

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

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

**OMAR AKRAM MUSLEH, Respondent**

**Case No. 2-270787287**

**OAH No. 2022080196**

**PROPOSED DECISION**

Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 6 and 7, 2023, from Sacramento, California.

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

Ernest H. Tuttle, III, Attorney at Law, represented Omar Akram Musleh (respondent) who was present.

Evidence was received, the record closed, and the matter submitted for decision on March 7, 2023.

## **FACTUAL FINDINGS**

### **Background and Jurisdictional Matters**

1. On June 1, 2018, the Commission issued a Clear Single Subject Teaching Credential (credential) to respondent. Respondent's credential was in full force and effect at all times relevant and will expire on July 1, 2023, unless renewed.

2. On July 1, 2022, complainant, acting in her official capacity, caused to be 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 toward a high school student, NJ, that was unprofessional, immoral, involved moral turpitude, and displayed evident unfitness for service. The specific conduct alleged is that respondent: hugged NJ and told NJ he "loved" him; failed to refer NJ to a school counselor after NJ discussed past suicidal ideations and current feelings of stress and anxiety; used inappropriate or profane language; obtained NJ's home address from a school counselor under false pretenses; sent food to NJ's home address; asked NJ to bring him food; and texted NJ a screenshot of respondent's resignation letter. Respondent timely filed a notice of defense, and this hearing followed.

### **Complainant's Evidence**

#### **TESTIMONY OF ZACHARY BOSWELL**

3. Zachary Boswell has been employed since September 2022 by the Tracy Unified School District as the principal of Tracy Independent Charter School. Prior to that he worked as the vice principal and principal at West High School in Tracy, where

he participated in the hiring of respondent to serve as a physical education teacher and coach at West High School.

4. Mr. Boswell met with NJ and his father on the last day of the 2020-21 school year, at which time NJ made complaints about respondent.<sup>1</sup> NJ was a well-respected student on campus. Following their meeting, NJ sent Mr. Boswell an email dated May 27, 2021, with screenshots of numerous text messages between NJ and respondent.

5. On June 4, 2021, Mr. Boswell and Tammy Jalique, associate superintendent of human resources, interviewed respondent, who had a union representative present.

6. Mr. Boswell testified about selected portions of the interview, respondent's statements during the interview, and his own opinions about respondent's conduct, as set forth below.

7. Respondent ordered pizza to be delivered to NJ's address. In Mr. Boswell's view, this alone would not necessarily be inappropriate.

8. Respondent sent a text message to NJ stating "U gotta bring me some T4 [a café] one day though . . . Thursday!" In Mr. Boswell's view it is inappropriate for a teacher to ask a student for food or beverages.

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<sup>1</sup> NJ also submitted a written statement about respondent. Because NJ did not testify, the written statement was admitted and considered as administrative hearsay only to supplement or explain other evidence pursuant to Government Code section 11513, subdivision (d).

9. Respondent hugged NJ on one or two occasions. In Mr. Boswell's view, it is not necessarily inappropriate for a teacher to hug a student.

10. Respondent told NJ that he loved him. In Mr. Boswell's view, it is inappropriately intimate for a teacher to tell the student that he loves him.

11. NJ told respondent he had suicidal feelings in the past. Respondent did not refer NJ for professional help or take other steps to ensure his safety. In Mr. Boswell's view, this was extremely inappropriate. A teacher's first responsibility is to keep students safe. The teacher should stay with the student and immediately call for appropriate help.

12. On cross-examination, Mr. Boswell acknowledged that respondent was "hard-working" and "doing a great job for us" prior to the complaint made by NJ. Respondent had the right to postpone their June 4, 2021 interview until the end of summer recess in August. Respondent did not insist on that and went ahead with the interview in June 2021.

### **TESTIMONY OF TAMMY JALIQUE**

13. Ms. Jalique is employed as the associate superintendent of human resources at Tracy Unified School District. She participated in the June 4, 2021, interview with Mr. Boswell, respondent, and respondent's union representative. She is familiar with standards of conduct for teachers. Generally, teachers are required to maintain professional boundaries with students.

14. Ms. Jalique believes respondent violated professional boundaries by ordering pizza delivered to NJ's home address, because, to her knowledge, NJ had not given respondent his home address. She also believes respondent violated

professional boundaries by hugging NJ. Ms. Jalique acknowledged on cross-examination that occasionally teachers will give students a hug, but it is not something the District encourages or expects from teachers.

15. In Ms. Jalique's opinion, respondent violated professional boundaries by telling NJ he loved him. A better course of action would have been for respondent to refer NJ for professional help if there were concerns about his well-being. Finally, Ms. Jalique believes respondent violated professional boundaries by sharing a resignation letter with NJ. As an adult, it is not appropriate to share his employment status with a student.

## **Respondent's Evidence**

### **RESPONDENT'S TESTIMONY, WRITTEN STATEMENTS, AND TEXT MESSAGES**

16. Respondent testified at hearing and submitted two written statements. One is dated December 20, 2021, addressed to the Commission, and the other is addressed to "whom it may concern" and was received by the Commission on October 8, 2021. Respondent's testimony, written statements, and text messages upon which he was questioned at hearing are summarized below.

17. Respondent is currently employed as a physical education teacher at Pioneer Elementary School, in Merced. Respondent's teachers during his high school years were in an important influence in encouraging respondent to pursue athletics and education. Respondent's leadership teacher in high school was particularly important in that she "went above and beyond" to support respondent through "tough times" by "lending an ear" when he needed to talk with someone. She also helped him get a job in the school cafeteria, which allowed him to eat and bring home money to help his family. Respondent decided to become a teacher because he loves

working with children and wanted to “give back” to students in the same way his teachers had helped him.

18. Respondent began his college education at Merced Junior College where he earned an associate’s degree in physical education and played on the basketball team. Respondent then went on to California State University, Stanislaus (Cal State Stanislaus), where he earned a bachelor’s degree in kinesiology, a master’s degree in administrative services, and his teaching and administrative credentials. He graduated summa cum laude from both his bachelor’s and master’s programs. He has since accepted several invitations from his alma mater to speak with students interested in kinesiology and physical education.

19. Respondent’s first job following graduation was at Patterson High School, in Patterson, where he served as a physical education/health intern teacher. Respondent began his career as a credentialed teacher at Johansen High School in Modesto, where he taught 21st century skills/health for two years. He then taught health for one year at Pitman High School in Turlock. Respondent did not encounter any problems with students or administrators at either school.

20. In 2020, respondent began working as a physical education teacher at West High School in Tracy. During the spring of 2021, the school administration asked respondent to serve as the head coach of the girls’ varsity volleyball team, and to assist as needed with the boys’ varsity volleyball team. During this time, respondent got to know NJ, who was one of the leading players and the captain of the boys’ volleyball team.

21. Members of the boys’ volleyball team did not reliably check electronic postings of practice schedules and announcements. For this reason, with NJ’s consent,

respondent routed electronic messages to NJ, who then forwarded respondent's messages to the rest of the team. Respondent found this was an effective way to communicate with the team.

22. NJ told respondent in a conversation before a game that he was having some challenges at home, and that he wanted respondent to mentor him and to help him develop self-discipline and accountability. For this reason, respondent started checking in with NJ via text messages regarding NJ's schoolwork and how he was feeling emotionally. Respondent's motive was to help NJ, and to demonstrate to NJ that he cared for and would listen to him. In this way, respondent hoped he could "give back" in a similar way to how teachers had helped him as a student.

23. Respondent and NJ exchanged a series of text messages regarding plans for a ceremony to occur immediately prior to the final volleyball game of the season to honor the former volleyball coach who had recently passed away prematurely. The text messages regarding plans for the ceremony are set forth below:

Respondent: I trust you . . . Come up with an idea [for the ceremony] and I'll just roll with it[.] Fuck it[.]

NJ: Maybe after reading the script about her you can let people who want to share a story . . . have a little speech?

Respondent: [laughing emoji] . . . . No we don't have time for that buddy . . . .

24. During the week preceding the final volleyball game of the season, NJ arrived late for team pictures, missed a practice without giving prior notice, and failed to provide reasons why he was late to practices including the final practice of the

season. Respondent recommended to the head boys' volleyball coach that NJ not play the first set of a five-set match. Respondent felt this would help teach NJ "responsibility and accountability." The head coach agreed with respondent's recommendation and held NJ out during the first set. NJ was very upset with respondent about this.

25. A few days after the game, respondent spoke with NJ outside at the high school quad. Respondent felt they had a good conversation and "cleared the air" about the fact that respondent had recommended holding NJ out of the first set of the previous match. Also, during this conversation, NJ told respondent that in the past he had some suicidal feelings. Respondent asked NJ if he had any "present" suicidal feelings or "a plan" to commit suicide. NJ answered "no" to both. Respondent did not feel NJ was at any risk at that time. Respondent was sensitive to issues of student suicidality because three students had committed suicide while he was teaching at Patterson High School. In hindsight, respondent now realizes he should have referred NJ to one of the other professionals at school to ensure NJ's safety.

26. Following respondent's conversation with NJ in the high school quad, respondent exchanged text messages in which respondent told NJ that loves him. Respondent was not expressing "intimate feelings" toward NJ when he said that. The text message exchange dated May 1, 2021, is set forth below:

Respondent: There are some conversations that are better to be between you and I . . . Those are the heart to heart conversations . . .

I hope you continue to stay in touch and let me know how you're doing in grades and stuff . . . I definitely want to see



you graduate and see you around the volleyball court at West . . .

As always and I really mean this let me know if you ever need anything . . . I hope I'm making a positive difference[.]

Love you [NJ]

-Coach.

NJ: I think it was good we had a conversation 1-1[.] In person[.]

27. Respondent is not sure why he said in the text message that "some conversations are better to be between you and I." Respondent hoped NJ would stay in touch, because graduates are welcome to come back and help coach the team. Respondent signed off with "Love you" to let NJ know he cares for him. Respondent was not expressing romantic affection for NJ.

28. Two days later, on May 3, 2021, respondent and NJ exchanged text messages, as set forth below:

Respondent: School is good?

NJ: Yeah just stressed[.] I'm literally just focusing on school[.]

Respondent: Don't kill yourself . . . hang in there . . . get help if you need it . . . focus on balance . . . reach out . . . if you need help tell me[.] Meditate . . . I do it all the time! I

want to hear from you let me know how you're doing each day . . . .

NJ: I'm doing fine today but mainly just stressed w[ith] school[.] I'm just trying to graduate at this point[.]

29. Respondent acknowledged on cross-examination that saying "don't kill yourself" was a poor choice of words on his part, especially given that NJ had told respondent two days earlier about his past feelings of suicidality. Respondent was trying to encourage NJ not to be too hard on himself.

30. Every year, each sport team is asked to nominate someone to be the athlete of the year. Respondent and another coach nominated NJ, and he was selected by a vote of varsity coaches to be awarded athlete of the year. To recognize the honor, respondent framed a team jersey , along with some photographs. Respondent thought this would be a nice way to recognize NJ's efforts on the volleyball team.

31. Initially, respondent intended to mail the framed jersey to NJ and obtained his mailing address from a school counselor for this purpose. Respondent found it would be too expensive to send by mail, and instead arranged to give the framed jersey to NJ in a school parking lot with an assistant principal nearby taking pictures. Respondent hugged NJ at that time.

32. On May 20, 2021, respondent exchanged a series of text messages with NJ about coming to pick up the framed jersey. The text messages are set forth below:

Respondent: Are you coming to pick it up today[?]

Respondent: ? Ur are terrible[.]

NJ: Dude I was actually focusing on classes today[.] I'll come today what time? Plus I didn't even get a notif[ication][.]

Respondent: LOL . . . You're such a bullshitter[.]

NJ: Bro what[?] I don't check notif[ications] if I'm not up[.]  
Okay that pisses me off that you think I'm bullshitting[.]

Respondent: I'm kidding . . . relax!

33. Respondent acknowledged that it is inappropriate for a high school teacher to call a student a "bullshitter." Respondent was trying to emulate a high school aged person in his text message.

34. Respondent understands that it was unprofessional of him to use profanity in text messages with NJ. He knows it was "poor judgment" and he is "not proud of it." If he could go back in time, he would not do so again.

35. The following day, on May 21, 2021, respondent ordered pizza delivered to NJ at his home because NJ had told respondent he had nothing to eat at home and was stressed about final exams. Respondent did not ask permission from NJ's parents before he sent the pizza, because he did not feel he was doing anything wrong.

36. Respondent never asked NJ to bring him food or beverages, other than in a joking manner in a text message exchange set forth below. Respondent did not intend his text message to be taken literally, because he was fasting for Ramadan and NJ knew that.

Respondent: U gotta bring me some T4 one day tho . . .  
Thursday!

NJ: I'm broke[.]

Respondent: LOL whatever . . . I'll pay for both[.] Thanks for the nice gesture though I really appreciate it (100% sarcasm)[.]

37. Respondent sent a text message to NJ with a "screenshot" of his draft resignation letter from his coaching position. Respondent sent the text message to NJ because NJ had made some very "harsh" comments about respondent's coaching. Respondent quoted some words from one of NJ's text messages, stating that respondent had "Fucked shit up." Respondent now recognizes that he should have "known better" than to send the text message and draft resignation letter. The text message is set forth below:

Respondent: Honestly [NJ] . . . . No . . . I'm not okay . . .

But nobody has to worry about me fucking shit up anymore . . . I am not sending this [resignation letter] out yet because I am going to think about it for another night.

But . . . Thank you [NJ] . . . thanks a lot . . . Maybe if you're on campus tom[orrow] I'll let you know what is going to happen[.]

38. Respondent has learned a lot from his experiences at West High School. He knows he must keep in mind that he is a teacher and not a counselor. He knows that he needs to keep a more professional distance between himself and students. He believes one of the best ways to make a positive impact is to model good behavior,

and to maintain a high level of professionalism each day. He loves working as a teacher and hopes to continue his service as an educator for many years to come.

### **TESTIMONY OF PAULETTE KEENEY**

39. Ms. Keeney is currently employed as a physical education teacher and softball coach at Tracy High School, and has been employed by the Tracy Unified School District for approximately 18 years. During 2021, she also coached the varsity boys' volleyball team at West High School. She knows respondent because he was at that time coaching the girls' volleyball team and also assisted her with the boys' team. She has not seen the Accusation in this matter.

40. Prior to the final volleyball game of the season, respondent and Ms. Keeney spoke about NJ missing and "messaging around" in practice. Respondent recommended to her that NJ not play in the first set of the five-set match. Ms. Keeney followed this recommendation as a normal type of discipline for NJ's behavior.

41. Ms. Keeney never observed respondent behave or speak inappropriately toward the students. Ms. Keeney worked primarily at Tracy High School and did not have much opportunity to observe respondent.

42. Ms. Keeney loves coaching, and naturally spends a lot of time with team members. Coaches can develop mentoring relationships with student-athletes, but must also maintain professional boundaries.

43. Ms. Keeney has a practice of sending text messages to the team captain with the understanding that the team captain will forward the message to the entire team. It is important that the coach maintain a level of professionalism in text messages with the team captain.

44. Ms. Keeney has never had food delivered to the home address of a student-athlete. This might be a breach of professional boundaries.

### **SCHOOL DISTRICT EVALUATIONS**

45. Respondent submitted written performance evaluations from Johansen High School (2017-18 and 2018-19); West High School in Tracy (2020-21); and Pioneer Elementary School in Merced (2021). All the evaluations assessed respondent's performance in six major areas consisting of subareas. The major areas include: (1) engaging and supporting all students in learning; (2) creating and maintaining an effective environment for learning; (3) understanding and organizing the subject of knowledge; (4) planning, designing and delivering learning experiences for all students; (5) assessing student learning; and (6) developing as a professional.

46. The evaluation from Johansen High School does not provide a numerical rating, but includes comments regarding each major area of performance. The evaluations from West High School and Pioneer Elementary School provide comments and a numerical rating of respondent's performance on a scale of 1 through 4. Respondent received a rating of either 3 (meets expectations/standards) or 4 (exceeds expectations/standards) in all areas of performance. The comments on each of the evaluations were generally positive, and no significant performance problems were noted.

47. Respondent's last evaluation as a physical education teacher at West High School, signed on April 22, 2021, includes the following entries:

#### **I. Engaging and Supporting All Students in Learning**

**Rating 3.417. Meets Expectations** – You engage and support all students in learning. You use a variety of strategies to support student learning. . . .

## **II. Creating and Maintaining an Effective Environment for Learning**

**Rating 3.358. Meets Expectations** – You maintain and create an effective environment for learning. You have established a good rapport with the students evidenced by the banter back and forth in your interactions. . . .

48. Respondent's subsequent evaluation as a 5th grade physical education teacher at Pioneer Elementary School, signed on September 27, 2021, includes the following entry:

### **Designing Learning Experiences for All**

#### **Total Score: 4**

[Respondent] provides a calm, safe, and productive learning environment for all. It is obvious he has made connections with students by the way mutual respect is shown between him and his class.

49. Respondent's most recent evaluation as a physical education teacher is from the Weaver Union School District, signed on February 8, 2023. It includes the following entry:

### **Developing as a Professional/Educator**

**Total Score: 3**

[Respondent] is an amazing part of the Farmingdale team. He is a leader and works to support all students. He has good classroom management and will make sure to ask for any assistance if it is needed. He has a love for physical education and it shows in his lessons. We are lucky to have [respondent] and support his journey in education!

**LETTERS OF SUPPORT**

50. Respondent submitted four employment recommendation letters dated in 2018 and 2020, written by principals and assistant/associate principals at high schools where he was then teaching. He also submitted two recommendation letters by faculty at the Cal State Stanislaus Department of Kinesiology. One is dated February 2016, and the other is undated. The letters of recommendation all speak very highly of respondent's knowledge, skills, and commitment to educating students.

**Analysis**

51. Respondent testified candidly and credibly. He acknowledged it was unprofessional for him to use profanity in text messages to NJ. He knows it was "poor judgement" for him to do so, and he is "not proud of it." Respondent also understands in hindsight that he should have referred NJ to another professional when he told respondent he felt suicidal in the past, and that he should not have sent NJ a screenshot of his resignation letter.

52. Respondent does not feel he acted inappropriately by hugging NJ when he gave him the framed jersey. Respondent credibly explained he obtained NJ's home



address from a school counselor for purposes of sending the framed jersey. Respondent thus had NJ's home address when he decided to send a pizza to NJ. Respondent also credibly explained that his intent was simply to show NJ he cared when he signed off a text message by saying "Love you," and that he was only joking when he sent NJ a text message asking him to bring him a beverage from T4.

53. Ms. Keeney testified candidly and credibly on respondent's behalf. She has never seen respondent behave or speak inappropriately toward students, though she has had limited opportunities to observe him because she teaches mainly at Tracy High School. Ms. Keeney was very clear and convincing in her view that coaches must maintain professional boundaries with student-athletes, including maintaining professionalism in text messages with the team captain. She also observed that it might be a breach of professional boundaries for a coach to order food delivered to the home address of a student-athlete.

54. Mr. Boswell and Ms. Jalique testified candidly and credibly on complainant's behalf. With respect to hugging, in Mr. Boswell's view it is not necessarily inappropriate for a teacher to hug a student. Ms. Jalique opined that it is a boundary violation for a teacher to hug a student. She observed that teachers will sometimes give students a hug, but it is not something the District encourages. With respect to a teacher telling a student he loves the student, both Mr. Boswell and Ms. Jalique opined this would be inappropriate and a boundary violation. Mr. Boswell opined that it would not necessarily be inappropriate, standing alone, for respondent to order pizza delivered to NJ, but that it would be inappropriate for a teacher to ask a student to bring them food. Their opinions are persuasive.

55. Based on the evidence as a whole, respondent committed unprofessional conduct and/or violated his professional boundaries with NJ when he signed off a text

message to NJ with “love you”; failed to refer NJ to another professional when NJ told him he previously had suicidal thoughts; used profane language in text messages to NJ; sent a pizza to NJ’s home address; asked NJ to bring him a beverage (even if only sarcastically); and sent NJ a screenshot of his resignation letter. In addition, as explained in the Legal Conclusions, below, respondent acted immorally when he used profane language in text messages to NJ.

56. The evidence as a whole did not establish that respondent committed unprofessional conduct and/or violate his professional boundaries with NJ when he obtained NJ’s home address from a school counselor for purposes of sending a framed jersey to respondent, nor did the evidence establish that respondent acted under false pretenses in obtaining NJ’s address. Also, the evidence did not establish that respondent violated professional boundaries or acted unprofessionally when he hugged NJ under the circumstances here.

57. Respondent demonstrated significant insight by acknowledging in no uncertain terms his misconduct of using profanity in text messages to NJ, and also by acknowledging his lapse in failing to refer NJ to an appropriate suicide prevention professional, and the inappropriateness of sending a screenshot of his resignation letter to NJ. Respondent convincingly testified he has learned from this situation, and that he now clearly understands the imperative to maintain appropriate professional boundaries and to demonstrate appropriate behavior for his students. Based on respondent’s record of employment and his substantial acceptance of responsibility for his conduct toward NJ, it is highly unlikely respondent will commit boundary violations or other similar lapses in the future.

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. Complainant has the burden of proving cause for adverse action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 583, 855-856.) 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.)

### **Jurisdiction and Applicable Law**

2. Pursuant to Education Code section 44000 et seq., and California Code of Regulations, title 5, commencing with section 80001, the Commission is responsible for credentialing teachers in public schools in California, including issuing credentials, and taking adverse action against applicants and credential holders. (Statutory references are to the Education Code unless otherwise specified.)

3. Section 44421 authorizes the Commission to take adverse action against an individual's teaching credential for, among other specified causes, unprofessional conduct, evident unfitness for service, immoral conduct, acts of moral turpitude, or for any cause which would warrant denial of an application for a credential. Section 44345, subdivision (e), allows the Commission to deny an application of one who has committed an act involving moral turpitude.

## **Alleged Causes for Adverse Action**

### **UNPROFESSIONAL CONDUCT**

4. Unprofessional conduct in the teaching profession has been defined as that which violates the rules or ethical code of the profession or is unbecoming of a member of the profession in good standing. (*Bd. of Ed. of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553, overruled on other grounds by *Bekiaris v. Bd. of Ed.* (1972) 6 Cal.3d 575.)

5. Based on the Factual Findings and Legal Conclusions as a whole, complainant established by clear and convincing evidence that respondent committed unprofessional conduct when he when he signed off a text message to NJ with "love you"; failed to refer NJ to another professional when NJ told him he previously had suicidal thoughts; used profane language in text messages to NJ; sent a pizza to NJ's home address; asked NJ to bring him a beverage (even if only sarcastically); and sent NJ a screenshot of his resignation letter. For these reasons, and based on the Factual Findings and Legal Conclusions as a whole, cause exists for adverse action against respondent's credentials pursuant to section 44421.

### **EVIDENT UNFITNESS FOR SERVICE**

6. "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 Dist. v. Comm'n 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.*)

7. Based on the Factual Findings and Legal Conclusions as a whole, complainant did not establish by clear and convincing evidence that respondent is evidently unfit for service, especially given respondent's record of employment and insights into his misconduct in this matter. Based on the evidence as a whole, respondent is fit to serve as a teacher.

### **IMMORAL CONDUCT**

8. The term "immoral" has been defined generally as "that which is hostile to the welfare of the general public and contrary to good morals. . . . [It] 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." (*Bd. of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

9. Based on the Factual Findings and Legal Conclusions as a whole, complainant established by clear and convincing evidence that respondent engaged in immoral conduct when he repeatedly used profanity in his text messages to NJ. For these reasons, and based on the Factual Findings and Legal Conclusions as a whole, cause exists for adverse action against respondent's credentials pursuant to section 44421.

### **ACTS OF MORAL TURPITUDE**

10. "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.)

11. Based on the Factual Findings and Legal Conclusions as a whole, complainant established by clear and convincing evidence that respondent committed acts of moral turpitude when he repeatedly used profanity in his text messages to NJ. For these reasons, and based on the Factual Findings and Legal Conclusions as a whole, cause exists for adverse action against respondent's credentials pursuant to sections 44421 and 44345, subdivision (e).

## **Fitness to Teach**

12. 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). The criteria are specified and applied to respondent's conduct, as set forth below.

## **LIKELIHOOD OF ADVERSE EFFECTS ON STUDENTS, FELLOW TEACHERS, OR THE EDUCATIONAL COMMUNITY**

13. NJ did not testify regarding the effects of respondent's conduct. However, there is a substantial likelihood of an adverse effect whenever a teacher repeatedly uses profanity in his communications with that student. There is no evidence of adverse effects on any other students, fellow teachers, or the educational community beyond NJ.

## **PROXIMITY OR REMOTENESS IN TIME**

14. Respondent's misconduct occurred during 2021, and is more proximate than remote in time.

## **TYPE OF CREDENTIAL HELD**

15. Respondent's credentials will put him in contact with other students who would be harmed by any similar misconduct.

## **EXTENUATING OR AGGRAVATING CIRCUMSTANCES**

16. 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 events or circumstances which demonstrate that "the public, school children and the profession would be adequately protected by a more lenient degree of adverse action . . . ." Mitigating factors present in this matter include the absence of any prior record of discipline over some (though not many) years, and clear evidence of respondent's good character as attested in letters of recommendation.

17. 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. 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. Of these, respondent committed multiple acts of

misconduct, with the potential for significant harm to NJ. There is no convincing evidence that respondent was dishonest, indifferent to the consequences of his conduct, or that he had prior notice or reprimands. On balance, the aggravating circumstances do not outweigh the extenuating or mitigating factors.

### **PRAISEWORTHINESS OR BLAMEWORTHINESS OF MOTIVES**

18. Respondent's sincere desire to "give back" to students is praiseworthy. However, respondent's inattention to professional boundaries and his repeated use of profanity are wholly blameworthy, regardless of his original motive to serve as a mentor to NJ.

### **LIKELIHOOD OF RECURRENCE**

19. The evidence clearly established that respondent has learned from the consequences of his misconduct, that he will be far more careful to maintain professional boundaries in the future, and that he is highly unlikely to engage in future misconduct.

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

20. 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**

21. There is no evidence of notoriety surrounding respondent's misconduct. There may be some students and faculty who learned of his misconduct, but it is



unlikely respondent's future on-campus relationships will be compromised, provided respondent is candid with prospective employers about this disciplinary matter.

### **CONCLUSIONS REGARDING *MORRISON* FACTORS**

22. On balance, the *Morrison* factors demonstrate a direct nexus between respondent's misconduct and his fitness to teach. However, the applicable *Morrison* factors do not indicate respondent is unfit to maintain his credentials and continue teaching. While some continuing concern is warranted, on balance it is not likely respondent will engage in similar misconduct in the future, provided appropriate discipline in this case.

### **Disposition**

23. Licensing disciplinary matters like this are not designed to punish an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, a licensing agency should be primarily concerned with protecting the public. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) In this matter, respondent's misconduct was not so extreme as to indicate revocation of his credentials is necessary to protect the public. Public protection will be achieved by imposing a two-year term of probation that will allow the Commission to monitor respondent's conduct and impress upon respondent the seriousness of his misconduct and the likelihood future misconduct could lead to revocation of his credentials.

### **ORDER**

The Clear Single Subject Teaching Credential issued to respondent Omar Akram Musleh is revoked. However, the revocation is stayed and respondent is placed on

probation for two years from the effective date of this order on the following terms and conditions.

SEVERABILITY CLAUSE: Each condition of probation contained herein is a separate and distinct condition. If any condition of probation is declared unenforceable in whole, in part, or to any extent, the remaining conditions of probation, and each of them, shall not be affected. Each condition of probation shall separately be valid and enforceable to the fullest extent permitted by law.

1. NEW CREDENTIALS SUBJECT TO ORDER: Any new credential issued by the Commission to respondent during the period of probation shall be subject to the same terms and conditions of probation, as set forth herein.

2. OBEY ALL LAWS: Respondent shall obey all federal, state, and local laws and regulations, including, but not limited to, the statutes and regulations of the Commission.

Except for minor traffic infractions, within 72 hours of any incident resulting in respondent's arrest, the filing of any criminal charges, or citation issued, respondent shall submit a full and detailed description of the incident to the Commission. For purposes of this condition, a "minor traffic infraction" includes only traffic violations which are punishable by a maximum of \$250, and do not subject the offender to incarceration or probation.

3. COMPLIANCE WITH PROBATION: 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.

During the period of probation, respondent shall submit quarterly reports, under penalty of perjury, on forms designated by the Commission, certifying and documenting compliance with all terms and conditions of probation.

4. COOPERATION WITH COMMISSION: During the period of probation, respondent shall be available for interviews with the Commission in person or by telephone upon reasonable notice.

5. MAINTAIN CURRENT CONTACT INFORMATION: Within seven days of the effective date of this order, respondent shall notify the Commission of his current mailing address and phone number where voicemail messages may be left. Respondent will notify the Commission in writing of any change of mailing address or residence within 10 days of such change.

6. NOTIFICATION OF EMPLOYER: Within five days of the effective date of this order, respondent shall provide a true and correct copy of this decision, together with a true and correct copy of the accusation, which forms the basis for the decision, to respondent's employer, if any, and to respondent's immediate supervisor at that employer. Within five days of complying with this notification requirement, respondent shall submit proof of compliance to the Commission.

If respondent changes employment at any time during probation, respondent shall again comply with this notification requirement within seven days of accepting new employment and shall again submit proof of compliance to the Commission within five days of complying with this notification requirement.

7. VIOLATION OF PROBATION: The Commission shall retain jurisdiction over respondent 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 any 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.

8. COMPLETION OF PROBATION: Upon successful completion of the terms of this probation, respondent's credentials shall be fully restored.

DATE: April 5, 2023

*Timothy Aspinwall*

TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings