

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

In the Matter of the Accusation and

Statement of Issues against:

ELIA CISNEROS, aka ELVIA DUENAS, Respondent.

Agency Case No. 1-992950672

OAH No. 2021080119

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter remotely by video and teleconference on January 18 and 19, 2022.

Lisa A. Miller, Deputy Attorney General, appeared on behalf of complainant May Vixie Sandy, Ed.D., Executive Director of the California Commission on Teacher Credentialing (Commission).

Seth A. Weinstein, Attorney at Law, represented respondent Elia Cisneros, also known as Elvia Duenas, who was present.

Oral and documentary evidence was received. The record was held open to permit additional evidence to be submitted by January 26, and objections to be filed by February 2, 2022.

The record was closed, and the matter was submitted for decision on February 2, 2022.

SUMMARY

In the Accusation, complainant seeks to revoke respondent's teaching credential for unprofessional conduct, immoral conduct, and acts of moral turpitude. Complainant based those causes for discipline on allegations that respondent sent a letter, purporting to be from a new elementary school principal, to the parents of students at that school, revealing the principal's sexual orientation and implying that he is a pederast. In the Statement of Issues, complainant seeks to deny respondent's application for a credential with an authorization in English for the same alleged acts of moral turpitude.

Respondent denies having sent the letter.

As set forth below, complainant has satisfied the clear and convincing burden of proof. Respondent's credential is revoked and her application denied.

FACTUAL FINDINGS

Jurisdiction

1. On December 3, 2003, the Commission issued a Clear Multiple Subject Teaching Credential to respondent. The credential was in full force and effect at all relevant times and is scheduled to expire on January 1, 2024. Respondent also previously held the following certification documents: a Special Temporary Certificate issued on September 5, 2003, that expired on October 1, 2005; a Certificate of

Clearance issued on March 24, 2000, that expired on April 1, 2005; an Emergency 30-Day Substitute Teaching Permit issued on September 1, 2003, that expired on October 1, 2004; and a Pre-Intern Certificate issued on August 25, 2000, that expired on September 1, 2003.

2. On November 19, 2018, the Commission received respondent's application to add an authorization in English to her Clear Multiple Subject Teaching Credential.

3. On April 2, 2021, complainant filed and served an Accusation and Statement of Issues while acting in her official capacity. Respondent filed a notice of defense.

The English Language Learners Services Department

4. At all relevant times, respondent was employed as a teacher at Bakersfield City School District (District). During the 2016-2017 academic year, respondent was an academic coach for the District, in the English Language Learners (ELL) Services Department (Department).

5. During the 2016-2017 academic year, Erick Casallas was the Department's Supervisor. Mr. Casallas supervised the four academic coaches and other staff in the Department.

6. Each academic coach in the Department was assigned to different District school sites. For part of the 2016-2017 academic year, respondent was the academic coach responsible for Voorhies Elementary School (Voorhies). Academic coaches spent part of their time in the office, but spent most of their day visiting the school sites for which they were responsible, to support principals, teachers, and students. Coaches

sometimes sent letters to parents of students at the school sites for which they were responsible.

7. The Department was located in an open-design office space that also housed the Curriculum and Instruction Department, the Migrant Education Services Department, and the Family and Community Engagement Department. Across the hallway from the large office was a smaller office housing the Gifted and Talented Education Department (G&T Department), which employed a clerk, an administrator, and others.

8. There were no cubicles in the large office space housing the Department. Each academic coach and each secretary was assigned a desk, or workstation, with a computer. Each staff member created their own confidential computer login name and password. Although each computer was assigned to a specific Department employee, any Department employee could, using their own login information, log onto any of the Department's computers. On the Department's computers, coaches and secretaries could generate labels for mailings to parents of students at particular school sites.

9. Office supplies in the large office space and in the smaller G&T Department office were stored in unlocked cupboards. The G&T Department's office supplies included envelopes pre-printed with the name and address of the department in the return address area of the envelope. Those envelopes were accessible to any Department staff member.

