

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

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

**BERNARDO LOPEZ**

**Clear Single Subject Teaching Credential**

**Preliminary Single Subject Teaching Credential**

**Certificate of Clearance**

**Respondent.**

**Case No. 2-71395276**

**OAH No. 2021100592**

**PROPOSED DECISION**

Cindy F. Forman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter remotely by videoconference on March 21, 2022.

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

Respondent Bernardo Lopez represented himself at the hearing.

The ALJ heard testimony and received documentary evidence. The record was kept open until April 11, 2022, to allow respondent to submit additional evidence and for complainant to file objections. Respondent did not file additional evidence. The record closed on April 11, 2022.

## **SUMMARY**

Complainant seeks to discipline respondent based on student complaints about his classroom conduct in October 2018 and two misdemeanor criminal convictions, the most recent of which occurred 15 years ago. At the administrative hearing, the students, with a few exceptions, gave conflicting accounts of respondent's alleged misconduct, retracted their complaints, or had no recollection of the complained-about conduct, thus placing the truthfulness of the students' initial complaints in doubt. Complainant proved by clear and convincing evidence respondent engaged in two isolated incidents of misconduct, which neither alone nor together rise to a level of actionable discipline. Complainant also failed to prove respondent engaged in a pattern of misconduct that would make his two criminal convictions relevant to the allegations of classroom misconduct. Accordingly, in the absence of clear and convincing evidence showing respondent is unfit to teach or adverse action is required to protect the public, schoolchildren, and the teaching profession, the Accusation is dismissed.

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## **FACTUAL FINDINGS**

### **Jurisdiction and Parties**

1. The Commission issued a Clear Single Subject Teaching Credential in math (credential) to respondent on March 23, 2011. The credential is scheduled to expire on April 1, 2026. Previously, the Commission issued a Certificate of Clearance to respondent on May 28, 2004; the Certificate of Clearance expired on June 1, 2009. Respondent was issued a 30-day Substitute Teaching Permit on April 15, 2005, and an Emergency Long Term Single Subject Teaching Permit in November 2005. Respondent also held a preliminary teaching credential from 2006 to 2011.

2. On February 28, 2020, the Commission informed respondent in writing the Committee of Credentials (Committee) had found probable cause to recommend a seven-day suspension of his teaching credentials and all other certification documents. On March 23, 2020, respondent wrote to the Commission denying the alleged misconduct and informed the Commission of his intent to appeal the Committee's findings and recommendation.

3. Complainant, in her official capacity, signed the Accusation on September 19, 2020. The Accusation was served on respondent on September 22, 2020. The Accusation seeks to discipline respondent because of alleged unprofessional conduct, immoral conduct, evident unfitness for service, and moral turpitude. The charges stem from certain alleged interactions respondent had with students in his classroom in the fall of 2018 and two criminal convictions respondent sustained in 2006 and 2007.

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4. Respondent filed a Notice of Defense, dated October 5, 2020, requesting a hearing on the merits of the Accusation.

5. All jurisdictional requirements are satisfied.

## **Committee of Credentials**

6. The timing and circumstances leading to the Committee's consideration of respondent's conduct were not made known at the administrative hearing. The Committee Findings note a letter of inquiry was sent to respondent on October 1, 2019. (Ex. 3, p. A50.) According to the Committee Findings, the Committee recommended a seven-day suspension based on respondent's 2018 release from employment by Endeavor Preparatory Charter School (Endeavor), as a result of allegations respondent used physical force on students, cursed in class, and made inappropriate comments to students, and respondent's two misdemeanor convictions in 2006 and 2007. (*Ibid.*)

## **Alleged Misconduct in the Classroom**

7. Respondent began teaching seventh-grade math at Endeavor on September 4, 2018. On October 24, 2018, Endeavor ended respondent's employment based on his alleged misconduct in the classroom, particularly his "use of force against two (2) [Endeavor] students." (Ex. 6.) Endeavor's termination of respondent's employment was predicated on a report dated October 23, 2018, about respondent's classroom conduct (Investigation Report) and prepared in response to Incident Reports submitted by respondent's students. (Ex. 5.)

8. The Investigation Report was prepared by Evelyn Rodriguez, Endeavor's former Operations Manager. Ms. Rodriguez does not have a teaching or administrative

credential. According to the Investigation Report, Ms. Rodriguez started an investigation after receiving student Incident Reports on October 17, 2018. She then conducted interviews and collected statements from certain students and other witnesses. She completed her investigation on October 22, 2018.

9. The Accusation cites many of the student complaints noted in the Investigation Report as a basis for respondent's discipline. They are as follows:

- a. Respondent grabbed a student by the shoulder and neck areas, forcing the student to sit down.
- b. Respondent grabbed a student by the shoulders and pushed him to go to his seat.
- c. Respondent cursed in front of students.
- d. Respondent screamed at students.
- e. Respondent told a student, "You guys are the worst class ever." "You are dumb." "You guys are never going to learn."
- f. Respondent told the class, "I'm done with you guys, I'm going to quit" and began packing up his belongings.
- g. Respondent refused to let a student use the restroom.
- h. Respondent would stand in front of the class and not allow students to go to break.

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- i. Respondent blocked the classroom door with his body and pushed students with his body.
- j. Respondent told a student that the student was receiving a demerit for not getting a haircut. Respondent then told the student that after he got paid, he would take the student to get a haircut.
- k. Respondent told a student that the student received a demerit for being ugly.
- l. Respondent told a student "What? Call your Dad, what is he going to do?" Respondent subsequently apologized to the student after learning that the student did not have a father.
- m. Respondent removed empty incident reports from the classroom and put them in his bag when the students wanted to fill them out.

(Ex. 1, p. A8–A9.)

10. Four students, R.G., A.J., A.G., and D.S. (identified by initials to protect their privacy), testified at the administrative hearing about the substance of the Incident Reports and their experiences with respondent. The students are now 15 or 16 years old. The students were all in the same classroom taught by respondent and are currently in the tenth grade at three different high schools. The students' parents or caregivers were present during the students' testimony. All the students denied being influenced by their parents regarding their testimony.

11. The students' testimony was clear, calm, and non-evasive. The students were respectful of the proceedings. With few exceptions, the students' testimony conflicted with the accounts of what happened in respondent's classroom provided in the Incident Reports and the summaries found in the Investigation Report. The students either denied or failed to recall most of the complaints contained in the Incident Reports

### **R.G. INCIDENT REPORT AND TESTIMONY**

12. At hearing, R.G. acknowledged he wrote and filed an Incident Report dated October 11, 2018. In the Incident Report, R.G. complains that (1) respondent yelled at R.G. and would not let him go to the bathroom, and (2) respondent "then put his hand on [R.G.'s] shoulder and squeezed which hurt." (Ex. 7, p. A63.) According to the Incident Report, six students witnessed respondent's conduct, including A.J. and D.S.

13. At hearing, R.G. retracted the statements made in his Incident Report. R.G. denied respondent ever grabbed him by the shoulder to take a seat, and he testified he never saw respondent forcibly place any student in a seat. He described respondent as being frustrated with the class because the students would not show him any respect or listen. He testified respondent spoke in a stern voice, but he never used profanity. R.G. never saw respondent place any Incident Report forms in a bag; according to R.G., the forms were always available and never hidden. R.G. never heard respondent telling the class they were dumb or the worst class ever or that he was "done with you guys." R.G. also testified respondent did not block the door or push students with his body. R.G. had no recollection of respondent giving detention or a demerit because of a haircut.

14. R.G. was one of the students interviewed by Ms. Rodriguez as part of her investigation into respondent's conduct. In her interview with R.G., held on October 18, 2018, Ms. Rodriguez reported R.G. said respondent grabbed him by the shoulder to take a seat and respondent placed all the unfilled-out Incident Report forms in his bag. (Ex. 7, p. A60.) At hearing, R.G. testified he did not recall speaking with Ms. Rodriguez, and as already noted, denied respondent ever grabbed him by his shoulder or placed any Incident Report forms in a bag.

### **A.J. TESTIMONY**

15. A.J. was the scrivener for an Incident Report filed by five female students on October 17, 2018 (group complaint). (Ex. 8.) The specific complaints she wrote in the group complaint are those listed in the Accusation. A.J. testified as to four of the reported incidents of alleged misconduct but she did not recall the others.

16. At hearing, A.J. disputed R.G.'s current account of respondent's conduct. A.J. testified she observed respondent grab R.G. by the neck and she later spoke to R.G. about the incident. A.J. acknowledged she had not informed R.G. she had reported the incident as part of the group complaint. A.J. also remembered respondent saying he was going to quit, but she did not remember respondent packing up his belongings and did not remember what prompted respondent's statement. A.J. additionally recalled respondent blocking the classroom entrance with his body, but she did not see him push any students with his body and does not recall why he blocked the entrance. A.J. did not remember seeing any Incident Reports in the classroom; she "thinks" (her own words) respondent put the Incident Reports in his bag one time but did not recall the circumstances for him doing so.

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17. A.J. had no recollection of the other reported incidents in the group complaint. Specifically, A.J. testified she did not remember respondent grabbing a student (other than R.G.) by the shoulders and pushing him to his seat; respondent cursing, using profanity, or yelling in the class; respondent refusing to allow students to go on break; respondent telling a student he needed a haircut or telling a student (D.S.) he was ugly; or respondent threatening to call a student's deceased father.

18. The Investigation Report includes the specific complaints identified in the group complaint. However, Ms. Rodriguez did not interview A.J. or any of the other students who jointly submitted the group complaint. According to the Investigation Report, these students were interviewed by an Endeavor counselor. However, the Investigation Report does not include any findings by the counselor about the interviews; nor does the Investigation Report include any summaries of those interviews.

### **A.G. TESTIMONY**

19. A.G. did not submit an Incident Report about respondent. Nor did he take part in the preparation of any complaint about respondent. A.G. testified respondent was a "good teacher," but the students in the class were rebellious and refused to focus on learning. A.G. described R.G. as a troublemaker in the class. A.G. described the complaints about respondent as "fake" and testified the "girls" who filed them were "troublemakers" who wanted to get respondent in trouble.

20. At hearing, A.G. testified he had no recollection of any of the incidents reported in the Accusation. Although the group complaint stated respondent had grabbed A.G. from the shoulders, A.G. had no recollection of respondent placing a hand on his shoulder or observing respondent place a hand on any other student's

shoulder. A.G. did not recall respondent using any profanities. He never observed respondent retrieving any Incident Report forms and never heard of any incident about the forms. A.G. never saw respondent block or push any student. He did not recall respondent threatening students with demerits for being ugly or not getting a haircut. He testified respondent yelled because he was frustrated, and respondent, in A.G.'s words, "acted like a normal teacher."

21. The Investigation Report included a summary of Ms. Rodriguez's interview with A.G., which was held on October 18, 2018. In the interview, according to the Investigation Report, A.G. stated respondent screams at him and "pushes students to be quiet." (Ex. 7, p. A60.) A.G. also stated respondent pushed him hard enough for him to take two steps back. (*Ibid.*) At hearing, A.G. had no recollection of his interview with Ms. Rodriguez. None of the Incident Reports mention respondent physically pushing A.G. or other students to be quiet.

### **D.S. TESTIMONY**

22. D.S. did not file an Incident Report. The group complaint identified D.S. by name as someone respondent called "dumb" and was one of the students respondent allegedly told, "You guys are never going to learn." (Ex. 8.) D.S. could not recall whether he took part in preparing any of the Incident Reports filed by respondent's students.

23. D.S. testified respondent was a "good" teacher. He described respondent as "frustrated with the students." D.S. denied seeing many of the incidents reported in the Accusation. Despite being named a witness on R.G.'s Incident Report, D.S. testified he never saw respondent place a hand on R.G.'s shoulder or push anyone. D.S. never saw respondent take any Incident Reports. He testified respondent would "yell" at

students to pay attention, but he did not scream at students. D.S. never heard respondent curse. D.S. did not recall respondent calling him “dumb” or telling him he was never going to learn.

24. D.S. confirmed respondent told him he would receive a demerit if he was ugly but did not remember the context of the conversation. D.S. recalled being offended by the comment and walking out of class. He testified he did not talk to anyone about it and ultimately, “did not care.”

25. Ms. Rodriguez interviewed D.S. as part of her investigation into respondent’s alleged misconduct. Ms. Rodriguez summarized the interview in the Investigation Report. According to the interview summary, D.S. said he has a good relationship with respondent but respondent yells at the class. D.S. also said he heard respondent say the “b and f word under his breath when mad” and “he can hear these words. when [respondent] walks by his seat.” (Ex. 7, p. A60.) At hearing, D.S. testified he recalled meeting with Ms. Rodriguez but did not remember the substance of the interview.

## **OTHER STATEMENTS**

26. Two other Incident Reports were admitted into evidence as administrative hearsay under Government Code section 11513, subdivision (d). A.J.2 submitted an Incident Report dated October 11, 2018 (Ex. 9); she also joined in the group complaint. A.J.2 did not testify at the administrative hearing. Her Incident Report complains respondent gave demerits without reason and screams. The Incident Report also states respondent took the Incident Reports away from the students and hid them in his computer bag “because he didn’t want us to tell on him.” (Ex. 9, p.

A65.) Ms. Rodriguez did not interview A.J.2 as part of her investigation into respondent's alleged misconduct.

27. B.M. submitted an Incident Report dated October 11, 2018. (Ex. 10.) She also joined in the group complaint. B.M. did not testify at the administrative hearing. Her Incident Report complains respondent verbally threatened her and interfered with her filing an Incident Report. The Incident Report also states respondent threatened to send B.M. to the "reset room" and to call her mother. (Ex. 10.) Ms. Rodriguez did not interview B.M. as part of her investigation into respondent's alleged misconduct.

28. According to the Investigation Report, Ms. Rodriguez interviewed K-8 Math Coach Rachelle Bertumen (Coach Bertumen) about respondent's misconduct. Coach Bertumen did not testify at the hearing. According to Ms. Rodriguez's summary of Coach Bertumen's interview, Coach Bertumen never observed or heard of respondent inappropriately touching his students. (Ex. 7, p. A61.) Coach Bertumen had no first-hand knowledge about the students' other complaints of respondent's conduct. Coach Bertumen referenced statements made by an instructional assistant about certain of respondent's classroom statements. However, neither Ms. Bertumen nor the instructional assistant testified or submitted declarations about those statements or the circumstances under which they were made. The statements made by the instructional assistant and reported by Ms. Bertumen to Ms. Rodriguez constitute inadmissible double hearsay and were given no evidentiary weight in this proceeding.

## **RESPONDENT'S STATEMENTS**

29. As part of her investigation, Ms. Rodriguez confronted respondent with the students' allegations. According to Ms. Rodriguez, respondent denied all the

allegations except admitted he had cursed once in class for which he had apologized to the class. In the Investigation Report, Ms. Rodriguez states respondent denied ever touching a student, taking away empty incident reports, or telling the students they were dumb. Respondent also told Ms. Rodriguez he cares about his students and teaching. (Ex. 5, p. A61.)

### **INVESTIGATION REPORT FINDINGS**

30. Based on the interview statements of R.G. and A.G. that respondent grabbed and pushed them in the classroom, Ms. Rodriguez credited the students' allegations respondent used force on the two students. Her investigation cited no other evidence supporting the students' claims of respondent's use of force. The Investigation Report did not make findings about the students' other complaints, including whether respondent cursed in class, made inappropriate comments to students, or took any Incident Report forms. (Ex. 5, p. A61.)

31. Based on the Investigation Report and with help from Endeavor's attorneys, Ms. Rodriguez notified respondent his last day of employment was on October 24, 2018. Endeavor offered no intermediate discipline or training to respondent. After respondent's departure, Endeavor had to hire another math teacher to replace respondent. Ms. Rodriguez could not recall when Endeavor was able to locate another math teacher but noted it took "some time" because math teachers were difficult to recruit.

### **ANALYSIS**

32. A review of the evidence shows there is little if any reliable direct evidence to support the allegations of respondent's classroom misconduct. To the extent the Incident Reports and the summaries of student statements found in the

Investigative Report are considered administrative hearsay, they can only be used to supplement or explain direct evidence. (Gov. Code, § 11513, subd. (d).) Thus, as administrative hearsay, the contents of the Incident Reports and the Investigation Report summaries are for the most part accorded little evidentiary weight because they largely fail to support or explain the testimony offered at hearing.

33. To the extent the Incident Reports and interview summaries in the Investigation Report are considered prior inconsistent statements and not hearsay under Evidence Code section 1235, there is insufficient evidence to determine the truthfulness of those earlier statements. Except for an incident involving an inappropriate comment, each of the recipients of respondent's alleged physical contact or inappropriate comments as noted in the Incident Reports denied such contact happened or such comments were made. In addition, the absence of any history of physical violence or prior discipline, the absence of any corroborating testimony by respondent's colleagues or students who did not file Incident Reports, A.G.'s description of the complaints as "fake," the almost simultaneous filing of the Incident Reports by students in only one class, and the direct, candid, and non-evasive demeanor of the students testifying at the hearing all cast doubt on the reliability of the statements made in the Incident Reports and to Ms. Rodriguez.

34. The evidentiary findings relating to the individual incidents of alleged misconduct identified in the Accusation are as follows:

- Allegation (a): Respondent grabbed a student by the shoulder and neck areas, forcing the student to sit down. Complainant did not prove this allegation by clear and convincing evidence. At hearing, the alleged student victim (R.G.) denied the incident and retracted the statements made in his Incident Report about the incident. There was insufficient evidence to

determine the truthfulness of R.G.'s prior inconsistent statements. None of the other students, except A.J., recollected respondent grabbing R.G. A.J. testified she saw respondent grabbing R.G. by the neck and her testimony corroborated the statements in the group complaint and R.G.'s Incident Report. However, A.J.'s testimony and earlier complaint are insufficient to establish the truth of R.G.'s earlier statement, considering R.G.'s unequivocal denials at hearing, respondent's denials, the absence of corroborating evidence from disinterested parties, and the circumstances surrounding the filings of the Incident Reports.

- Allegation (b): Respondent grabbed a student by the shoulders and pushed him to go to his seat. Complainant did not prove this allegation by clear and convincing evidence. The alleged student victim (A.G.) denied the incident, made no Incident Report of the incident, and did not recall telling Ms. Rodriguez about the incident. A.J., who reported the incident, had no present recollection of the incident. There was insufficient evidence to determine the truthfulness of A.J.'s prior inconsistent statements in the group complaint that respondent had grabbed A.G.
- Allegation (c): Respondent cursed in front of students. Complainant proved respondent said "shit" under his breath one time. Complainant did not prove by clear or convincing evidence respondent used profanity at any other time. None of the students testified respondent used profanity. There was insufficient evidence to determine the truthfulness of the prior inconsistent statements by A.J. in the group complaint that respondent used profanity or by D.S. to Ms. Rodriguez that he heard respondent curse under his breath.

- Allegation (d): Respondent screamed at students. Complainant did not prove by clear and convincing evidence respondent screamed at the students. Although D.S. and A.G. testified respondent yelled at the students, neither described respondent's actions as screaming. A.G. testified respondent acted like a "normal teacher." None of the other students testified respondent screamed at them. A.J.2's Incident Report, although it complains of respondent screaming, was admitted as administrative hearsay, and is not sufficient by itself to prove respondent screamed at students.
- Allegation (e): Respondent told a student, "You guys are the worst class ever." "You are dumb." "You guys are never going to learn." Complainant did not prove this allegation by clear and convincing evidence. D.S., the alleged recipient of the statements, had no recall of the statements. None of the other testifying students recalled respondent making the statements. There was insufficient evidence to assess the truthfulness of A.J.'s prior inconsistent statement in the group complaint that respondent made such statements.
- Allegation (f): Respondent told the class, "I'm done with you guys, I'm going to quit" and began packing up his belongings. Complainant did not prove this allegation by clear and convincing evidence. A.J. was the only witness who recalled respondent making the statements but she testified respondent did not pack up his belongings. There was insufficient evidence to determine the truthfulness of A.J.'s prior inconsistent statement in the group complaint that respondent did pack up his belongings.
- Allegation (g): Respondent refused to let a student use the restroom. Complainant did not prove this allegation by clear and convincing evidence. No student testified respondent ever refused to let a student use the



restroom. R.G., who filed the Incident Report making this complaint, refuted the statement at hearing. There was insufficient evidence to determine the truthfulness of A.J.'s prior inconsistent statement in the group complaint that respondent did not allow a student to use the restroom.

- Allegation (h): Respondent would stand in front of the class and not allow students to go to break. Complainant did not prove this allegation by clear or convincing evidence. No student testified respondent ever refused to let a student go to break. There was insufficient evidence to determine the truthfulness of A.J.'s prior inconsistent statement in the group complaint that respondent would not allow students to go to break.
- Allegation (i): Respondent blocked the classroom door with his body and pushed students with his body. Complainant did not prove this allegation by clear and convincing evidence. Although A.J. testified respondent blocked the classroom door with his body, as noted in the group complaint, A.J. could not recall whether respondent pushed students with his body. None of the other witnesses testified respondent blocked the door or pushed students with his body. There was insufficient evidence to determine the truthfulness of A.J.'s prior inconsistent statement in the group complaint that respondent blocked the classroom door with his body and pushed students with his body.
- Allegation (j): Respondent told a student that the student was receiving a demerit for not getting a haircut. Respondent then told the student that after he got paid, he would take the student to get a haircut. Complainant did not prove this allegation by clear and convincing evidence. None of the students testified respondent ever made such statements. There was

insufficient evidence to determine the truthfulness of A.J.'s prior inconsistent statement in the group complaint that respondent made such statements.

- Allegation (k): Respondent told a student that the student received a demerit for being ugly. Complainant proved by clear and convincing evidence respondent told a student (D.S.) he was ugly. D.S. testified respondent commented on his appearance. Because D.S. was the recipient of the comment, his testimony was more credible than respondent's denial. D.S., however, was not able to recall the circumstances or context of respondent's statement.
- Allegation (l): Respondent told a student "What? Call your Dad, what is he going to do?" Respondent subsequently apologized to the student after learning that the student did not have a father. Complainant did not prove this allegation by clear and convincing evidence. None of the students recalled respondent making such statements. There was insufficient evidence to determine the truthfulness of A.J.'s prior inconsistent statement in the group complaint that respondent made such statements.
- Allegation (m): Respondent removed empty incident reports from the classroom and put them in his bag when the students wanted to fill them out. Complainant did not prove this allegation by clear or convincing evidence. None of the witnesses except A.J. testified respondent placed Incident Reports in his bag. R.G. testified the Incident Reports were always available. A.J. testified she saw respondent put some Incident Reports in his bag one time but did not know the circumstances of him doing so. The group complaint states respondent took Incident Reports from the students and put them in his computer bag but makes no mention of the

circumstances behind him doing so. There is no testimony to support the statement in A.J.2's Incident Form, admitted as administrative hearsay, that respondent took the Incident Forms from students while they were filling them out and hid them in his bag because "he did not want us to tell on him." (Ex. 9, p. A66.)

35. In summary, complainant proved by clear and convincing evidence respondent cursed under his breath one time in front of the class and told a student he received a demerit for being ugly. There was insufficient evidence to prove clearly and convincingly the other incidents of alleged misconduct identified in the Accusation occurred.

## **Criminal Convictions**

### **2006 CRIMINAL CONVICTION**

36. On August 10, 2006, in the Superior Court of California, County of Los Angeles, case number 6CA21862, the court convicted respondent, based on his plea of nolo contendere, of violating Penal Code section 602.1, subdivision (a), interference with business, a misdemeanor. The court suspended the imposition of sentence and placed respondent on summary probation for 18 months under terms and conditions including (1) serving three days in County jail, with credit for three days, (2) paying \$316 of fines and fees; and (3) staying away from Dodger's Stadium. Respondent paid his fines and fees and complied with the other terms of his probation.

37. The facts and circumstances of respondent's 2006 criminal conviction are that on August 8, 2006, Los Angeles Police Department Officer Curtis Davis, who testified at hearing, arrested respondent and his friend at Dodger's Stadium in response to a Citizen's Arrest by Dodgers' Stadium security personnel. Officer Davis

did not observe the circumstances leading to respondent's arrest, and no one from Dodger's Stadium testified at the hearing. Respondent disputed the summary of the events provided by the Dodgers' security personnel as set forth in the police report, and the summary was considered only to the extent it supported or explained respondent's version of events. According to respondent, he and his friend were attending a Dodgers game. They both drank, but his friend became intoxicated and made a scene in the stands. When asked to leave, respondent attempted to escort his friend out of the stadium. However, his friend confronted the security officers and got into a scuffle. Respondent was arrested because he was with his friend. Respondent was 25 years old at the time of his arrest.

## **2007 CRIMINAL CONVICTION**

38. On October 11, 2007, in the Superior Court of California, County of Los Angeles, case number 7MP10211, the court convicted respondent, based on his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b), driving while under the influence with a blood alcohol content of 0.08 percent, a misdemeanor. The court suspended the imposition of sentence and placed respondent on summary probation for 36 months under terms and conditions, including (1) paying \$1,162 of fines and fees, or instead of paying fines, serving 13 days in County Jail less credit for a day, or performing 12 days of Cal Trans work; (2) successfully completing a three month alcohol education program; and (3) attending 10 Alcoholics Anonymous (AA) meetings at a rate of two times a week in addition to those required as part of the alcohol program. Respondent satisfied the requirements of his probation.

39. The facts and circumstances of respondent's 2007 conviction are that on September 8, 2007, at approximately 12:15 a.m., respondent was speeding, lost control of his vehicle, crossed the center median, and crashed into a parked car. A witness

contacted the police. The responding police officers arrested respondent after smelling alcohol on respondent's breath and administering Standardized Field Sobriety Testing, which respondent failed. A breathalyzer test showed respondent's blood alcohol content at the time was 0.16 percent. Respondent was 26 years old at the time of his arrest.

## **Respondent's Testimony**

40. Respondent is the first member of his family to graduate high school and college. He obtained a B.A. in Mathematics and an M.A. in Education from the University of California, Santa Cruz. While at college, he tutored students at continuation schools and fell in love with teaching.

41. Respondent began his teaching career in 2006, teaching in Watsonville, California. From 2007 to 2012, he taught high school math at Wilson High School in Los Angeles. Due to low enrollment, he was forced to become a default substitute teacher. He then left Wilson High School to work as a full-time math teacher at Franklin High School. He moved from Franklin High School when no permanent opening became available. Respondent then worked at Mark Keppel High School, Inglewood Continuation School, and College Bridge Academy in Watts but left these positions because of budget cuts and long commute times. Respondent received no complaints about his teaching performance or classroom conduct from any of these schools.

42. Respondent's position at Endeavor was his first experience working at a middle school. Respondent testified he was hired in September 2018 and, before that time, received no special training in teaching middle students. At the time, respondent looked forward to the challenge of teaching middle school students. He believed he

was at Endeavor for the long run, and he was determined to provide his students with a quality education.

43. Respondent denied all but one of the allegations contained in the student complaints and the Accusation about his classroom conduct. He acknowledged he said "shit" to himself but did not say it aloud in the classroom. However, because he thought it was the right and professional thing to do, he apologized to the classroom after consulting with his teaching coach. Concerning the other allegations, respondent testified he never laid hands on any student because it was not "part of who he is." He also maintained that if he had, Endeavor should have immediately reported the contact to law enforcement, which Endeavor never did. Respondent also did not recollect telling D.S. he was ugly but said if he had done so it would have been in a joking manner. Respondent acknowledged he may have "gotten loud" in the classroom but had done so infrequently.

44. Respondent's first criminal conviction occurred right after college. Respondent testified he accepted a plea, even though he believed he was innocent, because by doing so he did not have to remain in jail and would avoid a battery charge. Regarding the second criminal conviction, respondent acknowledged he made a mistake, and he testified never again drank alcohol before driving. Other than these two criminal convictions, respondent has had no interactions with law enforcement. He denied having any issues with alcohol.

45. After leaving Endeavor, respondent worked as a math teacher at Wallis Annenberg High School from 2019 to 2020 on a one-year contract. After the contract expired, respondent began work at Time Community Charter School in Montebello. He currently teaches math to ninth and tenth graders. Respondent also teaches game design at the school and is a teacher representative for school council meetings. Since

his tenure at Endeavor, respondent has taken classes on how to defuse difficult situations in the classroom and how to keep his students engaged. He testified he has had no further problems in his classrooms.

46. Respondent's testimony was candid and non-defensive. He was respectful of the proceedings. Respondent testified he harbored no ill will toward the students who filed complaints or testified against him. His questioning of the students at hearing was restrained and non-accusatory. Respondent expressed his disappointment with Endeavor but testified he had no grudge against the school or the students. Respondent also reiterated his love and passion for teaching.

## **LEGAL CONCLUSIONS**

### **Jurisdiction and Standard of Proof**

1. Under the Education Code (Code), commencing with section 44000, and California Code of Regulations, title 5, commencing with section (Regulation) 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. Regulation 80300, subdivision (a) defines "adverse action" as "a denial, a private admonition, public reproof, suspension, or a revocation of one or more credentials." Regulation 80300, subdivision (t), further provides that a suspension may be stayed "on condition of probation," indicating that adverse action may also take the form of placing a credential on probation subject to appropriate terms.

2. Respondent's credential is a professional license. Complainant therefore has the burden of proving that cause exists for adverse action against respondent's credential by clear and convincing evidence to a reasonable certainty. (*Ettinger v.*

*Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855–856.) Clear and convincing evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt and “it must be sufficiently strong to command the unhesitating assent of every reasonable mind. This requirement presents a heavy burden, far in excess of the preponderance of evidence standard.” (*Christian Research Institute v. Alnor* (2007) 148 Cal.App.4th 71, 84.)

## **Causes For Discipline**

### **FIRST CAUSE FOR DISCIPLINE: UNPROFESSIONAL CONDUCT**

3. Unprofessional conduct in the teaching profession has been defined as “that which violates the rules or ethical code” of the profession or “is unbecoming a member of the profession in good standing.” (*Board of Educ. of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553, overruled in part on another ground, in *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575, 588, fn. 7.)

4. Complainant proved by clear and convincing acts respondent engaged in unprofessional conduct when he cursed in class one time and commented negatively about a student’s appearance. Complainant did not prove by clear and convincing evidence respondent used physical force against his students, routinely used profanity, or made any other inappropriate comments to his students. (Factual Findings 7–35.)

5. Complainant proved by clear and convincing evidence respondent was convicted of DUI and interference with business relations in 2008 and 2009, respectively, during the time respondent held a preliminary teaching credential. (Factual Findings 36–39.) Both criminal convictions involved alcohol. Criminal convictions involving alcohol are unbecoming of a member of the teaching profession and therefore constitute unprofessional conduct.



## **SECOND CAUSE FOR DISCIPLINE: IMMORAL CONDUCT**

6. Immoral conduct 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 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.” (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811, citation omitted.)

7. Complainant failed to prove by clear and convincing evidence respondent engaged in immoral conduct in the classroom. Cursing one time in the classroom, and then apologizing for it, does not reflect indecent or depraved conduct. And while negatively commenting on a student’s appearance is unprofessional, it is impossible to assess whether it is immoral without knowing the context of the comment. (Factual Findings 34–35.)

8. Complainant failed to prove by clear and convincing evidence respondent’s criminal conviction for interference with business constitutes immoral conduct. Penal Code section 601.2, subdivision (a), prohibits a person from intentionally interfering with a public business by obstructing or intimidating those attempting to carry on the business and then refusing to leave after being requested to do so. No evidence was presented respondent’s conduct in Dodger’s Stadium was depraved, indecent, or dissolute, or that his conduct presented danger to others. (Factual Finding 37.) There was no evidence respondent tried to intimidate or obstruct Dodger’s security personnel while departing from the stadium.

9. Complainant proved respondent's DUI conviction constituted immoral conduct. Driving while under the influence of alcohol is reckless and dangerous to others, thereby reflecting an inconsiderate attitude toward good order and the public welfare. (Factual Finding 38–39.)

### **THIRD CAUSE FOR DISCIPLINE: EVIDENT UNFITNESS FOR SERVICE**

10. "Evident unfitness for service" means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444, citation omitted.) "'Evident unfitness for service' connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Ibid.*) To prove "evident unfitness for service," complainant therefore must demonstrate that respondent had a "flaw of temperament" that resulted in his conduct, and no "reasonable likelihood" exists that respondent could reform his temperament to ensure the bad conduct will not recur. (*Id.* at p. 1445.)

11. Complainant did not prove by clear and convincing evidence respondent suffers from a temperamental defect or an irremediable fixed character trait that makes him clearly not fit or suitable for teaching. Except for a few isolated instances, complainant failed to prove respondent engaged in classroom misconduct. (Factual Findings 34–35.) Complainant did not offer any psychological or psychiatric evidence that respondent suffered from a fixed character flaw. Complainant's 15 years of teaching without similar complaints disproves that respondent's teaching is irreparably flawed. Complainant also offered no evidence that respondent's earlier history of alcohol abuse makes him unfit to teach.

## **FOURTH CAUSE FOR DISCIPLINE: MORAL TURPITUDE**

12. "Moral turpitude" has been defined as "everything done contrary to justice, honesty, modesty or good morals." (*Rice Alcoholic Beverage etc. v. Alcoholic Beverage Control Appeals Bd.* (1979) 89 Cal.App.3d 30, 36.) "Moral turpitude is 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." (*In re Higbie* (1972) 6 Cal.3d 562, 569.) Moral turpitude has also been described as a crime or misconduct committed without excuse (*ibid*), or as any "dishonest or immoral" act, not necessarily a crime. (1 Witkin, Cal. Procedure (2d ed. 1970) Attorneys, § 195, p. 202.)

13. Complainant did not prove by clear and convincing evidence respondent engaged in acts of moral turpitude. Cursing once and making a derogatory statement to a student does not constitute moral turpitude. (Factual Findings 34–35.) While cases involving multiple DUI convictions have found such conduct to constitute moral turpitude, a single DUI does not rise to this level. (*People v. Forster* (1994) 29 Cal.App.4th 1746, 1757.) Respondent also denied engaging in physical violence with the Dodgers' security team or refusing to leave the stadium; his conduct at Dodger's stadium was not base, vile, or depraved. (Factual Finding 37.)

## **Disposition**

14. Adverse action against a credential is called for when respondent's misconduct demonstrates unfitness to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229 (*Morrison*). Thus, to decide whether adverse action is necessary because of respondent's misconduct, the factors enumerated in *Morrison*

and codified in Regulation 80302 must be considered. These factors are applied to respondent as follows:

A. The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated. No evidence was presented that respondent's single instance of cursing or single derogatory statement adversely affected fellow teachers or the educational community. While respondent's comment about a student's appearance was unprofessional and potentially injurious, no evidence was presented regarding the circumstances under which it was made. D.S., the subject of the comment, testified he was initially offended by the comment but then did not care, and despite the comment, believed he had a good relationship with respondent. While the comment may have adversely affected the other students in respondent's classroom at the time, complainant offered no evidence that the impact was long-lasting as none of the testifying students, except for D.S., were able to recall the comment. Respondent's two earlier criminal convictions, the most recent of which occurred 11 years before respondent taught at Endeavor, had no adverse impact on Endeavor's students, fellow teachers, or the educational community. There is no evidence anyone at Endeavor was aware of the criminal convictions. Notably, the Commission issued respondent's permanent teaching credential notwithstanding these criminal convictions. The Accusation does not allege the Commission was not aware of them before issuing the credential.

B. The proximity or remoteness in time of the conduct. Respondent's classroom misconduct occurred more than three and one-half years ago. Since that time, respondent has taught at several schools without incident. The criminal convictions at issue occurred more than 15 years ago.

C. The type of credential held by the person involved. Respondent holds a credential allowing him to teach mathematics to all grades as well as adults. While students need appropriate adult role models, respondent has taken classes to improve the handling of his classes. Respondent no longer drinks when driving and has had no interactions with law enforcement since his criminal conviction in 2007.

D. The extenuating or aggravating circumstances surrounding the conduct. There are no extenuating or aggravating circumstances that would make it likely respondent's misconduct will reoccur. The instances of classroom misconduct appear to be one-time events. Respondent apologized to his class for cursing. The circumstances of his derogatory comment are not known. Respondent's criminal convictions occurred when respondent was young. The record does not support a finding anyone was injured by respondent's conduct. Complainant has not proven respondent acted in bad faith or has been dishonest.

E. The praiseworthiness or blameworthiness of the motives resulting in the conduct. The motives for respondent cursing in the classroom is blameworthy. Because the context and circumstances of respondent making a derogatory comment are unknown, his motives in doing so cannot be determined to be praiseworthy or blameworthy. Respondent's motives in driving while intoxicated are blameworthy.

F. The likelihood of the recurrence of the questioned conduct. Recurrence of the questioned conduct is unlikely. Respondent took immediate responsibility for cursing one time by apologizing to his class, thus demonstrating he recognized the wrongfulness of his actions. Respondent has also taken classes to enable him to obtain better control of his classes. He no longer teaches middle school. Respondent has no other history of discipline, and since his last conviction in 2007, has had no trouble with the law.

15. As demonstrated above, application of the *Morrison* factors does not show respondent is unfit to teach. Complainant has proved respondent engaged in de minimus and isolated acts of unprofessional conduct in the classroom and was convicted of two misdemeanors 15 years ago. Complainant has not established respondent's classroom misconduct or criminal convictions harmed anyone, or that his continued presence in the classroom endangers students, school employees, or others. Contrary to complainant's arguments in her trial brief, respondent's 2006 and 2007 criminal convictions do not form a pattern of wrongdoing or suggest bad faith, dishonesty, or other violations of the law governing educators. Outside of the two proven classroom incidents at Endeavor, respondent's 16-year teaching record is unblemished. Considering the absence of any prior record of adverse action over these 16 years of educational service and the non-serious nature of respondent's misconduct, no adverse action is necessary to protect the public, schoolchildren, and the teaching profession. The Accusation is therefore dismissed.

## **ORDER**

The Accusation against respondent Bernardo Lopez is dismissed.

DATE: 05/16/2022



CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings