

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

In the Matter of the Accusation Against:

CRISTIAN MILEY, Respondent

Case No. 2-279301465

OAH No. 2023060417

PROPOSED DECISION

Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on February 28 and 29, 2024, from Sacramento, California.

Kevin W. Bell, Deputy Attorney General, represented Mary Vixie Sandy, Ed.D. (complainant), Executive Director of the California Commission on Teacher Credentialing (Commission).

Barry J. Bennett, Attorney at Law, represented Cristian Miley (respondent), who was present.

Evidence was received, the record closed, and the matter was submitted for decision on February 29, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 1, 1998, the Commission issued a Clear Pupil Personnel Services Credential (Personnel Services Credential) to respondent. On September 19, 2023, the Commission issued a Clear Administrative Services Credential (Administrative Services Credential) to respondent. Both credentials were in full force and effect at all times relevant to this matter.

2. On January 19, 2023, complainant, acting in her official capacity, signed and thereafter caused to be filed the Accusation in this matter. Complainant seeks to revoke all credentials, certificates, and authorizations issued to respondent, based on respondent's alleged conduct related to a report that an 11th grade boy (LG) sexually assaulted a 9th girl (CG). Both CG and LG were then students at Delhi High School (Delhi High) in the Delhi Unified School District (District). Respondent timely filed a notice of defense, and this hearing followed.

Report to Respondent of Sexual Assault and Respondent's Subsequent Actions

VG'S TESTIMONY AND WRITTEN STATEMENTS

3. VG is CG's mother. Complainant called her to testify. VG's testimony and written statements are summarized in relevant part below.

4. During the early morning hours of April 15, 2021, CG came to VG's bedroom and told her tearfully about what LG had done to her in September 2019. CG told her mother that during Spanish class, LG sat next to her at a table in the

classroom where she was sitting alone. LG started with some "small talk" about basketball, then put his hand on CG's thigh. CG pushed his hand off repeatedly and moved to a seat on the other side of the table. LG then followed and sat down next to CG. LG again put his hand on CG's thigh and moved his hand up underneath her skirt and touched her "private area" twice on the outside of CG's underwear. This occurred near the end of class. When the bell rang she left the class crying.

5. The day following the incident, LG approached CG at school and said he was "sorry" for what he had done, but told CG she had "asked for it" and warned her not to say anything. Some other male students watched LG apologize. CG was so embarrassed and traumatized by the assault and the threat that she kept quiet.

6. CG was prompted to tell her mother what happened because CG's boyfriend had invited LG to his birthday party. When CG learned of this, she told her boyfriend what LG had done and asked her boyfriend to disinvite LG. CG's boyfriend disinvited LG and told CG she needed to tell someone about the incident.

7. Later in the morning on April 15, 2021, after CG told her mother of the incident, VG called the office at Delhi High and asked for an appointment with respondent, who was then the Principal of Delhi High. VG was given an 11:00 a.m. appointment to meet with respondent at the school office that same morning. VG arrived on time and waited until 11:35 while respondent was in a videoconference. VG had to leave and return to work before respondent could meet with her. VG is employed by the District at a location other than Delhi High.

8. Respondent called VG by telephone during the afternoon of April 15, 2021. VG told respondent what CG had told her. Respondent told VG he had been working with LG and his parents, and that LG was a "wonderful boy" who had come a

long way and was “doing great.” Respondent also told VG that there was not much he could do because the incident occurred approximately 18 months prior.

9. VG told respondent that some other students had witnessed LG’s apology and knew what had happened. VG gave respondent the names of two students she could remember. Respondent told VG that one of the students had moved away, and that the other was “locked up.” VG told respondent she could get the names of some other students who saw the apology, but respondent “brushed it off.” Respondent told VG he would talk with LG and get back to her.

10. Respondent did not ask to speak with CG. VG never told respondent that he could not speak with CG or that he did not need to do so.

11. VG told respondent that she was going to meet with law enforcement, and that they wanted to know what the school was going to do about the incident. Respondent laughed and said that law enforcement always turns the matter back to the school, and that there was nothing they could do since it happened 18 months ago.

