

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

In the Matter of the First Amended Accusation Against:

ROBERT LANZ, Respondent

Agency Case No. 2-135252565

OAH No. 2022060145

PROPOSED DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference from November 1 through November 4, 2022, from Sacramento, California.

Katelyn E. Docherty, Deputy Attorney General, represented Mary Vixie Sandy, Ed.D. (complainant), Executive Director of the California Commission on Teacher Credentialing (Commission).

Ernest H. Tuttle III, Attorney at Law, represented respondent Robert Lanz, who was present throughout the hearing.

Evidence was received and the hearing concluded on November 4, 2022. The record was held open until December 5, 2022, to allow complainant to file an Amended Accusation and for respondent to file a redacted copy of Exhibit II.

Complainant and respondent filed the appropriate documents, the record closed, and the matter submitted for decision on December 5, 2022.

FACTUAL FINDINGS

Procedural Background

1. On March 24, 1998, the Commission issued respondent a Clear Multiple Subject Teaching Credential (teaching credential). On May 7, 2008, the Commission issued respondent a Clear Administrative Services Credential (administrative credential). On January 4, 2018, the Commission issued respondent an Activity Supervisor Clearance Credential (activity credential). The activity credential will expire on February 1, 2023, unless renewed or revoked. The teaching and administrative credentials will expire on April 1, 2023, unless renewed or revoked.

On January 7, 1991, the Commission issued respondent a Certificate of Clearance, which expired on February 1, 1996. On July 1, 1991, the Commission issued respondent an Emergency 30-Day Substitute Teaching Credential, which expired on June 30, 1992. On September 24, 2001, the Commission issued respondent a Clear Crosscultural Language and Academic Development Certificate, which does not expire. On July 1, 2002, the Commission issued respondent a Reading Certificate, which expired on June 30, 2003. On July 18, 2005, the Commission issued respondent an Administrative Services Credential Certificate of Eligibility, which does not expire. On August 1, 2006, the Commission issued respondent a Preliminary Administrative Services Credential, which expired on September 1, 2011.

Collectively, these credentials and certificates are referred to as respondent's "credentials." There was no evidence presented of prior discipline of the credentials.

2. On March 21, 2022, complainant, acting solely in her official capacity, signed and thereafter filed an Accusation seeking to discipline respondent's credentials based on his alleged unprofessional conduct, evident unfitness for service, immoral conduct, moral turpitude, and persistent defiance of and refusal to obey the laws regulating the duties of persons serving in the public school system. On November 29, 2022, complainant filed and served on respondent a First Amended Accusation, which included one additional paragraph and alleged the facts therein as an additional basis for discipline under all five causes.¹ Respondent timely filed a Notice of Defense and this hearing followed.

Complainant's Evidence

COMPLAINT AND DISTRICT INVESTIGATION

3. In approximately August 2018, respondent started working as the Vice Principal at Emilie J. Ross Middle School (RMS) in the Hughson Unified School District (District). He worked in an office suite with three other employees: Principal Luke Hibbard, Attendance Clerk Andrea Ruiz (Ms. Ruiz), and Mr. Hibbard's secretary, Jovita Gutierrez.

4. On March 22, 2020, Ms. Ruiz submitted a written complaint to the District about respondent's conduct. In her complaint, Ms. Ruiz complained that respondent sexually harassed her and other District personnel, mocked students, and mishandled

¹ At hearing, complainant moved to amend the Accusation to conform to proof. Respondent objected and the ALJ overruled the objection. The First Amended Accusation was marked as Exhibit 10 and admitted for jurisdictional purposes.

nude photographs of a student. Her complaint alleged 13 separate incidents and identified dates and witnesses for most of the events.

5. Based on Ms. Ruiz's complaint, the District hired Marleen Sacks, a partner at an independent law firm, to investigate respondent's conduct. In April and May 2020, Ms. Sacks interviewed respondent, Ms. Ruiz, and eight other witnesses. She also reviewed relevant District policies, respondent's letter resigning from the District, and email and text messages provided by respondent. Based thereon, Ms. Sacks prepared a Confidential Investigation Report. In her report, Ms. Sacks summarized the witness statements and concluded that each of Ms. Ruiz's 13 allegations were sustained, either in whole or in part. She also noted additional findings, including that respondent inappropriately referred to Ms. Ruiz and Ms. Gutierrez as "girls," writing, "The investigation found that this was inappropriate. They were both 29-year-old women. Referring to female employees as "girls" was demeaning and patronizing."

HEARING TESTIMONY

Andrea Ruiz

6. Ms. Ruiz has worked for the District for approximately 16 years, currently as the attendance clerk at RMS. In approximately August 2018, respondent started as the vice principal at RMS, and Mr. Hibbard started as the principal. From August 2018 through March 2020, Ms. Ruiz interacted with respondent, Mr. Hibbard, and Mr. Hibbard's secretary, Ms. Gutierrez, daily. Respondent and Mr. Hibbard created a casual working atmosphere in which the foursome was friendly and often joked with one another. They also shared a group text message chain in which they discussed work and personal topics. The group occasionally went to dinner together after work and one time vacationed in Lake Tahoe for a weekend.

7. Throughout their relationship, respondent engaged in behavior that caused Ms. Ruiz to feel uncomfortable. This included leaning too close to her at her desk and whispering compliments to her such as "what a great blouse," "such a nice voice," and "I can't believe you're single." Respondent often flexed his muscles, sometimes while lifting his shirt, and commented on his physique and workouts. Respondent also commented on the looks of other District personnel, including Marissa Emmons and Mary La Rosa. Ms. Ruiz noted many specific instances of respondent's behavior on a day-planning calendar at or near when they happened.

8. On August 28, 2019, respondent told Ms. Ruiz that he was going to try to seduce Brooke Mercer, RMS's campus supervisor, because it was her last year at the school. He also said it would be a challenge because Ms. Mercer's husband was the only man she'd ever been with.

9. On November 13, 2019, respondent asked Ms. Ruiz if she had ever seen a rabbit in the office. When she said she had not, respondent turned his pockets inside out and pulled them up to make rabbit ears. When he did so, his pants tightened and showed the outline of his crotch. He performed the "rabbit joke" twice more over the next two weeks.

10. On December 18, 2019, while Ms. Ruiz was bent over, respondent said, "you're in my favorite position, stay put." Patricia Verdone, a District employee, witnessed this.

11. On January 23, 2020, a student had an accident at school. Respondent then told Ms. Ruiz that he used to date a woman who became sexually aroused when he would wipe her after she urinated.

12. On January 30, 2020, Ms. Ruiz told Ms. Gutierrez about a friend who had sent nude photos to another person. Respondent overheard the conversation and asked to see nude photos of Ms. Ruiz. When she declined, he asked Ms. Gutierrez if she had nude photos of Ms. Ruiz.

13. On February 6, 2020, Ms. Ruiz overheard respondent mimicking a woman moaning from his office. Stefani Sanchez, a librarian at RMS, also witnessed this.

14. On February 27, 2020, respondent called Ms. Ruiz into his office and told her a student at RMS had nude photos of another student. He explained he had used his phone to take a photo of the student's phone screen showing the nude images. He then showed Ms. Ruiz the photos of the nude student and remarked, "all you girls are the same, you think no one will show others your photos and you girls keep sending them," or substantially similar words to that effect. He pointed to the student's genitals and asked, "what is that?" Ms. Ruiz responded, "that is the vagina of a student and you have no right showing these images to me!" Respondent never told Ms. Ruiz why he showed her the photos. Later that day, Ms. Ruiz saw respondent showing others the photos, including Brooke Mercer and Eric Peterson, the principal of an elementary school in the District. Shortly thereafter, Ms. Ruiz filed a police report because she believed respondent's conduct was potentially a crime.

15. On March 10, 2020, respondent said to Ms. Ruiz, "wow Andrea let me take a look at that blouse you're wearing." Ms. Ruiz responded negatively, to which respondent replied, "wow you can't compliment a girl nowadays."

16. On March 13, 2020, respondent told Ms. Ruiz her performance evaluation was coming up and said, "everyone needs to be a team player." He then looked at her and made a slurping sound and gesture.

17. On March 16, 2020, Ms. Ruiz told respondent that the student attendance percentage that day was 69.8 percent. In response, respondent touched his chest and said, "69 is my favorite number."

18. On March 17, 2020, respondent told Ms. Ruiz he had a rash on his thigh. He then showed her a photo of his leg, which was bare to his underwear line.

19. On unspecified dates, Ms. Ruiz saw respondent make fun of students with autism and other mental disabilities when their pants were inside out. She also saw him call a student named Diana "Dirty Diana" or just "dirty."

20. Ms. Ruiz did not formally complain about respondent's behavior because she did not believe he or Mr. Hibbard would take her concerns seriously. At times, she tried to demonstrate her discomfort with respondent's behavior by not reacting or by shaking her head or using other disapproving body language. She acknowledged that she sometimes participated in inappropriate joking both at work and on the group text but explained she did so because she believed she had to "play along to get along." She often felt she was "just trying to survive" and noted that the group text messages respondent introduced at hearing were small portions of their messages that did not include the full context. She also felt obligated and pressured to socialize with the group outside of work. Neither respondent nor Mr. Hibbard ever reprimanded or counseled Ms. Ruiz about her participation in the inappropriate comments.

21. On March 22, 2020, Ms. Ruiz submitted her written complaint to the District about respondent's behavior. The District had recently asked employees to stay at home due to the COVID-19 pandemic, and the time away from the office gave Ms. Ruiz an opportunity to process respondent's conduct. She does not stand to gain anything from her testimony, but rather wants "the right thing" to happen.

Brenda Smith

22. Brenda Smith was the District superintendent at all times relevant to this matter. She was in charge of overall operations at five District schools, including RMS. Ms. Smith explained that the District maintains written policies governing topics such as nondiscrimination in employment, sexual harassment, professional standards, and family and student privacy rights.

23. Ms. Smith received Ms. Ruiz's complaint on March 22, 2020. The following day, she placed respondent on administrative leave. She told him the reason for the leave but did not discuss any specifics with him.

24. On May 11, 2020, Ms. Smith met with respondent and discussed some of Ms. Ruiz's specific allegations. During their meeting, respondent admitted that he told Ms. Ruiz, "you're in my favorite position" while she was bent over. He also admitted that he used his pants pockets to pull his pants snug to his genitals. Ms. Smith was surprised that respondent admitted that behavior, because when she first read the complaint, she thought to herself, "there's no way he did that."

25. After respondent's admissions, Ms. Smith did not believe it was necessary to confirm the other details because she had heard enough to realize respondent could no longer serve as an administrator with the District. Respondent signed a resignation letter that day, to be effective June 30, 2020. Ms. Smith noted that respondent appeared remorseful and embarrassed during the meeting.

26. On June 10, 2020, Ms. Smith sent the Commission a letter reporting the complaint against respondent and the results of Ms. Sacks's investigation. In her letter,

she noted that respondent's conduct violated several District policies and "was at odds with what is expected of a dedicated professional."²

Patricia Verdone

27. Patricia Verdone worked for the District as a resource teacher from June 2014 through May 2020. She supported students during their individual education plan (IEP) meetings, many of which respondent attended. She believes respondent took inaccurate and undetailed notes during those meetings.

28. Early in the 2018/2019 school year, respondent asked Ms. Verdone why the previous vice principal left RMS. Ms. Verdone told him it was because of tension with the prior principal, who was married to Ms. Smith. Respondent replied, "well I can see your point, why would she want to have her boss be fucking the guy she didn't like?" Ms. Verdone found the comment inappropriate and uncomfortable.

29. In October 2018, respondent asked Ms. Verdone if she was happy in her marriage. Ms. Verdone replied that all marriages had ups and downs, to which respondent offered, "if you're ever unhappy, let me know and we could hook up at the beach."

30. Throughout the 2018/2019 school year, respondent made several similar comments to Ms. Verdone. On one occasion, he complimented her clothing and said,

² After the matter was submitted, the ALJ noticed one instance of a student's name was unreacted within Ms. Smith's letter, Exhibit 4, at page A133. Rather than reopen the record for the submission of a redacted Exhibit 4, the ALJ redacted the student's name within the existing exhibit.

"Ooh, ooh, you get me excited when you wear those dresses." Ms. Verdone told respondent not to talk to her like that, to which he laughed.

31. Respondent also asked Ms. Verdone whether she went to the gym. He told her he did and lifted his shirt, rubbed his stomach, and said "look what the gym did for me." He put his hands below his waistband while he did this.

32. On another occasion, respondent asked Ms. Verdone if she knew another individual with the same last name. Ms. Verdone confirmed it was her husband's niece. Respondent then replied, "Man, she's hot" and "she's kinda skinny though." He also said he "wanted to be with her" and asked if the woman's husband was "gay or metrosexual."

33. Ms. Verdone also witnessed other behavior from respondent that she found inappropriate. She saw him use his pockets to pull his pants snug against his groin. She witnessed him tell Ms. Ruiz "you're in my favorite position" while she was bent over. He thrust his hips in the air from behind Ms. Ruiz while he said this. Ms. Verdone also saw respondent blow on Ms. Ruiz's neck and ear. When Ms. Ruiz told him to stop, he laughed.

34. In addition, respondent commented about the physique of another District employee, Marissa Emmons, specifically her legs. Ms. Verdone found this "perverted" because Ms. Emmons was respondent's former student. Respondent called a mental clinician "hot" and asked Ms. Verdone to find out if she was single. Respondent pretended to spank the butt of a paraeducator who reached around him to get to a refrigerator. During an IEP meeting, respondent leered at Ms. Verdone's breasts until she zipped her blouse higher. Respondent used profanity, claiming, "that student is fucking crazy."

35. Ms. Verdone reported most of these events to her union representative at or near the time they occurred. Her union representative discouraged her from complaining to the District for fear of retaliation. Ms. Verdone chose not to complain to the District because she did not trust Ms. Smith.

Marissa Emmons

36. Marissa Emmons has been a school psychologist for the District for approximately six years. In that role, she provides social and emotional support to students. She serves students at multiple schools but her office is at RMS.

37. Ms. Emmons knew respondent and interacted with him during IEP meetings. She often found him to be immature and distracted during those meetings. Additionally, Ms. Emmons felt uncomfortable around respondent after a co-worker told her that he commented on her physical appearance.

38. On February 27, 2020, Ms. Emmons attended a training on the RMS campus. During a break, respondent approached her and Jameelah Cordano, a school counselor. He showed Ms. Emmons two nude photos of a student and said, "that's what I've been dealing with all day." Respondent displayed the photos such that Ms. Cordano could also see them.

39. Ms. Emmons was disturbed by respondent's conduct and filed a police report the same day. Respondent did not show Ms. Emmons the photos in the context of providing student services. Rather, it was "more of a show-and-tell situation." Ms. Emmons also noted that respondent had the images on his personal cell phone.

Cynthia Ruiz

40. Cynthia Ruiz has worked as a paraeducator at RMS since 2014. She spoke with respondent approximately five to seven times about students.

41. On one occasion, she encountered respondent and they chatted briefly. During their discussion, respondent told her that if he could change something about his appearance, it would be his under-eye bags. He asked her what she would change and she mentioned her hair. Respondent then asked whether she would ever get breast implants. She found respondent's comment inappropriate and it made her feel uncomfortable.

Stefani Sanchez

42. Stefani Sanchez has worked for the District since approximately 2015. From 2018 through 2020, she was a library media technician at RMS. She interacted with respondent occasionally.

43. Ms. Sanchez observed that respondent and Mr. Hibbard created a "frat house" feeling in the administrative office. Specifically, they often talked about drinking alcohol after work, asked whether substitute teachers or students' mothers were hot or married, and played music with inappropriate language. She heard respondent refer to students as "dumbass" and "little shit." She also observed respondent refer to himself as "the Asian Tom Cruise" and flex his chest and arm muscles. On one occasion, Ms. Sanchez was trying to unjam a copy machine and said, "this is hard," to which respondent replied, "that's what she said."

Respondent's Evidence

RESPONDENT'S WRITTEN RESPONSES TO THE COMMISSION

44. In November 2020, respondent submitted to the Commission two written responses to the allegations against him. One response addressed the allegations of sexual harassment, and the other addressed the allegations regarding his inappropriate handling of the nude student photos.

45. Regarding sexual harassment, respondent denied most of Ms. Ruiz's specific claims. He explained that she "embellished and flat out lied about situations and incidents that occurred at [RMS]." In his view, Ms. Ruiz "leads inappropriate conversations, has shown inappropriate pictures, and has been hostile towards" respondent, Mr. Hibbard, and Ms. Gutierrez. He suggested Ms. Ruiz falsely accused him of harassment to avoid employee discipline. He also explained that Ms. Ruiz came to him for advice about how to handle a sex video of her, stating Ms. Ruiz showed the video to Ms. Gutierrez. Generally, he alleged that Ms. Ruiz either created or fully participated in inappropriate conversations or conduct. He denied ever harassing her and noted that she never complained. To the contrary, Ms. Ruiz bought respondent a housewarming gift, visited his house to watch football with him and his children, and voluntarily attended several social events with him.

46. Respondent also noted that he, Mr. Hibbard, and Ms. Gutierrez found Ms. Sacks's investigation "stressful and unpleasant," her approach to be "intimidating," and her questions to be "leading in nature." He did not address the allegations raised by any of the other individuals. He did explain, "In reference to my one off-colored joke, I do admit to a lapse in judgment with that comment, regardless if it was only intended for my Principal. I have learned from this incident and about myself. I want to assure

the committee that this will not happen again." He did not specify which joke he meant.

47. Regarding the nude student photos, respondent explained that when he learned the student's classmate had the photos on her phone, he instructed the classmate to send them to his work computer for evidence. He noted that he looked at the two photos and the girl was "in a bra and underwear (not nude)." When the classmate was unable to email the photos, respondent "decided to use [his] work phone, during work hours, to take the two photographs off of her phone and send [them] directly to [his] work computer to be filed electronically."

48. Respondent then called Ms. Ruiz and Ms. Gutierrez into his office separately to show them the photos. He explained he wanted them to be in the office when he discussed the matter with the student in question. He also "wanted help correctly identifying the student." Later that day, he showed the photos to the "site counselor" because "follow up counseling support is protocol for this type of situation." He did not specify if he was referring to Ms. Emmons or Ms. Cordano.

49. Thereafter, respondent and Mr. Hibbard were meeting in Mr. Hibbard's office when Mr. Peterson, the principal at a District elementary school, knocked on the door. When he entered, respondent showed him the photos as well because respondent thought "additional administrative insights could be beneficial (basically, three administrative heads are better than two) and that he was the most senior administrator in our district." Respondent did not explain why viewing the photos was important to Mr. Peterson's insights or advice.

50. Eventually, police officers arrived and attended the meeting with the student in question. Thereafter, respondent deleted the photos. He noted that the

police subsequently questioned him and searched his phone, but ultimately praised his conduct and found he engaged in no wrongdoing.

51. On February 4, 2021, respondent submitted another written response to the Commission. In it, he repeated that he “never intentionally sexually harassed any female.” He explained Ms. Ruiz filed the complaint against him because she “had a crush on [him] and that [he] did not respond favorably to her advances.” He again denied most of Ms. Ruiz’s allegations but acknowledged he “appropriately complimented on [sic] staff, faculty, students regarding items such as a new jacket, scarf, shoes, haircut but never followed it up with the comment [Ms. Ruiz] is alleging.”

52. Regarding the “rabbit joke,” respondent explained it was in reference to a sticker of two rabbits mating. He explained, “that sticker triggered a past joke I had once heard, and I told it to [Mr. Hibbard]. I should have never made that wisecrack and did not realize [Ms. Ruiz] and [Ms. Gutierrez] heard it. I fully regret making that antic as it was inappropriate to all parties involved.”

53. Regarding showing Ms. Ruiz a photo of his bare leg, respondent explained, “One evening, I had developed a rash on my inner knee and sent a picture of it to our office group text feed. I was looking for some treatment suggestions.”

54. Respondent concluded his letter by noting:

However, despite the fact that many of the allegations are overstated or completely false, in hindsight I should have known better than to engage in the office in casual personal talk banter with classified female employees. We did not maintain an appropriate professional distance. I clearly should have adhered to a “military type” standard

where officers may not fraternize with enlisted personnel. This is a very small, rural school district. Everybody knew each other. Instead of keeping a professional distance, we acted more like a close-knit group of social friends. The four of us became too familiar with each other and I believe this closeness led to the false allegations against me when things did not go the way that [Ms. Ruiz] wanted them to go.

HEARING TESTIMONY

Respondent

55. At hearing, respondent reiterated the statements from his written letters to the Commission. He denied most of the allegations against him. He acknowledged that he pulled his pants pockets out to look like rabbit ears but said he did not mean to pull his pants close to his groin. He did this just one time and only to Mr. Hibbard, although he acknowledged Ms. Ruiz and Ms. Gutierrez “were in ocular view.” He believes they both laughed at the joke.

56. Respondent acknowledged that Mr. Hibbard played a Michael Jackson song called “Dirty Diana” for a student named Diana, but explained it was not done mean-spiritedly. Rather, the student had won a contest to be a student-administrator for a day and playing a song with her name in it was a fun way to celebrate her. Respondent was aware of the song but not familiar with all the lyrics. He saw no reason that playing the song was inappropriate.

57. Respondent also admitted he complimented Ms. Ruiz, Ms. Verdone, and others on their clothing and appearance, but never meant any harm by it. He

confirmed he referred to himself as “the Asian Tom Cruise.” In hindsight, he realizes that some of his jokes and bantering were inappropriate, but he believed his conduct was in line with the “general tomfoolery, bantering and silliness” of the administrative staff’s daily interactions.

58. To demonstrate the workplace culture, respondent introduced several text messages and photographs that Ms. Ruiz sent to the group of four administrative staff. These messages included references to using alcohol and marijuana, insults about students and staff, and statements of positive feelings toward the group members, including respondent. Respondent had more of the group’s text messages but did not supply them all because he only shared what he thought was relevant or important.

59. Regarding the nude photos of the student, respondent reiterated that the student was not fully nude because she wore underwear. He explained he used his own phone to photograph the images because he wanted the student’s classmate to delete the photos from her phone immediately. He considered his phone a “work phone” because he received a stipend from the District to defray the monthly service cost. He then showed Ms. Gutierrez the photos because he wanted her to sit in on the student meeting and wanted help identifying the student. Ms. Gutierrez did not know who the student was, but when respondent told her who the classmate said it was, Ms. Gutierrez confirmed that was her.

60. A little while later, Ms. Gutierrez had to leave campus on an errand. Because she would be unavailable to attend the student meeting, respondent showed Ms. Ruiz the photos so she could attend instead. He also asked Ms. Ruiz for help separating the photos into two files. At hearing, he explained that his written response

incorrectly stated that he asked for Ms. Ruiz's help identifying the student because some of the paragraphs were not in chronological order.

61. Later, while looking for Mr. Hibbard on campus, respondent encountered Ms. Cordano and Ms. Emmons. He showed Ms. Cordano the photo because he anticipated she would eventually need to counsel the student. He was comfortable with Ms. Emmons seeing the photos as well because she was the school psychologist. After that, he showed Mr. Peterson the photos because he wanted advice about how to proceed. When asked at hearing whether he would do anything differently if faced with the same situation today, he said he would describe the photo to Ms. Cordano instead of showing her, but that is his only regret about his actions regarding the photos.

62. In March or April 2022, respondent took courses in sexual harassment and workplace conduct so he could learn from his past behavior and improve in the future. He did not perceive his actions to be sexually harassing but took the classes because of the nature of the accusations against him. He waited almost two years to take the courses because the allegations shocked and overwhelmed him and he needed time to process the events. Additionally, he was busy because he started a new job as a fourth-grade teacher, his mother's health was failing, and the complaint has been a "nightmare" that "devastated [his] life" and traumatized him.

63. Through the courses, respondent learned "you can't behave this way" in the workplace. He now believes it is best not to make any jokes or compliment anyone because "these things can go sideways." He advises his friends who are still administrators not to joke or socialize with their coworkers. He no longer engages in "silly flexing" or comments about his physique because, even though he did not mean

those actions to be construed sexually, "you can never go wrong by being professional."

Jim Williamson

64. In addition to taking sexual harassment courses, respondent began to see a licensed marriage and family therapist (LMFT) on May 13, 2022. His therapist, Jim Williamson, testified at hearing and submitted a letter of support. Dr. Williamson has been an LMFT for approximately 27 years and is also a former special education teacher. He has two master's degrees and a Doctor of Education (Ed.D.) degree. He had weekly telephonic therapy sessions with respondent between May and November 2022. In those sessions, they spent approximately 90 percent of their time talking about the allegations and 10 percent talking about respondent's personal life. Dr. Williamson is aware of the general nature of the allegations but believes he "doesn't need all the nitty gritty details to know it wasn't right."

65. Through therapy, respondent worked on "boundary issues." Dr. Williamson would pose hypothetical issues and respondent would practice "being sensitive to workplace issues." Dr. Williamson found respondent to be remorseful, regretful, and receptive to change. He did not specify what respondent regrets. During cross-examination, he acknowledged that respondent did not admit to making inappropriate jokes or comments to coworkers. He also acknowledged that he does not know how respondent has changed in the workplace, if at all.

Luke Hibbard

66. Luke Hibbard met respondent at or near the time they both started working at RMS in approximately August 2018. Mr. Hibbard described the administrative office atmosphere as friendly, collegial and relaxed. In his opinion, he,

respondent, Ms. Ruiz, and Ms. Gutierrez were “professional when we needed to be, and friends at other moments.” The foursome socialized after work and Ms. Ruiz and Ms. Gutierrez sometimes babysat Mr. Hibbard’s children. Like respondent, Mr. Hibbard attributed much of the inappropriate comments and conduct to Ms. Ruiz.

67. Mr. Hibbard also wrote three letters of support for respondent, two of which were addressed to the Commission. In the first, he noted, “I am also aware that [respondent] is under review for alleged misconduct in the workplace and I feel compelled to write on his behalf. In our time together in a professional setting, [respondent] demonstrated on a daily basis that he possesses a management style that contributed to a strong relationship between our school site and students and their families.”

68. Mr. Hibbard also wrote in his first letter to the Commission, “I am familiar with the complaints made against [respondent] and can attest that they are overwhelmingly embellished or falsified.” He included similar statements in the second letter. At hearing, he confirmed he actually had no independent knowledge about whether nearly any of the allegations happened. Rather, he used that language to convey his sense of shock because the allegations were inconsistent with the behavior he observed from respondent. He acknowledged that, because he is also accused of participating in some of the inappropriate behavior, it is in his interest that the allegations be found unsubstantiated.

69. Regarding the student photos, Mr. Hibbard agreed with respondent that the child was partially dressed and therefore “not nude.” In Mr. Hibbard’s opinion, it was “probably not necessary” for respondent to show the photos to others. Instead, he could have described them. He also believes the photos should not have been on

respondent's cell phone. Mr. Hibbard was never issued a work phone and does not believe respondent was either.

Jovita Gutierrez

70. Jovita Gutierrez has worked for the District for approximately 12 years, currently as a secretary at the District office. She did not know respondent before he started at RMS but quickly grew to like him. She, respondent, Mr. Hibbard, and Ms. Ruiz would frequently joke at work and socialize outside of work. Ms. Ruiz often initiated their social interactions. All four of them participated in the playful and friendly banter and Ms. Ruiz never appeared offended.

71. Ms. Gutierrez confirmed that respondent flexed his muscles at work, discussed working out, and complimented women on their appearances. In her opinion, all four of them behaved similarly, and respondent meant no harm by his actions. She does not believe respondent ever crossed the line into sexual harassment.

72. Ms. Gutierrez also submitted two letters of support in which she characterized Ms. Ruiz's allegations as "fabricated." At hearing, she confirmed that respondent pulled his pants up to his groin by his pockets, shared a photo of his bare leg, complimented Ms. Ruiz's clothing and appearance, and played "Dirty Diana" for a student. She denied that she ever saw a sex video or nude photos involving Ms. Ruiz and denied that respondent asked her to see nude photos of Ms. Ruiz. She acknowledged she had no independent knowledge of whether the other allegations occurred.

73. Regarding the nude photos of the student, Ms. Gutierrez explained that she did not recognize the student. Instead, respondent already knew the identity of the student when he showed Ms. Gutierrez the photos. Once he told her the name, Ms.

Gutierrez then recognized her. She does not believe she needed to see the photos to participate in the meeting. She also does not believe others needed to see the photos.

ADDITIONAL LETTERS OF SUPPORT

74. Respondent introduced three additional letters of support from former coworkers. Mary La Rosa, a teacher and then interim principal at RMS, described him as student-centered, fair, kind, and empathetic. She praised his positive energy, "cutting jokes," and playful behavior. She never experienced any negative remarks or actions by respondent and believes the allegations against him must be dishonest and unfounded.

75. Jennifer Cornell is a counselor at Pitman High School in a different school district, where she formerly worked with respondent. She wrote a letter recommending him for employment in which she praised his responsibility, discipline, and respect. Her letter was written in February 2018, before the events raised in this case.

76. Scott Young is the assistant principal at Pitman High School. He has known respondent for more than ten years. In his experience, respondent was caring and compassionate and "always maintained the highest levels of professionalism." While at Pitman High School, respondent "did not have any issues with faculty members related to his behavior," nor did he "act in a way that was considered unprofessional."

Analysis

77. Complainant's witnesses and respondent's witnesses maintained respective versions of events that are largely incompatible with one another. Although there was some documentary evidence, most of the case focused on witness

testimony. As a result, witness credibility is central to the result. For the reasons explained below, complainant's witnesses were more credible than respondent's witnesses.

78. First, none of complainant's witnesses have any personal stake in the outcome of this case. In contrast, respondent, and to a lesser extent Mr. Hibbard, are biased by their own self-interest. (Evid. Code, § 780, subd. (f).)

79. Second, each of complainant's witnesses testified in a straightforward and forthright manner. In particular, Ms. Ruiz acknowledged her participation in the inappropriate workplace culture but credibly explained her reasons. Many of complainant's witnesses related substantially similar accounts of respondent's behavior. For example, Ms. Ruiz and Ms. Verdone both witnessed respondent tell Ms. Ruiz "you're in my favorite position" while she was bent over. Multiple witnesses agreed that respondent used his pockets to pull his pants tightly against his groin. Multiple witnesses agreed that respondent commented on women's clothing and physical appearance. Multiple witnesses agreed that respondent often flexed his muscles and talked about his physique.

80. On the other hand, respondent's witnesses made many inconsistent statements. (Evid. Code, § 780, subd. (h).) For example, both Mr. Hibbard and Ms. Gutierrez wrote letters characterizing the accusations against respondent as false. Yet at hearing, both witnesses either confirmed some allegations or stated they had no independent knowledge of whether the balance of allegations happened. Consequently, their challenges to the allegations as false or fabricated were wholly without merit.

81. Similarly, many of respondent's witnesses testified inconsistently with one another. For example, respondent said that Ms. Gutierrez saw either nude photos or a sex video involving Ms. Ruiz. However, Ms. Gutierrez denied that. Respondent said the phone he used to photograph the nude images of the student was his "work phone," but Mr. Hibbard testified that neither he nor respondent was issued a work phone. Respondent testified that he showed Ms. Gutierrez the photos of the nude student in part so she could help identify the student. Ms. Gutierrez explained that she did not recognize the student until respondent affirmatively told her the student's name.

82. In addition, the documentary evidence that respondent presented was incomplete and unpersuasive. He attempted to demonstrate that Ms. Ruiz initiated, or at least voluntarily participated in, the immature and inappropriate joking culture of the office. However, he did so by selecting only certain portions of the group's text messages that he deemed relevant or important. He had access to more messages, many of which would have provided context or presumably shown others' comments, but he did not introduce those messages. "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust." (Evid. Code, § 412.)

83. Moreover, respondent's testimony was equivocal, evasive, and smug. He denied many of the allegations, but those he admitted he minimized. Specifically, he acknowledged pulling out his pockets to resemble rabbit ears but denied pulling up his pants to accentuate his groin. He struggled to explain the humor of the joke if it involved just the rabbit's ears. He also acknowledged commenting on women's clothing and appearances but said he did so amiably. He offered no explanation as to

why multiple coworkers, many of whom rarely interacted with one another, would all fabricate similar accusations against him with nearly identical details.

84. Alternatively, respondent blamed Ms. Ruiz for instigating much of the inappropriate behavior. This was not credible. Respondent was the vice principal and, with Mr. Hibbard, was responsible for managing and, if necessary, disciplining Ms. Ruiz. However, despite his repeated claims that she initiated and participated in inappropriate workplace conduct, he never counseled or reprimanded her. This lack of discipline undermines respondent's credibility.

85. Furthermore, respondent claimed to have learned from his sexual harassment courses, but throughout the hearing he referred to Ms. Ruiz and Ms. Gutierrez as "the girls." This is despite Ms. Sacks specifically noting in her investigation report that such conduct is demeaning and patronizing.

86. Additionally, respondent continually insisted that the student was not fully nude in the photos he took and shared. Such insistence demonstrates that respondent does not fully appreciate the gravity of his actions. Whether the student was completely naked or had on her bra and underwear, she was a child who was undressed. Respondent not only took photos of her on his own cell phone, but then shared them with at least six other people, none of whom needed to see them to understand them. Indeed, the parties in this case conducted a four-day trial and examined 10 witnesses at length about these events, none of which was hindered by the absence of the actual photographs. By focusing on whether the student was fully or partially nude, respondent demonstrated that even now, he does not fully understand how inappropriate his actions were.

87. Respondent also noted that he has begun therapy with an LMFT. However, despite Dr. Williamson estimating that they have spent 90 percent of their sessions discussing the allegations in this case, he does not know the specifics. Moreover, he acknowledged on cross-examination that respondent did not admit to making inappropriate jokes or comments to coworkers and that he does not know whether respondent's workplace behavior has changed. For those reasons, Dr. Williamson's testimony not only failed to prove respondent's rehabilitation, it affirmatively demonstrated the opposite.

88. Finally, respondent submitted letters of support from former colleagues. However, none of the authors stated that they are aware of the specific allegations against respondent. As such, the letters are entitled to little weight with regard to the authors' assessment of respondent's character. (*Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 ["If the character witnesses were not aware of the extent or seriousness of petitioner's criminal activities, their evaluation of his character carry less weight"].)

Morrison Factors

89. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, the California Supreme Court concluded that a teaching credential cannot be disciplined for immoral conduct, unprofessional conduct, or conduct involving moral turpitude "unless that conduct indicates that the [educator] is unfit to teach." (*Id.* at p. 229.) The Court outlined factors for consideration when determining whether an educator's conduct demonstrates unfitness to teach, and the Commission adopted those factors by enacting California Code of Regulations, title 5, section 80302.

LIKELIHOOD OF ADVERSE EFFECT ON STUDENT OR FELLOW TEACHERS

90. "A teacher [. . .] in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the children coming under [his] care and protection." (*Bd. of Education v. Swan* (1953) 41 Cal.2d 546, 552.) This is also true of administrators such as vice principals, perhaps even more so. Respondent's repeated sexual harassment of his subordinates and coworkers reflects poorly on him individually, and on teachers and administrators generally. Moreover, respondent's handling of the nude student photos demonstrates a severe lack of sound judgment. He not only failed to safeguard the student's privacy, but he actively violated it repeatedly and unnecessarily.

91. Because students are impressionable and may try to emulate the adults in their lives, including teachers and administrators, it is essential that an educator's behavior be beyond reproach. Respondent's conduct demonstrated behavior inimical to the wellbeing of students and portrayed both him and the teaching profession negatively.

TYPE OF CREDENTIALS HELD

92. Respondent's credentials authorize him to teach students and act as an administrator in a variety of school settings to children of all ages. Therefore, it is even more imperative that he exemplify the type of behavior society wants emulated by students and possess sound judgment. Respondent's conduct raises concerns over whether he is an appropriate role model for the students in his care.

EXTENUATING OR AGGRAVATING CIRCUMSTANCES

93. Neither the Education Code nor the regulations adopted by the Commission specify what constitutes "extenuating circumstances." However, the California Code of Regulations defines "mitigating factor" as "an event or circumstance which demonstrates that the public, schoolchildren and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever." (Cal. Code Regs., tit. 5, § 80300, subd. (m).) The Commission's regulations also define "aggravating factor" as "an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession." (*Id.* at § 80300, subd. (b).)

94. The repeated nature of respondent's conduct demonstrates a pattern of misconduct involving both sexual harassment and violation of student privacy. Taken together, respondent's actions demonstrate the need for a greater degree of adverse action to ensure public protection. As explained above, respondent's evidence of mitigation in the form of his sexual harassment classes and therapy was not persuasive.

PRAISEWORTHINESS OR BLAMEWORTHINESS OF THE MOTIVES RESULTING IN THE MISCONDUCT

95. Respondent bears the sole blame for his conduct. Although respondent testified that he meant his remarks about women's clothing and physiques to be complimentary, he did not prove that his conduct was praiseworthy. To the contrary, complainant's witnesses credibly explained that they felt universally uncomfortable from respondent's comments.

LIKELIHOOD OF RECURRENCE

96. Respondent lacks insight into what caused his sexually harassing conduct. Similarly, he testified that the only thing he regrets about the way he handled the nude student photos was that he showed them to Ms. Cordano. As a result, his statements that he would avoid similar conduct in the future are unconvincing. Without understanding the reasons for his past misconduct, respondent cannot demonstrate he is unlikely to engage in similar misconduct in the future.

PUBLICITY OR NOTORIETY OF MISCONDUCT

97. Neither party presented evidence about whether respondent's misconduct was publicized. Nevertheless, his actions involved multiple teachers and students and led to a police investigation.

Conclusion

98. As discussed above, the persuasive evidence established that respondent engaged in each act of misconduct alleged in the First Amended Accusation. Complainant therefore established by clear and convincing evidence that respondent engaged in unprofessional conduct, evident unfitness for service, immoral conduct, moral turpitude, and persistent defiance of and refusal to obey the laws regulating the duties of persons service in the public school system. When considering the relevant *Morrison* factors, respondent's conduct demonstrated his unfitness to teach for the reasons explained in Factual Findings 77 through 97. Therefore, cause exists to discipline his credentials. In light of the serious and repeated nature of his conduct, respondent's credentials should be revoked.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving the existence of grounds for disciplining respondent's credentials and must do so by clear and convincing evidence to a reasonable certainty. (*Daniels v. Dept. of Motor Vehicles* (1983) 33 Cal.3d 532, 536 ["When an administrative agency initiates an action to suspend or revoke a license, the burden of proving the facts necessary to support the action rests with the agency making the allegation"]; *Gardener v. Comm'n. on Professional Competence* (1985) 164 Cal.App.3d 1036, 1039-1040 [recognizing that the clear and convincing evidence standard applies to proceedings to discipline a teacher's credential, whereas the lesser preponderance of the evidence standard applies to proceedings to dismiss a teacher from particular employment].) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a high probability [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

2. The California Supreme Court has recognized that the terms "immoral conduct" and "unprofessional conduct" substantially overlap one another and that conduct which constitutes one often includes the other. (See, *Morrison v. State Bd. of Education, supra*, 1 Cal.3d 214, 221, fn. 9.) "Unprofessional conduct" includes "'that which violates the rules of ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing.'" (*Bd. of Education v. Swan, supra*, 41 Cal.2d at p. 553; quoting, 66 Corpus Juris, p. 55.) In describing what constitutes "immoral conduct" within the context of the Education Code, the court in

Board of Education of San Francisco Unified School District v. Weiland (1960) 179 Cal.App.2d 808, said:

In *Orloff v. Los Angeles Turf Club*, 36 Cal.2d 734, at page 740 [227 P.2d 449], the Supreme Court quotes with approval the following statement from Words and Phrases, permanent edition, volume 20, pages 159-160: "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 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."

(*Id.*, at p. 811.)

3. The court in *San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, said the following about the definition of immoral or unprofessional conduct:

Moreover, the definition of immoral or unprofessional conduct must be considered in conjunction with the unique position of public school teachers, upon whom are imposed "responsibilities and limitations on freedom of action which do not exist in regard to other callings." [Citation.]

(Id., at p. 1466.)

4. And the following has been said about the analysis for determining whether particular conduct constitutes sufficient cause for taking adverse action against a credential:

Goldsmith v. Board of Education, 66 Cal.App. 157, 168 [225 P. 783], quoted in *Board of Education v. Swan*, 41 Cal.2d 546, 553-554 [261 P.2d 261], found that the standards for judging the propriety of a teacher's conduct, and the extent to which that conduct may be the basis for the revocation of a credential, involves many aspects. " . . . the teacher is entrusted with the custody of children and their high preparation for useful life. His habits, his speech, his good name, his cleanliness, the wisdom and propriety of his unofficial utterances, his associations, all are involved. His ability to inspire children and to govern them, his power as a teacher, and the character for which he stands are matters of major concern in a teacher's selection and retention."

(*Moser v. State Bd. of Education* (1972) 22 Cal.App.3d 988, 991.)

5. The Commission may discipline a credential based on the holder's unprofessional conduct. (Ed. Code, § 44421.) As discussed in Factual Findings 77 through 98, complainant established by clear and convincing evidence that respondent engaged in unprofessional conduct when he sexually harassed his coworkers and violated a student's privacy by inappropriately handling nude photos of

her. On that basis, cause exists to discipline respondent's credentials pursuant to Education Code section 44421.

6. The Commission may discipline a credential based on the holder's evident unfitness for service. (Ed. Code, § 44421.) As discussed in Factual Findings 77 through 98, complainant established by clear and convincing evidence that respondent's sexual harassment of his coworkers and violation of a student's privacy through inappropriately handling nude photos of her demonstrated his evident unfitness for service. On that basis, cause exists to discipline respondent's credentials pursuant to Education Code section 44421.

7. The Commission may discipline a credential based on the holder's immoral conduct. (Ed. Code, § 44421.) As discussed in Factual Findings 77 through 98, complainant established by clear and convincing evidence that respondent engaged in unprofessional conduct when he sexually harassed his coworkers and violated a student's privacy by inappropriately handling nude photos of her. On that basis, cause exists to discipline his credentials pursuant to Education Code section 44421.

8. The Commission may discipline a credential "for any cause that would have warranted the denial of an application for a credential or the renewal thereof." (Ed. Code, § 44421.) An application for a credential may be denied if the applicant "has committed any act involving moral turpitude." (Ed. Code, § 44345, subd. (e).) As discussed in Factual Findings 77 through 98, complainant established by clear and convincing evidence that respondent committed acts involving moral turpitude when he sexually harassed his coworkers and violated a student's privacy by inappropriately handling nude photos of her. On that basis, cause exists to discipline his credentials pursuant to Education Code section 44421, as that statute relates to Education Code section 44345, subdivision (e).

9. The Commission may discipline a credential based on the holder's "persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system." (Ed. Code, § 44421.) As discussed in Factual Findings 77 through 98, complainant established by clear and convincing evidence that respondent persistently defied and refused to obey the laws regulating the duties of those serving in public schools when he sexually harassed his coworkers and violated a student's privacy by inappropriately handling nude photos of her. On that basis, cause exists to discipline his credentials pursuant to Education Code section 44421.

10. Cause exists to discipline respondent's credentials for the reasons explained in Legal Conclusions 5 through 9, individually and collectively. When all the evidence is considered, respondent did not produce sufficient evidence of his continued fitness to perform the duties authorized under his credentials, even on a probationary basis. Therefore, his credentials should be revoked.

ORDER

The Clear Multiple Subject Teaching Credential, Clear Administrative Services Credential, Activity Supervisor Clearance Credential, and all other credentials, certificates, and authorizations issued to respondent by the Commission are REVOKED.

DATE: January 6, 2023


Sean Gavin (Jan 6, 2023 09:06 PST)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings