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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

RUBEN GONZALEZ, Plaintiff and Appellant, v. BOARD OF TRUSTEES OF THE CERRITOS COMMUNITY COLLEGE DISTRICT, Defendant and Respondent.	B344342 (Los Angeles County Super. Ct. No. 22STCP03807)

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Trygstad, Schwab & Trygstad and Daniel J. Kolodziej for Plaintiff and Appellant.

Best Best & Krieger, Michael T. Travis and Dana Lui for Defendant and Respondent.

Ruben Gonzalez (appellant) appeals from a judgment denying his petition for writ of administrative mandamus filed pursuant to Code of Civil Procedure section 1094.5 (petition) challenging his dismissal as an academic employee from Cerritos Community College. Though the trial court reversed the Administrative Law Judge's (ALJ) determination that appellant had engaged in immoral conduct, the trial court upheld the ALJ's determination that appellant was unfit for service and denied his petition.

As substantial evidence supports the trial court's decision, we affirm the judgment.

BACKGROUND

I. Charges

On January 20, 2021, the Board of Trustees of the Cerritos Community College District (district) voted to terminate appellant under Education Code section 87732.[1] The same day, the district served appellant with the required statutory notice of the district's intent to suspend his pay and proceed with his termination. The district's second amended statement of charges was filed on October 5, 2021. The second amended statement of charges included allegations that cause existed to dismiss appellant on the grounds of (1) immoral conduct within the meaning of section 87732, subdivision (a); (2) dishonesty within the meaning of section 87732, subdivision (b); (3) evident unfitness for service within the meaning of section 87732, subdivision (d); and (4) persistent violation of, or refusal to obey, the school laws of the state or reasonable regulations prescribed

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[1] All further undesignated statutory references are to the Education Code.

for the government of the community colleges by the board of governors or by the governing board of the community college district employing him under section 87732, subdivision (f).

II. Administrative hearing

Beginning September 27, 2021, an 11-day hearing was held before an ALJ.

At the commencement of the proceedings, appellant's counsel objected to several of the district's witnesses, arguing their testimony was inadmissible under section 87680, which provides, in part, "No testimony shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of the filing of the notice.…[N]o decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice."

The allegations reached back over 10 years. The ALJ thus excluded the testimony of witnesses MT, AW, LS1, LS2, and CR, although some of CR's testimony was admitted despite the four-year rule set forth in section 87680. The district acknowledged most of the charges against appellant involved allegations of conduct occurring more than four years prior to the January 21, 2021 notice, but argued the evidence should be admitted under the doctrine of equitable estoppel pursuant to *Atwater Elementary School Dist. v. California Dept. of General Services* (2007) 41 Cal.4th 227 (*Atwater*). Initially the ALJ permitted the district to try to establish equitable estoppel but ultimately ruled

against the district as to most of the evidence from more than four years prior to the district's notice.[2]

The testimony of 10 witnesses was admitted and is summarized below.

A. *AZ*

AZ attended Cerritos college from July 2017 until January 2020. She was a captain of the women's soccer team in 2017 and 2019, but not in 2018 when she was injured. Appellant was the head coach. When AZ first joined the team, appellant had a conversation with AZ about her boyfriend. Appellant stated it was not possible to remain faithful in a marriage and explained he cheated on his wife.

In the summer of 2019, there was an investigation into allegations that a player was partying and having sexual relations with coaching staff during a team trip in 2018. During a team practice, one of the players mentioned she got a call from an investigator. Appellant became angry and defensive, raising his voice and asking who else received a call from an investigator. Appellant ordered, "Nobody from here on out is to speak to any investigator." The team was concerned.

Appellant pulled AZ and the other team captain aside and said, "There's no proof. Do they have photos? What do they want

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[2] The ALJ noted AW testified she had reported her concerns to the district administration in 2014. There was no evidence that, despite such notice, the district investigated AW's claims. District witnesses LS1, LS2, and MT did not indicate they had attempted to report any misconduct to the district or that they had been prevented from reporting any misconduct to the district. Thus, the ALJ found there was no reason to apply the doctrine of equitable estoppel as to these witnesses.

me to do, fire my own brother?"[3] Appellant also blamed female students, saying players should not have been in the room where coaches were drinking. AZ then witnessed appellant interrogating each player individually, in an apparent attempt to determine how the investigation arose.

It was clear to AZ there would be consequences, such as loss of playing time, if a player did not do what the coaches wanted. Appellant ordered AZ and her fellow captain to not mention the investigation or any sexual harassment allegations to any new players on the team, and if they heard players talking about it, they were to "shut it down immediately."

Appellant and Whitfield were the two main coaches and had worked together for almost 10 years. AZ and her teammate felt uncomfortable with Whitfield, who added players as friends on social media, drank shots of alcohol with players, made inappropriate comments, and threatened to cut playing time when rejected.

On a 2019 summer soccer trip across the country, AZ received inappropriate texts from Whitfield after he attempted to get her to drink alcohol with him. The messages reflected that Whitfield was drinking, and boundaries were being crossed. AZ became fearful of saying anything about Whitfield. She felt she could not report the inappropriate behavior to appellant due to his response to the prior investigation.

AZ described the team environment as "toxic," with coaches demeaning players, mocking their weight, and using fitness as punishment. Other teammates expressed feeling the same. AZ

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[3] The assistant coaches included appellant's brother, Guillermo Gonzalez (known as Memo), Brent Whitfield, Ana Ramirez, and Jose Escorsia, among others.

and her teammates did not report anything due to their fear that the coaches would retaliate and diminish their opportunity to transfer to a four-year college.

AZ did report to the Title IX office, including Title IX coordinator Valyncia Raphael-Woodward (Raphael). Though she said she wanted to remain anonymous, Raphael could not guarantee that. AZ then sought out the other Title IX officer, who said AZ should try to get other teammates to report with her. This upset AZ because the Title IX office was where she was supposed to go for help.

AZ then decided to report to athletic director Maria Castro (Castro). AZ was able to obtain Castro's guarantee of anonymity and spoke to Castro about the inappropriate and toxic behavior on the team. On October 10, 2019, Castro had a meeting with the team about the allegations being investigated.

Following the meeting, AZ's teammate MC screamed at AZ, accusing her of reporting to Castro. MC threatened to "beat … up" AZ, yelling, "I know it was you who fucking told [Castro] and I will beat your fucking ass." Other teammates held MC back. Under her breath, MC added, "stupid fucking bitch." The whole team was present. Everyone was quiet and did not know what to say. AZ was shocked by the encounter and did not know how to respond.

Appellant was 10 to 15 feet away when MC began yelling and was two to three feet away at a later point during the confrontation. Appellant did nothing to stop MC from attacking AZ or correct what she said. It was clear to AZ he knew what was happening.

After the confrontation, AZ went straight to Castro's office without making any effort to talk to appellant. AZ told Castro

exactly what happened, including that appellant had declined to protect her. AZ was informed Whitfield would be suspended.

AZ felt she had no option but to withdraw from the soccer team and that had she continued, coaches and players would have made her life difficult and uncomfortable.

AZ recalled seeing social media posts from former Cerritos College soccer player Ashley Webb in 2020 about inappropriate text messages and players being treated like dogs. This was consistent with AZ's experience on the team.

B. *AJ*

AJ participated in the women's soccer program in 2018 and 2019. Appellant was the coach.

AJ went on a road trip with the soccer team during which the coaches were intoxicated and appellant was present. AJ was accosted by Whitfield who put his hand on her leg under a table while they were drinking. AJ was uncomfortable, but she did not report it because she had heard nothing would happen and she would lose playing time in retaliation. AJ did not know if appellant was aware of the incident. AJ's father was planning to report the incident, but AJ was injured and stopped playing.

AJ was aware of a chat "app" accusing a player of sleeping with one of the coaches. That player's mother spoke with appellant, who told the players they needed to own up to sending the app. If not, the police would be called, and there would be an investigation. Appellant then asked for the players' phones to see if they had downloaded the app.

Assistant coach Ana Ramirez flirted with players during practice. Appellant was around but did not appear to think anything of it.

AJ was never directly discouraged from reporting or threatened with loss of playing time.

C. *CR*

CR attended Cerritos College from 2013 to 2015 where she played on the soccer team.[4] Appellant was the head coach.

During a December 2013 soccer trip CR witnessed behavior she found to be wrong and felt she should report to an authority. She did not feel she could report to appellant. CR was "deeply disturbed" and reported to athletic dean Dan Smith what she had observed and heard on the trip. When she got to practice three minutes after she left dean Smith's office, appellant knew she had reported the sexual misconduct. Appellant angrily confronted her in front of the entire team, yelling she should not have reported anything to dean Smith and instead should have come to him first.

After CR reported the misconduct, the demeanor of the coaches towards her changed, and they stopped communicating with her. CR continued to witness coaches laughing and flirting with the players, but she felt the behavior was being deliberately hidden from her.

CR believed appellant cut her playing time in half and did not assist her in transferring to a four-year university because

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[4] Although the evidence presented by CR fell outside the four-year time limit of section 87680, the trial court agreed with the ALJ's decision that CR's testimony could be considered in part under the doctrine of equitable estoppel. Although the misconduct witnessed by CR prior to her report to athletic dean Dan Smith was excluded under section 87680, the trial court noted, "[T]he ALJ was entitled to consider CR's testimony about the repercussions CR felt from reporting."

she reported to dean Smith. She eventually transferred to a four-year university in Louisiana to play soccer despite the coach having received a reference from appellant that was "not positive."

D. *Ana Ramirez*

Ramirez was an assistant coach at Cerritos College when appellant became head coach in 2006. In 2013 through 2014, Ramirez did not witness appellant discouraging players from reporting anything. She did not have the impression players were afraid or intimidated to report misconduct. She never observed appellant yelling at CR in front of the team for reporting misconduct.

Ramirez attended all practices from July 2019 through the end of the 2019 season and did not observe appellant doing anything to discourage players from reporting any misconduct. She did not witness appellant telling the team not to participate in an investigation or that incoming freshmen should not be told about the investigation or any other alleged misconduct. Ramirez did not hear from any player that appellant said or did anything to discourage players from reporting misconduct.

In 2019, Ramirez was not of the impression players were intimidated by appellant or other coaches. On the contrary, appellant encouraged the players to come to him or the other coaches with any problems.

E. *Maria Castro*

Castro has been the athletic director at Cerritos College since 2019 and was previously the soccer team trainer.

In September 2019, AZ reported drinking and improper texts by assistant coaches after a team trip to New York. Afterwards, AZ reported an incident in which MC blamed AZ for

reporting the misconduct. MC blamed AZ for ruining their season through the investigation and for Whitfield's suspension. AZ told Castro the team was surrounding them during the altercation and appellant was on the outskirts of the group, unlocking the gate for practice.

Castro summoned MC to her office through a text to appellant. Castro told MC to "trust the process," and directed her to return to practice and apologize to the team for her outburst. Thereafter, appellant reported to Castro that MC had done as instructed.

Castro investigated AZ's report along with the Title IX coordinator. Castro interviewed about 15 student athletes, as well as Whitfield and appellant. The investigation did not yield any evidence that Whitfield and another coach were drinking in a bar but did find evidence of inappropriate texts from coaches to athletes. Appellant claimed he was unaware of any alleged texting or drinking. The investigation determined there was insufficient evidence to fire Whitfield, and no evidence appellant had anything to do with MC instigating the altercation with AZ.

The result of the investigation was an agreement among Whitfield, appellant, and Castro to "keep them in check" and make sure Whitfield knew how to behave going forward.

During her time as a trainer for the team and as athletic director, Castro had no knowledge of any conduct by appellant or any other coach that seemed to condone misconduct. Castro never observed any conduct that should have been reported.

F. *Adriana Flores-Church*

Adriana Flores-Church was the director of human resources since 2006 and vice president since 2016. After the September 2019 Title IX investigation of AZ's report, including

MC's retaliation and appellant's lack of acknowledgment of it, the district determined no disciplinary action was warranted against appellant. Whitfield was placed on suspension during the investigation but was reinstated once it was complete.

G. *Valyncia Raphael-Woodward*

Raphael was director of diversity, compliance, and Title IX coordinator from July 2016 through September 2020. During her Title IX investigation in 2019, no one reported to her that appellant said or did anything to discourage reporting.

If a player, after reporting improper conduct, is confronted by her teammates, the head coach has a duty to take action. Raphael instructed head coaches to report retaliation for Title IX reporting to her, but also coached them not to intervene in any altercation as it may make things worse. Intervention is an option, but she did not want head coaches to be "deputized" to handle the issue on their own without letting her know. If Castro told appellant she would handle a situation, appellant would be correct to follow Castro's instruction.

H. *Octavio Marquez*

Octavio Marquez was an assistant soccer coach from 2009 through 2019.

CR was a very good player but presented some issues with her attitude about not coming out of games and not starting. Marquez was not aware of CR ever reporting any misconduct by anyone and never observed appellant scolding or admonishing her. He believed he would have heard if it happened.

Appellant was not a coach who would admonish players in front of other players. Marquez never observed appellant tell players not to report anything. In fact, appellant encouraged

players to talk to Castro or one of the deans if there was an issue they did not feel comfortable discussing with a coach.

Marquez never observed a culture of fear preventing players from reporting concerns. He never heard appellant discourage AZ, or any other players from reporting anything to anyone, or from participating in an investigation, or talking to incoming freshmen about allegations. If appellant had said any of that, Marquez believed he would have heard about it.

I. *OL*

OL started as a soccer player in summer 2019. AZ was not practicing because she was recovering from an injury. Appellant never mentioned an investigation or that players should not talk to investigators. OL was unaware of any investigation during summer 2019. She never witnessed any coach flirting with any player.

OL never saw appellant do or say anything to discourage players from reporting anything about which they had concerns. There was not an environment of fear where players were afraid to raise concerns or problems. OL felt comfortable talking to appellant if she had an issue or concern. She and other players completed a three-hour course on Title IX. OL did not fear losing playing time if she reported an incident and was unaware of other players being afraid.

Two to three weeks after the trip to New York in summer 2019, OL saw MC argue with AZ. Castro had told the team about an investigation but did not say what it was about. On the day of the altercation, the team started in the weight room and then walked to the field. Castro was not present. AZ and MC raised their voices to each other, and the players stood in between them to prevent any further altercation. AZ then grabbed her stuff and

left. OL learned from other players that MC was blaming AZ for the team losing an assistant coach but did not understand why MC was blaming AZ.

Before the argument, appellant left the weight room and drove around to go to the other side of the field and park. The team waited by the back gate for appellant to unlock it. Appellant was walking to the gate on the other side and did not witness the fight. OL knew appellant did not see the fight because she was looking around for coaches as she did not want her teammates to get in trouble for fighting. OL was certain appellant arrived after AZ had left.

After the argument, during practice, appellant told MC to see Castro. MC returned to practice and apologized to the team. OL later learned that AZ made the report. Neither OL, nor any other players OL was aware of, were mad at AZ. MC is usually loud and an instigator.

J. *Appellant*

Appellant had been the head coach of the women's soccer team since 2006. He also taught classes in health, sports psychology, sports management, soccer, soccer and fitness technique, and weight training, beginning and advanced.

Appellant told players he had an open-door policy, and they could also talk to other coaches, Castro, human resources, the Title IX office, or with whomever they felt comfortable.

When assistant coach Escorsia tried to blackmail him by threatening to make misconduct allegations, appellant promptly reported it to Title IX coordinator Raphael. The ensuing investigation ended by June 20, 2019, before the team's 2019 summer session. Thus, contrary to AZ's testimony, appellant did not tell anyone in summer 2019 not to talk to investigators.

Appellant testified he did not have a confrontation with CR about reporting to dean Smith in 2013. Neither Dean Smith, CR, nor anyone else, ever told appellant about any such report.

Based on the school game statistics, CR played and started in most games. Appellant gave an honest assessment of CR to the Lafayette coach: CR was talented, could be lazy at times and uncoachable, and had an attitude, but appellant thought she would do a good job at the next level. Appellant recommended CR to be a coach at Bishop Amat High School in 2014, both because she had won a championship there and he wanted to motivate her as a player with a coach's perspective on player expectations. Appellant also mentored CR as a coach.

On October 10, 2019, at 7:00 a.m., in the weight room, Castro told the team she was conducting an investigation of allegations of misconduct. Appellant was not present during the meeting because Castro told him she wanted to meet alone with the players. Appellant waited outside the weight room. The meeting lasted five to 10 minutes, then the players started walking towards the field.

Appellant waited until all the players were out of the weight room and made sure the door was closed. He walked to his car to drive to the gate that the coaches usually use. He then unlocked the gate, unlocked and opened the bin containing the practice equipment needed for that day, and carried it 20 yards to the bench. Then he walked to open the gate for the student athletes on the other side of the field.

When appellant was about 50 yards away from the players' gate, he heard what sounded like horseplay. As he got closer, it went silent within 10 seconds. That was unusual, but at the time he did not question anyone about it. Later, during practice,

Castro texted him that she wanted to see MC. He asked MC what was going on, and MC said she did not know. Appellant told MC to see Castro.

At the end of practice, MC asked to speak to the team. Appellant agreed, and MC apologized for yelling at AZ. Appellant inquired as to the reason, but MC said she did not want to talk about it. Appellant then visited Castro who said MC yelled at AZ because MC believed AZ caused the investigation. Appellant asked Castro if he should reach out to AZ, but Castro said she would handle the follow up. Appellant had no further contact with AZ. Later, Castro suspended AZ for playing in an outside league, which was not permitted. Appellant was not involved in that decision.

Though appellant claimed to have never received reports of players and coaches flirting, he said he would have reported it to the Title IX coordinator and the dean if he had that information. Appellant had never been disciplined for any misconduct or given progressive discipline. If he returned to coaching the soccer team, he would do a better job of communicating with students and coaches and would have them sign a contract to reinforce rules of reporting.

III. ALJ's decision

The ALJ found the complaining witnesses (AZ, AJ, and CR), were credible and convincing. AZ had no discernible motive to fabricate her testimony. While AZ and AJ were on the team together for a period of time in 2019, and knew each other, they were not friends. The ALJ noted "[t]heir testimonies regarding the environment at Cerritos Women's College were consistent and established that: (1) coaching staff would routinely flirt and romantically pursue the players; (2) players believed that if they

did anything that made the coaches unhappy, they would lose playing time which would, in turn, affect their ability to be recruited to other schools; and (3) [appellant] discouraged players from reporting any complaints to District administration."

The ALJ did not find appellant's testimony credible to the extent he testified he did not treat CR differently after her report. In particular, appellant described CR as "lazy" to a recruiting coach. That assessment was inconsistent with appellant's decision to recommend CR as a coach for the team at Bishop Amat, and appellant had not provided any explanation for this inconsistency.

On August 22, 2022, the ALJ issued a written decision sustaining the district's decision to terminate appellant. The ALJ concluded there was cause to dismiss appellant for immoral or unprofessional conduct pursuant to section 87732, subdivision (a) and evident unfitness for service pursuant to section 87732, subdivision (d). The ALJ found the district failed to establish cause to dismiss appellant on the grounds of dishonesty (§ 87732, subd. (b)) or persistent refusal to obey the school laws or reasonable regulations (§ 87732, subd. (f)).

IV. Petitions for writ of mandate

On October 19, 2022, appellant filed a writ of administrative mandamus to vacate the ALJ's decision. On October 24, 2022, the district filed its own petition seeking to overturn the ALJ's exclusion of witness testimony and finding on the claim for dishonesty. On November 8, the petitions were deemed related.

The parties' petitions were heard on November 14, 2024. The court took the matter under submission.

V. Trial court decision

The trial court issued an order on November 15, 2024, adopting its written tentative decision denying both petitions as its final decision.

The trial court concluded the ALJ properly excluded the testimony and exhibits regarding the district's witnesses AW, MT, LS1, LS2, and CR (in part) under section 87680. The court concluded neither equitable estoppel nor the delayed discovery rule applied because the district was under actual notice of sexual harassment and inquiry notice of all other complaints. The exclusion of evidence left only AZ, AJ, and to some extent CR as the district's witnesses.

After considering the factors set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229, 235 (*Morrison*), the trial court concluded the ALJ properly found appellant unfit for service under section 87732, subdivision (d). Appellant permitted a toxic environment where players were subjected to flirtatious and abusive behavior and were afraid to report misconduct for fear of retaliation. In upholding the ALJ's decision on this count, the court credited the testimony of AZ, AJ, and the admissible testimony of CR. The court agreed appellant's "conduct reveals a fixed character trait of disregard for the well-being and safety of student athletes under his supervision," and appellant's "pattern of allowing inappropriate sexual behavior and discouraging reporting meets [the definition of unfitness for service] in that it harmed students and the community."

The court noted appellant's failure to take responsibility for his actions further supported the finding that he is unfit for service. Appellant not only denied any wrongdoing but deflected responsibility to his players and coaching staff. The court agreed

with the district that this lack of accountability demonstrated appellant is unable to adhere to the standards required of an educator and coach. The court noted appellant's conduct spanned the four-year period prior to the filing of the notice, which was an aggravating factor. The court concluded, "[h]is retaliation towards those who reported abuse reflects an unfitness for service that cannot be remedied through disciplinary warnings or lesser measures."

Although the trial court upheld appellant's dismissal on the ground of evident unfitness for service, the trial court held the ALJ's decision was not supported by the evidence as to its finding of immoral conduct under section 87732, subdivision (a).

VI. Notice of appeal

Appellant filed his notice of appeal on February 5, 2025.

DISCUSSION

I. Applicable law and standard of review

This is an appeal from a judgment denying a writ of administrative mandamus under Code of Civil Procedure section 1094.5 challenging a community college employee dismissal. Pursuant to section 87682, the trial court was required to "exercise its independent judgment on the evidence."

When the trial court reviews an administrative decision under the independent judgment standard, "we determine whether the record provides substantial evidence supporting the trial court's factual findings." (*Breslin v. City and County of San Francisco* (2007) 146 Cal.App.4th 1064, 1077–1078). "Applying the substantial evidence [standard] on appeal, we may not reweigh the evidence, but consider that evidence in the light most favorable to the trial court, indulging in every reasonable inference in favor of the trial court's findings and resolving all

conflicts in its favor." (*Id.* at p. 1078.) "The question on appeal is whether the evidence reveals … support—contradicted or uncontradicted—for the trial court's conclusion that the weight of the evidence supports the [ALJ's] findings of fact." (*Ibid.*)

II. Substantial evidence claims

Appellant makes two claims based on lack of substantial evidence. First, he challenges the trial court's finding that he is unfit, claiming the trial court's ruling was self-contradictory as well as unsupported by the evidence. Next, he claims the trial court erred in finding appellant exhibited a "pattern" of disregarding the safety or well-being of his students. We discuss each claim separately below and find the evidence supports the trial court's factual findings.

A. *Section 87732, subdivision (d)*

Section 87732 authorizes dismissal of a permanent college employee for various reasons, including evident unfitness for service. (§ 87732, subd. (d).) "'[E]vident unfitness for service' … properly means 'clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies.'" (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 (*Woodland*).)

The Supreme Court has indicated various factors may be considered in determining whether a teacher is unfit for service. (*Morrison, supra*, 1 Cal.3d at p. 229.) The factors are "the likelihood that 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, and 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." (*Ibid.*) These factors are relevant to the extent they assist the educational institution in determining "whether the teacher's future classroom performance and overall impact on his students are likely to meet" the institution's standards. (*Ibid.*) Only the relevant *Morrison* factors need be addressed. (*West Valley-Mission Community College Dist. v. Concepcion* (1993) 16 Cal.App.4th 1766, 1777.)

The criteria set forth in *Morrison* must be considered to determine, "as a threshold matter, whether the cited conduct indicates unfitness for service." (*Woodland, supra*, 2 Cal.App.4th at p. 1445.)[5] "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." (*Ibid.*) In order to warrant an inference that a teacher is unfit to teach, it is necessary to show "a relationship between [the charged] conduct and the functioning of [the appellant] as a teacher." (*Oakland Unified School Dist. v. Olicker* (1972) 25 Cal.App.3d 1098, 1109.)

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[5] Contrary to appellant's arguments, the trial court expressly acknowledged consideration of the *Morrison* factors was necessary in determining appellant was unfit for service. *Bevli v. Brisco* (1989) 211 Cal.App.3d 986, 992, is distinguishable, as in that case "there [was] no indication whatsoever that the trial court considered any criteria other than the remediability of the plaintiff's behavior."

Here, the trial court determined appellant exhibited unfitness for service in permitting a toxic environment, where players were subjected to flirtatious and abusive behavior and were afraid to report misconduct for fear of retaliation. The court found appellant's "conduct reveals a fixed character trait of disregard for the well-being and safety of student athletes under his supervision," and appellant's "pattern of allowing inappropriate sexual behavior and discouraging reporting meets [the definition of unfitness for service] in that it harmed students and the community."

B. ***Evidence of unfitness***

Appellant first argues the trial court's finding that he is evidently unfit to teach was self-contradictory and not supported by the evidence. Appellant highlights various sentences from the trial court decision, claiming each statement was unsupported by the evidence. As set forth below, we disagree.

1. *Awareness of toxic environment*

Appellant first argues there was no substantial evidence appellant was aware of a toxic environment or sexual behavior between players and coaches. He claims his awareness of any misconduct by the coaches towards the players was speculative.

The testimony supports the trial court's conclusion that appellant was aware of a toxic environment that was harmful to the students. The court specifically noted that "the ALJ's conclusion about a toxic atmosphere was clearly based on AZ's testimony…." In AZ's testimony, AZ described a district investigation based on a player who was alleged to be partying and having sexual relationships with staff. Appellant ordered that no one speak to any investigator, and pulled AZ and the other team captain aside, saying, "There's no proof. Do they have

photos? What do they want me to do, fire my own brother?" AZ's testimony was unequivocal that appellant had knowledge of the alleged misconduct and made it clear appellant wanted to cover up any misconduct, ordering AZ and her fellow captain to "shut it down immediately" if they heard any discussion of the investigation.

AZ herself reported inappropriate behavior by Whitfield consisting of inappropriate texts and attempts to get AZ to drink alcohol with him. The text messages from Whitfield reflected that he was drinking alcohol and boundaries were being crossed. Castro testified the result of the investigation was an agreement among Whitfield, appellant, and Castro to "keep them in check" and make sure Whitfield behaved appropriately going forward. AZ's testimony, along with Castro's testimony, undermine appellant's claim he was unaware of a toxic environment or inappropriate behavior towards players.

Appellant failed to take action when MC screamed at and threatened AZ. AZ testified it was clear appellant knew what was going on. Instead of ensuring the well-being of his athletes following this altercation and AZ's abrupt exit from practice, appellant chose to ignore the situation.

As the trial court correctly noted, "AZ testified to two instances of misconduct by [appellant], one in which [appellant] affirmatively prevented players from speaking to an investigator and one where he failed to take action in response to MC's threat to AZ for reporting."

Finally, AZ described the team environment as "toxic," with coaches demeaning players, mocking their weight, and using fitness as punishment. Because he was head coach, it is fair to infer appellant was aware of this environment.

AJ also described an environment on a team trip in which the coaches were intoxicated, and appellant was present. Appellant's presence during an incident in which coaches were intoxicated around players, creates a reasonable inference that appellant had knowledge of this inappropriate conduct.

Further, AJ described an incident during which appellant was aware of a chat app that accused a player of sleeping with one of the coaches. Appellant spoke with the players about this incident, telling them they needed to "own up" to sending the app or the police would be called, and there would be an investigation. Appellant asked to see the players' phones. He told the team the allegations were false.[6] In addition, AJ reported coach Ramirez flirted with players during practice, and appellant was around but seemingly thought nothing of it.

The evidence described above constitutes substantial evidence appellant was aware of a toxic environment and inappropriate flirtatious behavior involving players and coaches.

2. *Purported misunderstanding of evidence*

Appellant next accuses the trial court of misunderstanding the evidence. In rejecting the dishonesty charge, the trial court referred to specific incidents of sexual harassment testified to by CR and AZ, and as to those incidents, found "the contention [appellant] knew of sexual harassment and falsely denied it is speculative." The court was not addressing the incidents of

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[6] The trial court made an "inference that [appellant] made this statement to discourage reporting." Appellant disputes the trial court's summary of AJ's testimony, claiming AJ never said appellant said the claim was false. Appellant also disputes the inference made. This argument is discussed further below in part II.B.3.

inappropriate behavior described above in part II.B.1., regarding which appellant's knowledge is fully supported by the evidence. Appellant has failed to show a contradiction or misunderstanding of evidence resulting in the finding of unfitness.

Appellant next highlights a portion of the record constituting a discussion between counsel and the court regarding appellant's knowledge of sexual allegations. Counsel framed the evidence as showing "the only allegation is—that he was aware of is the Escorsia allegation, which I'll get to in a minute, but he reported that himself and then the District found it to be unfounded." Counsel's statement is not a correct summary of the evidence, and while the court may have been confused by counsel's misstatement, the exchange between counsel and the court does not undermine the court's final, comprehensive, and thoughtful opinion issued after review of all the evidence before the court.

3. *Testimony regarding chat app*

Appellant next argues the trial court made a "false inference" appellant was trying to suppress reporting when he investigated the incident during which it was reported, on an anonymous chat app, a player was sleeping with a coach. Appellant argues AJ did not testify that appellant told the team the allegation was false, although that is what student "AO" said.[7]

The trial court's inference that appellant's statement to the players that the allegation was false was made to discourage

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[7] Appellant identified "AO" as the player accused of having sexual relations with coaches. Appellant does not provide a citation to the record where AO said appellant told the team the allegation was false.

reporting was not necessary to the court's overall finding that appellant exhibited a pattern of discouraging reporting.[8] The court found AZ testified to two instances in which appellant affirmatively discouraged reporting, "one in which [appellant] affirmatively prevented players from speaking to an investigator and one where he failed to take action in response to MC's threat to AZ for reporting." In addition, CR's admitted testimony showed he angrily berated her for reporting misconduct, in front of the entire team. The court's purported mistake in attributing the disputed statement to AJ does not undermine the court's determination that appellant was unfit for teaching due to his pattern of discouraging reporting.

4. *Incident involving MC's threat to AZ*

Appellant argues the trial court's ruling regarding the altercation during which MC threatened AZ for reporting misconduct was inherently contradictory. The trial court interpreted the evidence as falling short of that required to form the basis of a charge of immoral conduct, yet found it could be used as the basis of the charge of unfitness to teach.

To properly address appellant's argument, we review the trial court's findings.

As to immoral conduct, the trial court noted the ALJ sustained the cause of immoral conduct based on a single incident, "[Appellant] engaged in immoral conduct when he failed to stop MC from threatening AZ after AZ reported the inappropriate behavior of coaching staff to Director Castro." The

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[8] We decline to find the trial court made an improper inference from the evidence, but conclude the inference was not material to the court's overall finding that appellant was unfit for service.

court agreed with appellant that "it has not been proven that [appellant] heard the details of the confrontation between MC and AZ—an particular, MC's threat against AZ for reporting."

However, the court noted "[t]his fact does not absolve [appellant], … because he clearly heard something." Appellant "admitted that what sounded like horseplay … got silent within ten seconds as he grew closer, which was unusual. Yet, he did not question anyone about it at the time."

The trial court noted appellant was "wrong" to argue Raphael had "coached him to do nothing in this situation." Instead, Raphael provided him a variety of options, and appellant had a "duty to take action." Appellant should have at least inquired as to what was occurring and informed Raphael.

The trial court noted, "In sum, [appellant] failed to handle the matter appropriately. Was his failure immoral conduct? [Appellant] is correct that the answer is no."

However, the court later cited the incident between MC and AZ as support for its finding of unfitness to teach. In discussing the testimony in support of its finding of unfitness, the court relied on the testimony of AZ. First, the court described in detail AZ's account of appellant's reaction to the district investigation in the summer of 2019. This included appellant's direction that no one speak to any investigator, that the team captains shut down any discussion of the allegations, and his act of blaming the players for the incident. The court also quoted AZ's testimony that the team environment was "toxic," with "coaches demeaning players, mocking their weight, and using fitness as punishment." In addition to this testimony, the court referenced its prior discussion during which appellant "failed to take action when MC screamed at and accused AZ of reporting to Castro and

threatened to beat her up." The court noted, "It was clear [appellant] knew what was going on."

Although the court found it had not been proven that appellant heard "the details of the confrontation between MC and AZ, the court also found "it was clear [appellant] knew what was going on." These two factual findings do not create a contradiction. Despite not necessarily hearing the details, appellant knew there was some sort of rowdiness going on that went silent as he grew closer, which was "unusual." The trial court found appellant knew something unusual was going on—something that involved hostility among players. The court found appellant "had a duty to take action," should have "inquired about what was happening," and should have informed Raphael as to what he learned.[9]

Appellant's choice to ignore the incident between MC and AZ was not the only thing that led the trial court to find he was unfit for service. As set forth above, AZ provided other credible testimony that appellant tried to shut down an investigation into coach misconduct and permitted a toxic environment on the team. The trial court also mentioned the testimony of AJ, who testified appellant was present when the coaches were intoxicated around players, ignored flirtation between coaches and players, and was aware of accusations directed at a player of sleeping with a coach. CR's admissible testimony further

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[9] This is particularly true since two witnesses—AZ and OL—reported AZ left practice immediately following the confrontation. Because he was aware of the incident and must have been aware of AZ's sudden departure from practice, it seems particularly egregious that appellant did not, at a minimum, inquire as to what happened.

supported the accusations of unfitness for service, as appellant angrily confronted CR in front of the team when she reported misconduct to dean Smith, and subsequently retaliated against her for making the report.

We reject appellant's argument that the trial court ignored compelling evidence contrary to the court's findings. The substantial evidence standard does not permit us to reweigh evidence or redetermine the credibility of the witnesses. (*Breslin v. City and County of San Francisco, supra,* 146 Cal.App.4th at pp. 1077–1078.) Instead, we determine only "whether the evidence reveals … support—contradicted or uncontradicted—for the trial court's conclusion." (*Ibid.*) The evidence supports the trial court's conclusion that appellant's failure to act upon observing the incident between MC and AZ was one of several factors showing a pattern of unfitness for service.

C. *Pattern of disregarding the safety and well-being of students*

Appellant next challenges the trial court's conclusion that the evidence showed a pattern of (1) appellant allowing coaching staff to routinely flirt and romantically pursue the players; (2) players believing that if they did anything to make the coaches unhappy, they would lose playing time; and (3) appellant discouraging players from reporting complaints to district administration. Again, appellant presents his interpretation of the facts, arguing there was no evidence appellant allowed flirtatious behavior when he was not aware of it; there was no evidence of a pattern of disallowing reporting; and the trial court "ignored" countervailing evidence that appellant did not discourage reporting, cared for his athletes' safety and well-being, and would not likely repeat his perceived neglect of his students.

The trial court's finding that appellant exhibited a pattern of behavior that allowed sexual harassment of players and disregarded the safety and well-being of his players is supported by the admissible evidence. In concluding such a pattern existed, the trial court relied heavily on the testimony of AZ, AJ, and the admissible testimony of CR, which showed a "pattern of allowing inappropriate sexual behavior and discouraging reporting."

The trial court found appellant's failure to take responsibility for his actions further supported the finding of unfitness for service, because appellant "not only denied any wrongdoing but also deflected responsibility onto his players and coaching staff." The court found appellant's misconduct spanned the four-year period predating the district's notice.

Appellant first argues there was a lack of substantial evidence of a pattern of allowing sexual behavior when there was no evidence appellant was aware of such behavior. On the contrary, the evidence showed appellant was aware of at least three investigations of inappropriate behavior on the part of coaches towards players (CR's report in summer of 2013, a report in summer of 2019 regarding behavior in 2018, and AZ's report in September 2019)—two of which he actively tried to shut down—and was also aware of flirting among coaches and players. One investigation confirmed inappropriate texts between coaching staff and a player and resulted in an agreement with appellant to keep the coaches in check. Appellant was also aware of at least one allegation that a player slept with a coach. This evidence is sufficient to show a pattern of allowing inappropriate behavior between coaches and players without taking action. At a minimum, appellant was aware of flirtation, sexual innuendo, and serious allegations of sexual activity.

The court was not required to accept appellant's insistence that he was unaware of inappropriate conduct given his role, the admitted testimony of AZ, AJ, and CR, and the number of reports made over the years. Appellant's hostile attitude towards the investigations further highlights his preference for ignoring such conduct rather than taking steps to improve the situation.

Appellant next argues there is no evidence of a pattern of appellant discouraging reporting, when there was only evidence of "a mere two occasions" of such discouragement. First, these two occasions were significant incidents of appellant actively showing anger concerning reports of misconduct and were sufficient for the players to understand that they could not report misconduct without consequences. There was evidence appellant's two outbursts were not isolated incidents but permeated the team environment. AJ testified she was accosted by coach Whitfield while on a road trip with the team. Although this made her uncomfortable, "she did not report it because she had heard nothing would happen and she would be retaliated against, such as loss of playing time." It was fair to infer appellant's attitude of anger towards any reports of misconduct was known among the players. The trial court did not err in putting this testimony together to find a pattern by appellant of discouraging reporting.[10]

We decline to address appellant's arguments that the trial court ignored contrary evidence. As set forth above, we do not reweigh evidence or redetermine the credibility of the

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[10] Further, appellant's act of passively allowing MC to accost AZ after reporting, and failing to intervene or determine the source of the conflict, could be interpreted as acquiescing in MC's retaliation.

witnesses.[11] (*Breslin v. City and County of San Francisco, supra,* 146 Cal.App.4th at pp. 1077–1078.) Evidence in the record supports the trial court's finding of a pattern of behavior that disregarded the safety and well-being of students, and the trial court was entitled to reject the contrary evidence below.[12]

III. Use of time-barred evidence

A. *Applicable law*

Section 87680 prohibits the introduction of testimony or evidence at a dismissal hearing "relating to matters which occurred more than four years prior to the date of the filing of the notice." However, in *Atwater, supra,* 41 Cal.4th 277, 232233, the Supreme Court interpreted a similar provision found in section 44944 and concluded the time limitation is not an absolute shield,

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[11] Throughout his brief, appellant objects that the trial court ignored the absence of evidence that his supervision of his regular classes outside of coaching soccer showed any disregard for his students' safety or well-being. Appellant points out that there is no concern when he is the only instructor managing or interacting with his students. Appellant argues this absence of evidence underscores his fitness to teach and unlikelihood of repeating any behavior in the future. We do not reweigh the evidence and decline to give this absence of evidence any greater weight than the trial court did. (*Breslin v. City and County of San Francisco, supra*, 146 Cal.App.4th at pp. 1077–1078.)

[12] Appellant also faults the trial court for citing only the district's opposition in concluding appellant failed to take responsibility for his actions and denied wrongdoing. We note the court was pointing out a lack of evidence in the record, as appellant never took responsibility for his actions or admitted wrongdoing. Under the circumstances, the trial court could reach the same conclusion as the district without citing specific testimony in the record.

particularly where the injured party ""“has been induced to refrain from using such means or taking such action as lay in his power”"" to address the wrongdoing. The *Atwater* court reasoned that equitable estoppel is "'wholly independent'" of the limitations period and applies where a defendant's conduct induces delay. (*Id.* at p. 232.) Under the high court's analysis, "if the district were able to meet the requirements of equitable estoppel, it could have been allowed to introduce evidence of, and base its dismissal proceedings on, incidents falling outside the four-year window." (*Id.* at p. 233.)

B. *The trial court did not improperly rely on evidence barred by section 87680*

Appellant argues the trial court committed error by factoring in evidence that was time-barred in concluding appellant was unfit for service. Specifically, appellant argues the trial court should not have considered any of CR's evidence, since she testified she did not observe any further misconduct after her report to Dean Smith. Nevertheless, appellant argues, CR's testimony factored directly into the trial court's determination that appellant engaged in a pattern of disregarding his players' safety and well-being. Appellant cites several cases in support of his position that the trial court abused its discretion because it based its decision on impermissible factors or an incorrect legal standard. (Citing *People v. Knoller* (2007) 41 Cal.4th 139, 156; *People v. Downey* (2000) 82 Cal.App.4th 899, 912.)

The trial court excluded CR's testimony regarding misconduct occurring prior to CR's report to dean Smith in December 2013. The trial court rejected the district's arguments

that such evidence was admissible under equitable estoppel or the delayed discovery rule.[13]

However, the trial court found the ALJ properly admitted and relied on some of CR's testimony because appellant was "estopped from asserting the four-year limit on evidence of misconduct observed by CR after her report to dean Smith." Appellant is incorrect that no misconduct occurred after CR's report to dean Smith. On the contrary, CR provided testimony there were severe repercussions for her decision to report the misconduct. "This included the fact that the demeanor of all coaches towards her changed, and they stopped communicating with her. [Appellant] cut her playing time in half and did not fulfill his promise to assist her in transferring to a four-year university. CR transferred to a university in Louisiana to play soccer after the coach received a reference from [appellant] that was 'not positive.'"[14]

The negative consequences of CR's report to Dean Smith constituted improper retaliation. CR was prevented from reporting such retaliation, as she suffered severe consequences from her prior report of misconduct.[15] Thus, we find no error in

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[13] The court also excluded damaging evidence sought to be introduced by the district from MT, AW, LS1, and LS2.

[14] We decline to address appellant's argument the trial court ignored or misconstrued substantial testimony that contradicted AZ's testimony regarding the repercussions she suffered. We do not reevaluate testimony or undermine the trial court's credibility determinations. (*Breslin v. City and County of San Francisco, supra*, 146 Cal.App.4th at pp. 1077–1078).

[15] CR also reported she continued to witness coaches flirting with players after her report to dean Smith but felt such behavior was deliberately being hidden from her. She was also prevented

the trial court's determination that CR's testimony regarding the consequences of her report to Dean Smith were admissible under *Atwater*.

Further, as the trial court noted, CR was not the only player to observe appellant's negative reaction to any reports of misconduct. AZ reported appellant ordered the team: "Nobody from here on out is to speak to any investigator." If she and her fellow captain heard any players talking about an investigation, they were to "shut it down immediately." Appellant blamed the players involved for the misconduct at issue in the investigation. When AZ was later harassed by a drunk assistant coach, she felt she could not report the inappropriate behavior because of appellant's earlier response to an investigation.

When AZ was verbally attacked and threatened by MC, appellant did nothing to stop MC or intervene in any way.

AJ also reported being accosted by an assistant coach and declining to report the conduct because she knew she would experience retaliation against.

Thus, although CR's testimony fell outside the four-year window, there was sufficient recent evidence that appellant discouraged reporting and failed to protect players from retaliation during the relevant four-year period. Under the circumstances, appellant has failed to show he was prejudiced by the partial admission of CR's testimony. The testimony of AZ and AJ was sufficient to permit a finding that appellant improperly discouraged reporting and failed to protect players from misconduct. Reversal is not permitted absent a miscarriage

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from reporting this misconduct due to appellant's reaction to her prior report.

of justice (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475), and appellant has failed to show the outcome would have been different absent CR's admitted testimony.

IV. Back pay

Appellant argues regardless of whether he is dismissed, he is entitled to back pay because he was improperly placed on unpaid leave due to the charge of immoral conduct, which was reversed by the trial court.

A. *Relevant law and background*

Section 87735 permits immediate suspension of an employee without pay for charges of immoral conduct, conviction of a felony or crime involving moral turpitude, incompetency due to mental disability, or willful refusal to perform regular assignments. "Unfitness for service is not a basis that supports a compulsory leave without pay." (*West Valley-Mission College v. Concepcion* (1993) 16 Cal.App.4th 1766, 1780.)

In *Von Durjais v. Board of Trustees* (1978) 83 Cal.App.3d 681, the court interpreted a similar provision to require back pay for the period of suspension when the charge warranting suspension without pay is found to be unsupported by the evidence—even if the employee is dismissed on other grounds. The *Von Durjais* court explained, "'if an employee is suspended [on a charge permitting suspension without pay], then, upon being cleared of such charge, the employee shall be paid full salary for the period of the suspension. The fact that the employee may be dismissed for charges other than [the charge warranting suspension without pay] … is immaterial ….'" (*Id.* at p. 686.) The *Von Durjais* court followed this interpretation because "[a] contrary conclusion could conceivably result in a subversion of the statutory scheme through the simple expedient

of superficially joining a charge authorizing suspension without pay with a substantive dismissal charge for which neither suspension nor compulsory leave is authorized." (*Ibid.*)

In this case, the charge of immoral conduct authorized the district to immediately suspend appellant's employment without pay. (§ 87735.) The ALJ upheld appellant's dismissal on the charge of immoral conduct, among other things. However, the trial court reversed the ALJ's finding of immoral conduct, determining appellant's dismissal was authorized only on the basis of unfitness for service. Because the charge of unfitness for service did not authorize appellant's suspension without pay, appellant argues under *Von Durjais*, he is entitled to back pay for the period of his suspension.

B. *Forfeiture*

In his opening brief, appellant does not provide a citation to the record showing he raised this issue before the trial court. The district contends the issue is forfeited.

Appellant disagrees. In his first amended petition for writ of mandate appellant alleged the district committed a prejudicial abuse of discretion by, among other things, "putting [appellant] on unpaid suspension without proper cause," and "terminating [appellant's] employment without cause." In addition, in his petition, appellant sought "relief in the form of back pay and reimbursement of the value of lost benefits," and expressly requested restoration of "all backpay and benefits that he would have received" until the date of his reinstatement.[16] ~(CT 2420

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[16] Appellant filed a motion to augment the record with the first amended petition for writ of mandate one day after he filed his reply brief on appeal. Thus, the district has not had the

[see augmentation granted 5/19/26]) ~ Appellant argues based on these statements in his petition, the issue was plainly presented to the trial court.

While appellant alleged generally in his petition that he was owed back pay, he did not address the specific issue of whether back pay should be granted under the circumstances of this case. Here, appellant was suspended without pay in January 2021 due to the charge of immoral conduct. In August 2022, the ALJ upheld appellant's dismissal based on immoral conduct. In November 2024, the trial court reversed the ALJ on the immoral conduct charge yet upheld appellant's dismissal on an alternate charge.

Appellant did not object to the trial court's written decision on the ground that it did not provide for back pay during his period of unpaid suspension. He was required to do so in order to preserve this issue for appeal.[17] (*People v. Braxton* (2004) 34 Cal.4th 798, 813 [""[W]here the court, through inadvertence or neglect, neither rules nor reserves its ruling … the [objecting party] must make some effort to have the court *actually rule*. If the point is not pressed and is forgotten, [the party] may be deemed to have waived or abandoned it.""].)

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opportunity to address appellant's claim that this issue was not forfeited due to these statements in his petition.

[17] We note the trial court ordered the district to prepare a proposed judgment and wait 10 days after service for any objections before submitting. Neither party has informed this court of any objections made to the judgment. (*People v. Ashford University, LLC* (2024) 100 Cal.App.5th 485, 525 [party claiming omissions or ambiguities in a written decision must bring such omissions or ambiguities to the court's attention].)

Generally, we will not consider an argument raised for the first time on appeal. (*Dowling v. Farmers Ins. Exch.* (2012) 208 Cal.App.4th 685, 696.) "Although we have discretion to consider for the first time on appeal an issue of law based on undisputed facts, we will not consider a new issue where the failure to raise the issue in the trial court deprived an opposing party of an opportunity to present relevant evidence that, if considered by the trial court, might have affected its ruling." (*Ibid.*) Here, appellant's failure to press this issue below deprived the district of the opportunity to make both legal and factual arguments concerning appellant's present request for back pay. Appellant is thus precluded from obtaining appellate review of this issue, and we decline to consider it.

DISPOSITION

The judgment is affirmed. The respondent is awarded its costs of appeal.

CHAVEZ, Acting P. J.

We concur:

RICHARDSON, J.

GOORVITCH, J.

Filed 11/18/26

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

RUBEN GONZALEZ, Plaintiff and Appellant, v. BOARD OF TRUSTEES OF THE CERRITOS COMMUNITY COLLEGE DISTRICT, Defendant and Respondent.	B344342 (Los Angeles County Super. Ct. No. 22STCP03807) ORDER MODIFYING OPINION; CERTIFICATION FOR PUBLICATION NO CHANGE IN JUDGMENT

THE COURT:

It is ordered that the opinion filed herein on November 6, 2026, be modified as follows:

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* Pursuant to California Rules of Court, rule 8.1110, this opinion is certified for partial publication. The portions directed to be published follow.†

† Note to the Reporter of Decisions: This opinion is to be published in full with the following parts omitted—Discussion parts II and IV.

1. On page 31, first full paragraph under part III. A., delete the citation to *Atwater* and replace with the following citation:

   Atwater, supra, 41 Cal.4th at pages 232–233

2. On the last line of page 36 and first line of page 37, delete the following:

   ~(CT 2420 [see augmentation granted 5/19/26]) ~

There is no change in the judgement.

The opinion in the above-entitled matter filed on November 6, 2026, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be certified for partial publication in the Official Reports, and it is so ordered.

CHAVEZ, Acting P. J. RICHARDSON, J. GOORVITCH, J.