12. During the same conversation, respondent told VG he would call his “good buddy” who worked in law enforcement. Later the same day, respondent called VG by telephone and told her he had spoken with his friend in law enforcement. Respondent’s tone was more serious. Respondent said his friend had informed him that it was not uncommon for situations like this to come to light months or even years later.

13. VG made a report to the Merced County Sheriff’s Department on April 21, 2021, regarding the sexual assault CG had described to her. On June 4, 2021, VG met with and reported the incident to the District Superintendent Adolfo Melara.

Superintendent Melara referred VG to the District Director of Human Resources, Alberto Verduzco, who interviewed CG on June 4, 2021. VG later also told Acting Superintendent Joseph Serratore of the incident after Mr. Melara resigned to take another position outside the District.

RESPONDENT'S TESTIMONY AND WRITTEN STATEMENTS

14. Respondent is currently employed as the principal of a middle school in East Palo Alto. During April 2021, he was employed as the Principal of Delhi High. Respondent knew both CG and LG through his work at Delhi High.

15. During April 2021, respondent was not taking in-person appointments at his office because of COVID-19 restrictions. On April 15, 2021, respondent's secretary told him that VG had called by telephone. Respondent returned VG's call in the afternoon. VG reported to respondent what her daughter CG had told her earlier that morning about the sexual assault in 2019, and LG's apology and threat the following day. Respondent asked VG for the names of the students who watched LG apologize. VG told him that CG did not have their names.

16. Respondent asked if he could speak with CG. VG responded that her daughter did not feel comfortable talking about the incident. Respondent also asked if CG could provide a written statement. VG responded by asking "what for?"

17. Respondent told VG that he was "familiar" with LG. Respondent said it would be disappointing if LG had done what CG alleged.

18. Respondent told VG that he would investigate the incident, and that he would interview LG. He also stated he would call a member of law enforcement he

knew. He told VG he would contact her with any information he obtained from law enforcement.

19. Directly following his conversation with VG, respondent called Detective Michael Ramirez and left a voicemail, then sent an email. Detective Ramirez responded very quickly to the email, and they spoke by telephone the same day. Detective Ramirez encouraged respondent to tell VG to file a report with the Sheriff's office, and that he could serve as a point of contact. Detective Ramirez told respondent to warn VG that investigating detectives would ask questions of CG that would seem "harsh or crass."

20. Respondent then called VG and let her know that Detective Ramirez had offered to serve as a point of contact. VG told respondent she would file a report with a deputy sheriff she knew. He told VG that an investigating deputy would ask "crass" questions of CG, as Detective Ramirez had warned, but not to discourage VG from reporting the assault.

21. Respondent interviewed LG a few days after his conversation with VG and Detective Ramirez. LG denied that he engaged in any of the alleged conduct. At that point, respondent did not have any other information to substantiate the allegations. Respondent documented his interview of LG in AIRES, an electronic student information system in the District. Respondent did not take any further action.

22. Respondent understood his responsibilities as a mandated reporter to make a telephonic report to law enforcement of sexual assault by one student against another. To his understanding, he was not required to file a written report with law enforcement. He was also required to report the incident to the District Director of Student Services, but she was out on an indefinite leave of absence. For this reason,

respondent did not file a report with the District. Instead, he left a note in AIRES by which he documented his interview of LG, who was the only witness available for him to interview.

23. To respondent's understanding, a mandated reporter must report instances of child neglect or abuse to child protective services (CPS) within 36 hours of learning of it. To respondent's thinking, the allegation of sexual assault against CG was not a case of abuse or neglect that must be reported to CPS.

24. On June 4, 2021, Superintendent Melara called respondent and told him that VG had reported what happened to her daughter and complained that nothing had been done about it. Respondent told Superintendent Melara about his conversations with VG, Detective Ramirez, and his interview of LG. Superintendent Melara told respondent he would ask Human Resources Director Alberto Verduzco to investigate the abuse allegations.

25. Respondent did not hear about this matter again until September 2021, when Acting Superintendent Joseph Serratore asked respondent to meet with him and the new director of human resources. Acting Superintendent Serratore told respondent that VG told him she had reported the incident to respondent and former Superintendent Melara, that nothing had been done, and that something needed to be done to respondent. Respondent told Acting Superintendent Serratore that the whole matter had been handled by Superintendent Melara and Mr. Verduzco.

DETECTIVE RAMIREZ'S TESTIMONY AND WRITTEN STATEMENT

26. Respondent called Detective Michael Ramirez to testify. His testimony and his written statement dated April 8, 2022, which was admitted in evidence for all purposes without objection, are summarized below.

27. Detective Ramirez has been employed by the Merced County Sheriff's Department since 2014. He has been serving as a detective since 2020. He is familiar with respondent because respondent has assisted the Sheriff's Department in several cases involving students in the District. Detective Ramirez and respondent are not social friends.

28. On April 15, 2021, Detective Ramirez received an email from respondent regarding CG's allegation of sexual assault and sent him an email reply. Detective Ramirez and respondent also spoke by telephone on the same date. Respondent told Detective Ramirez that a young female student told her mother earlier that morning that a male student had touched her inappropriately during class approximately 18 months earlier, and that the day after the incident the male student apologized to the female student for his conduct and told her not to say anything about the incident.

29. Respondent told Detective Ramirez he did not have any witnesses, and asked whether he should have VG call the Sheriff's office to file a report. Respondent added that he has never had a situation where reported misconduct was such a long time after the incident.

30. Detective Ramirez told respondent it is not uncommon for allegations of sexual assault to be reported so long after the fact. He further told respondent a report could be made by calling dispatch, and that it would then be assigned to a detective who specializes in those cases. Detective Ramirez told respondent to let him know if he or the family had any questions. Detective Ramirez never got the impression that respondent was indifferent about this matter.

Investigation of Sexual Assault by Detective Zambrano

31. Detective Zambrano of the Merced County Sheriff's Department did not testify. His written investigation reports were offered by complainant and admitted in evidence for all purposes without objection. Detective Zambrano's investigative reports are summarized in relevant part below.

32. On April 21, 2021, Detective Zambrano was dispatched to Delhi High regarding a sexual assault report. He arrived at approximately noon, at which time he interviewed VG, who told him what CG had told her during the early morning hours of April 15, 2021. Detective Zambrano asked VG whether she had contacted the school principal to report the incident. She stated she had, but it seemed like the principal (respondent) did not care about what she was reporting. She said respondent told her they could not do anything about it because it happened a long time ago. She said respondent also told her that if she reported the incident to the Sheriff's Department that the deputy would intimidate CG because she waited so long to report the incident. VG was very upset about how respondent acted as she reported the incident to him.

33. Detective Zambrano then interviewed CG in VG's presence on April 21, 2021. CG told Detective Zambrano what she had told her mother, as recited above. On May 27, 2021, Detective Zambrano conducted a follow-up interview of CG at the Merced County Sheriff's Office. CG again told Detective Zambrano what LG had done.

34. On June 3, 2021, Detective Zambrano interviewed LG at the Merced County Sheriff's Office. LG confirmed he had a Spanish class with CG during his junior year. He remembered speaking with CG a couple times during class projects. LG stated he never inappropriately touched CG, and that he would never do anything like that.

LG stated he “barely knew” CG and that he never had any physical contact with her except that he “might have high-fived her.”

Alberto Verduzco’s Testimony, Notes, and Letter of Support

35. Respondent called Alberto Verduzco to testify. His testimony, notes, and letter of support are summarized in relevant part below.

36. Mr. Verduzco is currently employed by the Santa Clara County Office of Education, as one of the Directors of Human Resources. He previously served as the Director of Human Resources at the District from 2019 to June 25, 2021.

37. On June 4, 2021, Superintendent Melara directed Mr. Verduzco to investigate the allegation that LG had sexually harassed or assaulted CG. On the same date, Mr. Verduzco met with LG and CG in separate offices to interview them and obtain written statements. Mr. Verduzco met with CG with her mother present. CG wrote in her statement essentially the same account of events as she had told her mother, VG. LG denied he had done anything to CG. He wrote that he did not associate with her, and only talked with her about assignments in Spanish class. He asserted that he would never do these things to a girl, and that he is not that type of person.

38. On June 4, 2021, Mr. Verduzco also spoke by telephone with Merced County Sheriff’s Detective Zambrano to verify that he was investigating the case, and that he had obtained statements from CG and LG. Detective Zambrano confirmed that he had obtained statements from both students, and that he had collected all the evidence he needed to complete the investigation.

39. On June 22, 2021, Mr. Verduzco again called Detective Zambrano for a status update. Detective Zambrano informed Mr. Verduzco he had completed the investigation and forwarded it to the District Attorney's Office for a determination whether to file charges against LG. Mr. Verduzco then called VG to inform her Detective Zambrano had submitted the case to the Merced County District Attorney.

40. Mr. Verduzco testified that teachers are mandated reporters. In the event they suspect child abuse they are required to file a report with CPS, then call CPS or law enforcement to inform them a report was submitted. Teachers should notify the district superintendent or director of human resources. A teacher should also notify the director of student services of any reportable event. Neither Superintendent Melara nor Mr. Verduzco had been notified of the alleged assault prior to June 4, 2021.

41. Mr. Verduzco left his notes in a secure file in the District Human Resources Office for the new administration. Mr. Verduzco left for his new job on June 25, 2021.

42. On July 13, 2021, Mr. Verduzco prepared a letter recommending respondent to prospective employers. The letter states that respondent is "passionate about education, teaching, learning, and helping students." In recommending respondent for a position as a school administrator, Mr. Verduzco noted that respondent is "persistent, relentless, and focused on the school's vision, mission, and goals."

District's Investigation of Respondent's Conduct and Letter of Reprimand

JOSEPH SERRATORE'S TESTIMONY, LETTER OF REPRIMAND, AND LETTER OF SUPPORT

43. Complainant called Joseph Serratore to testify. His testimony, letter of reprimand, and letter of support are summarized in relevant part below.

44. Mr. Serratore is retired from serving as the Acting District Superintendent following Superintendent Melara's resignation in August 2021. Mr. Serratore previously served for 20 years as the District Assistant Superintendent for Administrative Services.

45. In his capacity as Acting Superintendent, Mr. Serratore investigated respondent's conduct in response to the report of sexual assault of CG. Mr. Serratore did not delegate the investigation to the new director of human resources because he felt it would not be one of her strengths to investigate this matter in part because respondent has a strong personality.

46. Mr. Serratore initiated the investigation after VG reported to him that the prior administration under Superintendent Melara and Mr. Verduzco had not taken any action. Mr. Serratore did not call Mr. Verduzco because they are on "bad terms." Mr. Serratore cannot remember whether he called former Superintendent Melara, but Melara does not return his phone calls.

47. Mr. Serratore interviewed respondent and VG. He did not interview CG, as he was investigating respondent's failure to report the incident, not the incident

itself. VG told Mr. Serratore what her daughter CG had told her, and that she had reported the same to respondent.

48. Mr. Serratore's testimony about his interview of respondent included inconsistent statements by respondent. First, Mr. Serratore testified that respondent told him that he had spoken with VG, CG, LG, and a friend he had in law enforcement regarding the alleged assault. Second, on cross-examination, Mr. Serratore testified that respondent told him that he did not interview CG because VG would not allow him to do so. Neither party elicited testimony to address the implication of this specific inconsistency – i.e., whether respondent made inconsistent statements, whether Mr. Serratore's account of the interview is accurate, or some other explanation for the inconsistency. However, it is noted that respondent's testimony and written statements are consistent on the point that he did not interview CG because VG would not allow him to do so.

49. Mr. Serratore's impression following his interviews of respondent and VG was that VG's account was more believable. Mr. Serratore did not believe respondent's statement that he had interviewed CG. Mr. Serratore did not include in his testimony regarding credibility that respondent told him he did not interview CG.

50. Mr. Serratore felt that respondent did not adequately investigate the allegations. Respondent should have interviewed more witnesses, including CG. Also, respondent should have contacted the District about the allegations.

51. Mr. Serratore does not recall respondent telling him that he documented his interview of LG in AIRES. If respondent had told him, Mr. Serratore would have read it.

52. Based on his investigation, Mr. Serratore issued a written reprimand to respondent on September 29, 2021. The written reprimand was admitted in evidence to establish the fact that Mr. Serratore issued the reprimand, not to establish the truth of the statements in the reprimand. Respondent prepared a revised reprimand containing his account of events, including that VG told respondent that CG did not want to discuss the matter of the assault.

53. On November 3, 2021, Mr. Serratore prepared a letter recommending respondent to prospective employers. The letter states in part as follows: "[Respondent] is a dedicated and tireless administrator who wants every student to succeed. As Principal at Delhi High School, [respondent] has focused on creating the best possible environment for student learning" Mr. Serratore wrote the letter to emphasize respondent's strengths. He does not write letters of recommendation for "people who are liars."

Respondent's Supporting Witnesses and Letters of Support

MATTHEW WELLMAN'S TESTIMONY AND LETTER OF SUPPORT

54. Mr. Wellman is employed as the Music Director of Delhi High. He met respondent in 2019, when respondent was the Associate Principal of Delhi High. Mr. Wellman is aware of the allegation that respondent failed to properly report an incident of sexual harassment. He regards this as categorically false based on his understanding of the situation and his knowledge of respondent's character and values.

55. In Mr. Wellman's experience, respondent was "easily the most student engaged" administrator with whom he has ever worked. Respondent "knew every student's name" and something about each student.

56. To Mr. Wellman's observation, respondent "does what he says and means what he says." He never saw respondent as indifferent to anything. It would be unlikely for respondent to treat the sexual assault lightly. It would come as a surprise to Mr. Wellman if respondent did not speak to the victim of a sexual assault, tried to dissuade the victim's mother from filing a complaint, failed to report the incident to the school administration, or failed to file a police report. If these allegations are correct, it would change Mr. Wellman's mind about respondent.

HANNAH COLEMAN'S TESTIMONY AND LETTER OF SUPPORT

57. Hannah Coleman is employed by the District as a middle school teacher. During the 2021 calendar year, she worked at Delhi High as a biology teacher and the Director of Athletics and Activities. Ms. Coleman is aware of the allegation that respondent mishandled a sexual harassment claim. To her understanding the allegation is false and completely contrary to the person and professional she knows respondent to be.

58. Respondent was Ms. Coleman's direct supervisor. To her observation, respondent is a good administrator and honest person who puts the needs of students first. She never saw him display indifference toward students. Ms. Coleman considers respondent to be a mentor, as she occasionally reached out to him with professional questions.

59. Ms. Coleman does not know what respondent did to investigate the alleged assault at issue in this matter. She believes if sexual assault was reported to respondent, he would perform due diligence. If he did not investigate, she would change her mind about him.

ADDITIONAL LETTERS OF SUPPORT

60. Superintendent Melara wrote a letter dated July 13, 2021, recommending respondent to potential employers. Respondent was hired as the Assistant Principal prior to the 2019/2020 school year, and "immediately established a rapport with students and staff." Respondent was promoted to the position of high school principal prior to the 2020/2021 school year. Respondent "remained a strong advocate for our students and worked hard to ensure our students received the best services possible." Superintendent Melara regarded respondent as "an instrumental team member to our organization."

61. Respondent submitted an additional four letters of support written by individuals who previously worked with respondent in various roles in school administration and student counseling. These letters speak of respondent in laudatory terms, similar to the letters of support reviewed above.

Analysis of Evidence

62. The evidence established that respondent understood his responsibilities as a mandated reporter to require that he make a telephonic report to law enforcement of the alleged sexual assault against CG, and that the District required that he notify the Director of Student Services. The evidence also established that respondent did not notify the District of the alleged assault, and instead left a note in AIRES describing his interview of LG. Respondent's stated reasoning for not notifying the District was that the District Director of Student Services was out on an indefinite leave of absence.

63. The finding here is that respondent's decision to leave a note in AIRES without any further notification to the District was inadequate for purposes of

notifying the District of the alleged sexual assault. The inadequacy of the AIRES note is evidenced by the fact that neither Superintendent Melara nor Director of Human Resources Verduzco had been notified of the alleged sexual assault before VG brought it to Superintendent Melara's attention in June 2021.

64. Respondent's failure to notify the District of the alleged sexual assault prevented the District from being able to timely respond to VG's report that LG had sexually assaulted her daughter in class. This was a significant harm to the education system and potentially to CG, though evidence was not presented regarding the latter.

65. Beyond this, the evidence is not clear what respondent's reporting obligations were as a mandated reporter and employee of the District. Respondent's view is that he was not required to file a written report with law enforcement, and that the alleged sexual assault against CG was not a case of abuse or neglect that must be reported to CPS. Mr. Verduzco's understanding is that mandated reporters are required to file a report with CPS, then call CPS or law enforcement to inform them of the suspected child abuse. Mr. Verduzco was not asked during his testimony whether he would draw any distinction between child abuse reportable to CPS, and a sexual assault by one student against another. Based on the evidence presented, this tribunal is not in a position to make a finding whether any such distinction exists.

66. The evidence is also contested regarding what VG told respondent when she reported the sexual assault to him on April 15, 2021. VG testified that she told respondent the names of two students who had witnessed LG's apology to CG, and that respondent told her one of the students was "locked up" and the other had moved away. Respondent testified that VG said she did not have their names. VG's demeanor while testifying and the level of detail she provided give greater credibility to her testimony. The finding here is that her testimony in this regard is factually

accurate. In light of this finding, respondent had a responsibility and duty to at minimum include the two names in a written or oral report to law enforcement and the District. Respondent was dishonest when he asserted that VG said she did not have the names of the two witnesses.

67. VG also testified that she did not tell respondent he could not speak with CG or that he need not do so, as respondent claimed. VG's testimony is given greater credibility by the fact that on April 21, 2021, six days after her conversation with respondent, she reported the sexual assault to law enforcement and allowed Detective Zambrano to interview CG on the same date, and again on May 27, 2021. The finding here is that VG did not tell respondent he could not interview CG. Given respondent's choice to initiate interviews, he had a responsibility and duty to interview CG in addition to LG. Respondent was dishonest when he asserted that VG told him he could not interview CG.

68. The evidence established that respondent breached his duties and responsibilities as a high school principal and mandated reporter. He left a note on AIRES, but did not directly notify anyone at the District. He called a detective he knew, but left it to VG to formally report the alleged sexual assault. He interviewed LG, but not CG.

69. Based on the letters of support and testimony on respondent's behalf, it is clear that respondent has provided years of dedicated service. Notwithstanding his breaches of responsibility, Mr. Serratore and Mr. Verduzco provided letters of recommendation. These letters are given significant weight. Mr. Wellman and Ms. Coleman also testified and provided letters of support. Both testified that their expressed opinion of respondent would change if he failed to properly report a sexual

assault. Given the findings above, their testimony and letters of support are given little weight.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant has the burden of proving cause for adverse action by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 583, 855–856.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and that is sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Brooks* (2008) 169 Cal.App.4th 176, 190.)

Jurisdiction and Applicable Law

2. Pursuant to Education Code section 44000 et seq., and California Code of Regulations, title 5, commencing with section 80001, the Commission is responsible for credentialing teachers in public schools in California, including issuing credentials, and taking adverse action against applicants and credential holders. (Statutory references are to the Education Code unless otherwise specified.)

3. Section 44421 authorizes the Commission to take adverse action against an individual's credential for, among other specified causes, unprofessional conduct, evident unfitness for service, immoral conduct, or for any cause that would warrant denial of an application for a credential. Section 44345, subdivision (e), allows the Commission to deny an application of one who has committed an act involving moral turpitude.

Alleged Causes for Adverse Action

UNPROFESSIONAL CONDUCT

4. Unprofessional conduct in the teaching profession has been defined as that which violates the rules or ethical code of the profession or is unbecoming of a member of the profession in good standing. (*Bd. of Ed. of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553, overruled on other grounds by *Bekiaris v. Bd. of Ed.* (1972) 6 Cal.3d 575.)

5. Based on the Factual Findings and Legal Conclusions as a whole, complainant established by clear and convincing evidence that respondent committed unprofessional conduct when he failed to fulfill his duties and responsibilities as a mandated reporter and District employee. For these reasons, and based on the Factual Findings and Legal Conclusions as a whole, cause exists for adverse action against respondent's credentials pursuant to section 44421.

IMMORAL CONDUCT

6. The term "immoral" has been defined generally as "that which is hostile to the welfare of the general public and contrary to good morals. . . . [It] includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare." (*Bd. of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

7. Based on the Factual Findings and Legal Conclusions as a whole, complainant established by clear and convincing evidence that respondent engaged in

immoral conduct when he failed to fulfill his duties and responsibilities as a mandated reporter and District employee. For these reasons, and based on the Factual Findings and Legal Conclusions as a whole, cause exists for adverse action against respondent's credentials pursuant to section 44421.

EVIDENT UNFITNESS FOR SERVICE

8. "Evident unfitness for service" means a 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. Com. on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) "Unlike 'unprofessional conduct,' '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.*)

9. Based on the Factual Findings and Legal Conclusions as a whole, complainant did not establish by clear and convincing evidence that respondent is evidently unfit for service, especially given respondent's record of employment. Based on the evidence as a whole, respondent is fit to serve as a credentialed employee.

ACTS OF MORAL TURPITUDE

10. "Moral turpitude" has been defined as "everything done contrary to justice, honesty, modesty or good morals." (*Rice v. Alcoholic Beverage Appeals Bd.* (1979) 89 Cal.App.3d 30, 36.) An act involves moral turpitude if it involves a serious breach of a duty owed to another or to society. (*In re Stuart K. Lesansky* (2001) 25 Cal.4th 11, 16.)

11. Based on the Factual Findings and Legal Conclusions as a whole, complainant established by clear and convincing evidence that respondent committed acts of moral turpitude when he failed to fulfill his duties and responsibilities as a mandated reporter and District employee. For these reasons, and based on the Factual Findings and Legal Conclusions as a whole, cause exists for adverse action against respondent's credentials pursuant to sections 44421 and 44345, subdivision (e).

AGGRAVATING FACTORS

12. California Code of Regulations, title 5, section 80300, subdivision (b), states that an "aggravating factor" is "an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession." Aggravating factors include dishonesty and harm to the educational system. (*Id.*, subd. (b)(3) and (4).

13. Based on the evidence, aggravating factors exist in that respondent was dishonest in his assertion that VG told him he could not interview CG and that she did not have the names of other witnesses, and in that respondent caused harm to the District by his failure to report the alleged sexual assault consistent with his responsibilities as a mandated reporter and District employee.

FITNESS TO TEACH

14. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, the California Supreme Court concluded that a teaching credential cannot be disciplined for immoral conduct, unprofessional conduct, or conduct involving moral turpitude "unless that conduct indicates that the [educator] is unfit to teach." (*Id.* at p. 229.) The Court outlined factors to consider when determining whether an educator's conduct

demonstrates unfitness to teach, which have been codified in California Code of Regulations, title 5, section 80302, subdivision (a). The criteria are as follows: (1) the likelihood of adverse effects on students, fellow teachers, or the educational community; (2) the proximity or remoteness in time of the misconduct; (3) the type of credential held by respondent; (4) extenuating or aggravating circumstances; (5) praiseworthiness or blameworthiness of motives; (6) likelihood of recurrence; (7) the extent to which disciplinary action may chill or have an adverse impact upon the exercise of constitutional rights among teachers or other persons involved; (8) publicity or notoriety of respondent's misconduct.

15. The *Morrison* factors are considered, as follows. Respondent's misconduct had an adverse effect on the District, at minimum. Respondent's misconduct is more proximate than remote in time. Respondent's credentials put him near impressionable students, who would be vulnerable if he were to engage in further misconduct. Aggravating circumstances exist in that respondent engaged in dishonesty and caused harm to the District. Respondent's misconduct is blameworthy in that he chose a course of action in violation of his responsibilities as a mandated reporter and District employee. The evidence does not show a likelihood that respondent will engage in similar misconduct in the future. Disciplinary action in this matter will not have an adverse effect upon anyone's exercise of constitutional rights. There is no clear evidence of publicity or notoriety of respondent's misconduct.

16. On balance, application of the *Morrison* factors demonstrates a nexus between respondent's misconduct and his fitness to serve as a credentialed employee. Taking into account the evidence as a whole, they do not indicate respondent is unfit to maintain his credentials. However, a measure of discipline is necessary to protect the public. Here, a 30-day suspension with three-year period of probation will provide

a time for respondent to reflect on the wrongfulness of his conduct, and a period for the Commission to monitor respondent's conduct.

ORDER

The Clear Pupil Personnel Services Credential and the Clear Administrative Services Credential issued to respondent Cristian Miley are revoked. However, the revocation is stayed, and respondent is placed on probation for three years from the effective date of this decision and order on the following terms and conditions.

SEVERABILITY CLAUSE: Each condition of probation contained herein is a separate and distinct condition. If any condition of probation is declared unenforceable in whole, in part, or to any extent, the remaining conditions of probation, and each of them, shall not be affected. Each condition of probation shall separately be valid and enforceable to the fullest extent permitted by law.

1. ACTUAL SUSPENSION: As part of probation, respondent's credentials are suspended for a period of 30 days beginning the effective date of this decision and order.

2. NEW CREDENTIALS SUBJECT TO ORDER: Any new credential issued by the Commission to respondent during the period of probation shall be subject to the same terms and conditions of probation, as set forth herein.

3. OBEY ALL LAWS: Respondent shall obey all federal, state, and local laws and regulations, including, but not limited to, the statutes and regulations of the Commission.

Except for minor traffic infractions, within 72 hours of any incident resulting in respondent's arrest, the filing of any criminal charges, or citation issued, respondent shall submit a full and detailed description of the incident to the Commission. For purposes of this condition, a "minor traffic infraction" includes only traffic violations which are punishable by a maximum of \$500, and do not subject the offender to incarceration or probation.

4. COMPLIANCE WITH PROBATION: Respondent shall fully comply with the terms and conditions of this order and cooperate with representatives of the Commission in its monitoring and investigation of his compliance.

5. COOPERATION WITH COMMISSION: During the period of probation, respondent shall be available for interviews with the Commission in person or by telephone upon reasonable notice.

6. MAINTAIN CURRENT CONTACT INFORMATION: Within seven days of the effective date of this decision and order, respondent shall notify the Commission of his current mailing address and phone number where voicemail messages may be left. Respondent will notify the Commission in writing of any change of mailing address or residence within 10 days of such change.

7. NOTIFICATION OF EMPLOYER: Within five days of the effective date of this decision and order, respondent shall provide a true and correct copy of this decision, together with a true and correct copy of the Accusation in this matter, to respondent's employer, if any, and to respondent's immediate supervisor at that employer. Within five days of complying with this notification requirement, respondent shall submit proof of compliance to the Commission.

If respondent changes employment at any time during probation, respondent shall again comply with this notification requirement within seven days of accepting new employment and shall again submit proof of compliance to the Commission within five days of complying with this notification requirement.

8. MAINTAIN ACTIVE, CURRENT CREDENTIALS: During the entire period of probation, respondent shall maintain active, current credentials with the Commission, including during any period of suspension.

9. VIOLATION OF PROBATION: The Commission shall retain jurisdiction over respondent during the period of probation. If respondent violates any term or condition of this order, after giving him written notice and an opportunity to be heard on the issue of any violation of probation, the Commission may set aside the stay order and impose the revocation of respondent's credentials. If an accusation or petition to revoke probation is filed against respondent during probation, the probation period shall automatically be extended until a final decision is made on the accusation or petition.

10. COMPLETION OF PROBATION: Upon successful completion of the terms of this probation, respondent's credentials shall be fully restored.

DATE: April 2, 2024

Timothy Aspinwall

TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings