

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

**In the Matter of the First Amended Accusation Against:**

**JON PATRICK KELLER, Respondent.**

**Agency Case No. 2-118955714**

**and**

**In the Matter of the Statement of Issues Against**

**JON PATRICK KELLER, Respondent.**

**Agency Case No. 2-24606608**

**OAH No. 2021100139**

**PROPOSED DECISION**

Nana Chin, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 21 and 22, 2022.

Complainant Mary Vixie Sandy, Ed.D., Executive Director of the California Commission on Teacher Credentialing (Commission or CTC) was represented by Mario Cuahutle, Deputy Attorney General.

Respondent Jon Patrick Keller appeared and was represented by Amit Singh, Esq., Rothschild Wishek & Sands LLP.

On March 21, 2022, the ALJ ruled on motions in limine brought by Complainant and Respondent. Complainant moved to exclude JF's records from the CTC and the Alhambra Unified School District (District or Alhambra). The motion was granted as to the CTC records but was denied as to the District records. Respondent's motion requesting that paragraph 18 of the First Amended Accusation and Statement of Issues be stricken on the basis of estoppel was denied as the Committee's letter to Respondent did not constitute an adjudication. Respondent's second motion ordering JF to testify by videoconference was moot as JF intended and did testify by videoconference.

Testimony and documentary evidence was received. The record closed and the matter was submitted for decision on March 22, 2022.

## **SUMMARY**

Complainant seeks to revoke Respondent's teaching credentials and certification and deny his application for a teaching credential based on: (1) a single 1995 DUI conviction that had previously been disclosed to the Commission; and (2) conduct alleged to have occurred between 2016 and 2018. Many of the allegations contained in the Accusation were not established. Of the allegations that were established, Complainant failed to establish that they were grounds for discipline.

The evidence also established that Respondent currently holds a credential and had submitted the application for teaching credential in error. Accordingly, the First Amended Accusation and Statement of Issues are dismissed.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. The Commission is responsible for the credentialing of public school teachers, including issuing credentials and taking adverse action against applicants and credential holders. An "adverse action" is defined in California Code of Regulations, title 5, section 80300, subdivision (a), as "a denial, a private admonition, public reproof, suspension or a revocation of one or more credentials."

2. The CTC's Committee of Credentials (Committee) is responsible for investigating all alleged misconduct that may be cause for the CTC to take adverse action and the circumstances in mitigation and aggravation. (Ed. Code, § 44242.5, subd. (c).)

3. Respondent holds a Clear Single Subject Teaching Credential (Credential), with an authorization in Physical Education. The Credential was originally issued on June 10, 1995 and is scheduled to expire on June 1, 2025, unless renewed. (Exhibit 6 indicates that the Credential was originally issued on May 10, 2000, however, the License Certification in Exhibit 2, pp. A59, A61, A63, A65, A71 and A73 states that the Credential was originally issued on June 10, 1995.) Respondent also holds a Crosscultural, Language and Academic Development Certificate (Certificate), issued on February 21, 2008.

Respondent has previously held: (1) a Preliminary Five Year Single Subject Teaching Credential, valid from June 10, 1995, until July 1, 2000; (2) an Emergency 30-Day Substitute Teaching Permit (Permit), valid from September 1, 1992 until June 30, 1993, that was reissued on July 1, 1993 and expired on June 30, 1994; (3) an

Emergency Long Term Single Subject Teaching Permit, valid from September 1, 1994, until June 30, 1995; and (4) an Emergency Crosscultural, Language and Academic Development Certificate, valid from July 1, 2007 until August 1, 2008.

Before the incidents alleged herein, Respondent had no disciplinary history with his school district or the Commission.

4. The Committee initiated an investigation after the Alhambra Unified School District (District or Alhambra) notified the Commission that Respondent resigned from the District while allegations of misconduct were pending pursuant to Education Code section 44242.5, subdivision (b)(3).

5. During its January 15-17, 2020 meeting, the Committee found probable cause to recommend the revocation of Respondent's credentials and certifications based on: (1) allegations related to Respondent's conduct while employed at San Gabriel High School (San Gabriel) during the 2016 until 2018 school years; and (2) a February 29, 1996, misdemeanor conviction for violation Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol or drugs). The Committee notified Respondent of its finding on January 24, 2020, and Respondent timely appealed.

6. The Committee denied Respondent's request for reconsideration and Complainant filed the Accusation in her official capacity to initiate an adjudicatory hearing. Respondent requested a hearing on the merits by filing a Notice of Defense dated December 7, 2020.

7. On April 20, 2020, the CTC received an application for a Certificate of Clearance from Respondent. On June 28, 2021, Complainant filed a First Amended Accusation and Statement of Issues, Case Numbers 2-24606608 and 2-118955714,

(First Amended Accusation) alleging unprofessional conduct, immoral conduct, and acts of moral turpitude as grounds for discipline, and acts of moral turpitude as grounds for denial.

## **1996 Criminal Conviction**

8. On February 29, 1996, in the criminal proceeding entitled *The People of the State of California v. Jon Patrick Keller* (Super. Ct. Los Angeles County, 1996, No. 6GL00982), Respondent was convicted, on his plea of guilty, of one misdemeanor count of driving under the influence, in violation Vehicle Code section 23152, subdivision (a). The court found a factual basis for Respondent's plea, suspended imposition of sentence and placed Respondent on summary probation for three years with terms and conditions, which included completion of a three-month licensed first offender alcohol and other drug education and counseling program and the payment of fines, penalties and restitution.

9. The facts and circumstances underlying this conviction are that on January 28, 1996, Respondent was driving under the influence with a blood alcohol content of 0.11 percent.

10. Respondent had previously disclosed his 1996 conviction to the Commission. During its September 20-22, 2000 meeting, the Committee found that "[n]o clear relationship can be established between the acts or omissions alleged and fitness and competence. Therefore no further inquiry is warranted." (Exh. H.)

## **Sexual Harassment/Discrimination Allegations**

11. At all times relevant to the First Amended Accusation, Respondent was employed by the District as a certificated employee at San Gabriel. JF began her

employment at San Gabriel in 2016. JF was a teacher in the physical education (PE) department and the coach of the San Gabriel girls' basketball team. During the period JF was employed at San Gabriel, Respondent was serving as the Department chair (also referred to as Department head) of San Gabriel's PE Department.

### **TESTIMONY OF JF**

12. JF met Respondent in April or May of 2016. Respondent had been part of the District panel that interviewed her. After the interview, JF claims Respondent called her to let her know that the principal of San Gabriel would soon be calling to offer her a position at the school.

13. JF began working as a full-time PE teacher at San Gabriel in August 2016. Besides Respondent, there were two other teachers in the department her first year, Michelle Buchicchio and Carla Fujimoto. Both teachers were in offices close to hers.

14. JF's duties as a PE teacher required her to have daily interactions with Respondent. According to JF, Respondent almost immediately began giving her a level of attention he did not give to either Ms. Fujimoto or Ms. Buchicchio. Respondent would communicate with her daily by email, review her lesson plans and watch her classes. Though she was a new teacher, she did not have a lot of questions for respondent as she had Ms. Fujimoto and Ms. Buchicchio, "two experienced great teachers" to rely on.

15. JF admitted she engaged in personal communications with Respondent as they came from similar backgrounds in that they both played on basketball teams, coached and they both had had an interest in Division 1 basketball. Respondent, however, would take their common interests and make the communications "uncomfortable."

16. JF also had social interactions with Respondent outside the school grounds. On only one occasion was that interaction outside the normal colleague relationship. On that occasion, Respondent had come by her apartment after he had dropped off his children while she was outside. She was on a walk and her boyfriend at the time, "Trevor," called to tell her that Respondent had come by. When she came home, Respondent was there, having a beer with her boyfriend and appeared intoxicated.

17. When asked about other instances of harassment and discrimination, JF stated that Respondent would: (1) comment on the size of her breasts; (2) stare at her breasts; and (3) touch her inappropriately, on one occasion, slapping her on the butt as she walked out the door. PE attendant Eddie Mendez was present during the occasion and appeared "extremely caught off guard" by the incident. JF also stated Respondent gave her a bottle of vodka in a gift bag with a post-it saying "size matters."

18. When asked further about other inappropriate conduct by Respondent, JF claimed he would send texts and emails to her personal account containing sexual innuendos and more explicitly referring to toys in the bedroom.

19. JF and Respondent eventually had consensual sexual relations several times on school grounds and one time after she invited him to her home. JF stated she engaged in sexual relations with Respondent because she was "naïve." She had "just got an incredible job with an incredible District" and the job at the time "meant the world to [her]" and she "felt incredibly pressured" because she was not tenured. JF did not testify, as alleged in the First Amended Accusation, that Respondent "threaten[ed] her tenure if JF did not comply with his sexual advances." (Exh. 1, p. A47.)

20. JF claimed she ended their physical relationship in the fall of 2017. JF reportedly did not say anything to Respondent at the time as she did not think of it as a relationship and did not think she had to explain it to him. JF simply stopped going to the office early in the morning and responding to Respondent's texts and calls.

21. Despite her efforts to avoid Respondent, JF continued to receive an excessive number of emails and texts from Respondent. Afterwards, JF described Respondent as being "relentless" and claimed she actively tried to avoid Respondent though JF did admit, however, that three to four months after their physical relationship ended, she had a negative interaction with another coach at San Gabriel for which she sought Respondent's assistance.

22. According to JF, she did not make any attempt to report Respondent's behavior as she was "too scared," and it was "his word against [hers]."

23. In February 2018, the District placed JF on paid leave. JF was told she would not be offered tenure and would be non-reelected to her position. After she was released by the District, JF filed a civil suit against the District in June 2018. Many of the allegations JF appeared to have made in connection with the suit, as outlined in Exhibit 3, p. A87 and Exhibit 6, pp. A121, 123, were not repeated at the hearing.

24. The only evidence of many of the acts of harassment and discrimination alleged in the First Amended Accusation, which included "making inappropriate advances, making inappropriate sexual comments, touching her backside on several occasions, continuously and repeatedly threatening her tenure if JF did not comply with [Respondent's sexual advances], and engaged in sexual intercourse with JF on school premises," was JF's testimony. (Exh. 1.) None of the harassing texts or emails Respondent was alleged to have sent were offered into evidence and there was no



statement or testimony from any witness to Respondent's alleged misconduct. The validity of the allegations, therefore, relies solely on JF's credibility.

25. At the hearing, however, evidence of an incident that reflected negatively on JF's credibility was presented. Specifically, JF had volunteered at the Special Olympics in Long Beach. JF did not go to the event on the day she was scheduled. Instead, JF sent Ms. Fujimoto, the event coordinator, a text stating, "Trevor had been shot in a car in Hollywood." JF denied she had lied and that she had sent the text in order to avoid volunteering at the event. JF claimed she was experiencing a "mental health crisis." JF claimed she "accidentally" sent the text while she was dreaming. JF admitted she did not go to the event as "she didn't want to do it" and did not inform Ms. Fujimoto until later that afternoon that the text had been sent in error.

#### **TESTIMONY OF MICHELLE BUCHICCHIO**

26. Michele Buchicchio wrote a character reference letter on Respondent's behalf and testified at hearing. Her testimony was straightforward and direct.

27. Ms. Buchicchio was a PE teacher for the District for 33 years before she retired in 2017. Ms. Buchicchio has known Respondent since he was hired to teach PE and coach basketball at San Gabriel in 1998. Ms. Buchicchio worked with Respondent closely over the years and has been very impressed with Respondent as an educator on the occasions she observed him provide instruction to his students. His classes were inclusive, very innovative, fast-paced, and fun for students. Ms. Buchicchio was unaware of any complaints being filed against Respondent by students, parents or colleagues during the time they worked together.

28. Ms. Buchicchio was shocked by JF's allegations against Respondent. JF had been hired the year before Ms. Buchicchio retired. During the year they worked

together, Ms. Buchicchio often observed JF leaving her teaching area to go to Respondent's teaching area. At no time did she get the impression Respondent was forcing JF to go to his area. Based on her observations, she believed Respondent had taken JF "under his wing." Ms. Buchicchio did not find this behavior to be unusual as she would often observe Respondent mentoring both new teachers and student teachers.

### **TESTIMONY OF CARLA FUJIMOTO**

29. Carla Fujimoto wrote a letter in support and testified on Respondent's behalf. Ms. Fujimoto was a PE teacher with San Gabriel for 36 years before she retired in May 2020. Ms. Fujimoto is familiar with both Respondent and JF. Ms. Fujimoto worked with Respondent for approximately 20 years. In the last eight years they worked together, he was the department chair, and therefore her "boss." (During cross-examination, she later denied that Respondent's position as department chair made him her "boss.")

30. Ms. Fujimoto had many opportunities to observe Respondent teaching class and as department head. As an educator, Respondent was a popular teacher who was "very, very good" with students and made learning fun. As the department head, Respondent worked "really hard" to make the system work. Other than the complaints made by JF, she was not aware of any complaints made against Respondent by students, parents or other colleagues.

31. Ms. Fujimoto also worked with JF the two school years she was at San Gabriel. Ms. Fujimoto noted that JF had difficulty coping when things did not go the way she wanted. Though Ms. Fujimoto was aware JF had not been offered tenure, she had not known at the time that JF had accused Respondent of sexual harassment and

discrimination. Ms. Fujimoto was also unaware that Respondent resigned because of JF's accusation. According to Ms. Fujimoto, she was both surprised and not surprised by JF's accusation. She was not surprised because, based on her knowledge of JF's "personality, background and past employment," "there always seemed to be a problem." She was surprised by the accusation because she had never observed any untoward behavior by Respondent towards JF nor had JF ever complained to her about Respondent's behavior.

32. Ms. Fujimoto denied observing Respondent showing JF more attention by spending more time with her and denied observing JF leaving her teaching area to go to Respondent's teaching area.

33. Ms. Fujimoto was familiar with the incident involving JF and the Special Olympics. According to Ms. Fujimoto, she was officiating the Special Olympics, and approached JF about volunteering for the event. JF told her that she had helped out before at the Special Olympics and really loved doing it and wanted to work it again.

34. The morning JF was scheduled to work, Ms. Fujimoto received a text from JF stating that "Trevor" (JF's boyfriend) had been killed. She shared that information with the others and assigned another volunteer to work JF's post. JF sent her a text later that afternoon stating that it had simply been a bad dream. Ms. Fujimoto was appalled both by JF's texts and the ensuing drama. A number of people who were present at the event were also familiar with Trevor's father. The information Trevor had been killed was relayed to his father and it created "a mess." (Ms. Fujimoto later denied it was a "mess.")

35. Ms. Fujimoto believes Respondent should keep his credential. She considers him to be an outstanding teacher, dedicated and a great leader who loves what he does and gets long with both students and colleagues.

36. Ms. Fujimoto's testimony was somewhat confused and therefore less credible in that her recollection of events contradicted the recollection of others and her responses to questions during cross-examination contradicted her responses to questions during direct examination. Her testimony regarding the texts she received from JF the day JF was scheduled to volunteer at the Special Olympics, however, was credited in that her testimony is corroborated by JF's own testimony of the incident.

### **TESTIMONY OF DEBORA STONE**

37. Debora Stone, the principal of San Gabriel, testified at hearing. Principal Stone was a credible witness. Her responses to questions were thoughtful and measured and there was no indication Principal Stone held any personal animosity towards either Respondent or JF.

38. Principal Stone has been the principal of San Gabriel for seven years. Before becoming principal, she was employed by the District for 15 years. As the principal, she is responsible for maintaining a safe and secure campus. As part of her duties, Principal Stone oversees the high school's four offices, which include, Curriculum & Instruction, Counseling, Business & Activities and Student Support Services. She is assisted in her duties by five assistant principals.

39. According to Principal Stone, department chairs are responsible for training department members, building a master schedule, and advocating on behalf of their department. They do not have any supervisory roles over the members in their Department or conduct evaluations of teachers. Teacher evaluations are part of her

oversight duties. Though Principal Stone will take input from the department chairs when making decisions regarding tenure, she is the individual solely responsible for making tenure decisions. When making that decision to offer a teacher tenure, Principal Stone considers both the candidate's professionalism and whether the candidate is a good fit for the school.

40. Principal Stone is familiar with JF. JF was a teacher at San Gabriel who did not pass probation in her second year. Respondent had no impact on her decision not to offer JF tenure. Her decision was based on JF's work performance. JF had had incidents with students; complaints had been made about her by athletic directors from other schools; and JF would exhibit "elevated" or "escalated" behaviors. Principal Stone ultimately decided JF was not a good fit for the school and did not offer her tenure. Principal Stone was not aware that JF and Respondent had had a physical relationship until after JF was released from her employment.

41. Principal Stone also is familiar with Respondent. They had a working relationship while Respondent was at San Gabriel. Before JF brought the allegations against Respondent, Principal Stone had never received any complaint of Respondent harassing, discriminating or engaging in acts of retaliation against another colleague.

42. Principal Stone does recall an incident where she reached out while JF was a PE teacher at San Gabriel. JF shared that she was upset about something. When Principal Stone asked her what she was upset about, JF told her that she had received some upsetting text messages. Principal Stone asked her to share the messages with her and JF printed the messages out. The messages had been from Respondent and though she did not recall the exact messages, the general nature of the messages were that JF was a temporary employee and that she needed to "step up" and "pull her

weight” in the department, and that he had the ability to give that information to Principal Stone.

43. The text messages did not contain any sexual content and there was no indication there was a quid pro quo arrangement between Respondent and JF. The text messages were all related to Respondent’s performance as a PE teacher. Principal Stone, however, found the text messages to be improper and spoke with Respondent about them.

### **Respondent’s Testimony**

44. Respondent is currently employed as an admissions advisor for ENTITY Academy (Entity), an all-women academy that is focused on mentoring and coaching women to bridge the gap between men and women. Before working for Entity, Respondent worked for two years in the admissions department of Summit College, a private postsecondary school. The last time Respondent used his Credential was when he was employed by the District.

45. Respondent agreed with some of JF’s testimony but disagreed with the majority of her testimony. Respondent agreed that he first met JF when he was on the District panel that interviewed her. Respondent denied that he called her before she signed the contract with San Gabriel, noting that he had, in fact, recommended another individual, a friend of his, be hired for the position offered to JF.

46. Respondent was never JF’s supervisor. As the department chair, his duties were primarily administrative and though he supported probationary teachers, he did not evaluate any of the teachers and was not responsible for any employment decisions.

47. Respondent agreed he had more interactions with JF than the other two teachers in his department. Respondent explained his level of attention was based on the facts: (1) JF was a new teacher and, when compared to Ms. Buchicchio and Ms. Fujimoto, she had a lot of learning to do; and (2) JF had asked for him to critique her coaching because she had never before coached high school basketball. He also agreed he visited JF's classes but claimed JF visited his classes far more frequently and that he had to speak to her about leaving her class.

48. According to Respondent, his relationship with JF began as a working relationship and became what he believed to be a close friendship. As JF had expressed a desire to grow as a coach, Respondent offered to take her to the college basketball games and practices of coaches with whom he was close. JF seemed to be very grateful for the opportunity. When he took her to these events, there were always other people with them, including, on one occasion, JF's boyfriend.

49. Respondent admitted to gifting JF the bottle of alcohol with the post-it note on it for her birthday. Before that occasion, JF had been at his house for a poker event and JF had expressed disappointment with the small amount of vodka Respondent had in his home. When he saw the large bottle of vodka, he thought it was the perfect gift for JF's birthday. The post-it was meant to be a joke but he also knew it was a sexual innuendo. Afterwards, JF seemed very happy about the gift, showing both Ms. Buchicchio and Ms. Fujimoto the bottle claiming it was the "best gift ever."

50. Respondent estimates he and JF had sex three to four times. The first time was in June 2017, at JF's home while Trevor was at work. The other times it had been on campus, early in the morning, well before anyone was there. Respondent had

a 30-mile commute to San Gabriel and would routinely arrive early to avoid traffic. JF would also come to school early once or twice a week.

51. Respondent estimates that the physical component of their relationship ended no later than September 2017. According to Respondent, he ended their physical relationship because he knew it wasn't right and felt remorseful about it. No one knew of their relationship until after JF filed her lawsuit.

52. Respondent denied the slapping incident JF described, staring at her breasts, or making comments about her breasts, but admitted to texting JF on her personal phone and that some of those texts were sexual in nature. According to Respondent, before their relationship became physical, JF would send him sexual texts and he would respond in kind. Respondent did not recall he received sexual texts from JF after the end of their physical relationship. Respondent also admitted visiting JF at her apartment but disputed JF's description of the event and denied he had been inebriated.

53. Respondent provided additional details regarding the text messages that had upset JF. According to Respondent, a colleague of his mentioned he had smelled alcohol on JF's breath during a game she had been coaching. Respondent sent JF a strongly worded text to let her know that things like that could not happen and that he "had a small amount of influence on [her] tenure" and not to engage in behavior like that in the future.

54. Principal Stone spoke to Respondent afterwards and made it clear the texts were inappropriate. Respondent apologized for his behavior." According to Respondent, he had sent JF the texts only because he knew she was doing something that could get her fired and to let her know not to engage in similar behavior.



55. Respondent was not surprised when JF was not offered tenure. There had been a number of incidents involving JF. She had problems getting along with students, administrators, other teachers, and basketball officials. JF did not accuse him of being the reason for not getting tenure and, in fact, asked him for a letter of support.

56. The first time Respondent was informed of JF's accusations was when he was notified of the lawsuit by the District.

57. According to Respondent, other than JF, he had never had a physical relationship with a colleague. He remains embarrassed by his actions. Though he was not JF's supervisor, Respondent acknowledged that by engaging in a physical relationship with JF, he transgressed appropriate boundaries. The relationship was "out of character" for him and he has since taken a boundaries class and has gone to therapy to deal with the insecurities that led him to have the affair.

58. Respondent's testimony was straightforward and direct and consistent with other evidence in the record, including the statement Respondent submitted to the Committee as part of its investigation into the misconduct allegations.

## **Renewal Application**

59. On April 20, 2020, Respondent submitted an online application for a Clear Single Subject Teaching Credential. In the application, Respondent properly disclosed his criminal conviction, the District termination, and Commission's investigation.

60. The application, however, was submitted in error. Respondent had intended on renewing his Credential and submitted the wrong application.

## **Character References**

61. At hearing, two of Respondent's teaching colleagues, Timothy John Godley and Jeffrey Klein (both of whom are educators at different schools), testified on his behalf. They both spoke highly of Respondent, his abilities as an educator, and his good character. Mr. Klein's testimony, however, was accorded less weight as Mr. Klein showed a tendency to exaggerate and refusal to consider any hypothetical questions during cross-examination.

62. Respondent also presented declarations from three other colleagues, Jeffrey Cammon, Haleigh Green (a student teacher), and Jared Hovesepian. Each of these declarants asserted the conduct alleged by JF was inconsistent with their experience with Respondent. Mr. Cammon and Mr. Hovesepian also wrote letters on Respondent's behalf. They both spoke highly of Respondent's character and teaching abilities in their letters and their declarations. These declarations were admitted as direct testimony pursuant to Government Code section 11514.

63. In addition to these letters and the letters from Ms. Buchicchio and Ms. Fujimoto, Respondent presented 14 additional character reference letters from teaching colleagues from various schools and districts and his family members. The letter writers also speak highly of Respondent's abilities as a teacher. Though the letter writers are aware of the allegations JF made against Respondent, the writers each speak highly of Respondent's character and support his keeping his credentials.

## **LEGAL CONCLUSIONS**

### **Jurisdiction and Burden of Proof**

1. Education Code section 44440, subdivision (b), authorizes the Commission to take adverse action against an individual's teaching credential after the expiration of the credential.

2. Education Code section 44421 authorizes the Commission to take adverse action against an individual's teaching credentials for: (1) immoral or unprofessional conduct; (2) persistent defiance of and refusal to obey the laws regulating the duties of person serving in the public school system; (3) for any cause which would have warranted the denial of an application for a credential or renewal of a credential; or (4) for evident unfitness for service. Pursuant to Education Code section 44345, subdivision (e), the Commission may deny any application for the issuance or renewal of a credential made by any applicant who "[h]as committed any act involving moral turpitude."

3. "Aggravating factor" is defined by California Code of Regulations, title 5, section 80300, subdivision (b), as "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." Subdivisions (b)(3)-(5) further provide, in pertinent part, that aggravating factors may include, "misconduct surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators," misconduct which "significantly harmed the public or educational system," and "demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders."

4. The burden of proof for the First Amended Accusation in this case is on Complainant to establish cause for adverse action by clear and convincing evidence to a reasonable certainty. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) Clear and convincing evidence has been defined as “[e]vidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the fact[s] for which it is offered as proof.” (*Mattco Forge v. Arthur Young* (1997) 52 Cal.App.4th 820, 847.)

5. In the part of this proceeding based on the Statement of Issues, the standard of proof is different. In that circumstance Respondent does not have the same vested interest as he might in existing licensing rights. Therefore, he is not protected by the higher standard of proof, as he is in the First Amended Accusation. The applicable standard is by a preponderance of the evidence. (*Southern Calif. Jockey Club, Inc. v. California Horse Racing Bd.* (1950) 36 Cal.2d 167, 177; Evid. Code, § 115.)

## **Analysis**

6. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 224-5, the California Supreme Court held that adverse action may not be imposed against a teacher on the basis the teacher’s conduct is immoral, unprofessional or involves moral turpitude in the absence of evidence showing the teacher is unfit to teach.

7. For purposes of disciplining a teaching credential, the factors discussed in *Morrison* have been codified at California Code of Regulations, title 5, section 80302 and include: (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the teacher; (4) the existence

of extenuating or aggravating circumstances and publicity, if any, 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 that the discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher; and (8) the publicity or notoriety given to the conduct.

### **SEXUAL HARASSMENT AND DISCRIMINATION ALLEGATIONS**

8. In the present case, Complainant failed to establish by clear and convincing evidence Respondent sexually harassed or discriminated against JF. The only evidence in support of those claims was JF's testimony. JF was not a credible witness and her testimony was not given much weight for the reasons set below.

9. Initially, JF claimed Respondent showed her an excessive level of attention and was constantly seeking of her company. This was not corroborated by for the other two members in the department, Ms. Buchicchio and Ms. Fujimoto. Though Respondent conceded he showed more attention to JF than the other teachers in the department, the level of attention was not excessive in light of the fact respondent, as department chair, was responsible for training new department members. Ms. Buchicchio and Ms. Fujimoto were highly experienced teachers who had been at Saint Gabriel of a number of years.

10. JF also claimed she had been too scared to report Respondent's behavior as it would have been his word against hers. JF repeatedly stressed throughout her testimony that part of Respondent's harassing and discriminatory behavior was the excessive number of inappropriate texts and emails he would send her. None of those emails or texts were submitted into evidence. It was also established JF had previously complained to Principal Stone when Respondent sent her texts she felt were

inappropriate and provided Principal Stone with a print out of the those texts. There was no indication JF had any concerns of retaliation at that time.

11. Finally, JF's testimony regarding the Special Olympics raises particular concerns. What was particularly telling was her insistence she had not lied when, in order to avoid volunteering, she sent the text to Ms. Fujimoto telling her that her boyfriend had been shot.

12. The evidence did establish Respondent and JF had a physical relationship that lasted for approximately three months and had sexual intercourse on the school premises. Respondent, though he was the department chair, had no supervisory role over JF. JF did not testify she believed Respondent to be her supervisor or that he had the authority to offer or deny her tenure. (In fact, the evidence reflected that Respondent, in the texts that were shown to Principal Stone, revealed that the extent of his authority in making tenure decisions was solely related to his ability to provide Principal Stone with information on JF's performance as a teacher.) There was no evidence Respondent had coerced JF into having sexual intercourse by either promising her tenure or threatening her continued employment. There was no evidence anyone was aware of their physical relationship and therefore their conduct did not adversely affect any students or their fellow teachers, and no evidence that similar conduct is likely to reoccur.

### **CRIMINAL CONVICTION**

13. In the present case, Complainant established by clear and convincing evidence Respondent had been convicted of one misdemeanor count of violating Vehicle Code section 23142, subdivision (a), driving under the influence.

14. The California Supreme Court has held that the offense proscribed by Vehicle Code section 23152, subdivision (a) does not on its face involve moral turpitude. (*In re Kelley* (1990) 52 Cal.3d 487; see also *Ostrow v. Municipal Court* (1983) 149 Cal. App.3d 668.) Thus, if moral turpitude is to exist in this case, it must be based on the circumstances surrounding the offense.

15. No evidence was presented to establish that the facts and circumstances surrounding the commission of this offense involved moral turpitude. Further, there was no evidence the conduct adversely affected students or fellow teachers and the degree of such adversity; it occurred more than 25 years ago and is unlikely to reoccur.

### **Cause for Discipline and Denial**

16. Cause was not established for adverse action against Respondent's credential pursuant to Education Code section 44421, for unprofessional conduct, based on Complainant's failure to provide clear and convincing evidence.

17. Cause was not established for adverse action against Respondent's credential pursuant to Education Code section 44421, for immoral conduct, based on Complainant's failure to provide clear and convincing evidence Respondent committed acts of unprofessional conduct.

18. Cause was not established for adverse action against Respondent's credential pursuant to Education Code section 44421, and 44345, subdivision (e), based on Complainant's failure to provide clear and convincing evidence Respondent committed acts of moral turpitude. Cause was not established to deny Respondent's application for a Certificate of Clearance pursuant to Education Code 44345, subdivision (e), in that Respondent established by a preponderance of the evidence he had not committed acts of moral turpitude. The evidence did however establish

Respondent presently holds a Clear Single Teaching Credential, and the application was submitted in error.

## **ORDER**

The First Amended Accusation and Statement of Issues against Respondent Jon Patrick Keller are dismissed.

DATE: 04/25/2022

  
Nana Chin (Apr 25, 2022 09:06 PDT)

NANA CHIN

Administrative Law Judge

Office of Administrative Hearings