10. In early 2017, the District informed Mr. Casallas that the Department would be dissolved and that he would be reassigned to the position of Principal of Voorhies. The Department's four academic coach positions and the program specialist position would be eliminated, and the four coaches—Susanne Icardo, Jane Ferdinand,

Holly Hinh, and respondent—and program specialist Courtney McMahan, would be permitted to apply for District teaching positions.

The Letter

11. On November 27, 2017, the District learned of a letter sent by U.S. mail to parents of students at Voorhies (the letter). The letter, which appeared to be signed by Principal Casallas, was in Spanish, in Calibri 11-point font, and was mailed in a District envelope stamped with the Gifted and Talented Education Department return address. The letter introduced Mr. Casallas to the parents of his new school and included the following, which, translated into English, reads:

I would like to share some things with you before taking this new role. First of all, I AM GAY and I have lived with my partner (a man) for many years. For this reason, I LOVE boys and mostly because I will have them very close to me. I hope that this will not be a problem with you. If you feel that this will be a problem for you, please come to the board meeting this June 27th at 6pm in the board room of the Bakersfield School District, 1300 Baker Street (next to Taqueria Los Tucanes). The parents have the right to express their opinion. I am happy to meet you personally at this meeting as well as your children. [¶] Sincerely, Erick Casallas.

(Ex. 5, p. A62.)

12. Included with the letter was a copy of a photograph obtained from Mr. Casallas's partner's Facebook and Snapchat page. On the back of the envelope was a label with the District's superintendent's telephone number.

13. On the day the District learned of the letter, Dr. Diane J. Cox, Assistant Superintendent of Human Resources, and Erin Johnston, District Human Resources Coordinator, spoke to Mr. Casallas about the matter. Mr. Casallas told Dr. Cox and Ms. Johnston that, over the week-long Thanksgiving holiday in November 2017, Jayme Cook, a teacher at Voorhies with a daughter attending Voorhies, contacted him and informed him and sent him a screen shot of the letter, received by mail on November 24, 2017.

14. Mr. Casallas told Dr. Cox and Ms. Johnston he did not send the letter and did not have any prior knowledge of its preparation. He said he had learned the letter was being distributed not only by mail but by text messages and on Facebook, and that he was collecting the letters and envelopes parents brought to the school office. Some of the envelopes were sent to former Voorhies students who were, in November 2017, attending middle school.

15. Mr. Casallas told Dr. Cox and Ms. Johnston that the parents who approached him about the matter said they did not believe he created and sent the letter; they were primarily concerned that someone had access to their addresses and possibly other personal information.

Evidence of Respondent's Authorship

16. Complainant attempted to demonstrate that respondent must have sent the letter by introducing evidence that respondent had a motive and the opportunity

to do so and that no one else employed in the Department did. Everyone employed in the Department in 2017 testified.

EVIDENCE FROM THE FORMER ASSISTANT DIRECTOR OF INFORMATION TECHNOLOGY

17. Robert Burks, the District's Director of Information Technology (IT) for the past seven months, was the Assistant Director of IT in 2017. As Assistant Director, Mr. Burks was responsible for the District's data systems. He testified that then-IT Director John Deaton told him letters were sent to students at Voorhies Elementary School and asked him to determine who created the labels. Mr. Deaton did not tell Mr. Burks to determine who wrote the letter.

18. Mr. Burks conducted an investigation and reported back to Mr. Deaton in an email dated Monday, November 27, 2017. His findings in and accompanying that email, and his testimony at hearing, are summarized here.

19. Mr. Burks reviewed an image of the envelope and label used to send one of the letters. In 2017, the District used the CompleteSchool student information system (SIS); programs in the SIS could generate labels. The labels used to send the letter were in the Arial font, the font the SIS used for most of its labels. Mr. Burks found an unusual feature of the labels, however, "[a]ssuming the SIS was used to produce the labels." (Ex. 5, p. A215.) Students' parents' names were listed in the order of first name, middle name, and last name. Most label programs available in the SIS produce labels that list names in the order of last name, first name, middle name; there were only four methods for printing labels in the format used for the letter.

20. “The text used in and recipients of the letter also suggests the labels were actually created using the 2016/2017 Voorhies enrollment information.” (Ex. 5, p. A215.)

21. Mr. Burks ascertained which programs could have generated the labels he was asked to investigate. Then he ascertained that only three employees’ logins had been used to run those programs: Chris Holloway, an IT Department database administrator who was testing the system in early 2017; a second man, whom Mr. Burks could not remember when he testified at this hearing; and respondent.

22. The SIS keeps a record of every time a report is run, including the date and time and the user whose login was entered to run the report. Mr. Burks created a spreadsheet listing labels in the format used for the letter, produced using 2016/2017 school year information, limited to logins of users assigned to Voorhies as well as to users who could generate labels that do not automatically limit the student list to students enrolled at the user’s schools settings. Mr. Burks listed 35 label reports found using those parameters. He sent the spreadsheet to Mr. Deaton.

23. The spreadsheet shows that, on April 27, 2017, someone using respondent’s login information logged into the system and ran ELL Student Mailing Labels, ELL District Student Mailing Labels, and District ELL Student Program Designation Data Reports. (Ex. 5, pp. A215-A219.)

24. The spreadsheet also shows that, on May 18, 2017, someone using respondent’s login information logged into the system and ran a schoolwide student address label report. This report only runs when the user specifies that the labels are to be sent to parents of students at a particular school. (Ex. 5, pp. A215-A219.)

25. For both the April 27 and May 18, 2017 reports, "school 50" was selected. That school is Voorhies. (Ex. 5, pp. A215-A219.)

26. Mr. Burks found it likely that the SIS was used to generate the labels because the label font was Arial, not any other commonly used font, and because the letter's salutation is "To Parents/Guardians," a common salutation in programs using the SIS. Though the first name, middle name, last name format is not used in most programs in the SIS, it is available in some of those programs.

27. Mr. Burks is very confident the May 18, 2017 labels are the ones on the envelopes mailed to the Voorhies parents in November 2017.

28. Label reports can be generated and saved on the desktop of the person who logged in, or in an email or on a USB drive, and the labels can be printed at a later date. Thus, label reports prepared in April or May 2017 could have been used to print labels later in the year. Mr. Burks acknowledged that label reports generated earlier or later than April 27, 2017, could have been used for the mailers mailed in November 2017. Anyone creating the report used to generate the labels would have been able to access the 2017 school year student information on the SIS.

29. Respondent's login was used to prepare labels on May 18, 2017, close to the date the school year ended, June 1, 2017. Mr. Burks does not know whether an academic coach would have reason to generate labels so late in the school year.

30. Mr. Burks examined the envelopes used for the November 2017 letter mailing. The envelopes were stamped with the Gifted and Talented Department title and address. He concluded they must have been stored with that department's envelope supplies.

31. Mr. Burks did not investigate the computers in the Department office. He did not investigate who had access to respondent's login information, or who had access to the envelopes.

32. Mr. Burks's evidence supports the conclusion that respondent's login and password were used to generate the labels to send the letter. But because anyone possessing respondent's login could use any computer in the Department to generate the labels, Mr. Burks acknowledged he does not know to a certainty that it was respondent who generated the labels.

EVIDENCE FROM DEPARTMENT EMPLOYEES ABOUT LETTERS, LABELS, AND COMPUTER USE

33. The academic coaches who worked with respondent in 2017, Jane Ferdinand, Susanne Icardo, and Holly Hinh, the instructional specialists, Claudia Maldonado and Brandon Ware, the program specialist, Courtney McMahan, the Department secretary, Linda Villalpando, and the Department Clerk, Tina Mendez, each testified that Department employees had their own logins and passwords. Some testified, without contradiction, that there was a policy against sharing that information and that they did not share their login information with anyone. Almost all testified respondent never shared her login information with them; none of them knew whether respondent shared it with the others. Anyone with a login and password could log onto any of the computers in the Department using their own login information. But all testified they never used respondent's computer workstation, they know of no other employees who did, and it was very uncommon and not generally appreciated for an employee to use a computer assigned to another employee.

34. The coaches all prepared letters to families of students from time to time. Most of the coaches testified they did not prepare labels for the letters they prepared; the Department secretaries or clerk would do that when requested. But Ms. Villalpando and Ms. Mendez, the secretary and clerk, as well as Ms. McMahan, the program specialist, contradicted that testimony. Ms. Mendez testified neither she nor Ms. Villalpando ran label reports for any of the coaches. Ms. Villalpando and Ms. Mendez testified respondent never asked them to run a label report. Ms. McMahan testified it was common for coaches to run labels for their own school sites. Ms. Maldonado testified she saw respondent printing labels or letters for parents on a couple of occasions.

35. Even if it could be established that coaches sometimes asked the secretary or clerk to create label reports, Ms. Maldonado testified that coaches did not have to share their login information when doing so, because the secretaries had their own logins and could access the same name and address data as everyone else in the Department.

36. All Department staff—coaches, specialists, secretary, and clerk—denied sending the November 2017 letter.

37. On the whole, the evidence establishes that coaches could and at times did prepare their own letters and labels for mailings to the parents of students at schools to which they were assigned. There was no need for a coach to share her login information with the secretary or clerk if seeking assistance creating labels. There is no evidence on this record to support the conclusion that any employee in the Department, apart from respondent, created the letter or the envelope labels for the letter.

EVIDENCE OF RESPONDENT PRINTING AND PHOTOCOPYING DOCUMENTS IN MAY-JULY 2017

38. Ms. Hinh testified that there was no reason for an academic coach to send a letter to parents on May 18, 2017, a date very late in the academic year. (See Factual Finding 29.) Reclassification of ELL students, when those students no longer require support and are considered sufficiently proficient to achieve California standards, occurs before that date. Any letter at such a late date would, therefore, concern some administrative matter and would be sent over Mr. Casallas's signature. It would not have been a coach's responsibility.

39. Ms. Maldonado and Ms. McMahan testified they saw respondent in the Department office once, in June or early July 2017, after June 8, when respondent's Department position was eliminated.

40. Ms. Maldonado testified she saw respondent enter the Department office after working hours with a rolling cart. Respondent worked at her computer, printed labels at her printer, and made "a huge" number of photocopies on the Department copier. Ms. Maldonado did not see the contents of what respondent was printing or copying. Ms. Maldonado testified respondent was upset when she saw her and asked Ms. Maldonado why she was still there at that time of day. Ms. Maldonado thought it strange that respondent was in the office and texted Ms. McMahan about it; Ms. McMahan was also in the office. Ms. McMahan responded that respondent had no reason to be there and suggested Ms. Maldonado document it, but Ms. Maldonado testified she too busy to do so.

41. Ms. Maldonado, however, asked the coordinator of the Migrant Education Services Department, where respondent was going to work during the

summer, whether respondent was making copies for them. The coordinator said she was not. This corroborates the District's summary of a December 6, 2017 interview with the head of that department, who confirmed that respondent's only duty that summer was to supervise students, not to prepare mass mailings or photocopies.

42. Ms. McMahan testified that she and Ms. Maldonado had returned to the Department office to run copies after giving a professional development session. She testified the photocopy machines were running and respondent was sitting at her old desk. Ms. McMahan did not speak to respondent or see what she was copying or printing. Ms. McMahan reported respondent's presence to Mr. Casallas, but did not document it.

ADDITIONAL EVIDENCE OF RESPONDENT'S POSSIBLE AUTHORSHIP OF THE LETTER

43. No one in the Department saw respondent write the letter, print the label reports, take 600 envelopes from the District office, or mail the letter.

44. After the letter was sent and publicized, Ms. McMahan visited respondent's Facebook page and found November 20, 2017 photographs of respondent and, apparently, family members at the Moby Dick Restaurant in Santa Barbara. The letter was mailed from Santa Barbara and postmarked on November 22, 2017. Ms. McMahan provided screen shots of the photographs to the District. (Ex. 7, A260-A262.) Ms. McMahan knew the letters were not mailed from Bakersfield, she testified, because she had seen the envelopes of some of the letters that had been returned to the Department office. Ms. McMahan testified she suspected respondent sent the letter because it was apparent respondent did not get along with Mr. Casallas and was upset about having to reapply for a position, and she was in Santa Barbara in

November 2017. There were “visible issues” in the office between Mr. Casallas and respondent. Respondent often appeared upset and resisted following Mr. Casallas’s directions. Ms. McMahan testified she did not know anyone who disliked Mr. Casallas other than respondent.

45. Tina Mendez, a clerk in the Department in 2017 who has now been employed by the District for almost 18 years, testified there was some animosity between respondent and Mr. Casallas. She believes one issue of contention was whether coaches should be required to teach as substitutes. Respondent corroborated this testimony. (See Factual Finding 60.) Ms. Mendez testified that the letter was in a font respondent liked to use, and that respondent would capitalize words for emphasis, a feature of the letter. Ms. Mendez recalls no other employees having any problem with Mr. Casallas.

46. The Department employees who addressed the subject testified respondent was the only employee who had a difficult relationship with Mr. Casallas.

DISTRICT’S CONCLUSIONS

47. Ms. Johnston and Dr. Cox spoke with Mr. Casallas, who told them he thought the letter may have been written by respondent because she and he had a troubled professional relationship and had not interacted well during the previous months. He testified he does not have many enemies and generally has good professional relationships. Ms. Johnston did not consider whether candidates other than Mr. Casallas for the Voorhies principal position might have prepared and sent the letter.

48. Ms. Johnston concluded the letters were printed at the Department office; she saw no evidence that they were printed offsite. The District did not compare

the April and May 2017 labels with labels respondent had previously printed for her mailings to ascertain whether they were similar; Ms. Johnston testified the District was not in possession of earlier-printed labels. The letter, dated November 20, was typed in Calibri 11.5, a standard default Word font. Ms. Johnston testified she cannot definitively identify respondent as the author of the letter because she did not see respondent type it or mail it and she never discovered any eyewitness who did. Attempts to obtain fingerprints from the letters were unsuccessful. Ms. Johnston knows of no one who saw respondent take the envelopes from the G&T Department cabinet.

49. Ms. Johnston testified respondent was in Santa Barbara around the time the letters were mailed, and the letters had a Santa Barbara postmark dated November 22, 2017. Ms. Johnston visited the Santa Barbara post office and learned that the letters had been dropped in a mailbox; Ms. Johnston did not learn whether there was video surveillance at the mailbox. Respondent was in Santa Barbara sometime during the Thanksgiving week holiday, which in 2017 was from Monday, November 20, to Friday, November 24. Ms. Johnston did not know whether respondent was there on Thanksgiving weekend, from Thursday, November 23, to Sunday, November 26.

50. Ms. Johnston in summary testified she is confident respondent prepared and sent the letter because the evidence showed respondent was the most likely person to have done so, she was in Santa Barbara at around the time the letter was mailed, she had a motive, the other employees interviewed provided information strongly tending to show respondent created the labels and sent the letter, and IT confirmed it must have been she who created the labels.

51. On December 28, 2017, respondent was charged in Kern County Superior Court with misdemeanor theft and embezzlement of the District's paper, labels, and

envelopes. On September 21, 2018, the District Attorney's Office dismissed the case. Respondent resigned from the District four days later, on September 25, 2018; she testified she believed the District filed criminal charges against her to force her off its payroll.

RESPONDENT'S EVIDENCE

52. Respondent testified that she did not write, print labels for, or mail the letter. Respondent disputed running label reports or photocopying significant number of documents between June 8 and August 31, 2017, or taking envelopes from a District office.

53. Respondent was in the office on the afternoon of April 27, 2017, but does not recall whether she ran a label report on that date. She testified she might have run one, or she might have asked Ms. Mendez, Ms. Villalpando, or Ms. Ferdinand to do it; she would give them her login information when they asked for it. This testimony is not credible. First, in her interview with the District, respondent did not identify Ms. Mendez as someone she shared her password with. Second, those witnesses testified that respondent never gave them her password. Third, in any event, those employees would not have needed respondent's password to create labels for her schools, as they had their own logins and had access to the database.

54. Respondent testified that the testimony of Ms. Mendez, Ms. Villalpando, and Ms. Ferdinand about her providing them with her login information is false.

55. Respondent testified she was made aware of the mailing on the Monday after Thanksgiving, November 27, 2017. Dr. Cox showed respondent the envelope, though not the letter. Respondent told Dr. Cox that the envelope was not familiar, it was a Gifted & Talented Education Department envelope.

56. On June 8, 2017, respondent left the Department, but she still had access to the Department office. That summer, respondent worked as a coordinator for the Migrant Education Services program, Jamie Flores, Director, at the District's Pioneer Elementary School. Respondent went back to the Department office on July 25, 2017, to interview for a position as an academic coach for the Family and Community Engagement (FACE) program. She denied ever being in the Department office on any other day that summer. She testified that Ms. McMahan and Ms. Maldonado, who both testified they saw her there, were "absolutely" lying, and that she was out of the country when they claim to have seen her. During the cross-examination of Ms. McMahan, after being instructed to stop shaking her head at the testimony, respondent said, "She's such a liar, such a puppet for the District." At the end of respondent's testimony, near the close of the hearing, respondent apologized for her outburst.

57. In 2017, respondent had a week off for Thanksgiving. She planned to travel to Baja California with her brother to meet their uncle. That plan did not work out, so respondent visited her sister in Ventura instead, arriving on Sunday, November 19. On Monday, November 20, respondent testified, she left her children with her sister and went to a medical clinic in Santa Barbara. She returned to her sister's home the same day and spent the night there. Respondent did not explain why the photographs posted on social media appear to place her and her family in Santa Barbara on November 20, not with her sister in Ventura.

58. Respondent testified that the next day, Tuesday, November 21, at around 5:00 or 6:00 p.m., she left her sister's home, drove back to Bakersfield, and spent Thanksgiving with her husband.

59. The following Monday, November 27, 2017, respondent testified, she was interviewed by Dr. Cox and Michael Lukey. They asked what she did during Thanksgiving week. The District's summary of the interview, which Ms. Johnston prepared, shows that respondent said she visited her uncle in Baja California, then visited her sister in Ventura, and did not return to Bakersfield until Saturday, November 25. Respondent testified at this hearing that she told the interviewers she had visited her sister in Santa Barbara; she did not understand that her sister actually lives in Ventura. Ms. Johnston testified that respondent never mentioned Santa Barbara in her November interview, and the interview summary correctly reflects that. Respondent testified at this hearing that Ms. Johnston was lying about that and about other things. Respondent testified she also told the interviewers she had planned to visit Baja California, but that she visited her sister instead, and that she never told them she returned to Bakersfield after Thanksgiving.

60. The interviewers asked about respondent's relationship with Mr. Casallas. She said it was cordial, that she had nothing against him, and that she would not write a letter impugning him. But at hearing, respondent acknowledged her relationship with Mr. Casallas "took a tumble" in January or February 2017, because of substitute teaching assignments that caused her to have to cancel her ELL parent workshops. Respondent also addressed Mr. Casallas's testimony about a letter of reference she had obtained from him.

61. Mr. Casallas wrote a letter of recommendation for respondent in 2015. In April 2017, he testified, he attempted to rescind the letter due to his issues with her integrity, specifically, his belief she overreported how long she spent at school sites, and what he felt were job performance inconsistencies. The Human Resources Department told him respondent had submitted a reference letter from him dated

only two weeks earlier. Mr. Casallas testified it was the 2015 letter, but respondent had altered the date.

62. Respondent testified that, in 2017, she wanted to use Mr. Casallas's 2015 letter to apply for some jobs. Ms. Stout, in the Human Resources Department, suggested she date the 2015 letter with the current 2017 date. On April 26, 2017, Dr. Cox told respondent Mr. Casallas said she had fraudulently written the 2015 letter. She testified she "was floored."

63. On April 27, 2017, the day immediately following respondent's conversation with Dr. Cox, respondent's login was used to print a series of label reports for Voorhies. (See Factual Findings 23-25.)

64. Respondent testified the November interviewers showed her the envelope the letter was mailed in, but did not show her the letter, which she did not see until this administrative proceeding. On cross-examination, respondent testified that the November interviewers may have tried to show her the letter, but she only remembers the envelope. Then she testified she saw the letter at her second interview, in December 2017.

65. Respondent told the November interviewers she often prepared label reports, and might have created labels for Voorhies, but had no specific memory of doing so. According to the interview summary, when told a mass production of labels showed up on her computer, respondent complained about security at her workstation.

66. On December 6, 2017, respondent was called for a second interview. Her union lawyer, Mr. Tuttle, was present, as were the District's attorney, Mr. Sahbani, Dr. Cox, and Erin Johnston. She told the interviewers, according to the District's interview

summary, that during her trip to Ventura to visit her sister, she also visited a medical clinic in Santa Barbara. The December 6 interview summary Ms. Johnston prepared reflects that the interviewers asked respondent if she had ever returned to the Department office after June 8. At this hearing, respondent did not recall being asked that and testified that the interview summary is inaccurate and that Ms. Johnston jumbled what respondent said.

67. Respondent testified that at both the November and December interviews, Ms. Johnston misunderstood what she was saying and on numerous occasions failed to write what respondent actually said, and that what Ms. Johnston wrote, and her testimony at this hearing, "is absolutely false."

68. Respondent testified she feels very bad for what was done to Mr. Casallas. She denied that he ever told her he is gay. She testified she saw photographs of his daughters on his desk and assumed he was married.

69. In sum, respondent testified that all the Department employees lied under oath. She disputed the testimony of Ms. Mendez, Ms. Villalpando, and Ms. Ferdinand. She testified that Ms. McMahan lied, that Ms. Villalpando lied, that Ms. Maldonado lied, and that Ms. Johnston lied. Her testimony about the subjects covered in the November and December 2017 interviews was inconsistent and confused. Respondent's uncorroborated testimony alone has not raised sufficient doubt to refute what appears to be clear and convincing evidence.

70. That evidence supports the conclusion that respondent planned the letter and ran label reports in April and May 2017, printed the letter and envelopes in June or July 2017, and mailed the letter in November, when she was in Santa Barbara. That it took seven months to bring this scheme to conclusion does not make it less

likely, given the events apparently precipitating the scheme occurred in the spring of 2017, near the end of the academic year, and it was known Mr. Casallas, like the other Department employees, would start his new positions after the summer break, at the beginning of the next academic year.

Mitigation and Rehabilitation

71. Respondent denied writing the letter and offered no evidence of mitigation or rehabilitation.

LEGAL CONCLUSIONS

Applicable Law

1. Under the Education Code, commencing with section 44000, and California Code of Regulations, title 5, commencing with section 80000, the Commission is responsible for credentialing teachers in public schools in California, including issuing credentials and taking adverse action against applicants and credential holders. "Adverse action" includes the suspension or revocation of a credential or the private admonition or public reproof of a credential holder. (Ed. Code, § 44000.5; Cal. Code Regs., tit. 5, § 80300, subd. (a).)

2. The Commission "shall" take adverse action against an individual's teaching credentials for immoral or unprofessional conduct, or for evident unfitness for service, or for any cause which would have warranted the denial of an application for a credential or renewal of a credential. (Ed. Code, § 44421.) The Commission may revoke the credential of a teacher "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." (Ed. Code, § 44421.) One cause that may warrant the denial of an application is if the applicant "[h]as committed any act involving moral turpitude." (Ed. Code, § 44345, subd. (e).)

3. "The term 'immoral' has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality . . . includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as wilful, 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. [Citation.]" (*Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740; see also *Board of Education of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811 (*Weiland*).)

4. "Unprofessional conduct" has been described as "'that which violates the rules or ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing.'" (*Board of Education of the City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553, quoting 66 Corpus Juris 55, overruled in part on another ground in *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575, 587, fn. 7.) For example, conduct that produced serious friction in the school and showed a teacher's insubordination and refusal to conform to the instructions and requirements of superiors has been held to be unprofessional conduct. (*Johnston v. Taft School Dist.* (1937) 19 Cal.App.2d 405, 407.)

5. "Moral turpitude is a concept that 'defies exact description' [citation] and 'cannot be defined with precision' [citation]." (*In re Grant* (2014) 58 Cal.4th 469, 475-476.) "Our Supreme Court has defined moral turpitude as 'an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty

between man and man.’ [Citation.] Moral turpitude has also been described as any crime or misconduct committed without excuse, or any ‘dishonest or immoral’ act not necessarily a crime. [Citation.] The definition depends on the state of public morals and may vary according to the community or the times, as well as on the degree of public harm produced by the act in question. [Citation.]” (*Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027; see also *Ricasa v. Office of Administrative Hearings* (2018) 31 Cal.App.5th 262, 281; *Golde v. Fox* (1979) 98 Cal.App.3d 167, 185.) Moral turpitude has also been described as the “‘general readiness to do evil.’ [Citation.]” (*Donley v. Davi* (2009) 180 Cal.App.4th 447, 458.)

6. For purposes of teacher discipline, conduct cannot be characterized as immoral, unprofessional, or involving moral turpitude unless it indicates a teacher is unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229 (*Morrison*)). In making this determination, the Commission may consider such matters as: “(1) The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated; [¶] (2) The proximity or remoteness in time of the conduct; [¶] (3) The type of credential held or applied for by the person involved; [¶] (4) The extenuating or aggravating circumstances surrounding the conduct; [¶] (5) The praiseworthiness or blameworthiness of the motives resulting in the conduct; [¶] (6) The likelihood of the recurrence of the questioned conduct; [¶] (7) The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons; [¶] (8) The publicity or notoriety given to the conduct.” (Cal. Code Regs., tit. 5, § 80302, subd. (a); *Morrison*, supra, 1 Cal.3d at p. 229.) Not all *Morrison* factors need be examined, only the pertinent ones. (*West Valley – Mission Community College Dist. v. Concepcion* (1993) 16 Cal.App.4th 1766, 1777.)

7. The Accusation also alleges evident unfitness for service. Evident unfitness for service properly means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. [Fn. omitted.]" (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 (*Woodland*)). This cause for discipline 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.*) On this cause for discipline, the criteria for unfitness in *Morrison* "must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service. [Citation.] If the *Morrison* criteria indicate unfitness to teach, the next step is to determine whether the 'unfitness' is 'evident'; i.e., whether the offensive conduct is caused by a defect in temperament. (*Woodland*, supra, 2 Cal.App.4th at p. 1445.) For instance, a teacher's removal of school property (a public address system speaker) from the classroom wall may be considered evidence of evident unfitness for service. (*Palo Verde Unified School Dist. of Riverside County v. Hensey* (1970) 9 Cal.App.3d 967, 973.)

8. Because this case involves a professional license, the burden of proof is on complainant to establish cause for adverse action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.) This means the burden rests with complainant to offer proof that is clear, explicit, and unequivocal, "so clear as to leave no substantial doubt" and "sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487; citations omitted.)

Cause for Credential Discipline and for Application Denial

9. Cause exists to take adverse action against respondent's credential under Education Code section 44421 for unprofessional conduct, as set forth in Factual Findings 4 through 71.

10. Cause exists to take adverse action against respondent's credential under Education Code section 44421 for immoral conduct, as set forth in Factual Findings 4 through 71.

11. Cause exists to take adverse action against respondent's credential under Education Code section 44421 and 44345, subdivision (e), for committing acts of moral turpitude, as set forth in Factual Findings 4 through 71.

12. Cause exists to deny respondent's application for an authorization in English for her credential under Education Code section 44345, subdivision (e), for committing acts of moral turpitude, as forth in Factual Findings 4 through 71.


13. All admissible evidence and applicable statutes and regulations, including the *Morrison* factors, have been considered. Complainant established by clear and convincing evidence that respondent engaged in unprofessional, immoral conduct and committed an act of moral turpitude by sending the letter. The misconduct adversely affected the educational community; it was not remote in time; there were no extenuating circumstances surrounding the conduct; the motive for the conduct is blameworthy; there is a likelihood the questioned conduct could recur; there is no risk of a chilling effect upon the constitutional rights of the person involved; and the conduct received extensive publicity and notoriety. Respondent accepted no responsibility for her conduct. She could not explain the convincing body of evidence

on this record, but argued the unlikely position that almost every witness but she lied under oath.

ORDER

The Clear Multiple Subject Teaching Credential issued to respondent Elia Cisneros, also known as Elvia Duenas, is revoked. Respondent's application to add an authorization in English to her Clear Multiple Subject Teaching Credential is denied.

DATE: 03/22/2022


Howard W. Cohen (Mar 22, 2022 13:28 PDT)

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings