent's voice on the recording. Respondent sent the voice recording on a Snapchat account with the username or "handle," "Cerilloramirez9." One of AL's female friends was present with her and took a picture of the Snapchat message on her phone. Respondent also used other Snapchat account handles, including "Tin3535" and "Rawool15."

8. Approximately one hour after receiving respondent's voice recording on Snapchat, AL received a photograph from the "Cerrilloramirez9" Snapchat handle. The photograph was too dark for AL to see, so she asked the sender to send it again. Shortly thereafter, she received a photograph of a penis through the same Snapchat account. The picture appeared for approximately three seconds. A Snapchat sender can control how long a picture will appear to the recipient before going blank.

9. AL did not save or hold the picture in place because Snapchat notifies a sender if the recipient saves or holds a picture, and AL did not want that notice sent to respondent. AL's friend who had photographed the earlier Snapchat message with the voice message was also present. AL's friend did not take a picture of it.

10. AL considered making a complaint with the school about respondent, but she did not want to deal with what she expected to be the repercussions of doing so. She knew of another female student who had made a complaint against a teacher and observed that the other student had experienced a lot of social repercussions including rumors among students. AL did not want to go through something similar.

11. AL enrolled in and attended summer school in respondent's geography class after this incident. She felt "kind of weird" about going to his class, but other students were present and summer school is a fairly short period of time.

12. Respondent continued to contact AL through social media during the summer school session, though not while in class. He put his hand on her shoulder during summer school class at least five times. Respondent gave AL an "A" in the class, which AL feels she "definitely did not deserve" because she did not understand the material.

13. During her senior year, AL served as a TA in respondent's class. She applied for the position because she knew respondent would accept her as his TA. She was worried in the back of her mind about working for respondent, but felt she was safe because they would be in class in front of other students.

14. During the time AL was serving as respondent's TA, he started hugging her "hello and goodbye." Respondent would sometimes put his hand on her lower back during a hug. This would give AL "a sinking feeling" in her stomach.

15. Also during the time AL was serving as respondent's TA, he would sometimes overhear AL and her friends talking about money issues, including that AL needed \$30 to pay the Department of Motor Vehicles (DMV) to re-take a test. Respondent, on his own initiative, gave her the \$30 so she could pay the DMV.

16. On one occasion while working as a TA, AL was alone in the classroom with respondent for a short time. On their way out of the classroom, respondent hugged AL and, while doing so, grabbed her buttock with his right hand. Shortly afterward, respondent sent a text message to AL stating "that felt nice." AL does not remember whether she responded to the text message. AL did not say anything to anyone about the incident because she did not want to draw attention to herself.

17. During AL's senior year in high school, respondent sent her a Snapchat message that they could eat lunch together at his house when his wife was not present. Respondent told AL that he and his wife were not having sex, and he was sexually frustrated. It seemed to AL that respondent wanted to have a physical relationship with AL.

18. After AL graduated from high school, respondent frequently contacted her on social media. One night respondent contacted AL by social media and asked

her what she was doing. AL told respondent she was at Save Mart running an errand for her mother. Shortly thereafter, respondent arrived in the Save Mart parking lot. Even though AL had a “sinking feeling” in her stomach, she made conversation with respondent. It ended when respondent said he wanted to kiss her, then kissed her on the lips. AL did not reciprocate. She was “shocked” by respondent’s behavior. She went to her car and started crying. She drove to her mother’s house and composed herself before going inside.¹

19. AL was motivated to come forward by the fact that respondent had kissed her in the parking lot, and that she had younger sisters and female cousins who would be attending the high school where respondent was then teaching.

20. The first authority figure AL contacted was a “cop” at Walmart. He was an elderly man who “looked easy to talk to.” AL explained her situation, and he gave her a law enforcement phone number to call. She called the number, and two police officers came to her apartment later that day and took a statement from her. AL also posted a public message on Twitter stating her account of how respondent had behaved toward her during her high school years.

21. AL was interviewed at different times by police officers and the Commission investigator. AL did not tell either the police officers or Commission investigator that respondent had kissed her in the Save Mart parking lot. AL felt it was

¹ This account is included only to explain why AL reported respondent’s conduct. It is not alleged in the accusation, nor is it considered as a basis for discipline.

important to tell what respondent did while she was a student, and not what he did after she had graduated and had reached adulthood.

TESTIMONY OF EA

22. EA is a young woman who attended Central High East. She was in respondent's history class during her junior year (2016–17) and served as respondent's TA during her senior year (2017–18). When she was in respondent's history class, she noticed that respondent was more friendly with the girls than with the boys. AL was respondent's TA while EA was a junior in his history class.

23. During her junior year, respondent touched her shoulders with his hands when he came near during class. At first, it seemed like he was a "cool teacher" and that she was a "cool student."

24. EA had social media accounts on Twitter, Snapchat, and Instagram. A couple of months into her junior year, EA noticed that respondent "added" her and started following her on Twitter. Respondent sent her a message on Twitter and introduced himself by saying "hola chica," which translated from Spanish to English means "hello girl." Respondent also started to follow EA on Snapchat, which allows a person to send and post written messages and pictures. Respondent's Twitter handle was "Raulgol_[a number]." He used the "TinTin35" Snapchat handle.

25. None of respondent's social media communications with EA were school related. For example, respondent asked EA for her personal telephone number on Snapchat. She responded by giving him her telephone number but does "not know why" she did so. He also commented on pictures she had posted on Instagram, by posting a picture of a face with hearts in place of the eyes.

26. Respondent messaged EA on Snapchat in the late-night hours. On one occasion around the midpoint of her junior year, at approximately 10:00 or 11:00 p.m., EA received a Snapchat from the "TinTin35" handle with a photograph of a penis and a written message that said, "you make me hard." EA sent a written response asking, "where's your wife?" The response she received from the "TinTin35" handle was, "she's sleeping and would not want to anyway." To EA's knowledge, respondent changed his Snapchat handle twice after this incident.

27. EA cannot recall whether the Snapchat picture of the penis was on a timer. She viewed the picture for several seconds and did not save it. She was embarrassed to have it on her phone. EA felt disgusted and confused. She wondered why respondent sent her the picture because she had never done anything to suggest she wanted anything like this.

28. Respondent had previously told EA in Snapchat conversations that his marriage was not so good and that his wife "would not please him in certain ways." They also communicated about this a few times through cell phone text messages, but respondent told EA he did not want to communicate with text messages because they went through his daughter's iPad, and he did not want his wife to see the messages.

29. All the Snapchat text messages from respondent would disappear after she exited the conversation. She did not save them because she did not want respondent to see that she was saving the messages. She was still his student and was concerned he might think she was saving them to use against him, and that this could negatively affect her grades in his class.

30. EA thought about reporting the incident to the school. However, another student, AS, had complained to the school about respondent and EA noticed that lots

of rumors about AS started to circulate at school. EA did not feel like the school would have taken action to terminate respondent even if she had shared her information. On balance, EA thought it was not worth reporting the incident to the school. She did not want to "ruin" her remaining time in high school.

31. During her senior year, EA volunteered to serve as respondent's TA. She had already decided she was not going to report his behavior to the school. She also knew that he knew she had "a lot on him" from her junior year. She decided to use this to her advantage. For example, so long as she responded to his social media communications, respondent would mark her present if she missed class as a TA. If she did not respond, he would mark her as absent.

32. During her senior year, respondent continued to send EA Snapchat messages about his wife. He would also send EA pictures of her own neighborhood with a message stating something like, "I'm nearby, let's meet up." Respondent sent these messages after school hours.

33. EA's impression from respondent's messages was that he wanted to meet and have sex with her. This seemed especially clear to her when respondent sent her messages about how his wife was not "pleasing him."

34. EA continued to communicate with respondent through social media and cell phone text messages until her first year of college in 2018. EA's last message to respondent was a text message stating that he was "disgusting" and that he should think about his daughter and wife. Respondent replied, "I hope I didn't scare you off." EA deleted all the communications from her phone because she was starting her "young adult life."

35. Approximately two years ago, EA saw AL's public Twitter post in which she described respondent's conduct. EA contacted AL to let her know she was not alone. EA and AL then discussed privately with each other how respondent had behaved toward them.

TESTIMONY OF AS

36. AS is a young woman who graduated from Central High East in 2018. She was a student in respondent's history class during the second semester of her junior year, beginning in January 2017.

37. During class, respondent touched AS on her shoulders approximately three or four times and touched her hair two or three times. Respondent would usually put one hand on her shoulder while he was talking to her. AS cannot estimate how long he would keep his hand on her shoulder, because "it felt like forever."

38. The first time respondent touched her hair, he grabbed and tossed her hair up from behind, and told AS he liked her hair and that it was very soft. She did not like that he touched her hair. The second time respondent touched her hair, AS told him to "stop touching my hair."

39. AS noticed that respondent gave high grades to girls in the class who responded favorably to him. Respondent gave AS a high grade on a project she did not complete. After AS told respondent not to touch her hair, he gave her a zero out of 100 on her next assignment. AS then started "ranting" on Twitter, stating that she could not believe respondent was giving her zeros because she had "told him to leave me alone."

40. Respondent obtained AS's cell phone number from her. She was a yearbook photographer and had photographs of soccer players he coached. Respondent insisted she send him the pictures by text message. AS told respondent she could send the photographs through their school email accounts, but he wanted her to send them via text message. AS complied.

41. In March 2017, respondent and AS exchanged cell phone text messages regarding AS's request that he grade her notebook. The text messages are as follows:

AS: SO disappointed in you. You forgot to grade my notebook, even with my remind ... [Thumbs down emoji]

Respondent: Haha[,] I'll get you[,] Make it worthwhile[,]

AS: NOT cool

Respondent: I was still salty [meaning, insulted] over your staff comment [on Twitter.]

AS: HAHAAH[,] THAT DOESN'T IMPLY [sic] TO YOU[,] IT'S THE CRAPPY VPS[,]

Respondent: I thought of you just a little while ago too[,]

Oh okay[,] I like having you actually[,] You make the day better until fifth [period.]

AS: just grade my notebook PLEASE

Respondent: Then it all goes bad

AS: and I know ... I'm great

Respondent: Wow

AS: grade?? my?? notebook??

Respondent: Yes will do tomorrow morning [short gif/film clip of Jon Stewart showing exasperation]

AS: YOU'RE NOT FUNNY omg[.] [thumbs up emoji]

Respondent: Promise

AS: and okay thanks

Respondent: Got you girl.

42. AS realized respondent had been reading her Twitter posts, based on his comment in the text message that he was feeling "salty" about her Twitter comments. She kept her Twitter on a public setting, meaning that people can follow her tweets, but removed her tweets regarding the school staff because she did not want respondent to see these.

43. In April 2017, respondent told AS and one of her classmates to put their cell phones away in class. AS asked why, because in her observation respondent generally did not seem to care when girls had their phones out in class. Respondent told her "because I said so" and took her phone to his desk. AS felt herself start to cry out of frustration, and falsely told respondent she needed to go to a yearbook meeting. She took her phone, left the classroom, and walked to her car in the parking lot. Shortly thereafter AS received a telephone call from her mother. Respondent had called the school office, and the school had called AS's mother.

44. That night AS spoke with her mother about her frustrations with respondent. The next day, AS went to the school principal, who brought her to the vice principal's office. She told the vice principal that respondent had behaved inappropriately with girls, and that he had touched her shoulders and hair. AS also showed the vice principal the thread of text messages between her and respondent regarding the need for him to grade her notebook. AS was "crying really hard" as she described these matters.

45. The next day, the principal called her to the office and thanked her for coming forward. The following Monday she received a new class schedule, placing her in a new class with one month remaining in the school year. For summer school, she was placed in a class taught by respondent's brother. Respondent would come into the class most every day. This made AS uncomfortable, so she would get up and go to the bathroom.

46. AS felt like the school was not doing anything about the situation. She did not come forward sooner because she was a 16-year-old girl going to a school where, to her understanding, other teachers had been reported. She did not think the school would do anything meaningful about her situation.

47. Approximately two years after AS graduated, she saw AL's Twitter posts about respondent. She then reached out to AL on Twitter.

LETTERS OF REPRIMAND

48. On April 6, 2017, Central Unified School District (the District) issued a formal letter of reprimand to respondent based on his behavior toward students, including AS, as outlined in her testimony above. The letter of reprimand directed respondent to, among other things, (1) maintain professional standards especially

when interacting with students, (2) model appropriate professional behavior, (3) cease and desist any communication with students by phone, text messages, or any social media, (4) create and maintain a positive learning environment to enhance student learning, (5) always keep the door open during non-instructional time when students are present and refrain from spending time alone with students, (6) maintain professional and ethical standards at all times, as outlined by District Board Policies and Bylaws.

49. On April 27, 2018, the District issued a formal letter of reprimand to respondent based on his behavior toward students. Specifically, during the 2017–18 soccer season, respondent admitted to using foul language in the presence of student-athletes. In addition, respondent admitted to using unprofessional vernacular in text messages to students, including terms such as “Bro” and “Foo.”

Respondent’s Evidence

RESPONDENT’S TESTIMONY AND WRITTEN RESPONSE TO CTC ALLEGATIONS

50. Respondent testified at hearing and submitted a written statement dated March 1, 2021, addressed to the Commission, and signed by respondent under penalty of perjury. Respondent’s testimony and his written statement in response to the Commission’s allegations are summarized below.

51. Respondent was employed by the District for 16 years. He taught social studies courses, including world geography, world history, and US history. He also served as a coach for the boys’ soccer team.

Student AL

52. AL was in respondent's world history class. She was willing to work but seemed distracted at different times. She sought his advice and emotional support regarding social situations, academic issues, various life decisions, and her goals and aspirations. Respondent feels he served as a mentor to AL. Respondent also had mentor/mentee relationships with other students.

53. There was a time AL was living between two households—her mother's home and her father's home, with respective stepparents. It appeared to respondent that "chaos at home" made it difficult for AL to stay focused in the classroom. To his observation, AL frequently displayed "feelings of anxiety, defensiveness, and risky behavior." Respondent "was concerned for her safety and wellbeing and ... offered to help be supportive through these difficult times." Respondent believes "this could have been misinterpreted" by AL.

54. Because of AL's "difficult homelife, and in case of emergency, [respondent] gave AL [his] cell phone number." They "exchanged text messages that were supportive, friendly, but professional in nature." Respondent believes AL "misconstrued [his] availability to her."

55. Respondent reported some of his concerns to the secretary at the student counseling office and suggested that AL should be called in for counseling. AL later told respondent that she had been called in for counseling.

56. Respondent did not have the Snapchat handle "CerrilloRamirez9." He did not send AL Snapchat messages from this handle. He did not send a Snapchat voice message to AL saying her middle name, nor did he send any picture to AL through Snapchat.

57. Respondent never complained about his wife to AL. He did, however, tell AL about things that he and his wife had done, such as where they went on a trip.

58. Respondent was never in a room alone with AL. Respondent never hugged AL, nor did he ever put his hand on AL's buttocks. Respondent never met or kissed AL in a Save Mart parking lot.

59. Respondent maintained a relationship with AL after she graduated from high school. She sent him Snapchat pictures of her children and herself. AL also shared that her younger sister would be playing youth soccer. Respondent advised AL what type of equipment to purchase for soccer.

60. In mid to late 2019, AL asked respondent through Snapchat for financial help to purchase a car. Respondent told her "no." Respondent had previously given AL \$30 for her to retake a DMV test.

61. In June 2020, AL asked respondent for financial help to purchase a home. She had a lien of \$1,400 that she needed to pay before she would be able to start the home purchase process. Respondent told AL he would not be able to help pay the lien.

62. Within a few weeks after respondent refused to provide financial assistance to AL, she posted her Twitter comments about his behavior toward her. One of respondent's colleagues in the sports program at Central High School told him that AL had posted comments on Twitter about him. Respondent believes AL made the allegations against him because he refused her request for financial assistance to purchase a car and a home.

Student EA

63. Respondent does not know where EA lives. He never sent her a picture of his penis. He does not recall ever sending a text message to EA stating, "I hope I didn't scare you off."

Student AS

64. AS "falsely claimed" respondent touched her hair. Respondent never touched AS's hair, and she never told him not to do so. Respondent believes AS made false allegations against him because she was "angry" at him. He had "reprimanded her for not following in-class school procedures." Specifically, respondent had asked AS to put away her cell phone because she was showing videos to other students while in class. She continued to show the video, thereby "causing a disruption to the learning environment." AS "consistently disrupted the learning environment by using electronics, eating, chatting, and other things." Respondent "used various disciplinary measures including taking away electronics and verbal reprimands." He also "contacted her mother regarding her disruptive behavior and dishonesty." AS "became extremely upset and complained [that respondent] touched her hair when [he] did not do so." Respondent feels as though AS "launched the complaint" to "get back" at him for calling her mother and reprimanding her.

65. A former student athlete informed respondent that AS had posted Twitter comments about his behavior. It was these Twitter comments that respondent referenced when he said in his text message exchange with AS that he was still "feeling salty."

66. Respondent wrote in his text message to AS, "make it worthwhile" because he was not sure whether she had turned in her notebook. At the time of their

text message exchange, respondent was not at the school, where he had some student notebooks he needed to grade. Respondent was concerned AS would respond negatively to him if he said he had not yet seen her notebook.

67. Respondent wrote in the string of message to AS, "I like having you actually" "You make my day better until fifth." By these messages respondent meant to convey that she was good to have in class because of her participation.

68. The text messages between AS and respondent as presented and described during her testimony appears to be missing some entries, such that it is incomplete and out of context. For example, text message entries from AS are missing immediately before each of respondent's three entries where he states, "I thought of you just a little while ago too" "Oh okay" and "I like having you actually." AS had posted messages before each of those three statements that made respondent's statements appropriate in context.

Letters of Reprimand

69. Respondent acknowledged that the District issued formal letters of reprimand to him on April 6, 2017, regarding his text messages with AS, and April 27, 2018, regarding "foul language" and "unprofessional vernacular." Regarding the 2018 letter of reprimand, respondent acknowledged in his testimony that he used the word "crap" around members of the soccer team, and that he had used the words "bro" and "foo" in a text message to a member of the soccer team. "Bro" and "foo" are vernacular for the words brother and fool.

70. Respondent also acknowledged in his testimony that he had been admonished in the letters of reprimand not to engage in social media with students. Respondent felt he needed to continue using cell phone text messages to

communicate with students. Respondent did not always have access to the school email system. For example, sometimes when he was off campus he did not have email access, and two or three times per month the school email system would be unavailable for a few days. Respondent estimates that he used the school email system for approximately 60 percent of his communications with students, and some form of social media for approximately 40 percent of the communications. He used Twitter, Instagram, and Snapchat at various times in communicating with students.

Decision to Resign from District

71. In June 2020, respondent met with the District assistant superintendent, who asked respondent if he wished to resign. Respondent felt that the assistant superintendent had made up his mind regarding the complaints about him. In light of the assistant superintendent's expressed views, respondent chose to resign.

72. Respondent is now employed as an instructional coach for an online high school. In this capacity he helps other teachers with their teaching practices.

LETTERS OF SUPPORT AND NOTES OF APPRECIATION

73. Respondent submitted six letters of support from colleagues, friends, and a former student athlete. Two of the letters are from the same person. Respondent testified that he spoke with each of the authors regarding the allegations against him. The letters taken together speak highly of respondent's personal and professional ethics, and his commitment to teaching and coaching soccer.

74. Respondent also submitted five short notes of appreciation from former students. Four of the notes are dated 2011 to 2019, and one is undated. None of the notes acknowledge any allegations against respondent.

Witness Credibility and Findings

75. Witnesses AL, EA, and AS were forthright in their demeanor while testifying. They clearly perceived and recalled respondent's conduct toward them in person and on social media. There is no credible evidence that any of them are motivated by bias or a desire to fabricate. Rather, each of the witnesses, AL, EA, and AS, were motivated to tell the truth, and did so with poise and courage. Based on the evidence as a whole and factors set forth in Evidence Code section 780, witnesses AL, EA, and AS provided credible testimony.

76. Respondent's testimony and written statement are, taken as a whole, insincere and unconvincing. He attempted to establish that he was motivated by the best interests of his students. The evidence does not support this portrayal of his conduct. For example, respondent attempted to establish that AL "misinterpreted" and "misconstrued" his supportive conduct, and that she made false allegations against him because he refused to provide more financial help. The evidence establishes AL correctly understood respondent's social media communications and physical contact with her as a series of sexual advances.

77. Respondent also sought to portray AS as defiant and asserted that she made false allegations that he touched her hair because she was angry at him for reprimanding her and contacting her mother. While it is clear that AS was angry at respondent, it was substantially because he in fact touched her hair and graded her unfairly when she told him not to do so.

78. Respondent's testimony appears to be motivated purely by a desire to exonerate himself. He flatly denied the allegations of misconduct toward AL, EA, and AS. However, based on the factors set forth in Evidence Code section 780, respondent

was not a credible witness. Moreover, his account of events is so at odds with the clear and convincing evidence as to lack any credibility on the material issues in this matter.

79. Respondent also postulated in argument that someone other than respondent could have sent the Snapchat pictures of a penis to AL and EA. This is unconvincing. AL and EA had received numerous social media communications from respondent and were familiar with the names he used. While it is theoretically possible that someone else could have posed as respondent, based on the evidence presented such a scenario is more fanciful than real.

80. Based on the evidence as a whole, including the testimony provided by AL, EA, and AS, complainant established the allegations alleged in the Accusation by clear and convincing evidence.

Morrison Factors

81. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, the California Supreme Court concluded that a teaching credential cannot be disciplined for immoral conduct, unprofessional conduct, or conduct involving moral turpitude “unless that conduct indicates that the [educator] is unfit to teach.” (*Id.* at p. 229.) The Court outlined factors to consider when determining whether an educator’s conduct demonstrates unfitness to teach, which have been codified in California Code of Regulations, title 5, section 80302, subdivision (a). Those factors are: (1) the likelihood that the conduct may have adversely affected students or fellow teachers, and the degree of such adversity is 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

82. Respondent's social media communications and physical contact with students adversely affected their high school experiences.

PROXIMITY OR REMOTENESS IN TIME

83. Respondent's misconduct occurred during approximately 2014 to 2018.

TYPES OF CREDENTIALS HELD AND SOUGHT

84. Respondent holds a Clear Single Subject Teaching Credential.

EXTENUATING OR AGGRAVATING CIRCUMSTANCES

85. 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 did not present significant mitigating evidence.

86. California Code of Regulations, title 5, section 80300, subdivision (b), lists aggravating factors, the presence of which indicates a greater degree of discipline is necessary to protect students and the teaching profession. Aggravating factors include

misconduct that evidences: (1) multiple wrongful acts or a pattern of misconduct; (2) bad faith or dishonesty; (3) significant harm to children entrusted to respondent's care and/or harm to the educational system; (4) indifference toward the consequences of the misconduct; and (5) misconduct that occurred when respondent had prior notice or reprimands for similar misconduct. Respondent committed multiple wrongful acts in his conduct toward students and engaged in a pattern of abusive and manipulative conduct toward female students. Respondent's misconduct harmed the students entrusted to his care and compromised the integrity of the educational system. By his continued misconduct, respondent demonstrated indifference toward the consequences for the students and the educational system. Some of respondent's social media communications with students occurred after he had received a letter of reprimand directing him not to interact with students on social media. On balance, the aggravating circumstances far outweigh any extenuating or mitigating factors.

PRAISEWORTHINESS OR BLAMEWORTHINESS OF MOTIVES RESULTING IN THE MISCONDUCT

87. The clear and convincing evidence is that respondent was motivated to develop physical sexual relationships with students. This is entirely blameworthy. Respondent's testimony that he was acting out of concern for the welfare of his students is unconvincing, for the reasons stated above in the credibility findings.

LIKELIHOOD OF RECURRENCE

88. Respondent persisted in his misconduct over a period of years. He has not demonstrated any rehabilitation. It is therefore likely that respondent would engage in similar misconduct in the future if he were allowed to retain a teaching credential.

**EXTENT TO WHICH DISCIPLINARY ACTION MAY INFLICT AN ADVERSE IMPACT
OR CHILLING EFFECT ON CONSTITUTIONAL RIGHTS OF PERSONS INVOLVED OR
OTHER TEACHERS**

89. 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

90. Respondent's misconduct was publicized on social media.

Analysis

91. Based on the Factual Findings as a whole, and considering all the *Morrison* factors, complainant established by clear and convincing evidence that respondent is unfit to teach. For all the foregoing reasons, it would be inconsistent with the public interest to allow respondent to retain his existing credentials.

LEGAL CONCLUSIONS

1. Complainant has the burden of proving the allegations in the accusation by clear and convincing evidence. In an administrative proceeding in which a licensing agency seeks the suspension or revocation of an existing, professional license, the standard of proof is clear and convincing proof to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 583.) 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.)

Applicable Statutes

2. Education Code section 44421 states:

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 states in part:

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

[§] ... [§]

(e) Has committed any act involving moral turpitude.

[§] ... [§]

Any denial pursuant to subdivisions (a) to (e), inclusive, shall be based upon reasons related to the applicant's fitness to teach

Causes for Discipline

IMMORAL AND UNPROFESSIONAL CONDUCT

4. The California Supreme Court has recognized that the terms "immoral conduct" and "unprofessional conduct" substantially overlap one another, such that conduct that constitutes one often includes the other. (*Morrison v. State Bd. of Ed.*, *supra*, 1 Cal.3d at p. 221, fn. 9.) It is also true that the terms "immoral conduct" and "unprofessional conduct" are so general that they must be given meaning in relation to the particular profession involved. Although a teacher may have committed an immoral act, unless it indicates his unfitness to teach, it is not an appropriate basis for his discharge. (*Id.* at p. 220.) The determinative test of a charge of immoral or unprofessional conduct is fitness to teach, which is a question of ultimate fact. (*Bd. of Education v. Jack M.* (1977) 10 Cal.3d 691.)

5. The term "immoral" has been defined generally as that which 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. (*Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740.) "Unprofessional conduct" includes "'that which violates the rules or 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.)

6. Based on the Factual Findings and Legal Conclusions as a whole, respondent engaged in immoral and unprofessional conduct with students demonstrating that he is unfit to teach. Accordingly, cause exists to discipline

respondent's teaching credential for immoral and unprofessional conduct pursuant to Education Code section 44421.

MORAL TURPITUDE

7. "Moral turpitude" has been defined as "everything done contrary to justice, honesty, modesty or good morals." (*Rice v. Alcoholic Beverage Appeals Bd.* (1979) 89 Cal.App.3d 30, 36.) An act involves moral turpitude if it involves a serious breach of a duty owed to another or to society. (*In re Stuart K. Lesansky* (2001) 25 Cal.4th 11, 16.)

8. Based on the Factual Findings and Legal Conclusions as a whole, respondent committed acts of moral turpitude in his conduct with students, demonstrating that he is unfit to teach. Accordingly, cause exists to discipline respondent's teaching credential for conduct involving moral turpitude pursuant to Education Code section 44421, as it relates to Education Code section 44345, subdivision (e).

EVIDENT UNFITNESS FOR SERVICE

9. "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." (*Ibid.*)

10. Based on the Factual Findings and Legal Conclusions as a whole, respondent lacks the good judgment and fitness required of a teacher. The fact that he has not accepted responsibility for his actions further indicates that notice of his failure to meet professional standards is insufficient for him to reform his conduct. Accordingly, cause exists to discipline respondent's teaching credential for evident unfitness for service pursuant to Education Code section 44421.

ORDER

Respondent Raul Martin's Clear Single Subject Teaching Credential is hereby REVOKED.

DATE: August 29, 2022

Timothy Aspinwall

TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings