

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

In the Matter of the Amended Statement of Issues against:

SAMUEL KWAKU AGYEI-FOSU GODMAN,

Respondent.

Agency Case No. 2-169229311

OAH No. 2022030657

PROPOSED DECISION

Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on May 20, 2022 and December 8, 2022.

Diana Petikyan, Deputy Attorney General, represented Complainant Mary Vixie Sandy, Ed. D., Executive Director, Commission on Teacher Credentialing (Commission), State of California. Respondent Samuel Kwaku Agyei-Fosu Godman represented himself.

Oral and documentary evidence was received. On May 20, 2022, the matter was continued due to Respondent's pending Writ of Administrative Mandate (Writ) before the Superior Court of California (San Bernardino County, Case No. CIVSB220638). At the time of the continued hearing date of December 8, 2022, the Judge in Case No.

CIVSB220638 had issued a tentative decision and Proposed Judgment Denying Petition for Writ of Mandate, which was marked and admitted as Exhibit A and ordered Complainant to prepare a proposed judgment. At the conclusion of the administrative hearing on December 8, 2022, the record was left open for the parties to file a copy of the Superior Court final judgment and for the parties to supplement their oral closing arguments with written closing briefs addressing the final judgment in Case No. CIVSB220638. Complainant filed the Notice of Entry of Judgment and Final Judgement Denying Petition for Writ of Mandate which incorporated by reference the tentative, now final, decision of the Judge, which was marked and admitted as Exhibit 13. The parties elected not to supplement their oral closing arguments with written closing briefs.

The record closed and the matter was submitted for decision on January 23, 2022.

SUMMARY

Respondent presented to the Commission an Application for Credential Authorizing Public School Service, Multiple Subject Teaching Credential (Elementary Teaching) (Application) after the Commission had recently revoked Respondent's Clear Designated Subjects Adult Education Teaching Credential: Full Time, and Clear Crosscultural, Language and Academic Certificate. Respondent filed a Petition for Writ of the Commission's decision to revoke his previous license. The Writ was denied. Respondent offered no new evidence to support his Application and the issuance of a new credential after the revocation of his prior credential and certificate. As such, Respondent's Application is denied.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 20, 2020, the Commission received Respondent's Application for Credential Authorizing Public School Service, Multiple Subject Teaching Credential (Elementary Teaching) (Application). Respondent certified under penalty of perjury the truthfulness of all statements, answers, and representations in the Application on July 2, 2020. (Ex. 11.)

2. During its May 19-21, 2021 meeting, the Committee of Credentials of the Commission found probable cause to recommend denial of Respondent's Application based upon its findings which are incorporated by reference herein. (Ex. 12.) During its July 21-23, 2021 meeting the Committee of Credentials of the Commission denied Respondent's request for reconsideration because it determined Respondent failed to provide new and relevant information warranting reconsideration pursuant to California Code of Regulations, title 5 (Regulations), section 80315. (Ibid.) The Commission adopted the recommendations and findings of the Committee of Credentials. Respondent timely requested an administrative hearing.

3. On March 7, 2022 Complainant filed and served the Statement of Issues pursuant to Education Code (Code) section 44242.5, subdivision (c)(3)(B). On April 15, 2022, Complainant filed and served a First Amended Statement of Issues which was deemed controverted and subject to Respondent's Notice of Defense. All jurisdictional requirements have been satisfied for this matter to proceed to hearing.

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Previous Decision and Judgement on Petition for Writ of Mandate

4. The Commission's decision to deny Respondent's Application was based upon the same factual findings set forth in OAH Case No. 2021041006, Agency Case No. 2-49712480, Jennifer Russell, Administrative Law Judge, presiding, adopted by the Commission, as its Decision & Order, with minor exceptions unrelated to the material findings for cause, on February 18, 2022. (Ex. 3.)

5. By its Decision & Order effective March 20, 2022, the Commission revoked Respondent's Clear Designated Subjects Adult Education Teaching Credential: Full Time, and Clear Crosscultural, Language and Academic Certificate. (Ex. 3.)

6. The material factual findings of the Decision & Order have not changed or been modified over time. By clear and convincing evidence, the Commission found Respondent violated the school district's Positive Behavior Policy requiring teachers to abstain from harmful or humiliating conduct when addressing the behaviors of students already confronting traumatic situations in their daily lives in two incidents involving six-grade students and a fifth-grade student. The incidents were described as follows:

17. On November 28, 2018, respondent was the substitute sixth grade teacher in room D3 at the District's Del Vallejo Middle School. The students were loud and talkative during classroom instruction. Student A.S. engaged one of her classmates in simulated fighting. Respondent directed A.S. and several other students to kneel in front of the classroom. The students "got mad." They told respondent, "That's nasty."

A.S. reported the incident to her parents, who in turn requested an investigation of the matter.

25. On February 7, 2019, respondent was the substitute fifth grade teacher in Room D108 at the District's Bing Wong Elementary School. At some point, the students became restless and unruly. The principal assigned an additional substitute teacher to assist respondent. The students were calmed, and respondent resumed instruction. Student R.O. approached and stood in front of respondent contorting his face to resemble the Joker. Respondent told R.O. "not to do that to any teacher." Respondent also told R.O., "If you were my son, I would slap you." R.O. shouted to all within ear shot, "The sub attempted to slap me." The assistant substitute teacher urged R.O. to report the incident to the principal.

(Ex. 3, pp. A70 and A72.)

7. Notably, the Commission concluded Respondent "demonstrated a troubling lack of insight into the risk of harm his conduct presents to an educational community populated with students experiencing levels of upheaval that have negatively impacted their learning." (Ex. 3, pp. A83-85.) By clear and convincing evidence, the Commission found Respondent's conduct demonstrated he engaged in unprofessional, immoral conduct and conduct involving moral turpitude, evidencing unfitness to teach. (*Id.* pp. A85-A86.) Respondent has never acknowledged the truth of the findings, expressed remorse, presented persuasive rehabilitation evidence or provided any evidence which would assure the Commission he no longer presents a

public safety risk. The findings set forth in OAH Case No. 2021041006 as adopted by the Commission, are incorporated in full herein by this reference. (Ex. 3; Official Notice.)

8. Respondent filed a Petition for Writ of Mandate with the goal of overturning the Commission's decision. (Superior Court of California, County of San Bernardino, March 18, 2022, CIV SB 2206238). On December 16, 2020, the Honorable David Cohn, Judge of the Superior Court, issued a Judgment Denying the Petition for Writ of Mandate. (Ex. 13.) As part of his final judgment, Judge Cohn adopted his tentative ruling of August 31, 2022 which is incorporated in full herein by this reference. (Ex. 10.)

9. In relevant part, the final judgment provided:

Petitioner Fails to Carry His Burden

Respondent's final decision and order is located at pages 17 through 40 of the administrative record. (See AR-000017 - AR-000040.)

In its decision, Respondent sets forth the following relevant facts: Petitioner received his teaching credential in 2009 and his certificate in 2013. (*See* AR-000018 - AR-000030 [Factual Findings] at [¶¶2-3.] Petitioner had received other teaching credentials as early as 2004, but they are now expired. (*Id.* ¶¶9-11.) In November 2018, Petitioner was sent home after he directed disruptive students to kneel on the floor at his desk. (*Id.* ¶¶ 17-23.) In February 2019, Petitioner told a student who was antagonizing him, "If you were my son, I

would slap you." (*Id.* ¶¶25-29.) In March 2019, Petitioner's employment was terminated. (*Id.* ¶30.) Respondent agreed with the ALJ that these incidents supported revocation of Petitioner's teaching credential and certificate. (See *id.* ¶¶24, 31.)

The decision also discusses the fact that Respondent imposed a 120-day suspension against Petitioner in April 2014 for inappropriately photographing students. (*Id.* ¶35.)⁷ [footnote: Petitioner was criminally charged with misdemeanors which were either dismissed or of which he was acquitted. See Respondent's Ex. A. at ¶¶32-34.] Respondent characterized this as an "aggravating factor." (*Id.* ¶¶37, 44.)

Finally, the decision mentions a prior conviction against Petitioner for driving on a suspended driver's license. (*Id.* ¶¶38-44.) However, the decision states the incident did not provide cause to discipline Petitioner "given the lapse of more than one decade since the conviction and the underlying misconduct occurred, the diminished evidentiary significance of misconduct with the passage of time [citation], and the absence of similar, more recent misconduct." (*Id.* ¶43.)

Respondent determined Petitioner violated the District's Positive Behavior Policy by humiliating students when he instructed them to kneel at his desk. (See AR-000034 at ¶11

[Legal Conclusions].) It further determined Petitioner again violated the policy, after being warned and being given additional training, when he threatened to slap a fifth grader who taunted him. (See *id.* ¶¶12, 13.)

Based on these incidents, and because Petitioner lacked insight into the risk of harm in the aftermath of both incidents, Respondent determined good cause existed for revocation of Petitioner's credential and certificate. (See *id.* ¶¶14-20.)

Petitioner's position appears to be that: (1) he did not actually slap the fifth-grade student [*see* Reply ¶14]; (2) there is no evidence Petitioner actually threatened the student (*see* Reply, ¶7). There is also some suggestion in the petition that it was unfair that the fifth-grade student did not testify. (See Pet. ¶5.) ["I had presented Discovery to the child, his parents and their attorney. The complainant answered on behalf the child, family and attorney regarding the child's acting behavior and what I said, which was not even audible, because I had a flat voice."].)

In his reply, Petitioner states:

The student stood in front of me and made faces as a joker. He did not hurt me. He was just having fun. I was not mad, but tired trying to control the class to prevent any injury. I advised him not to that to any teacher [sic] and that if his

father sees him joking in class instead of learning, he will punish him. I inadvertently said, if I were his father I would smack or slap him. The student went off saying, "the sub attempted to slap me."

(Reply, ¶2.)

This suggests that Petitioner is arguing he was falsely accused of striking the student. But in Respondent's final decision, there appears to be no factual dispute regarding the issue. Respondent clearly understood that Petitioner did not *actually* slap the student. Instead, Respondent felt the statement was threatening. (*See* AR-000023 - AR000026 at ¶¶25-31.)

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The statement signed by Petitioner is consistent with Respondent's position. In his statement, dated February 7, 2019, Petitioner stated, in part that he "said, 'Don't that again [sic]. If do it again I will slap you [sic].'" (AR-000231; *see also* AR-000413 at lines 13-24 [authentication of statement during administrative hearing].) In the administrative hearing, Petitioner confirmed the statement. (See AR-000416 at lines 19-20 ["That is was I wrote. If you do that again, I will slap you."].)[fn 8 noted here states: Petitioner testified during the administrative hearing that he was 'shocked' at the student's behavior because the student looked 'oriental.' (AR-000418.)]

Petitioner's testimony during the administrative hearing is inconsistent and appears to shift over time. In his written statement, Petitioner stated the student was "trying to provoke" him. (See AR-000231.) But Petitioner testified: "Actually, he did not provoke me. He did not make me mad. But the provoke I used is he caused me to advise him. So that's why I used the word provoke." (AR-000419 at lines 15-17.)

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After going out of his way, both in his written statement and his sworn testimony to point out that he *inadvertently* made the slapping comment, Petitioner testified that he 'felt sorry' for doing so:

Q: I see. You do believe that you did something wrong by using the word slap; is that correct?

A: No, because I did not intend to slap him. I believe it's not wrong. I advised him that, if he was my child, I would have slapped him. Slap or smack is what he heard and he started shouting that I attempted to slap him. It's just language. So I know that is not wrong. But I felt sorry for using smack or slap.

(AR-000420 at lines 13-20.)

In his writ petition, Petitioner alleges he testified that he would not repeat what he said in the future. (See Pet. ¶15.) While that technically appears to be true, Petitioner's refusal to acknowledge that his threatening statement to the student was wrong supports Respondent's finding that Petitioner's "minimization of his agency and responsibility as a trained educator with 40 years' experience casts doubt on his ability and willingness to comport himself with expectations and requirements contrary to his personal views." (AR-000036 at ¶15.)

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Petitioner also focuses on Respondent's reliance on his prior driving conviction and prior allegations against him of annoying or molesting children. (See Pet. ¶¶6, 7.) But Respondent rejected the driving conviction as a basis for discipline. As for the other criminal allegations, Respondent considered the related 120-day suspension, not whether Respondent had been convicted of a crime.

There appears to no real factual dispute in this case regarding the facts giving rise to Respondent's final decision. Petitioner cites no authority, and none is apparent, showing Respondent proceeded in excess of its jurisdiction, denied Petitioner a fair hearing, or prejudicially abused its discretion.

The petition for a writ of mandate is therefore denied. ...¶

Current Application and Disposition

10. The First Amended Statement of Issues contains the same factual allegations which formed the basis of the Decision & Order revoking Respondent's previous teaching credentials. (Ex. 1, pp. A25-A31.) The Commission had revoked Respondent's teaching credentials after being notified by the San Bernardino City Unified School District he was terminated effective March 4, 2019 based upon the above incidents noted in the Writ Decision above. At the meeting of the Committee of Credentials on May 28, 2021, the Committee denied Respondent's Application based upon the same material findings which formed the basis of the Commission's Decision & Order. The Committee's findings are incorporated by reference herein. (Ex. 12, pp

A172-178.) On July 30, 2021, following Respondent's request for reconsideration the Committee affirmed its denial of Respondent's Application on the ground Respondent "failed to provide new and relevant information warranting reconsideration." (*Id.*, p. A171.)

11. In addition to the incidents referenced above, the Committee considered relevant aggravating factors, which were considered as well in the Decision & Order and included Respondent's prior suspension in 2014. At its April 10-11, 2014 meeting, the Commission issued a 120-day suspension to Respondent after finding probable cause Respondent continually photographed two female students, two of whom were juveniles, on campus even after they had asked him to stop. Respondent admitted taking their pictures because he found the students "attractive" and saw nothing wrong with taking the pictures. (Ex. 3, pp. A75-A76; Ex. 12, p. 178.) This incident did not establish cause for discipline in the Decision & Order but was considered an aggravating factor. (Ex. 3, p. A76.)

12. The First Amended Statement of Issues alleges two legal bases for the Commission's denial of Respondent's Application: The First Cause for Denial of Application (Revocation of Certification Document) based on the revocation of Respondent's Clear Designated Subjects Adult Education Credential and his Clear Crosscultural Language and Academic Development Certificate; and the Second Cause for Denial of Application (Commission of Acts Involving Moral Turpitude) based upon the same two incidents described in the Decision & Order and Writ Decision.

13. During the hearing, Respondent offered no new material information that would justify the issuance of a different teaching credential and approval of his Application. By the time of the Decision & Order, Respondent had obtained an Master of Arts in Industrial and Technical Studies, and Master of Science in Higher Education

Administration and completed an Educational Doctoral program in Organizational Leadership, K-12 Leadership. Respondent maintains at a minimum he should be allowed to pursue his career as an administrator. He describes himself as a quiet, gentle and religious person who does not drink or consume any recreational drugs. He had worked occasionally in the last few years as a substitute teacher at the high school level in a private school where a credential was not required. Otherwise, his primary source of income is from driving as an Uber driver.

14. Respondent failed to meet his burden of proof on the First and Second Causes for Denial of Application by providing any persuasive evidence he is now safe and fit to practice as a teacher. As such, the Respondent's appeal of the Commission's decision is denied. The Commission's decision to deny the Application is affirmed.

LEGAL CONCLUSIONS

1. The burden of proof is on the applicant to establish he is entitled to the license. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal. App.4th 1205; *Southern Cal. Jockey Club v. California Horse Racing Bd.* (1950) 36 Cal.2d 167.)

2. Pursuant to Code section 44345 the Commission may deny any application for the issuance of a credential or for the renewal of the credential made by an applicant on the grounds of commission of an act of moral turpitude (subdivision (e)) and a revoked certification (subdivision (f)). Denial on these grounds "shall be based upon reasons related to the applicant's fitness to teach or fitness to perform other duties which that application is certificated, or competence to perform the duties which the credential would authorize the applicant to perform."

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3. Respondent failed to meet his burden of proof on the First Cause for Denial of Application (Revocation of Certification Document). Pursuant to Code section 44345, subdivision (f), the Application may be denied on the basis of the previous revocation of his prior credentials, i.e., his Clear Designated Subjects Adult Education Teaching Credential: Full Time and his Clear Crosscultural, Language and Academic Development Certificate. (Factual Findings 4-14.)

4. Respondent failed to meet his burden of proof on the Second Cause for Denial of Application (Commission of Acts Involving Moral Turpitude) pursuant to Code section 44345, subdivision (e). "Immoral conduct" in teacher dismissal cases has been defined generally as "that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or a 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." (*Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811.) (Factual Findings 4-14.)

5. The Court of Appeals in *Woodland Joint Unified School Dist. v. Commission of Professional Competence* (1992) 2 Cal.App.4th 1429, 1444, instructs "evident unfitness for service" means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." "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.

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6. The Decision & Order and Writ Decision establish the unrefuted foundational evidence to deny Respondent's Application including his unfitness to teach. (Factual Findings 4-14.)

7. The doctrine of *collateral estoppel* applies to this action. Collateral estoppel, or issue preclusion, "precludes relitigation of issues argued and decided in prior proceedings." (*Mycogen Corp. v. Monsanto Co.*, (2002) 28 Cal. 4th 888, 896-97, citing *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) "Traditionally, we have applied the doctrine only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with the party to the former proceeding. (*People v. Sims* (1982) 32 Cal. 3d 468, 484, 486. *Sims, supra*, 32 Cal.3d at p. 484; *People v. Taylor* (1974) 12 Cal.3d 686, 691.)

8. Here, the requirements of collateral estoppel have been met. The parties and issue litigated are identical; the Decision and Order followed by the Writ Decision contained the same findings and the Decision and Order constituted a final determination on the merits. (See *Sims, supra*, 32 Cal.3d at p. 486.) Further, the equities of the doctrine were served as Respondent had a full opportunity to present evidence and witnesses before OAH and the Superior Court. (*Sims, supra*, 32 Cal.3d at pp. 481-482.) Respondent also had an opportunity to present additional evidence during the hearing to establish his rehabilitation and fitness to teach in addition to the evidence he supplied in the Decision & Order and Writ Decision but he failed to do so. (Factual Finding 13.) (See *Sims, supra*, 32 Cal. 3d at p. 481, citing, *Teitelbaum Furs, Inc.*

v. Dominion Ins. Co., Ltd., (1962) 58 Cal.2d 601.) (Factual Finding 10.) Further Respondent's aggravating circumstance of a prior incident involving taking photographs of students referenced in both the Decision & Order and Writ Decision remains a consideration in the Commission's decision to reject the Application. (Factual Findings 9 and 11.)

9. Respondent failed to meet his burden of proof and as such, the Application is denied.

ORDER

The application of Samuel Kwaku Ayei-Fosu Godman for a Credential Authorizing Public School Service, Multiple Subject Teaching Credential is denied.

DATE: **01/24/2023**

Eileen Cohn

EILEEN COHN

Administrative Law Judge

Office of Administrative Hearings