

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

In the Matter of the Accusation Against:

CYNTHIA STROFFOLINO, Respondent

Case No. 2-108447055

OAH No. 2021100866

PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by telephone/videoconference on March 14 and 15, 2022.

Shannon M. Brubaker, Deputy Attorney General, Department of Justice, State of California, represented complainant, Mary Vixie Sandy, Ed.D., Executive Director, California Commission on Teacher Credentialing (CTC).

Cynthia Stroffolino, respondent, represented herself.

The matter was submitted for decision on March 15, 2022.

FACTUAL FINDINGS

Background

1. The CTC is responsible for the credentialing of public school teachers, including issuing credentials and taking adverse action¹ against applicants and credential holders. The CTC's Committee of Credentials (Committee) is responsible for investigating alleged acts or omissions that may be cause for the CTC to take adverse action.

2. On June 9, 2003, the CTC issued a certificate of clearance that expired² on June 1, 2008. On December 19, 2006, the CTC issued an Emergency 30-Day Substitute Teaching Permit that was regularly renewed until it expired on April 1, 2017. On March 8, 2007, the CTC issued a Preliminary Five Year Multiple Subject Teaching Credential, which expired on April 1, 2012. On July 18, 2016, the CTC issued a Preliminary One Year Multiple Subject Teaching Credential, which expired on August 1, 2018. On August 1, 2018, the CTC issued respondent a Clear Multiple Subject Teaching Credential that will expire on September 1, 2023, unless renewed. There is no history of any discipline imposed against the above, collectively referred to as "credentials."

¹ An "adverse action" means the denial of an application for a credential, a private admonition, or public reproof of a credential holder, or the suspension or revocation of a credential. (Ed. Code, § 44000.5.)

² The expiration of any credential does not deprive the CTC from taking disciplinary action against the credential. (Ed. Code, § 44440, subd. (a).)

3. At its January 20 through 22, 2021, meeting, the Committee found probable cause to recommend the revocation of respondent's credentials. The findings were based on allegations relating to respondent's conduct while employed as an elementary school teacher by the San Jacinto Unified School District (district) during the 2018-2019 school year. Respondent timely requested an administrative hearing.

4. On July 15, 2021, complainant signed the accusation alleging the following as grounds for discipline: unprofessional conduct, immoral conduct, evident unfitness for service, and acts of moral turpitude. The factual allegations relate to her conduct involving fellow teachers while she was a fourth-grade teacher at Park Hill Elementary School (Park Hill Elementary). Complainant seeks the revocation of respondent's credentials.

5. Respondent timely filed a Notice of Defense. This hearing ensued.

Allegations Related to the 2018-2019 School Year at Park Hill Elementary

TESTIMONY OF SUSAN RECORD

6. Susan Record has been an elementary school teacher for the past 26 years, with the last 17 years at Park Hill Elementary. During the 2018-2019 school year, she taught third grade. Ms. Record and respondent were friends during the three years they worked together at Park Hill Elementary. Although Ms. Record considered respondent a friend, they did not socialize outside of school.

7. Over the course of the school year, on approximately five occasions, respondent showed Ms. Record pictures of respondent's boyfriend's naked penis that were on respondent's phone. On three occasions, this occurred in Ms. Record's

classroom when children were absent. Twice this occurred while walking through the hallway; although children were present, they could not see what was on her phone. Ms. Record did not object to respondent showing her these images. Her reaction was, "OK, you know. Let me see this type of thing because we are friends," or "oh wow," and "oh my gosh." Ms. Record thought that this was inappropriate to do on an elementary school campus, but it was "quick and somewhat private." Ms. Record never shared similar types of photos with respondent.

8. In October 2018, respondent shared with Ms. Record that she was bisexual, went to swingers' clubs, and shared details about her time there. This occurred in Ms. Record's classroom. While there were no children there, the door was open. Ms. Record did not object to this conversation, and Ms. Record's response was, "like you did what, you know, that kind of questioning and details." This type of conversation occurred a few times. Respondent would always talk about her boyfriends and dating, which Ms. Record called "normal girl talk." Ms. Record denied initiating this conversation or asking respondent about her sex life. On one occasion, she asked Ms. Record to go to a swingers' club, but Ms. Record declined.

9. In October 2018, respondent came to Ms. Record's classroom after school and told her that there are condoms for a woman's vagina and stated to Ms. Record, "Let me know if you want to try it." Ms. Record's husband was present. The statement surprised Ms. Record because the look on respondent's face was "inviting." She asked her husband, "What just happened?" Ms. Record was baffled and confused by the statement. Ms. Record declined and felt respondent was making a sexual advance.

10. On another occasion near Halloween, respondent wanted to take a "selfie" with Ms. Record. As they were about to take the photo, respondent kissed Ms.

Record on the cheek. Several days later, respondent asked Ms. Record if she liked the kiss. Ms. Record did not think the kiss was a big deal, but when respondent asked about it, Ms. Record felt the context changed, not necessarily in a sexual way, but "just in a real friendly way."

11. In January 2019, respondent would pop into Ms. Record's classroom during breaks and say that she loved Ms. Record. This did not initially bother Ms. Record because "that's how girls talk to each other." One day respondent saw her and asked Ms. Record if she was avoiding her and whether she still loved respondent. Then one morning, respondent came into Ms. Record's classroom and said, "Let's get married and get out of here." After this statement, Ms. Record felt the statements were "in a different context." Ms. Record responded by saying, "No way, I'm not raising kids again." Ms. Record felt respondent was serious when she said, "let's get married." Ms. Record said the statement did not make her feel uncomfortable, but she knew the relationship was "definitely changing." However, Ms. Record did not really know how to respond directly to the statement, which is why she said she would not raise more kids.

12. Ms. Record began to avoid respondent and walk a different way so as not to encounter her. She did this because she knew how respondent felt about her and did not want to hear any more about things like the swingers' club, which respondent talked about all the time, asking Ms. Record to join, which made Ms. Record uncomfortable.

13. Approximately six times over the course of the year, respondent would tell Ms. Record, "I need dick tonight." This would be in Ms. Record's classroom with the door open, although no children were present.

14. In April 2019, Ms. Record was in her classroom after school and had been crying about a personal issue. Respondent hugged Ms. Record, then looked her up and down before saying, "You look so good in that skirt. I watched you walk away and you looked good from behind, no wonder your students pay attention to you." This upset Ms. Record because it was as if respondent had not been paying attention to why Ms. Record was upset and was only interested in her romantically. This changed the relationship and prompted Ms. Record to send respondent a text message asking respondent to "lay low and leave me alone for now." Although the text was friendly, Ms. Record tried to communicate that she was ending the friendship.

15. Shortly after sending the text to respondent, Ms. Record was placed on administrative leave by the district. Her principal told Ms. Record that respondent had reported her for something, but the principal could not tell her about what specifically. Ms. Record believed respondent was retaliating against her and had sexually harassed her, so on May 15, 2019, Ms. Record submitted a letter outlining the above interactions to the district and requested a transfer to another school. Ms. Record wrote this letter because she did not feel the district was taking the situation seriously. Ms. Record was put on leave for 19 days before she was allowed to return to school.

16. On cross-examination, respondent asked Ms. Record if she ever made prior claims of sexual harassment. Ms. Record said she attended a conference and a counselor there made gestures and comments that made Ms. Record uncomfortable, so she reported it to the district. She denied ever alleging sexual harassment against anyone else. Ms. Record also maintained that she did not socialize with respondent outside of school, although there was one occasion where she and her husband stopped by a bar where a coworker was performing, and respondent was also there.

17. Ms. Record confirmed that respondent had a good reputation as a teacher and her students liked her.

TESTIMONY OF KAREN KNOX

18. During the 2018-2019 school year, Karen Knox taught fourth grade at Park Hill Elementary. This was her first year working for the district and as a teacher. Respondent was the fourth-grade team leader, so Ms. Knox had daily interaction with her. They worked collaboratively on curriculum and attended weekly team meetings together. The two did not socialize outside of school, although they might have eaten lunch together on occasion outside of campus.

19. On one occasion, Ms. Knox was in the teachers' lounge and made a statement about how nobody ever brings in leftover snacks into the lounge, and respondent's response was, "You could eat me." Ms. Knox took this to be a reference to oral sex, since respondent had previously told her that she liked both men and women. Ms. Knox took the statement as a joke and it did not bother Ms. Knox much because she and respondent were both going through divorces at the time, but respondent knew Ms. Knox was straight and monogamous, so it would not be something that interested her.

20. Another time in the lounge for a meeting, Ms. Knox asked respondent if a seat was taken, to which respondent responded, "No, but if you sit next to me, I'll wrap my legs around you." Ms. Knox said she was shocked by the statement, but she just sat down and continued with what she was doing.

21. At grade level meetings, while people were gathering before the start of the meeting, respondent frequently stated, "I need dick." This occurred approximately five or six times over the course of the year. Other teachers, but no students, were

present. It appears Ms. Knox took this as a joke, because her response was, "Like right now? Or are we going to do our work?" Another time, respondent told Ms. Knox, "I'm a ho and Miller is a ho, and it's only a matter of time before we fuck." Mr. Miller was another fourth-grade teacher at the school. Ms. Knox said that these comments often came out of nowhere, so she could not provide any context for the statement.

22. Ms. Knox did discuss her own online dating with respondent. She thought the comments respondent made would be suitable for lunchtime but "probably not" during a meeting, because respondent was also her team leader and Mr. Miller was her assigned mentor.

23. Ms. Knox had issues with the school administration that year, and ultimately, she was not elected to return. These issues related mainly to scheduling of team and planning meetings outside of contract hours, and her custody schedule was not accommodated. Ms. Knox felt that respondent's behavior, attitudes, and statements made for an uncomfortable work environment. Ms. Knox never said anything to respondent or the administration because the administration made it known that their team was a "problem team" for the school and they needed to make it look like they all got along.

24. Ms. Knox documented the above in an email she sent to Dr. Sharon Raffiee, in charge of the district's human resources, on June 10, 2019, at Dr. Raffiee's request. Ms. Knox also confirmed that she met with Margarita Lanier, Park Hill Elementary's principal, and a union representative on September 24, 2018. Ms. Lanier documented the meeting in a note, which stated that Ms. Knox reported that respondent made inappropriate comments, hitting on her, and making statements such as, "I need dick." Ms. Knox is documented as saying how she did not know respondent was even a teacher with the way she behaved, but Ms. Knox did not want

to write a statement because she feared retaliation. Ms. Knox testified that she did not report any of these comments to Ms. Lanier, but other teachers who were present in the lounge reported it. Ms. Knox believed Ms. Lanier did not like her, and she was just trying to get through the year. Ms. Knox wanted to “keep her head down” so she did not want to make a formal statement.

25. As a first-year teacher, Ms. Knox needed help with curriculum and teaching strategies. She felt that respondent’s comments were distracting and made it more difficult to do her job. However, Ms. Knox did not avoid respondent and still sought her out for assistance.

TESTIMONY OF KATE DEMBOWSKI

26. Kate Dembowski taught fourth grade at Park Hill Elementary for two years through the 2018-2019 school year. She and respondent were friends at school and socialized some outside of school. Ms. Dembowski was not surprised when she learned of the district’s investigation into respondent based on some of the statements respondent made at the fourth-grade team meetings, and respondent was always very “blunt.” Both respondent and another teacher, Mr. Miller, talked about their dating life and made sexually suggestive comments. This conversation did not make Ms. Dembowski uncomfortable or cause her offense, but it was not a topic appropriate for work. Ms. Dembowski only heard respondent say, “I need dick tonight” once at a team meeting. Again, Ms. Dembowski was not personally offended, but if her mother had been there she would have been shocked, so Ms. Dembowski could see why others might be offended. No children were present during these conversations. Respondent was always very professional with the students.

27. Ms. Dembowski testified that Ms. Record openly bragged that she could get anyone at the school fired because her husband worked for the district. She also testified that Ms. Record filed a sexual harassment claim against another teacher at the school, who taught Ms. Dembowski's child at the time.

TESTIMONY OF JACINTA COATS

28. Jacinta Coats has taught at Park Hill Elementary for six or seven years. During the 2018-2019 school year, she was a resource (special education) teacher. She knew respondent, but the two did not socialize and they only interacted on occasion. In the fall of 2018, two other teachers asked Ms. Coats for advice because they were concerned about the "You can eat me" comment respondent made to Ms. Knox in the lounge. Ms. Coats told them they should report it to the principal because Ms. Knox was new teacher, and if she felt she was being harassed, only administration could do something about it. Ms. Coats had been present in the lounge when respondent made the comment to Ms. Knox after Ms. Knox commented there should be snacks in the lounge. Ms. Coats understood it to be a sexual comment. Ms. Coats did not believe Ms. Knox was happy about the comment based on the reaction on her face. Respondent had made similar statements at other times and told Ms. Coats that she was bisexual. Respondent had a reputation of talking about sexual things, so it was not out of the ordinary. On three or four occasions, respondent asked Ms. Coats if she could come over and use Ms. Coats's jacuzzi. This made Ms. Coats uncomfortable based on some of the other statements respondent made. As a result, Ms. Coats tried to distance herself from respondent.

TESTIMONY OF HOLLY AMIGHETTI

29. Holly Amighetti³ is in her sixth year teaching at Park Hill Elementary. During the 2018-2019 school year, she taught second grade. She met respondent at a new teachers' orientation as they were both hired at the same time. The two became friends and they socialized outside of school, including working out together at the same gym before school. However, the friendship changed when Ms. Amighetti began feeling uncomfortable around respondent. Respondent began talking about things that made Ms. Amighetti uncomfortable. Specifically, respondent alluded to things that suggested to Ms. Amighetti that respondent was more interested in a romantic relationship than just a friendship. For example, respondent would say that she was "fluid," and although not necessarily gay, she was into women sexually. She would say things in a joking way, but would say things like, "You need to dump your man and

³ Shortly before taking a lunch break on the first day of hearing, respondent advised that she was of the belief that the hearing would end at 12:00 p.m. on each of the scheduled hearing days. Respondent said she received an email from Deputy Attorney General Brubaker stating such, an assertion that Ms. Brubaker denied, and which respondent did not produce any corroboration. Respondent said she was unable to attend the hearing in the afternoon because she had to work. Because complainant had scheduled most of her remaining witnesses to appear on the afternoon of March 14, 2022 (and the district had arranged for substitute teachers to cover the witness's absence), respondent was told that the hearing would proceed as scheduled, and attendance at the hearing was her choice. Accordingly, respondent was not present for the testimony of complainant's remaining witnesses, with the exception of Dr. Raffiee, who testified the following day.

you and I could be fine together.” As a result, Ms. Amighetti stopped socializing with respondent outside of work.

30. Ms. Amighetti was not surprised when she was interviewed by the district about respondent because of the inappropriate comments respondent had made. On several occasions, respondent discussed with Ms. Amighetti about going to swingers’ clubs. On more than 10 occasions, while at school, respondent would make a comment about needing “dick.” On one occasion, Ms. Amighetti made a comment about being hungry and respondent said something to the effect of, “You can eat me,” which Ms. Amighetti understood to be sexual in nature. Ms. Knox also shared with Ms. Amighetti that respondent made a similar comment to her and other inappropriate statements during team meetings. Ms. Knox was very concerned because she felt like she was going to lose her teaching position. Ms. Amighetti ended up reporting this to the principal, Ms. Lanier, because she was concerned about Ms. Knox and did not feel that as a new teacher, she was receiving the support she needed.

31. On one occasion, there was a baby shower being held at the school’s library after school. Respondent had passed around a photo of a male’s genitalia “out of the blue.” This made Ms. Amighetti uncomfortable, and she did not think it appropriate for the setting. After these incidents, Ms. Amighetti attempted to avoid respondent and did not want to have anything to do with her. She felt respondent’s behavior affected the work environment and caused her to be worried that she might run into respondent while at school.

TESTIMONY OF MARCIA THOMAS

32. Marcia Thomas has taught for the district for 24 years, the last 14 of which at Park Hill Elementary. During the 2018-2019 school year, she was a second-

grade teacher. She was friendly with respondent and would occasionally socialize outside of school in a group, such as at a Christmas party or after-work happy hours. Ms. Thomas was interviewed by Dr. Raffiee regarding respondent. Ms. Thomas clarified that the statement written by Dr. Raffiee was inaccurate in one respect, as she never personally heard respondent say, "you can eat me." Instead, Ms. Knox told her and Ms. Amighetti this. Ms. Thomas did hear respondent state, "I need dick tonight," but she could not recall if she heard this more than once. Ms. Thomas was not surprised that the district was investigating respondent because she did not believe respondent to be very professional.

TESTIMONY OF LESLIE SEARL

33. Leslie Searl has been a teacher at Park Hill Elementary for the past 20 years. On one occasion, respondent and Ms. Record were walking and talking together in the hallway at the end of recess. Because they were laughing and joking, Ms. Searl caught up to them and said something to the effect of, "You guys are having a whole lot of fun, what's going on?" They both responded, "Oh, nothing," to which Ms. Searl said, "Oh come on." Respondent then showed her a picture of a naked man in the shower with the curtain pulled aside. Although Ms. Searl felt it was inappropriate, she did not say anything and was not offended. Although students were around in the hallway, the phone was not visible to students, which was one of Ms. Searl's concerns. In the past, respondent had told Ms. Searl that she went to swingers' clubs, but Ms. Searl shut the conversation down. Ms. Searl was also the union representative, and Ms. Knox had told her about several comments respondent made that were offensive.

TESTIMONY OF CARMEN NUNEZ-TAIT

34. Carmen Nunez-Tait has been a teacher for the past 16 years and at Park Hill Elementary for the past six years. She and respondent were friendly at school but did not socialize outside of school. Respondent would frequently use the "f-word" at lunch or in passing on the campus when students were around. She would make comments or gestures about sexual activities. She would talk about wanting to "hook-up" and about sexual experiences, and respondent asked other teachers if they did "this or that." One time, in a classroom during lunch, she shared that she had same-sex encounters and made a gesture of cupping her breasts accompanied by "suckling" noises. This made Ms. Nunez-Tait extremely uncomfortable to the point that she would leave the room if respondent entered. Respondent never showed her naked photos, but she was present when respondent shared what she assumed to be naked photos, based on the reaction by the other teachers.

TESTIMONY OF MARGARITA LANIER

35. Margarita Lanier has been employed by the district for the past seven years and is currently a middle school principal. During the 2018-2019 school year, she was principal of Park Hill Elementary. Ms. Lanier first met respondent when she was dean of students at a middle school where respondent was a substitute teacher. Ms. Lanier's first concern with respondent was that she wore high stiletto heels, which Ms. Lanier believed posed a safety hazard. She asked respondent to stop wearing them, but respondent ignored the request. Later, Ms. Lanier began hearing conversations about respondent making inappropriate comments. Ms. Lanier documented having a

conversation on September 24, 2018,⁴ where she met with Ms. Knox and a union representative during which Ms. Knox reported that respondent made inappropriate comments to her and during the team meetings. However, Ms. Knox did not want to write a statement because she believed respondent would retaliate. After this meeting, Ms. Lanier reported the incident to personnel and then met with respondent and asked her to step down from the lead teacher position.

TESTIMONY OF SHARON RAFFIEE

36. Sharon Raffiee is the Executive Director of Personnel for the district, who has been employed there for the past 17 years. On May 16, 2019, Ms. Lanier provided her Ms. Record's complaint against respondent. Dr. Raffiee went to Park Hill Elementary and met with respondent, Park Hill's Assistant Principal and a union representative. Dr. Raffiee read to respondent Ms. Record's complaint and provided respondent the opportunity to respond. Respondent only stated that it was probably not a good idea to make a comment about swingers' bars in her room after school. Dr. Raffiee encouraged respondent to provide her a narrative statement by email. Dr. Raffiee placed respondent on paid administrative leave while she further investigated the allegations.

⁴ The document was not dated, and it appears that the reference to September is in error, and this meeting took place in November 2018. Moreover, because this documentation was first referenced in a June 24, 2019, email from Ms. Lanier to Dr. Raffiee, it does not appear that Ms. Lanier documented this meeting contemporaneously.

37. Dr. Raffiee interviewed Ms. Record about her statement, which was consistent with Ms. Record's testimony. On May 21, 2019, Dr. Raffiee received an email from respondent with two written statements attached, summarized as follows: Respondent stated she believed Ms. Record's complaint was in retaliation for a statement respondent submitted against Ms. Record. At no time did respondent make an advance on Ms. Record, and respondent believed that Ms. Record twisted many private conversations. She admitted to having personal conversations with Ms. Record about intimate parts of their lives, which Ms. Record would often initiate. At no point did Ms. Record tell respondent she did not want respondent to share with her. Instead, Ms. Record constantly referred to respondent as a friend and somebody with whom she could share things.

Respondent indicated she believed the complaint stemmed from a complaint respondent made about Ms. Record's unprofessionalism toward coworker. Respondent then discussed facts relating to her complaint about Ms. Record.

Respondent admitted to showing photos to Ms. Record of her boyfriend's privates, but this was at the request of Ms. Record. Respondent explained that the two frequently talked about sex, and Ms. Record asked to see the explicit photos. On another occasion, after Ms. Record had asked to see the photo, Ms. Record called for Ms. Searl to look at the photo as well. This made respondent uncomfortable because respondent did not have this type of relationship with Ms. Searl or had not previously had similar conversations. However, Ms. Record prompted her to show Ms. Searl the picture, who just laughed as a result.

Regarding the statement, "I need dick tonight," respondent said on one occasion, she was irritated after work. Ms. Record then made the comment, "Oh you just need some dick to get over it." Respondent laughed. One occasion, Ms. Nunez-

Tait and another teacher walked in while the two were laughing. They asked what was going on, and Ms. Record explained why they were laughing and stated, "she said 'I need dick tonight.'" Ms. Record was laughing hysterically, and they all laughed and went their separate ways.

Regarding the allegations that she looked Ms. Record up and down and told her she looked good from behind, respondent said the two did pay each other compliments about their attire, but she did not say those words. Instead, Ms. Record told respondent other coworkers paid her compliments, especially from men, and she shared them with her husband because it was a "turn on" for them.

Respondent said she could not account for the allegations about the swingers' club and denied that they were ever said.

In a second statement, respondent extensively discussed her allegations of misconduct against Ms. Record.

38. On May 28, 2018, Dr. Raffiee met with respondent with her union representative. She informed respondent that the allegations had been substantiated to the extent that the district believed she needed to be removed from the classroom and respondent had not offered a clear response. Dr. Raffiee informed respondent that she would be taking her concerns to the cabinet and dismissal charges would be forthcoming and offered her the choice of resignation. After speaking with her union representative, respondent requested additional time, and it was agreed that a meeting would be convened the following day. At the next meeting, respondent told Dr. Raffiee that she never said any of the things in the allegations. Dr. Raffiee offered to return to Park Hill and interview additional teachers, which was agreed. Dr. Raffiee testified she did this because she thought it only fair, as respondent had alleged that

Ms. Record's complaint was retaliation against respondent for having made a complaint about Ms. Record.

39. Dr. Raffiee interviewed additional teachers at Park Hill, many of whom testified at this hearing and whose statements were consistent with their testimony. As indicated in their testimony, many of the teacher expressed no surprise about the nature of the investigation and there was an overall validation of the complaint about unprofessional workplace conduct.

40. On June 7, 2019, respondent met with respondent and her union representative. Dr. Raffiee shared the results of her interviews, including additional allegations. Dr. Raffiee informed respondent that based on her unprofessional conduct, she would be recommending dismissal, but she would be given an opportunity to resign. Respondent asked about receiving additional training or whether she could be moved to another site, which Dr. Raffiee declined. Dr. Raffiee testified that respondent received yearly trainings on sexual harassment, anti-bullying, and discrimination. The types of conduct committed by respondent were covered in these trainings.

41. On January 21, 2020, respondent agreed to resign from the district following the district having initiated dismissal proceedings.

Respondent's Evidence

42. Respondent's testimony is summarized as follows: Ms. Record and Dr. Raffiee have been friends for the past 17 years. Dr. Raffiee allowed for a toxic work environment caused by Ms. Record. Respondent was told to do as Ms. Record says, and that if respondent ever came forward, Ms. Record would have her fired as she had done with other employees. Finally, respondent filed a complaint against Ms. Record in

May 2019 after seeing Ms. Record become physical with another employee. Afterwards, nothing came of the complaint, and respondent's whole life came apart and her livelihood has been taken. However, she has taken classes, gone through counseling, and taken workplace violence training, which have helped her set boundaries so that she will not be "entrapped" any more.

43. Respondent has worked in education for the past 20 years and has held a teaching credential since 2006. She has never been disciplined until this incident. Since the incident, respondent has attended individual counseling, and domestic violence counseling through county social services and Kaiser. It was not clear from respondent's testimony the length or frequency of the counseling. It was also unclear what kind of therapy, if any, she continues to receive, as she could not name a therapist and appears to only have irregular "check-ins." She said that obtaining services through Kaiser has been difficult since they do not maintain a sufficient number of therapists. She also goes to a weekly support group for mothers at her church. The domestic violence course lasted nine weeks, which she attended voluntarily because she needed to see how her boundaries were "broken," and she suffered from domestic violence. Respondent still feels that she is being targeted because she went after Ms. Record. When asked if that is why this hearing is occurring, respondent said, "I know I did wrong, but she made the environment, it wasn't me who made it, she's the one who orchestrated." When it was noted that there were allegations from others besides Ms. Record, respondent said they are all Ms. Record's friends. She said they do not remember how conversations started and only remember what respondent said. Respondent said they are all "hiding" from Ms. Record.

44. Respondent completed school to become a medical scribe, where she learned about workplace boundaries. She has not worked in education since, because

she did not want to put this "problem" in her application. Since working for the district, respondent has not worked until starting a couple weeks before for Riverside County training to be a "wraparound" peer counselor.

45. When asked if she acknowledged any of the misconduct alleged in the accusation, respondent said she did some wrong, but it was orchestrated by Ms. Record and only when respondent spoke against her was her conduct brought to anyone's attention. She was professional up until Ms. Record entrapped her. Ms. Record said she could get anyone fired, and she did. Respondent said she "misconducted herself." Respondent said the witnesses did not "include things how they were said," and "everyone" made references to "needing dick." Respondent testified that she only said this once, which as she explained in her statement to Dr. Raffiee, was when she repeated that Ms. Record said, "[respondent] needs dick." This was the only time she ever said "I need dick" to anyone. Respondent then volunteered, "these are all friends of Ms. Record. They all want to be staying within the district, they are all invested in it. I just spoke up against her."

46. Regarding showing the naked photos of men, respondent said it did not happen as the witnesses described. Respondent said she only showed a nude photo after Ms. Record asked her about her dating life, respondent replied she had a new man, Ms. Record asked her to show pictures, and respondent replied, "Oh, you will never believe what he just sent me." At Ms. Record's insistence, respondent showed her the photo. Later, at the end of the school day, Ms. Record called out to Ms. Searl to come "check this out." Respondent was hesitant, but Ms. Searl said, "Come on, let me see." After respondent showed her the photo, Ms. Searl laughed and said she had a boyfriend just like that. Everyone was laughing and while she recognized it was on school campus, respondent said she did not understand why this is happening

because she was being used as a “tool” for Ms. Record’s amusement. Respondent believes she is only in these proceedings because of Ms. Record.

47. When asked if she showed a nude photo during a baby shower, respondent said Ms. Amighetti took her phone and passed it. She explained that she received a text, after which she giggled. After seeing the photo - which was a sweat-mark in the shape of a penis and not a naked man – her phone was passed around the room.

48. When asked about stating, “You can eat me,” to Ms. Knox, respondent said she could not recall saying that. Respondent denied being told anything about the comment to Ms. Knox by Ms. Lanier. She denied being removed from the team lead, and she only stepped down from the position shortly before going on a medical leave. Respondent said Ms. Lanier’s account is not what happened.

49. Respondent admitted to talking about swingers’ clubs at school, but they all discussed their love lives and they all shared personal information.

50. When asked if she learned anything out of this experience, respondent understands boundaries and will never “step out of boundaries” or “reporting what she sees.” She explained because she was a whistleblower against Ms. Record. She is sad that she placed herself in this predicament. Respondent said she will not speak so freely in the future, she will be more tactful with how she comes across.

51. In conclusion, respondent stated she worked hard to obtain her credential and would like to continue serving the community. She has taken courses and classes, and she wishes to continue to serve the community. She also noted that she was the only woman of color at Park Hill Elementary, and she believes there was prejudice against her.

52. Respondent did not submit any evidence or call any witnesses.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (Evid. Code § 115.) The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is clear and convincing evidence. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Relevant Statutes

2. Education Code section 44421 permits the CTC to take adverse action against a credential for "immoral or unprofessional conduct," or "for any cause that would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service."

3. Education Code section 44345 lists as grounds to deny any application for the issuance of a credential an applicant who "has committed any act involving moral turpitude." (*Id.* at subd. (e).) Any denial on the grounds of moral turpitude must "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."

Evaluation

4. Clear and convincing evidence established that respondent made inappropriate and unprofessional comments to her coworkers while on school property or during school hours during the 2018-2019 school year. These included sexually suggestive comments and coarse language during team meetings or during lunch. While Ms. Record's testimony is perhaps less credible than the other witnesses' due to a potential motive for retaliation based on respondent's initial complaint against Ms. Record, the testimony of the other witnesses was more credible than respondent's testimony. Respondent essentially denied most of the allegations and alleged that the witnesses were lying because they were afraid of, or friends with, Ms. Record. This allegation is rejected. Indeed, two of the witnesses are no longer employed by the district and as respondent no longer works there, there is no motive for any of the witnesses to lie at this hearing. All of the witnesses were consistent in their allegations about the general tenor of respondent's lack of professionalism and in identifying specific instances where her behavior was inappropriate. Even if the conversations between Ms. Record and respondent were "consensual," there are other independent grounds to conclude respondent engaged in unprofessional conduct. Specifically, respondent made sexual references on multiple occasions, showed nude photographs on her phone, and spoke about "needing dick" during team meetings.

RELATIONSHIP TO FITNESS TO TEACH

5. Any adverse action on the grounds that respondent committed an act of moral turpitude must be based upon reasons related to the applicant's fitness to teach. (Ed. Code, § 44345.) The statutory definition of immoral 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.'" (*San Diego Unified School Dist. v. Comm. on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466) (*SDUSD*) [citation omitted].)

6. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 235 (*Morrison*), the Supreme Court held that "an individual can be removed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher." The court delineated the following criteria to determine whether a teacher's conduct indicates that he or she is not fit to teach: (1) the likelihood that the conduct may have adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of the conduct; (4) the type of teaching certificate held by the teacher; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct in question; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the recurrence of the conduct in question; and (8) the extent to which disciplinary action may inflict an adverse impact or have a chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Id.* at pp. 229-230.) "These factors are relevant to the extent that they assist the board in determining . . . the teacher's fitness to teach, i.e., in determining whether the teacher's future classroom performance and overall impact on his students are likely to meet the [school district's] standards." (*Ibid.*) There must exist a "factual nexus between [the teacher's misconduct] and unfitness to teach." (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1982) 135 Cal.App.3d 278, 288 (*San Dieguito*).)

Not all the *Morrison* factors must be considered, only the most pertinent ones. (*West Valley-Mission Community College District v. Conception* (1993) 16 Cal.App.4th 1766, 1777.) Additionally, the *Morrison* factors may be applied to all the charges in the aggregate. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1456-1457 (*Woodland*).) The determination of fitness for service required by *Morrison* is a factual one. (*Id.* at fn. 3); *Fontana Unified School District v. Burman* (1988) 45 Cal.3d. 208, 220-221 (*Burman*); *Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384.)

7. In considering the *Morrison* factors relevant to this case in relation to the sustained allegations the following conclusions are reached.

The Likelihood That the Conduct May Have Adversely Affected Students, Fellow Teachers, or the Educational Community, and the Degree of Such Adversity Anticipated

8. Respondent's conduct had a negative effect on her fellow teachers, many of whom sought to avoid her or felt uncomfortable in her presence.

The Proximity or Remoteness in Time of Conduct

9. The events that occurred were not recent. However, the conduct is not so remote as to prevent the CTC from taking action. (*Broney, supra*, at p. 477 [conduct was not remote in time where the CTC took action against the credential three years after the criminal conduct occurred].)

Type of Teaching Credential

10. This factor looks to the teacher's teaching certificate and whether the teacher's conduct is consistent with her credential. (*SDUSD, supra*, at p. 1143.) Respondent's conduct is inimical to a credential for elementary or secondary education.

Extenuating or Aggravating Circumstances

11. California Code of Regulations, title 5, section 80300, subdivisions (b) and (m), provide definitions for aggravating and mitigating factors which demonstrates that a greater or more lenient degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession. These factors are instructive, but not exhaustive, in evaluating extenuating or aggravating circumstances related to fitness to teach.

Aggravating factors include:

- (1) a prior record of adverse action including the nature and extent of that record;
- (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 bad faith, dishonesty or other violation of the laws governing educators;

- (4) that the misconduct significantly harmed a child entrusted to the care of a credential holder or applicant, significantly harmed the public or the educational system;
 - (5) that the holder or applicant demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders; or
 - (6) that the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source.
- (*Id.* at subd. (b).)

Mitigating factors include:

- (1) absence of any prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious;
- (2) lack of harm to the person who is the object of the misconduct;
- (3) emotional or physical difficulties suffered by the holder or applicant which substantially contributed to the misconduct; provided that the difficulties were not the product of illegal conduct by the credential holder or applicant, such as illegal drug or substance abuse; and further provided that the credential holder or applicant has established through clear and convincing evidence that he or she no longer has such difficulties;

(4) a demonstration of good character of the applicant or holder attested to by references from the educational community or the general community from individuals aware of the extent of the applicant's or holder's misconduct;

(5) objective action taken by the applicant or holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing which is designed to timely make amends for the consequences of the misconduct;

(6) the proximity or remoteness in time relative to the seriousness of the misconduct; or

(7) the nature and extent of subsequent rehabilitation.

12. There are aggravating circumstances including respondent's repeated course of conduct and lack of acceptance of any responsibility. In mitigation, respondent has no history of discipline; respondent has undergone some counseling, trainings, and other courses related to professional boundaries and sexual harassment; and the misconduct occurred approximately three years ago.

The Praiseworthiness or Blameworthiness of Respondent's Motives

13. Respondent's motives were not praiseworthy, although it is noted that much of the communication between Ms. Record was in the context of a friendship where they both shared personal details about their lives.

The Likelihood of the Recurrence of the Questioned Conduct

14. Respondent's acceptance of responsibility was minimal. While respondent nominally stated that she would maintain better boundaries in the future, it was not established that respondent has been rehabilitated. She continuously blamed Ms. Record and provided very little insight about her actions or why they were inappropriate. Even removing Ms. Record's allegations from the equation, respondent made unprofessional comments to other teachers and created a hostile and uncomfortable working environment. Respondent denied most allegations and accepted no responsibility for her comments in the face of clear and convincing evidence. Respondent's scant acceptance of responsibility does not indicate that she has engaged in meaningful introspection about her conduct. While respondent indicated that she has taken courses and trainings in areas of professional boundaries, there was no corroborating evidence. Similarly, she presented no evidence from a mental health professional regarding any treatment she received and her prospects for continuing to teach. Consequently, the risk of recurrence of improper conduct is not minimal. (*San Dieguito, supra*, at p. 1183 (noting it was "likely [the teacher] would repeat her unsatisfactory performance since she appeared to be indifferent to the seriousness of the problem").)

Chilling Effect Upon Constitutional Right

15. There is no relationship between her conduct and free speech.

16. In consideration of the *Morrison* factors and totality of the circumstances, respondent's conduct in the aggregate indicates a factual nexus between her conduct and unfitness for service.

UNPROFESSIONAL CONDUCT

17. The term “unprofessional conduct” is conduct such as to indicate unfitness to teach. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.) Unprofessional conduct has been defined as “that conduct which breaches the rules or ethical code of a profession or conduct which is unbecoming a member in good standing of a profession.” (*Shea v. Bd. of Medical Examiners*, (1978) 81 Cal. App.3d 564, at 575; *Bd. of Education v. Swan* (1953) 41 Cal.2d 546, 553.)

18. Respondent engaged in unprofessional conduct demonstrating an unfitness to teach as measured against the *Morrison* factors.

MORAL TURPITUDE/IMMORAL CONDUCT

19. There is broad discretion in determining what constitutes immoral conduct in the context of teacher disciplinary matters. (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327.) Immoral conduct has been defined by the courts as follows:

[T]hat which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Palo Verde etc. School Dist. v. Hensey* (1970) 9

Cal.App.3d 967, 972, citing *Bd. of Education of San Francisco Unified School Dist. v. Weiland*, 179 Cal. App 2d 808, 811.)

A teacher's conduct is therefore "immoral" when it negatively affects the school community in a way that demonstrates the teacher is "unfit to teach." (*Board of Education v. Commission on Professional Competence* (1980) 102 Cal.App.3d 555, 593 [the term "immoral conduct" must be "given context by reference to fitness for the performance of that occupation"]; *Bassett Unified School Dist. v. Commission on Professional Competence* (1988) 201 Cal.App.3d 1444, 1453 ["[W]here charges of immorality . . . are raised in [a] teacher discharge case[], the applicable standard is whether the person is fit to teach."].)

20. While respondent's conduct was unprofessional, it did not rise to the level of immoral conduct or moral turpitude.

EVIDENT UNFITNESS TO TEACH

21. Evident unfitness for service is established by conduct demonstrating that the teacher is "clearly not fit, not adapted or suitable for teaching, ordinarily by reason of temperamental defects or inadequacies." (*Woodland, supra*, at p.1444.) It connotes fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet expectations of the school district. (*Ibid.*) As a threshold matter, the *Morrison* criteria must be examined to ascertain whether the conduct in question indicates unfitness for service. "If the *Morrison* criteria are satisfied, the next step is to determine whether the 'unfitness' is 'evident'; i.e., whether the offensive conduct is caused by a defect in temperament." (*Id.* at p. 1445.)

22. Respondent has some recognition that she acted inappropriately and has sought out classes and counseling relating to professional boundaries. It was not established that respondent has a fixed character trait that is not remediable. With a proper showing of rehabilitation and acceptance of responsibility, respondent may very well be fit to return to the classroom.

Cause Exists to Revoke Respondent's Credential

23. Cause exists to take adverse action against respondent's credential in that she committed acts of unprofessional conduct. (Ed. Code, §§ 44421.)

24. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger, supra*, at p. 856.) Respondent's conduct is inconsistent with the behavior expected of teachers and raises serious concerns about her judgment and maintenance of professional boundaries. On this record, respondent has not established that she has been rehabilitated such that she is safe to continue teaching in public schools. Accordingly, revocation is the only level of discipline sufficient for public protection.

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ORDER

All credentials and certificates issued to respondent Cynthia Stroffolino are revoked.

DATE: April 14, 2022


Adam Berg (Apr 14, 2022 16:54 PDT)

ADAM L. BERG

Administrative Law Judge

Office of Administrative Hearings