

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

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

**DAVID LEE SANDLES, Respondent.**

**Clear Multiple Subject Teaching Credential (Expired)**

**Clear Specialist Instruction Credential (Reading) (Expired),**

**Respondent.**

**Agency Case No. 2-75598363**

**OAH No. 2022080310**

**PROPOSED DECISION**

Administrative Law Judge (ALJ) Chantal M. Sampogna, Office of Administrative Hearings, State of California, heard this matter by videoconference on October 19 and 20, 2022.

Deputy Attorney General Matthew A. King represented complainant Mary Vixie Sandy, Ed.D, Executive Director of the California Commission on Teacher Credentialing (Commission).

Matthew Sean Harrison, Attorney at Law, Prometheus Civic Law, P.C., represented respondent David Lee Sandles.

Testimony and documents were received in evidence. The record was closed and the matter was submitted for decision on October 20, 2022.

## **STATEMENT OF THE CASE**

On October 13, 2022, complainant issued the Accusation against respondent alleging cause to revoke his teaching credentials and certifications. Complainant alleges: (1) in 2002 respondent suffered a misdemeanor criminal conviction; and (2) respondent failed to report to work for the Bakersfield City School District between August 12 and September 5, 2019, due to purported illness while working for the California State University of Bakersfield (CSUB) during the same time period. Respondent timely filed a notice of defense.

## **ISSUES**

1. Whether there is cause to discipline respondent's credentials under Education Code section 44421 for: (1) unprofessional conduct; (2) evident unfitness for service; (3) immoral conduct; or (4) persistent violation or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of District. (Undesignated statutory references are to the Education Code.)

2. Whether there is cause to discipline respondent's credentials under sections 44421 and 44345, for committing acts involving moral turpitude.

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## **SUMMARY**

Complainant alleged Respondent's conduct at James Curran Middle School constituted multiple grounds for disciplining his credentials and certifications. Complainant further alleged a criminal conviction respondent incurred over 20 years ago as a ground for discipline.

Respondent was employed by the District during the 2019-2020 academic year to teach at JCMS, Monday through Friday, during regular school hours. In July 2019, respondent accepted a full-time adjunct professor position with CSUB, agreeing to teach a course on Thursdays, 9:30 a.m. until noon, between August 26 and December 18, 2019. The days and time of the CSUB teaching position overlapped with days and times respondent was scheduled to teach for the District.

Respondent applied for the CSUB job because he felt targeted and harassed by the District, specifically by its superintendent and the principal of JCMS. Between 2017 and 2019, respondent and his wife had been outspoken at District Board meetings against the superintendent and District Board policies. Though respondent established a negative work environment which caused him stress and became dissatisfying, respondent failed to establish the District or JCMS targeted or retaliated against respondent, or that respondent's workplace caused him to be unable to perform his District teaching job duties for medical reasons.

Complainant established the facts alleged in the Accusation by clear and convincing evidence. Respondent established mitigating factors, including his 15-year career teaching at Title I schools, serving low-income students and English Learning students with multiple educational and mental health challenges, and working in a

negative environment which caused him stress. However, respondent was dishonest with JCMS, the District, and with the Commission about the cause for his absence from work, his conflicting employment, and, in his 2021 application to renew his credentials, about whether his teaching credential had been subject to investigation or disciplinary action.

Respondent's claims of retaliation and the resulting stress and anxiety he suffered do not excuse his misconduct, especially to the extent it involved dishonesty and resulted in substantial expense to the District in fees for substitute teachers and to the students who lost continuity of teaching and related learning opportunities. His distress and anxiety as well as evidence of his committed and effective teaching under difficult circumstances do, however, warrant imposing discipline short of the most serious, revocation of his credentials and certifications. Because the criminal conviction is so remote in time and nothing in the record established respondent's repeat of the underlying conduct, the criminal conviction does not establish cause for discipline.

Considering the record as a whole, grounds exist to discipline respondent's Clear Multiple Subject Teaching Credential and Clear Specialist Instruction Credential (Reading) credential (collectively, credentials) and the appropriate discipline is a one-year suspension. Because his credentials are currently expired, the suspension period is stayed pending respondent's petition to reinstate them. Respondent's remaining credentials and permits remain revoked.

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## **FACTUAL FINDINGS**

### **Jurisdiction**

1. On November 16, 2010, the Commission issued respondent a Clear Multiple Subject Teaching Credential which expired on December 1, 2020, and has not been renewed.

2. On July 6, 2011, the Commission issued respondent a Clear Specialist Instruction Credential (Reading) (reading credential) which expired on December 1, 2020, and has not been renewed.

3. Respondent previously held the following certification documents, each of which were revoked on January 16, 2022.

a. Preliminary Multiple Subject Teaching Credential issued on March 21, 2005 and expired on April 1, 2010.

b. Emergency Long Term Multiple Subject Teaching Permit issued on February 8, 2005 and expired on March 1, 2006.

c. Emergency 30-Day Substitute Teaching Permit issued on July 30, 2001 and expired on August 1, 2002; reissued on September 17, 2002 and expired on October 1, 2005.

d. Emergency Long Term Single Subject Teaching Permit issued on April 23, 2001 and expired on September 20, 2001.

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4. On March 25, 2021, the Commission received an online reissuance application for a Multiple Subject Teaching Credential. The Commission denied the credential application on January 16, 2022.

5. On March 25, 2021, the Commission received an online reissuance application for a Specialist Instruction Credential (Reading). The Commission denied the reading credential application on January 16, 2022.

6. On November 23, 2021, complainant, acting in her official capacity, filed the Accusation. Respondent timely filed a Notice of Defense. On October 13, 2022, complainant, acting in her official capacity, filed the First Amended Accusation, the operative pleading.

### **Respondent's Criminal Conviction**

7. On August 30, 2002, in *People v. David Lee Sandles* (Super. Ct. Kern County, 2002, No. BM629021A), respondent pled nolo contendere to, and was convicted of, violating Penal Code section 415, subdivision (2) (maliciously and willfully disturbing another person by loud and unreasonable noise), a misdemeanor. The court suspended imposition of sentence and placed respondent on three years' court probation with terms and conditions including serving two days in county jail with credit for two days served and paying fines, fees, and restitution totaling \$180. Respondent complied with the court's orders, and, on May 5, 2020, the court dismissed the case pursuant to Penal Code section 1203.4.

8. The circumstances underlying respondent's criminal conviction occurred on July 28, 2002. Respondent and his wife, Carrie Sandles, had an argument regarding parenting. Ms. Sandles walked toward the bedroom and picked up the phone to call

the police, but respondent took the phone from her. Ms. Sandles began walking away, down the hallway, and respondent followed her, kicking her right calf from behind, which caused Ms. Sandles to fall down. Ms. Sandles then attempted to exit their apartment, but respondent blocked her from leaving, and then left himself. Ms. Sandles called the police. As observed by the reporting police officers, Ms. Sandles had a red mark on her right calf from the kick.

## **Respondent's Teaching History**

9. Respondent worked for the District between 2004 and 2019 as an elementary school teacher, teaching 4th & 5th grades, a middle school teacher, teaching 6th grade English Learners, and as a Restorative Classroom Specialist, teaching 6th through 8th grades students. He enjoyed his work, teaching only at Title I schools, serving low-income students and English Learning students with multiple educational and mental health challenges. Respondent obtained his doctorate in education in 2013.

10. In addition to fulfilling his teaching position, respondent was awarded Teacher of the Year (2008-2009); he established and volunteered for a districtwide spelling bee program (2005-2009) that produced five district champions, and coached the Kern County Champion to Scripps's National Spelling Bee; he received positive teacher evaluations; he conducted a district-wide summer institute training for more than 500 teachers; he was promoted from classroom teacher to Restorative Classroom Specialist (2015); planned and facilitated a school-wide "Citizenship Celebration" to acknowledge students who performed well as campus citizens (2018-2019); and was the team lead for JCMS's Positive Behavioral Interventions and Supports (PBIS) inventory for which JCMS received a silver PBIS implementation award.

## **Respondent's Evidence of Retaliation**

11. Between 2017 and 2019 the relationship between respondent and the District became contentious. At the Board's May 2017 meeting respondent publicly voiced his disagreement with then-Superintendent Harry Ervin's demotion of the then-principal at JCMS. The following day, Superintendent Ervin came to JCMS to introduce the new principal, Polo Marquez, to the staff. Respondent testified the superintendent stood over respondent for up to 30 seconds and respondent found this to be intimidating. Despite this initial tension, during the 2017-2018 academic year, respondent had infrequent interaction with the newly assigned principal, Mr. Marquez.

12. At its January 2019 Board meeting, the District announced its decision to cancel summer school for 2019. Ms. Sandles spoke out against this plan at the meeting. Throughout the remainder of that school year, respondent and Ms. Sandles continued to publicly voice opposition to this plan and organized with community leaders to convince the District to offer summer school in 2019, a goal they ultimately achieved.

13. The evening of the January 2019 Board meeting Superintendent Ervin sent respondent an email, the contents of which were not presented at hearing; the following day he appeared in respondent's classroom with a police officer, the reasons for which were not provided at hearing, and subsequently that same day sent another email to respondent regarding respondent and his PBIS team leaving campus to visit another school, action for which respondent had already received approval. That same month, the superintendent sent two additional emails to respondent regarding a parent complaint and a Categorical Notice of Possible Reassignment, informing respondent his position may be eliminated.



14. Respondent again spoke out at the February 2019 Board meeting regarding the summer school issue and the need for teacher raises. In February 2019, Superintendent Ervin sent respondent an email stating he had concerns with respondent's overall performance and how he speaks with students and directed him to speak with students only with a third person present. That month, respondent used a teacher's assistant to cover his classroom while he met with a parent; in March Principal Marquez relieved respondent of his PBIS lead duties and directed him to remain in his classroom at all times.

15. Beginning in October 2018, and throughout the 2019 spring semester, respondent and his colleague in the restorative classroom program, Quiana Roberts, raised the issue of the District's failure to provide respondent a duty-free lunch to Principal Marquez: respondent was required to supervise students who served a form of detention during lunch time and was not provided any instructional relief during the school day, but Mr. Marquez did not address this concern. Ultimately, respondent's union filed a complaint, and the issue was resolved in respondent's favor with the District paying respondent more than \$1,200 in compensation.

16. Respondent maintained that Superintendent Ervin and Principal Marquez's actions amounted to a sustained pattern of retaliation against him for his public statements against Board policies. In March 2019, he began seeing a therapist and doctor to help him address the pressures he felt from his workplace.

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## **Respondent's Violations of District Policies Regarding Sick-Leave and Performing Work for Other Agencies**

17. Three witnesses testified on behalf of the Commission: Ilse Velasquez, a District Human Resources Technician II during the relevant time period; Mark Anthony Luque, the Superintendent of the District, but during the relevant time period a District Assistant Superintendent; and Christine Cornejo, District Assistant Superintendent of Human Resources.

### **RESPONDENT'S REQUEST FOR SICK LEAVE**

18. As a Human Resources Technician II, Ms. Velasquez managed absences for certificated staff and used the software, the Smart Find System, to hire substitute teachers and process medical leave. Teachers can use the Smart Find System to report absences and the cause for the absence and substitute teachers can use it to find and accept available substitute teacher assignments. When substitute teachers do not fill a vacancy, human resources technicians must locate substitute teachers to fill the teacher absence.

19. At the beginning of the 2019-2020 academic year respondent was employed by the District and was assigned to teach a middle school class at JCMS. The assignment required him to teach Monday through Friday from 7:30 a.m. until 2:00 p.m. Complainant presented a printout of respondent's Smart Find System activity during the relevant time period (Exhibit 4). The printout shows on the school days occurring between August 14 and 29, 2019, respondent reported he was sick, and the District secured and paid a substitute teacher to fill respondent's teaching assignments for those days. Ms. Velasquez testified the District pays middle school substitute

teachers at a rate of \$135 per day. Though not evident from the printout, Ms. Velasquez testified, and respondent did not dispute, he reported being sick for all school days from August 12 through September 5, 2019.

20. On August 27, 2019, Ms. Cornejo wrote the following letter to respondent (Exh. 6):

District policies and procedures require an employee to request an appropriate leave of absence in order to be excused for absences extending beyond ten (10) work days, and where applicable, to provide verification by a medical doctor. (See Board Policy and Administrative Regulation 500.05, "Leaves of Absence - Certificated and Classified Service Employees.")

It has been reported that you have been absent in excess of ten (10) work days, and you have not submitted a request for a leave of absence. If your absence is due to illness, you must also submit a medical doctor's verification and the estimated duration of your absence. For your convenience, we have enclosed a form that your medical doctor may complete and return to our office. If your absence is due to a reason other than illness, please contact our office so that we may provide you with additional information regarding leaves of absence.

Please do not hesitate to call us at 631-4858 should you have questions regarding this matter. Currently, you are

absent without leave. Failure to comply with the above requirements within one week of the date of this letter shall constitute sufficient cause for dismissal, including but not limited to willful refusal to perform your regular assignment without reasonable cause.

21. Between August 26 and September 1, 2019, Ms. Velasquez also communicated with respondent, via email, about his need to comply with the District's policy. Respondent initially provided a note signed by a physician's assistant which only excused respondent between August 27 and September 2, 2019. On August 28 Ms. Velasquez reminded respondent he must submit a form signed by a doctor which excused him from August 12, the first day of his absence, through to whatever day he anticipated he would return to work. On September 3, 2019, respondent submitted the required form signed by David Dougherty, M.D., excusing him from work between August 12 and September 14, 2019, because "[respondent's] current medical condition precludes ongoing work at this time." (Exh. 15.)

### **RESPONDENT'S SIMULTANEOUS WORK FOR ANOTHER AGENCY**

22. Mr. Luque testified at hearing regarding his discovery and confirmation of respondent's employment with CSUB. As an assistant superintendent, Mr. Luque was responsible for, among other things, general education, special education, service programs, instructional programs, data assessment, summer programs, and family engagement. Mr. Luque has worked in public education for 25 years and with the District for nine years. In his capacity he was aware of the Board's policies including the Board's policy for obtaining sick leave as described by Ms. Velasquez.

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23. At the end of August 2019, Mr. Luque was reviewing Twitter posts from professional colleagues on his feed. He saw August 25, 2019, posts from Kristina LaGue, Ed.D., of CSUB's 2019 new student convocation, and August 29, 2019, posts from Vickie Spanos, of CSUB's teacher residency program. The posts consisted of three pictures of respondent wearing a professor's gown and stole attending the convocation and three pictures of respondent in business attire and, per the information provided in the posts, teaching CSUB teacher residency students.

24. At the time Mr. Luque saw these posts he did not know respondent was on leave but wondered how he was performing this work while employed as a middle school teacher for the District. Mr. Luque was aware the Board's policy prohibiting teachers from failing to appear for District work to earn compensation in lieu of performing District responsibilities. Mr. Luque searched CSUB's online teacher residency course schedule (Exhibit 8) and found respondent was listed as the course-instructor for the "Science Methods and Assessment" course offered in-person on Thursdays, 9:30 a.m. until noon, during the fall semester, August 26 through December 18, 2019. This teaching schedule conflicted with respondent's District teaching schedule which runs Monday through Fridays, 7:30 a.m. until 2:00 p.m., except for early release days on Wednesdays.

25. Mr. Luque contacted Superintendent Ervin to discuss the matter. Superintendent Ervin brought the social media posts to Ms. Cornejo's attention and asked her to follow up and investigate if respondent was teaching for CSUB while on sick leave.

26. As the District's Assistant Superintendent of Human Resources, Ms. Cornejo oversees human resource issues of District certificated and classified

employees, and she held this position during the 2019-2020 academic year. She affirmed Ms. Velasquez's testimony that a certificated employee may use sick leave for a short absence by reporting his or her absence due to illness on a daily basis, but if the absence extends beyond 10 days the teacher must submit a doctor's notification substantiating the sick leave. Teachers are on notice of the substantiation requirement because the District posts the requirement in multiple areas including on the Board website and within its human resource forms and posted regulations, and the requirement is included in the collective bargaining agreement.

27. Ms. Cornejo explained the District has a policy that requires teachers to inform the District if the teacher is working for another agency. The District does not prohibit teachers from working other jobs as long as they do not conflict with a teacher's District assignment and many District teachers do work as adjunct teaching staff for other schools or employers under these circumstances. Even then, however, the District requires the teacher to inform it of the secondary job. The District does not allow teachers to take secondary jobs requiring attendance during times teachers are assigned to work at the District under any circumstances.

28. Through her research Ms. Cornejo confirmed Mr. Luque's findings that respondent was named in the CSUB schedule as an instructor teaching a course on Thursdays, from 9:30 a.m. until noon, hours which conflicted with his District teaching assignment. At approximately 10:30 a.m. on September 5, 2019, she and Mr. Luque went to Val Verde Elementary School, a school in the Greenfield Elementary School District where CSUB offered the teacher residency program, and through a door-window observed Respondent teaching a classroom of CSUB students, adult teacher residency students. Both Ms. Cornejo and Mr. Luque observed respondent did not appear ill or incapacitated to work, nor did he claim he was. Ms. Cornejo called him

out of the classroom, introduced herself and directed him to come to her office that day, when he was done teaching, at 1:00 p.m. Respondent did not appear as directed but instead submitted an email informing Ms. Cornejo that effective 12:57 p.m. on September 5, 2019, he resigned from his position with the District.

29. Based on the Request for Medical Leave form respondent submitted, the District understood respondent was unable to work. Neither respondent nor the doctor requested an accommodation which might allow respondent to continue working for the District, and they did not place any conditions or qualifiers on respondent's inability to work due to illness. Respondent also did not formally bring to the attention of the JCMS or the District that he was unable to return to work due workplace stressors or his feelings of being targeted and retaliated against.

30. Respondent's absences from work between August 12 and September 5, 2019, totaling 18 school days, negatively impacted his students and the District. The District had to manage respondent's absences and hire a substitute teacher for each day at a rate of \$135 per day, and the students were not able to form a relationship with or establish consistency with a permanent teacher at the beginning of the academic year.

## **Respondent's Evidence**

### **RESPONDENT'S TESTIMONY**

31. Since resigning from the District, respondent continued to work with CSUB and, since 2020, has taken on additional assignments, serving as the CSUB Director of M.A. Education (Curriculum & Instruction), acting as CSUB's Coordinator of Black Educator Teacher Residency, serving as CSUB's Co-Chair of the 2021 Associate

Dean Search for the School of Social Sciences and Education, acting as the CSUB Team Lead for the Chancellor's Office Learning Lab Initiative, and serving on the Alumni Association Board of Directors. He is also a member of the Western Association of School and Colleges Accrediting Commission, reviewing other states', including Nebraska, southern Texas, and New York, school performance.

32. During his testimony, respondent expounded on his assessment the District was retaliating against him and the resulting impacts on his physical and mental health. He concluded the District's actions were "spawned by forceful retaliation against him for championing rights of youth." By the start of the 2019-2020 academic year, he was "frightful and dispirited and unable to discharge his duties." He began to have panic attacks, heart palpitations, depression, excessive irritability, and trouble sleeping. Respondent speculated Misses Cornejo and Velasquez and Mr. Luque's actions were directed by Superintendent Ervin and were additional acts of retaliation, rather than acts of District employees carrying out their job responsibilities whose communications and actions were reasonable under the circumstances.

33. Respondent asserted his medical release form was accurate as he could not perform the District assignment and the form does not ask about his ability to perform other work. He was treated by a doctor for his symptoms but remained unable to face returning to JCMS. Respondent diagnosed himself with Post-Traumatic Stress Disorder and Complex Post-Traumatic Stress Disorder. Respondent explained he chose to resign so he would not be required to bring his mental and physical health to the attention of the District because he did not want to share this information. For the same reasons, he did not submit medical records or call his doctor to testify at hearing.



34. Although Respondent concluded he could not continue to work at JCMS, he did not want to release his District tenured position and was worried about the potential financial ramifications. His District job paid \$92,000 per year but the CSUB job paid only 60,000 per year.

35. During his testimony, Respondent equivocated about whether he received pay from both the District for his sick leave and from CSUB for his adjunct professor work, pay from two employers for the simultaneous days and hours of work. Respondent initially testified he was not sure when he actually received pay for his CSUB work, but he finally acknowledged regardless of when he received his pay, he was paid by both jobs for conflicting work hours.

36. Respondent did not acknowledge he was prohibited from working two jobs with simultaneous work hours and that he failed to disclose his work for another agency to the District. Respondent also failed to acknowledge that regardless of his described mental and physical struggles affecting his ability to report to his District assignment, it was not possible for him to report to his District assignment on August 29 and September 5, 2019, because his CSUB class occurred on these same days during conflicting hours.

37. Respondent acknowledged his criminal history. In 2002, he timely and accurately reported it to the Commission and neither the Commission nor the District raised it as any impediment to his credentials until the instant matter. Both he and Ms. Sandles testified about the incident. Ms. Sandles affirmed respondent's testimony that such behavior has not reoccurred and that they had addressed their marital strain through marital counseling and the support of their family and friends.

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38. Respondent acknowledged his current work does not require a Commission-issued credential or certificate. However, his credentials hold value for him because he was the first person in his family to complete college and he obtained his credential as a working parent, which required financial and personal struggle. Further, if his credentials were revoked, it would inhibit future work opportunities and would affect his social cache.

### **RESPONDENT'S CHARACTER WITNESSES**

39. Respondent had four witnesses testify as character witnesses: Ms. Sandles; Quiana Roberts and Kempton Coman, former work colleagues; and Lori Pesante, a community organizer and friend.

40. Ms. Sandles corroborated respondent's testimony regarding the physical and emotional effects of his work environment on him, including his inability to report to JCMS from August 12, 2019 onward. Since respondent resigned from the District, she observed respondent's health improve, though he is no longer a vociferous advocate anymore.

41. Ms. Sandles also described her participation at Board meetings and her efforts to maintain District offered summer school: she attended Board meetings, wrote letters to newspapers, canvassed neighborhoods to get signatures, and engaged in community organizing, some of which was covered by the local news, with the Dolores Huerta Foundation, a community advocacy group for quality education and the rights of students and farmworkers. Respondent asserted that Ms. Sandles' advocacy was also the basis for the District's and Mr. Marquez's actions against respondent.

42. Ms. Sandles wanted respondent to resign from the District but was worried their family would not survive financially given the reduction in pay. As with respondent, she also believed respondent did everything he was required to do by submitting the medical form to the District.

43. Quiana Roberts is currently employed by the Kern High School District, but worked with respondent between 2014 and 2019 in the JCMS restorative education program. She is not a credentialed teacher, but rather provided mental health supports to the students. Ms. Roberts found respondent to be one of the best teachers she had met, noting his particular patience and effectiveness while working with challenged seventh and eighth graders. She was often in respondent's classroom and regularly observed him not being provided a duty-free lunch, but rather observed him provide instruction and supervision throughout the entire school day. She also did not receive duty-free lunches which is why she left her job with the District. She observed that when Mr. Marquez began working at JCMS he treated respondent poorly and she concluded Mr. Marquez's behavior was in retaliation for respondent's opinions about District policies.

44. Kempton Coman has been a restorative educator for over 30 years and worked with respondent between 2010 and 2017. Mr. Coman experienced treatment similar to that which respondent described. Mr. Coman was transferred to a different middle school because of issues he had with his principal and Superintendent Ervin. He found Superintendent Ervin to create a hostile work environment, telling teachers generally that he had the power to have their teaching credentials revoked.

45. Lori Pesante works with the Dolores Huerta Foundation and is a parent in the District. During meetings at the foundation, respondent and Ms. Sandles shared

with her the difficulties respondent was having in the District. Ms. Pesante observed respondent's stress when discussing his workplace and was distressed to hear of respondent's experience because her husband had had similar workplace issues as a teacher in the District.

## **Respondent's Misstatements and Misrepresentations**

### **STATEMENT TO THE COMMISSION**

46. In an eight-page letter to the Commission, respondent detailed his experience with the District and his basis for alleging retaliation. (Exh. 14, p. A147.)

As the 2019-20 school year approached, I was uncertain of whether to return to my position with [the District]. I felt as if Superintendent Ervin would continually target me because of my family's activism, but I also did not want to leave the profession I worked diligently to cultivate, a profession that yielded life-long friendships and that helped my wife and I rear our four children. In May of 2019, I applied for a position at California State University, Bakersfield. I did not believe I would even receive an interview, but I felt I needed to give myself potential options to the treatment I had received with BCSD. Ultimately, I was granted an interview with CSU Bakersfield and offered the position of full-time lecturer at the university.

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I accepted the position at CSUB to give myself an option, thinking I could later decide which position I actually wanted to consider. As the school year began with BCSD, I opted to utilize my accrued sick leave. I was unsure if I could return to that environment, but I wasn't sure I could leave my job of 15 years, either. I was in a definite quandary. After discussing the matter with my wife and my department chair, I decided I would resign on September 5th. At 12:42 pm, I submitted my resignation letter to the district . . . .

47. In his letter, Respondent did not disclose to the Commission that the work hours of the two positions conflicted, and he did not speak to or explain the fact that he submitted a medical form to the District claiming he was too ill to work, but rather wrote "he wasn't sure if I could return to that environment." (*Id.*). He also misrepresented his decision to resign: he presented his decision as if he happened to speak with his wife on September 5, 2019, and decided that day to resign, failing to disclose the fact that on that day District administrators observed him teaching the CSUB class during a date and time he was contracted to teach for the District, that Ms. Cornejo directed him to meet with her after the class, and that rather than meet with Ms. Cornejo, he resigned within one-half hour of the class ending.

### **APPLICATION FOR CREDENTIAL RENEWAL**

48. On October 1, 2019, the District sent the Commission a "Notice of Credential Holders Change of Employment Status" informing the Commission of respondent's resignation and the surrounding events. On April 24, 2020, the

Commission sent respondent a letter informing respondent of its investigation and formal review of respondent's conduct and that the Commission's Committee on Credentials would determine whether "the information contained in the Confidential Investigative Report constitutes probable cause for adverse action," and explaining an adverse action means respondent's credential(s) may be "suspended, revoked, or denied, or [respondent would be] privately admonished or publicly reprimanded." (Exh. 1, p. A55.)

49. On October 29, 2020, the Commission informed respondent the Committee found probable cause to revoke his credentials and that the adverse action would become effective within 30 days unless he requested reconsideration or an administrative hearing. On November 23, 2020, respondent, through counsel, requested reconsideration. On December 23, 2020, the Commission informed respondent the Committee sustained its previous decision. On January 28, 2021, respondent requested an administrative hearing to address the disciplinary matter.

50. On March 25, 2021, and while the Commission's investigation into the matters alleged in the First Amended Accusation was pending, respondent applied to the Commission to renew his Multi Subject Teaching Credential and his Specialist Instruction Credential (Reading) (Exh. 2). On page 1 of the application (Exh. 2, p. A84), the application asks:

b) Conviction

Have you ever been convicted of any felony or misdemeanor in California or any other place? . . . .

c) Under Investigation

Are you currently the subject of any inquiry or investigation by any law enforcement agency or any licensing agency in California or any other state? ¶ . . . ¶

e) Credential Discipline

Have you ever had any credential, including but not limited to, any Certificate of Clearance, permit, Discipline credential, license or other document authorizing public school service: revoked, denied, suspended, publicly reprovved, and/or otherwise subjected to any other disciplinary action (including an action that was stayed) for cause, in California or any other state or place?

Respondent answered "Y" to question (b) but answered "N" to questions (c) and (e).

51. The First Amended Accusation did not allege, nor was it addressed at hearing, whether respondent provided misstatements or misrepresentation in his renewal application. Nonetheless, documentary evidence presented at hearing and summarized in Factual Findings 48 through 50 demonstrates by clear and convincing evidence that respondent did, in fact, misrepresent himself and provided misstatements in his renewal application to the Commission. Respondent was on notice of, and affirmatively requested an administrative hearing regarding, the fact his credentials were under investigation and were subject to disciplinary action, though not yet resolved, and yet he answered no to the questions inquiring about these issues. As found in jurisdictional documents included in Exhibit 2, pages A86-A95, this fact was not lost on the Committee as respondent's failure to disclose was identified in the Committee's findings of fact which formed part of the basis for the Committee's

finding of probable cause to deny respondent's application and to revoke respondent's credentials. (Exh. 2, p. A 95.)

## **Credibility Assessments**

52. In his defense, and which serves as a mitigating factor, respondent established he worked in an increasingly negative work environment, in which JCMS and District administrators gradually eliminated respondent's leadership positions, and which required respondent to work without duty-free lunches in violation of the applicable collective bargaining agreement. However, respondent did not establish the District's or JCMS's actions were retaliatory.

53. Respondent did not establish the District's or JCMS's actions were in response to respondent's or Ms. Sandles' advocacy, or that he attempted to meaningfully address his workplace concerns with the District or JCMS. Further, the negative and stress inducing work environment experienced by respondent was similarly experienced by two of respondent's character witnesses, Mr. Coman and Ms. Roberts, but without connection to respondent's actions or any alleged retaliation against these witnesses. Finally, to the extent respondent is attempting to make a legal claim of workplace retaliation, these claims are not properly raised, as the matter to be addressed herein is a licensing matter raised by the Commission against respondent, not an employment matter between the District or JCMS and respondent.

54. Respondent established through his own testimony and that of Ms. Sandles that his District work environment was no longer satisfying, and it caused him some stress and anxiety. However, respondent's evidence in support of his alleged medical inability to return to his District position between August 12 and September 5, 2019, is not credited. On the face of his Request for Medical Leave form the doctor



stated respondent's current medical condition precludes him from ongoing work. The medical excuse is conclusive and unsupported by any explanation. In light of other evidence, particularly respondent's financial concerns and reluctance to leave a tenured position, it is insufficient to establish respondent was medically precluded from working at JCMS even as he worked at another job. Moreover, his failure to abide by the District's internal rules for engaging in secondary employment, his decision to resign from the District at the same time he was observed teaching at CSUB by District personnel, and his explanations to the Commission describing himself as "in a quandary" about which job to keep and that he was unsure if he could return to JCMS, belie his representation that he was too traumatized or otherwise infirmed to work at JCMS.

55. The court in *Lonicki v. Sutter Health Central* (2008) 43 Cal.4th 201, 216-217, concluded that an individual's ability, during a time he seeks medical leave, to perform part-time work for a different employer, performing nearly identical tasks to those performed for his initial employer is strong evidence the individual was able to perform the full-time job from which the individual requested medical leave, but it is not dispositive. Rather, it raises a disputed issue of fact to be resolved at trial.

56. Respondent's work for CSUB is strong evidence respondent was able to perform his District assignment, but it is not dispositive. However, in light of all the evidence presented, respondent was not persuasive that his stress and anxiety were so debilitating as to prevent him from reporting to his District assignment yet were nearly wholly relieved, or were relieved, when he attended to his CSUB duties. Respondent chose to not introduce evidence beyond his and his wife's testimony supporting his claim that he could not, for medical reasons, perform his District teaching duties but could perform other teaching duties. Further, the evidence presented that in July 2019

respondent was conscious of the fact that he needed to choose between the two jobs, and that he delayed doing so out of financial concerns and overall hesitation to release his tenured position, and that he used his sick leave to postpone making a final decision. Nothing required him to maintain his employment with the District or to prolong his employment dilemma or the related stress. Respondent's delay served him and harmed the District and his JCMS students.

## **LEGAL CONCLUSIONS**

### **. Commission's Authority**

1. Established by the Ryan Act (§ 44200 et seq.) (Act), the Commission's primary mandate is to license public school teachers in California and develop and enforce their professional standards. (61 Ops.Cal.Atty.Gen. 353, (1978); see § 44225.)

2. The expiration of any credential does not deprive the Commission of its authority to institute or continue a disciplinary proceeding against the credential holder upon any ground provided by law, or to enter an order suspending or revoking the credential. (§ 44440.)

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

3. 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. Department 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. Commission 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].)

4. “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.)

## **Cause to Revoke Credential**

5. The Commission must privately admonish, publicly reprove, revoke or suspend a credential for the following reasons: immoral or unprofessional conduct; the persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system; any cause that would have warranted the denial of an application for a credential or permit; or for evident unfitness for service. (§ 44421.)

6. The Commission may deny any application for the issuance of a credential if the applicant has committed any act involving moral turpitude or has had a document certification revoked. (§ 44345, subds. (e) & (f).) A denial of a credential for acts involving moral turpitude must be based on reasons related to the applicant's fitness to teach or fitness to perform other duties for which that applicant is certificated, or competence to perform the duties which the permit would authorize the applicant to perform. (§ 44345.)

## **UNPROFESSIONAL CONDUCT**

7. Unprofessional conduct is defined in 66 Corpus Juris, p. 55 as conduct which violates "the rules or ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing." (*Board of Educ. of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553 [overruled by *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575 on other grounds].)

8. "... [T]he calling [of a teacher] is so intimate, its duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous that they are incapable of enumeration in any legislative enactment . . . 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." (*Goldsmith v. Board of Education* (1924) 66 Cal.App. 157, 169.

## **IMMORAL CONDUCT**

9. The court in *Board of Education of the San Francisco Unified School District v. Weiland*, (1960) 179 Cal.App.2d 808, found a teacher had committed immoral conduct when she falsified attendance records to maintain her course during the next semester of instruction. In so finding, the court relied on the definition of immoral conduct as provided in *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, where the Supreme Court quoted 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 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 Education of the San Francisco Unified School District v. Weiland, *supra*, 179 Cal.App.2d at p. 811)

### **ACTS OF MORAL TURPITUDE**

10. Moral turpitude has been defined as acts which are contrary to “honesty and good morals” (*Young v. State Bar* (1990) 50 Cal.3d 1204, 1217-1218), and as acts of “baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man . . . .” (*Yakov v. Board of Medical Examiners* (1968) 68 Cal.2d 67, 73 [citing *In re Boyd* (1957) 48 Cal.2d 69, 70].)

### **EVIDENT UNFITNESS TO TEACH**

11. Immoral conduct, unprofessional conduct, and moral turpitude cannot be the basis for removal of a teacher unless that conduct indicates the teacher is unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229.)

12. A. Evident unfitness for service has been defined as 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," which demonstrates the teacher is "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.)

B. Factors that assist the Commission in determining whether the teacher's fitness and overall impact on the students are likely to meet the Commission's standards include the following: the likelihood the conduct may have adversely affected students or fellow teachers; the degree of such adversity anticipated; the proximity or remoteness in time of the conduct; the type of teaching certificate held by the party involved; the extenuating or aggravating circumstances, if any, surrounding the conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood of the recurrence of the questioned conduct; the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers; and the notoriety and publicity accorded to the conduct (Collectively referred to as "*Morrison* factors" and further delineated in in regulation and in case law). (Cal. Code Regs., tit. 5, § 80302, subd. (a); *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-30; *Board of Education v. Jack M.* (1977) 19 Cal.3d 691, fn.5.)

C. Aggravating factors are events or circumstances 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. Aggravating factors include the following: misconduct evidencing multiple acts of wrongdoing or demonstrating a pattern of misconduct; the misconduct

significantly harmed a child entrusted to the care of a credential holder or applicant, significantly harmed the public or the educational system; or the holder demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders. (Cal. Code Regs., tit. 5, § 80300, subd. (b).)

D. A mitigating factor is an event or circumstance which demonstrates the public, schoolchildren and the profession would be adequately protected by a more lenient discipline or no discipline against respondent's credential. Mitigating factors may include the following: the absence of any prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious; a lack of harm to the person who is the object of the misconduct; emotional or physical difficulties suffered by respondent which substantially contributed to the misconduct if respondent has established through clear and convincing evidence that he or she no longer has such difficulties; a demonstration of good character of respondent attested to by references; objective action taken by respondent, which spontaneously demonstrate remorse at the time of the misconduct and recognition of the wrongdoing, which is designed to timely make amends for the consequences of the misconduct; the proximity or remoteness in time relative to the seriousness of the misconduct; or the nature and extent of subsequent rehabilitation. (Cal. Code Regs., tit. 5, § 80300, subd. (m).)

E. The *Morrison* factors must be applied to determine whether the cited conduct indicates unfitness for service. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1445, citing *Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 696.) "If the *Morrison* criteria are satisfied, the next step is to determine whether the 'unfitness' is 'evident'; i.e., whether the offensive conduct is caused by a defect in temperament." (*Id.*)

13. A court may determine unfitness after considering the most pertinent *Morrison* factors and is not required to make findings on all the *Morrison* factors. (*West Valley-Mission Community College Dist. v. Concepcion* (1993) 16 Cal.App.4th 1766, 1777.)

14. Only the likelihood that the teacher's conduct may have adversely affected students and other teachers, and not actual adverse impact, needs to be found. (*Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 477.)

## **Analysis**

### **CRIMINAL CONVICTION**

15. Complainant did not establish respondent's 2002 criminal conviction constituted unprofessional conduct, immoral conduct, moral turpitude, a persistent defiance of and refusal to obey laws, or evident unfitness to teach. Based on the remoteness in time, the underlying criminal behavior and the absence of any similar conduct or subsequent criminal behavior, and in consideration of the *Morrison* factors, respondent's criminal conviction does not constitute grounds for discipline. (Factual Findings 7-9, 37, 52-56.)

### **UNPROFESSIONAL CONDUCT**

16. Complainant established by clear and convincing evidence respondent's conduct constitutes unprofessional conduct. Respondent's failure to comply with the District's rules regarding working for another agency and using unwarranted sick leave to postpone his resignation while benefitting himself financially and harming the



District and his JCMS students was conduct unbecoming a teacher in good standing. Respondent was entrusted with the educational and mental wellbeing of his JCMS students. However, respondent's conduct left his students for at least one month without a consistent teacher or classroom routine, both of which the students were due. (Factual Findings 17-56.)

### **IMMORAL CONDUCT**

17. Complainant established by clear and convincing evidence respondent's conduct constitutes immoral conduct. Respondent's conduct was hostile to the welfare of the general public and contrary to good morals. Respondent presented dishonest medical information to the District to maintain his employment at, and income from, two employers while he continued to weigh his career options a month into the academic year, over a month after he knew he would have to choose between the two jobs. Respondent showed a moral indifference to the District's rules and its attempts to uphold good order and was inconsiderate to the District and to his JCMS students. (Factual Findings 17-56.)

### **PERSISTENT DEFIANCE OF RULES AND REGULATIONS**

18. Complainant failed to establish by clear and convincing evidence respondent's conduct constituted a persistent defiance of, and refusal to obey laws regulating the duties of persons in the public school system. Respondent's conduct was isolated in time and when faced with the knowledge the District knew of his work for CSUB, respondent resigned from the District. (Factual Findings 7-56.)

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## **MORAL TURPITUDE**

19. Complainant established by clear and convincing evidence respondent committed an act involving moral turpitude. As provided in Legal Conclusion 17, respondent's acts were dishonest and respondent's submission of a dishonest Request for Medical Leave form in order to delay his inevitable decision about which job to maintain and which job to resign from, was contrary to the duties he owed to the District and the JCMS students. (Factual Findings 17-56.)

## **EVIDENT UNFITNESS TO TEACH**

20. Complainant failed to establish by clear and convincing evidence respondent's evident unfitness to teach. The evidence did not demonstrate respondent has a fixed character trait not remediable upon receipt of notice his conduct fails to meet expectations of the employing school district or that he is not fit, or is unsuitable for, teaching by reason of temperamental defects or inadequacies. Rather, the evidence demonstrated respondent had a fifteen-year career with the District, the first 13 of which were marked by quality teaching, leadership, and volunteering with his students to help them achieve educational accomplishments, without issues raised by the District. Respondent has continued his contribution to education, leadership, and to his community through his work with CSUB over the past three years. While not justified or excusable, respondent's violative conduct is attributable to his increasingly negative work environment and removal from many of his JCMS duties, and to a weakness in character not previously or subsequently demonstrated. (Factual Findings 7-45.)

21. It is likely respondent's conduct adversely affected his JCMS students as he failed to report to work for one month and during this time did not provide the

District an opportunity to permanently fill his position though he likely knew he would not return to work for the District. However, any harm caused to the students was temporary and isolated in nature. Respondent's conduct occurred three years ago. Respondent has a clear subject teaching credential and reading credential which have expired, and his remaining credentials, certifications, and permits were revoked by the Commission in January 2022. (Factual Findings 17-30.)

22. Though respondent's conduct occurred over a one-month period, it presented as one event of misconduct, and not as multiple acts of wrongdoing or as a pattern of misconduct. Respondent's conduct harmed the students entrusted to his care and the District, though the harm was not as significant as, for example, would be direct physical harm or emotional abuse. (Factual Findings 17-30.)

23. Respondent is blameworthy for his motives resulting in the conduct, which included delaying a decision he knew he must make for a month into the academic year while he continued to weigh his options and receive income from both the District and CSUB, which were both compensating respondent for the same days and times of work. It is unlikely respondent's conduct will recur. (Factual Findings 7-56.)

24. Disciplining respondent's credentials will not inflict an adverse impact or chilling effect upon the constitutional rights of respondent or other teachers.

25. Beyond testimony about a few social media posts, evidence was not presented regarding the notoriety and publicity accorded to respondent's violations.

### **Aggravating Factors**

26. Respondent demonstrated an indifference toward the consequence of the misconduct, continuing to justify his behavior while failing to recognize the District

employees' duties to investigate the matter, but instead considering this continued retaliation, and failing to acknowledge his duty to inform the District of his work for the CSUB. Respondent's indifference went so far as to include multiple misrepresentations to the Committee and Commission in his written statement regarding the allegations and in his answers on his renewal application. Respondent has not demonstrated remorse for his actions. (Factual Findings 17-34.)

### **Mitigating Factors**

27. In January 2022, the Commission denied respondent's renewal application and revoked the permits and credentials identified in Factual Finding 3, constituting a prior record of adverse action. (Factual Finding 3.) This adverse action is based, however, on many of the facts presented in this matter. Over his 15 years of educational service, respondent has not otherwise been subject to adverse action.

28. Though dishonest and self-serving, respondent's misconduct is not deemed the most serious, if for no other reason he did not directly harm any student physically or emotionally. Respondent was suffering emotional or physical difficulties which substantially contributed to the misconduct. Having found and maintained work elsewhere, respondent no longer has such difficulties. Respondent's general good character was demonstrated through his character witnesses and through his years of service to his students, employers, and to the field of education. (Factual Findings 7-56.)

### **Assessment of Discipline**

29. In consideration of the evidence presented, the public, schoolchildren and the profession would be adequately protected by a more lenient discipline against respondent's credentials than revocation. Respondent's Clear Multiple Subject Teaching

Credential and reading credential will be suspended for one year, with the suspension stayed until and if ever respondent renews either credential at which time respondent must immediately serve the one-year suspension. Any and all other credentials, certificates, and authorizations issued to respondent are revoked. (Factual Findings 1-56.)

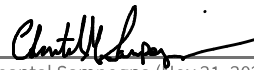
## **ORDER**

The Clear Multiple Subject Teaching Credential issued by the Commission to respondent is suspended for one year, with the suspension stayed until and if ever respondent renews the credential at which time respondent must immediately serve the one-year suspension.

The Clear Specialist Instruction Credential (Reading) issued by the Commission to respondent is suspended for one year, with the suspension stayed until and if ever Respondent renews the credential at which time respondent must immediately serve the one-year suspension.

Any and all other credentials, certificates, and authorizations issued to respondent David Lee Sandles are revoked.

DATE: 11/21/2022

  
Chantal Sampogna (Nov 21, 2022 16:05 PST)

CHANTAL M. SAMPOGNA  
Administrative Law Judge  
Office of Administrative Hearings