

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

In the Matter of the Accusation Against:

LUPE J. PEREZ, Respondent

Agency Case No. 2-43871817

OAH No. 2021020811

PROPOSED DECISION

Heather M. Rowan, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter via telephone and video conference on November 8, 2021, from Sacramento, California.

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

Ann M. Bennett, Attorney at Law, represented respondent Lupe J. Perez, who was present.

Oral and documentary evidence was received. The record closed and the matter submitted for decision on November 8, 2021.

ISSUE

Whether complainant established cause to discipline respondent's Administrative Services Credential and Clear Multiple Subject Teaching Credential and, if so, what is the appropriate level of discipline.

FACTUAL FINDINGS

Jurisdictional Matters

1. In 1996, the Commission issued respondent an Emergency Multiple Subject Teaching Credential. On July 12, 2001, the Commission issued respondent a Clear Multiple Subject Teaching Credential (Teaching Credential). The Teaching Credential will expire on September 1, 2026, unless renewed or revoked.

2. On June 17, 2002, the Commission issued respondent a Clear Administrative Services Credential (Administrative Credential). The Administrative Credential expired on September 1, 2021, and has not been renewed.¹

3. On January 26, 2021, complainant, acting in her official capacity, signed and thereafter filed the Accusation.² Complainant seeks to revoke respondent's

¹ At hearing, respondent testified he applied for renewal and it has not yet processed.

² On complainant's unopposed motion, the Accusation was amended to delete paragraphs 35 and 36.

credentials, certificates, and authorizations based on allegations that he engaged in misconduct related to a teacher and substitute school counselor in 2018 and 2019, while he was the principal at Hester Elementary School (Hester) within the Farmersville Unified School District (District). Generally, complainant alleged respondent made inappropriate and unwelcome physical or sexual advances toward the substitute school counselor and left offensive and demeaning voicemails for the teacher.

4. As disciplinary considerations, complainant alleged respondent engaged in inappropriate conduct in 2018 and 2019, with two additional female teachers. In aggravation, complainant alleged: respondent's actions demonstrate a pattern of misconduct; his misconduct was surrounded or followed by a violation of laws governing educators; respondent's conduct significantly harmed the public or the educational system; and respondent has demonstrated indifference toward the consequences of his actions.

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

Allegations of Misconduct

6. Complainant alleged respondent's credentials should be disciplined based on his misconduct regarding two female teachers at Hester. Both teachers testified at hearing. Two additional teachers testified as to their encounters with respondent, which was the basis for the "Disciplinary Considerations." Though the evidence referred to an investigator who spoke to the teachers, no investigative report was produced. Complainant's evidence consists primarily of the testimony below.

S.A.

7. Between November 13, 2018, and February 2019, S.A. was a long-term substitute school counselor at Hester. She testified at hearing regarding her experiences and encounters with respondent.

8. S.A.'s position as a school counselor required her to consult with respondent, as the principal, regarding students. She recalled one meeting, not long after she started at Hester in November 2018, wherein she and respondent met in respondent's office with a student about the student's behaviors. Respondent and S.A. sat at one side of the table and the student on the other. S.A. recalled respondent "caressed [her] inner thigh under the table," and then smiled at her before he removed his hand. He said after the meeting: "Maybe I shouldn't have done that." The same scenario occurred a second time, and S.A. responded by pulling her leg away.

9. After these meetings, S.A. was uncomfortable around respondent. She recalled that "time and time again," respondent engaged in similar behavior. He would close his office door and hug her, pressing his chest against hers. One day, respondent texted S.A. with a room number, and S.A. responded, thinking there was an issue with a student. She arrived to a dark, empty classroom, and respondent hugged her in a close, uncomfortable way, "caressed" her back, and told her he "needed his morning hug." He instructed her to leave in the opposite direction to not raise suspicion. S.A. stopped responding when she received respondent's text messages containing only a room number.

10. S.A.'s substitute counselor assignment ended and she was assigned as a substitute teacher at Hester for one week, starting in the kindergarten class. She recalled the intercom system was not working, and respondent went to S.A.'s

classroom every morning to “sing and dance” with the children, which “got them riled up.” While in S.A.’s classroom, respondent “started whispering [to her] about going out and having drinks” together. He also told her that they needed a “code” for when he texted her at night so she could tell him if her husband was nearby.

11. S.A. was transferred to Snowden Elementary School (Snowden) in the spring of 2019. Respondent continued to call her and at one point visited Snowden. While there, he asked S.A. for a hug and again asked her to have drinks with him. S.A. stated she felt she left Hester and the uncomfortable situation, but when respondent appeared at Snowden, “it was not over.” Her principal questioned her about respondent’s visit and “intervened.”

12. Respondent’s behavior generally made S.A. feel unsafe and uncomfortable. The series of text messages wherein respondent tried to “lure” S.A. into an empty room made her feel harassed. She tried to avoid being alone with respondent.

13. S.A. stated she “told people time and again” about respondent’s behavior. She confided in the school nurse, a student liaison, a first-grade teacher, and special education teacher Amy Koop about respondent’s behavior. She showed Ms. Koop respondent’s text messages. The text messages produced at hearing appear to be respondent sending room numbers during school hours and one after-hours text message that said, “Hey.”

14. S.A. believed “the other ladies” when they warned her not to say anything about respondent’s behavior, or she would be “blackballed” in the District. She also believed respondent could “get rid of [her],” though he never explicitly threatened her job. Respondent was her supervisor and she was a substitute counselor. She is

unaware, however, whether a principal can fire a substitute. S.A. did not ask respondent to stop hugging or texting her, nor did she report his behavior to the superintendent, respondent's supervisor. At one point, she told a school board member about respondent's conduct and her discomfort. After this experience, S.A. stopped "trusting the educational system; they let [her] down."

M.R.

15. M.R. was a kindergarten teacher at Hester between 2017 and 2019. In the summer of 2017, she and respondent began a romantic relationship that lasted at least two years. They communicated through text messages and at work, though respondent was married so their in-person visits were limited. M.R. could not recall the dates of their relationship, when it ended, or when she last contacted him. She resigned from the District in 2021.

16. In early 2019, M.R. received seven voicemails from respondent over a several-day period. In the voicemails, respondent was angry, yelling obscenities, and accusing M.R. of having sex with someone else. He yelled she was a "bitch" and a "whore." Because M.R. was having sex with another man and not taking respondent's calls, he yelled he was done, she should leave him alone, and "we'll see if you'll even make it for? [unclear] the school year." In one message he yelled that he had sex with [A] and would do so again. Respondent also stated: "yeah, I fucked Kim and I'm going to fuck her again, and you know who's next? [S]. So fuck you, whore."

17. M.R. was a willing participant in the affair. After she received the voice messages, M.R. was scared and felt threatened. She did not speak to anyone about the respondent's behavior for some time, but she eventually told her parents about respondent and the messages. She later spoke to the District's investigator. In 2019,

M.R. had a temporary restraining order against respondent, which has since expired. No evidence was presented regarding when the restraining order was filed.

DISCIPLINARY CONSIDERATIONS

18. Ms. Koop was a special education teacher at Hester between May 2018 and June 2019. She recalled going with respondent to a meeting for a first-grade teacher "grade level meeting." When they entered the meeting, respondent put his arm around Ms. Koop, "maybe to show unity." Based on the looks on her colleagues' faces, Ms. Koop felt uncomfortable. She stated, "Hester talks," and she did not want to be associated with gossip. She did not bring the matter up with the superintendent or respondent. Ms. Koop did not feel respondent's actions had a sexual connotation, but Ms. Koop's wife is also a teacher, and she did not want "something silly," like this Hester gossip, to get back to her wife.

19. Connie Tejada was a school liaison at Hester between May 2018 and June 2019. She had daily interactions with respondent because she was the "middle person" among teachers, students, and parents. She recalled two instances with respondent she found uncomfortable. On one occasion, she and respondent attended an off-site training. Respondent asked her to step out of the room and showed her his phone, which had a picture of himself with no shirt, and asked what she thought. Ms. Tejada was "very uncomfortable," and asked him if he worked out, based on his physique.

20. Another time, Ms. Tejada was at a meeting with respondent. She passed him some papers and his fingers touched hers. He did not attempt to hold her hand. She pulled her hand away and averted her eyes.

21. Ms. Tejada believes respondent is "a smart man," and if she did not pay him any attention, he would pick up her signal and leave her alone. By ignoring

respondent's behavior, Ms. Tejada sent a message she was not going to "follow along." She did not confront respondent or report his behavior. She recalled, however, that she spoke to S.A. about respondent.

Respondent's Evidence

22. Respondent has been an educator since 1997. He began his career as a second-grade bilingual teacher for the District under an emergency credential. He attended evening classes to complete the requirements for a clear credential, which he was awarded in 2001. Respondent concurrently completed a masters' degree program for his Administrative Credential.

23. Respondent was the principal at Hester from 2016 until he resigned in 2019. Hester serves students from transitional kindergarten through first grade. Respondent described the school as a "busy place with a lot of little bodies." The school had an intercom system and the principal and staff had radios to communicate. Respondent stated that sometimes the radios did not work, so he would text his teachers. If he needed to meet them, he texted a room number. He was involved in the classrooms and frequently visited classrooms where there was a substitute teacher to ensure the students knew he was watching.

24. Respondent is familiar with S.A.; she was a substitute counselor at Hester. He stated he had no romantic relationship with her, he did not initiate hugs with her, and he never intentionally touched her inappropriately. Respondent recalled sitting next to S.A. during a meeting in his office. When they both stood up, his hand brushed her outer thigh and he apologized.

25. Respondent explained S.A. was a behavioral counselor and helped teachers with classroom management. When he met with her regarding disruptive

students, their meetings lasted “five, ten, fifteen seconds” to strategize. It would not be unusual if he texted S.A. room numbers. He recalled sending S.A. one text message after hours, at 5:30 p.m., because they had a student to discuss the following day. He does not recall telling her they needed a “code” for when she was near her husband. She never informed him she was uncomfortable or that he should not text her.

26. When S.A. finished her school counselor assignment, she was a substitute teacher at Hester. Respondent recalled she was assigned to “four or five” classrooms in one week. He visited the classrooms in the mornings to engage the students. Respondent stated he “never went in twice; it was a different teacher each time.” Additionally, the intercom system was not working, so instead of an all-school morning announcement, respondent went room to room.

27. Respondent also explained he did not go to Snowden to ask S.A. out for drinks. He first said he was there to deliver a photographer’s money. He then explained that one of his former students was there and the principal asked him to go to Snowden to talk to the student. His office assistant told him to talk to S.A. while he was there. There was to be a group “going away” gathering for her at a local bar, and he was to ask her if she would attend. He was relaying a message.

28. Respondent met M.R. when she was hired as a teacher in 2017. They began a relationship that respondent “deeply regret[s].” The affair was “never on school grounds,” and always involved meeting after school hours. The relationship lasted from the summer of 2017 through December 2019. Respondent explained that he never threatened M.R.’s job. Even though he was her supervisor, he did not have the power to fire her. As the principal, he could make a recommendation to the superintendent with adequate evaluations to support any disciplinary action. He

performed M.R.'s yearly evaluations and always evaluated her "by what she did in the classroom."

29. Respondent testified he "always wanted to stop [the relationship]," but M.R. threatened to tell his wife or the superintendent. Regarding the voice messages in February 2019, respondent recalled he was in a parent meeting after school. M.R. wanted him to meet her, but he did not immediately respond. Eventually, afraid M.R. would tell his wife or the superintendent, he told her to meet him at their meeting spot. When respondent arrived at the spot, he saw M.R.'s car was parked, the windows were foggy, and she jumped naked from the back seat to the front seat. Respondent was upset she was having sex with someone else and he left. He then left the voice messages. Respondent stated all seven messages were "almost the same night" and not more than "a few days" apart. The messages submitted at hearing were not dated.

30. One or two weeks after the voice messages, respondent was asked to a meeting at the District office with the superintendent and assistant superintendent. He was told someone had filed a sexual harassment claim against him, but he was not told who filed the charges. Respondent assumed M.R. had filed a complaint and "did not think of anyone else" because he "was a professional." He was placed on administrative leave during the investigation.

31. Respondent hired Ms. Koop as a special education instructor in 2017. He recalled no inappropriate physical contact. Ms. Koop never told respondent she was uncomfortable.

32. Ms. Tejada was the "Community Liaison" for Hester. Respondent first stated he never went to "out of town trainings" with Ms. Tejada because none were overnight trips. He recalled they went to a series of meetings at the County Office of

Education, however. Respondent stated he never showed Ms. Tejada, or anyone else, a picture of himself without a shirt on. He recalled talking with Ms. Tejada, S.A., and a nurse aide about fitness. S.A. told them she was in a fitness competition and showed the group a picture of herself.

33. Respondent knew Ms. Tejada prior to her position at Hester because her son was in respondent's continuation high school class. Because they knew each other, he thought she would have told him if she were uncomfortable, but she never did.

34. Respondent currently works at a level four correctional facility as an adult educator. He teaches the inmates who have tested into grades four through seven. The classroom hours are 7:30 a.m. to 3:30 p.m., Monday through Friday. The inmates' goal is to gain enough proficiency to pass a high school equivalency exam.

35. Respondent attested he has never had a "negative" evaluation since he started teaching in 1997. He submitted two quarterly evaluations from his current positions. Respondent's ratings are either "standard" or "outstanding" in all categories.

36. Following his affair, respondent and his wife sought counseling through their church. He attends a men's group at his church that has "changed [his] life." The affair, which "affects [him] daily," has "made [him stronger] and closer to [his] wife." Respondent knows he hurt his family and he lost his wife's and adult children's trust.

37. Respondent admitted he made a mistake having an affair with a subordinate and was unprofessional regarding M.R., but he was "shocked and disappointed" to hear of the other women's allegations. Had he known they were uncomfortable, he would have "had a meeting with a third party" to "clear up any misunderstanding." Given the opportunity, he could have changed his behavior.

Respondent respects women and, until now, has had no allegations against him in more than 20 years as an educator.

38. Respondent risks losing his job as a teacher if his Teaching Credential is revoked. He maintains he has always “done his job” as a teacher, and his affair did not impact his position as principal. Respondent admitted that though he never directly acknowledged to other teachers he was having an affair with M.R., he believed they knew. Even so, he maintains he never acted inappropriately at school or with teachers, students, or parents. He never sacrificed student safety. Respondent loves being a teacher, believes he is “here to make a difference,” and has never violated the requirements of his credential or in his position as a teacher.

ANA RIVERA’S TESTIMONY

39. Ana Rivera was the school counselor at Hester in 2017, 2018, and 2019. S.A. was her substitute while Ms. Rivera was on maternity leave. She is currently a school counselor at Tulare Western High School. She testified at hearing regarding her experiences at Hester and with respondent.

40. Ms. Rivera had a good working relationship with respondent. She was the first school counselor Hester had and worked collaboratively with respondent. She described him as positive, supportive, and professional. Ms. Rivera never saw respondent jeopardize student safety or negatively affect the learning environment. Ms. Rivera and respondent were implementing a positive behavior intervention system to incentivize morale among students and staff. She did not observe respondent interact inappropriately with female staff nor did any teacher approach her with their concerns.

41. Before Ms. Rivera went on maternity leave, S.A. shadowed her for a short time. When Ms. Rivera returned from maternity leave, S.A. continued as a substitute teacher for one week. Ms. Rivera recalled that on her first day back, respondent was there to greet her, and S.A. walked in and hugged respondent. Ms. Rivera saw no other physical contact between the two.

42. In Ms. Rivera's experience, it was not common for respondent to contact her via text, but he did so if she did not answer her radio. He would tell her, for example, that he was going to a meeting or that he was with a teacher or a particular student. If he needed her to meet her in a classroom, he would text something like: "Crisis in room X."

43. Ms. Rivera described the environment at Hester as "unique." There was generally a negative work environment. The school served a "rough population," and the teachers were stressed, overworked, and unhappy. She found the environment to be "more negative" when she returned from maternity leave. Ms. Rivera was negative about Hester when she returned because her office had moved and she thought S.A. had moved her belongings. She felt there was little communication while she was gone and when she returned, she felt S.A. was avoiding her. Ms. Rivera also felt the other teachers befriended S.A. while Ms. Rivera was gone, and the teachers were upset she was not doing things the same as S.A. had done. She stated: "People were not talking to me." But if she felt harassed, Ms. Rivera felt she would have made a complaint or talked to the assistant superintendent.

LETTERS OF SUPPORT

44. Respondent submitted two letters of support. The first from Lisa Whitworth, with whom he worked in the District for 11 years. She described him as

professional in all situations. Loretta Aragon Spaulding worked with respondent for five years within the District. She described him as respectful and professional and able to create a positive environment. Neither letter mentioned respondent's discipline or the underlying actions.

EVALUATIONS

45. Respondent submitted a probationary evaluation from Tulare City School District in fall of 2019. His overall rating was satisfactory. He also submitted evaluations from 2004 through 2007, when he was as Assistant Principal within the Visalia Unified School District. He was well-regarded by staff and developed a good rapport with students. Respondent's calm demeanor was as asset to the student body.

46. In respondent's evaluations as Principal for the District, he showed consistent improvement from 2009 through 2012. On a five-point scale, his ratings ranged from 3.72 to 4.33. Respondent's reviewers commented on his calm demeanor and positive behavior techniques. He submitted evaluations from 2016 and 2018, in which his overall ratings were 3.9.

PRINCIPLES OF LAW

Burden of Proof

47. Complainant has the burden of proving the allegations in the Accusation by clear and convincing evidence to a reasonable certainty. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently

strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Brooks* (2008) 169 Cal.App.4th 176, 190.)

Applicable Law

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

49. Education Code section 44440 provides:

[¶] . . . [¶]

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

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

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

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

50. 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.

51. Education Code section 44345 allows the Commission to deny an application made by any applicant who:

(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 or fitness to perform other duties for which that applicant is certificated, or competence to perform the duties which the credential would authorize the applicant to perform.

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

[¶] . . . [¶]

(b) "Aggravating factor" is an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately

protect the public, schoolchildren or the profession.

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

[¶] . . . [¶]

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

(3) that the misconduct was surrounded by or followed by . . . violation of the laws governing educators;

(4) that the misconduct significantly harmed . . . the public or the educational system;

(5) that the holder or applicant demonstrated indifference toward the consequence of the misconduct . . .

53. The California Supreme Court has recognized that the terms “immoral conduct” and “unprofessional conduct” substantially overlap one another and conduct that constitutes one often includes the other. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 221, fn. 9 [*Morrison*].) “Unprofessional conduct” includes “that which violates the rules of ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing.” (*Board of Education of the City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553; quoting, 66 Corpus Juris, p. 55.) Additionally, in *San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, the court explained:

Moreover, the definition of immoral or unprofessional conduct must be considered in conjunction with the unique

position of public school teachers, upon whom are imposed "responsibilities and limitations on freedom of action which do not exist in regard to other callings." [Citation.]

(*Id.* at p. 1466.)

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

The term "immoral" has been defined as that which is hostile to the welfare of the general public and contrary to good morals. Immorality includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare.

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

56. "Evident unfitness for service" means a teacher is clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects

or inadequacies. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) "Unlike 'unprofessional conduct,' 'evident unfitness for service' connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Id.*)

57. In *Morrison*, 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). The factors are:

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

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

ANALYSIS

58. Complainant seeks to discipline respondent's license based on his inappropriate contact with S.A. and his offensive voicemails to M.R. Complainant alleged these interactions constitute unprofessional and immoral conduct, evidence unfitness for service, and involve moral turpitude. S.A., M.R., and respondent testified at hearing, which is the primary evidence in this matter.

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

60. The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting *Neverov*

v. Caldwell (1958) 161 Cal.App.2d 762, 767.) Finally, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)

61. No prior statements from the District's investigation or any other source was submitted at hearing. The events at issue occurred more than two years ago and all witnesses testified from recollection. S.A. was visibly upset recollecting her encounters with respondent. She was straightforward and consistent throughout her testimony. Most of her allegations against respondent occurred while she was alone with him or in the presence of students, but there was nothing that impeded her perception. S.A. has moved on from Hester and had no apparent bias in this proceeding, and little motive to alter the facts.

62. M.R.'s testimony was halting, disengaged, and evasive. She had little recollection of her relationship with respondent, when it ended, or when she filed a restraining order. She described the voicemails, during which respondent was yelling and demeaning her, as respondent "asking where I was." M.R.'s disinclination to reveal information spoke to her bias in favor self-protection over straightforward disclosure. Her inability to respond regarding the facts as they occurred called her credibility into question.

63. Additionally, respondent called Ms. Rivera as a witness. Ms. Rivera has no apparent bias and responded directly in her testimony. She was not uncomfortable or hesitant. Her opinions regarding the climate at Hester were consistent throughout her testimony and were supported by other evidence. Her testimony was credible.

64. Respondent's testimony was more complicated. To be sure, respondent was highly motivated by the bias of self-interest. His credentials are threatened and he

needs to keep them to continue to work. While his general demeanor at hearing was contrite and apologetic, his version of some of the events glossed over the seriousness of his conduct and was contradicted by both his prior statements in the voicemails and his own witness's account of the situation at Hester. The seven ranting voicemails were admitted at hearing and available for review. Even so, respondent's characterization of the messages minimized his conduct. Overall, respondent's testimony regarding his interactions with the female teachers was not credible.

65. Specifically, respondent expressed shock that any other teacher would have a complaint regarding his conduct. Ms. Tejada's testimony that respondent's fingers touched hers and that he showed her a picture of himself was not persuasive evidence to discipline respondent. Similarly, Ms. Koop's testimony that respondent put his arm around her at a teacher meeting did not add much to the allegations for disciplinary considerations. But Ms. Koop and Ms. Rivera both referred to an uncomfortable setting at Hester. Ms. Koop knew there was gossip about respondent with female teachers and did not want to be associated with it. Ms. Rivera described a negative, gossipy, hostile atmosphere among the teachers. Even respondent acknowledged that though he never explicitly told any teacher about his affair with M.R., he believed the teachers knew.

66. That respondent denied his affair with M.R. impacted his job as a principal shows a remarkable lack of insight. The climate he created was one where teachers knew of his indiscretions, which impacted their interactions and possibly their respect for him. For example, Ms. Koop testified that the first-grade teachers reacted when respondent put his arm around her. Ms. Tejada, S.A., and Ms. Koop testified they were uncomfortable with respondent's conduct because he was their supervisor.

67. Further, respondent's attempts to explain why the female teachers' perceptions were inaccurate were not credible or consistent with the evidence. First, he argued that he frequently texted classroom numbers to indicate where he would meet his staff. Ms. Rivera, however, stated that if respondent needed her, he would tell her there was a crisis in a classroom or that he was addressing a behavioral issue and tell her where to go. He did not simply text a room number with no context. Second, his convoluted explanation about why he was at Snowden and why he asked S.A. if she were joining the Hester teachers at a bar simply made no sense. He was either bringing a photographer money or talking to a former student at the principal's request. And his assistant supposedly told him the staff was having a going away party for S.A. that evening and he should ask if she planned to attend.

Third, respondent repeatedly insisted he only texted S.A. room numbers to talk about a student, only texted her at night one time to talk about a behavior issue the next day, and he may have brushed her outer thigh during one meeting, but quickly apologized. Ms. Rivera contradicted his testimony about the room numbers. His text after 5:00 p.m. to S.A. stated "Hey," with no context and no additional message, even to say he would talk to her tomorrow about a student. Respondent's explanations about S.A. can be given little weight when compared to his voice message to M.R. in which he screamed about having sex with different women: "and you know who's next? [S]," S.A.'s first name. Finally, respondent argued he did not threaten any teacher's job because he did not have the power to fire, only to make a recommendation. But on one of the voicemails, he yelled: "We'll see if you even make it [for?] the school year," which a reasonable person would take as a threat to her job.

68. After making these credibility findings, *Morrison* instructs that factors, now codified in California Code of Regulations, title 5, section 80302, subdivision (a),

must be applied. The factors assist in determining whether a credential can be disciplined for immoral conduct, unprofessional conduct, or conduct involving moral turpitude, and if so, whether the conduct indicates he is unfit to teach.

LIKELIHOOD OF ADVERSE EFFECTS ON STUDENTS OR FELLOW TEACHERS

69. Respondent believes his conduct in having an affair with a teacher had no effect on his school. On the contrary, that conduct in addition to inappropriate physical contact or sexual advances toward S.A. contributed to the atmosphere at his school. Several women reported being uncomfortable. Ms. Koop described the “knowing looks” of the first-grade teachers when respondent put his arm around her. And the teachers felt they could not confront or report respondent for fear of reprisal. Complainant established respondent’s conduct had an adverse effect on M.R. and S.A. in particular, and the teachers generally.

PROXIMITY OR REMOTENESS IN TIME

70. Respondent’s conduct occurred between 2017 and 2019. The conduct is more proximate than remote in time.

TYPES OF CREDENTIALS HELD AND SOUGHT

71. Respondent holds an Administrative Credential as well as a Teaching Credential. As an administrator, the Commission expects respondent to act with professionalism and good judgment, which he did not do. As an educator, the Commission expects, at the least, good judgment, for respondent to be an example for students, honesty, and teaching competency.

EXTENUATING OR AGGRAVATING CIRCUMSTANCES

72. Neither the Education Code nor the applicable regulations specify what constitutes "extenuating circumstances." California Code of Regulations, title 5, section 80300, subdivision (m), however, defines "mitigating factor" as "an event or circumstance which demonstrates that the public, school children and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever." Respondent presented little mitigating evidence. Notably, however, respondent has been an educator for 25 years with no other complaints. His current evaluations show he is competent in his teaching position. And there was no evidence presented that respondent's conduct impacted the lives or educational pursuits of the students at Hester.

73. California Code of Regulations, title 5, section 80300, subdivision (b), lists aggravating factors, the presence of which indicate a greater degree of discipline is necessary to protect students and the teaching profession. Complainant alleged the following in aggravation: respondent's actions demonstrate a pattern of misconduct; his misconduct was surrounded or followed by a violation of laws governing educators; respondent's conduct significantly harmed the public or the educational system; and respondent has demonstrated indifference toward the consequences of his actions.

Complainant established respondent had a pattern of inappropriately engaging with female teachers. Complainant did not establish, however, that respondent's conduct was surrounded or followed by a violation of laws governing educators. Respondent expressed remorse regarding his conduct, but primarily due to the harm he caused his wife and children and the loss of trust in those relationships. He

continued to deny his behavior as to all but M.R., suggesting some level of indifference.

PRAISEWORTHINESS OR BLAMEWORTHINESS OF MOTIVES RESULTING IN THE MISCONDUCT

74. This factor weighs in favor of adverse action. Complainant established respondent's motives were primarily selfish and sexual. Respondent offered no evidence of praiseworthiness.

LIKELIHOOD OF RECURRENCE

75. The likelihood of recurrence of respondent's misconduct is minimal. Respondent has been an educator for 25 years with no history of discipline. While his conduct was gravely unprofessional, he has learned in no uncertain terms that any physical contact with female teachers is unwelcome. Respondent's dedication to teaching was apparent, as was his intention to repair his marriage. Any further conduct such as this would put an end to both pursuits.

ADVERSE IMPACT OR CHILLING EFFECT

76. 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

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

Conclusion

78. For the reasons stated above, and considering the *Morrison* factors, complainant established respondent's conduct was immoral, unprofessional, and involved moral turpitude. The evidence suggests respondent did not demonstrate the professionalism and good judgment expected of an administrator and he is currently unfit to maintain such a position. But complainant did not establish that respondent is unfit to teach.

79. Complainant established cause to discipline both respondent's Administrative Credential and his Teaching Credential. Based on the evidence presented, public protection requires that respondent's Administrative Credential be revoked. Public protection does not require the outright revocation of his Teaching Credential, but the Commission must require greater oversight of respondent, which will be served with a probationary period.

LEGAL CONCLUSION

Complainant established cause to discipline respondent's credentials under Education Code sections 44421 and 44435, subdivision (e), based on his unprofessional, immoral conduct that involved moral turpitude.

ORDER

1. Respondent's Clear Administrative Services Credential is REVOKED.

2. Respondent's Clear Multiple Subject Teaching Credential is REVOKED. The revocation is stayed, however, and his credential is placed on probation for a period of three years under the terms and conditions set forth below.

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

b. Respondent shall fully comply with the terms and conditions of this Order and cooperate with representatives of the Commission in its monitoring and investigation of his compliance. Any credentials issued to respondent during the period of probation shall be subject to the conditions contained herein.

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

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

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

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

g. The Commission shall retain jurisdiction over respondent's case during the period of probation. If respondent violates any term or condition of this Order, after giving him written notice and an opportunity to be heard on the issue of his violation of probation, the Commission may set aside the stay order and impose the revocation of respondent's credentials. If an accusation or petition to revoke probation is filed against respondent during probation, the probation period shall automatically be extended until a final decision is made on the accusation or petition.

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

DATE: November 23, 2021

Heather M. Rowan
Heather M. Rowan (Nov 23, 2021 13:04 PST)

HEATHER M. ROWAN

Administrative Law Judge

Office of Administrative Hearings