

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

In the Matter of the Accusation Against:

FANG JIA, Respondent

Agency Case No. 2-254340493

OAH No. 2023030740

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, Office of Administrative Hearings, State of California, heard this matter on June 7, 2023, by videoconference.

Deputy Attorney General Molly Selway represented complainant Mary Vixie Sandy, Executive Director of the California Commission on Teacher Credentialing.

Respondent Fang Jia represented himself.

The record was closed, and the matter was submitted for decision on June 7, 2023.

FACTUAL FINDINGS

1. Respondent Fang Jia holds or held four certification documents (credentials) issued by the California Commission on Teacher Credentialing (commission).

2. On February 25, 2014, the commission issued a Certificate of Clearance to respondent. That credential expired on March 1, 2019. On August 6, 2014, the commission issued a 30-day Substitute Teaching Permit to respondent. That credential was renewed on September 1, 2015, and expired on September 1, 2016. On May 22, 2015, the commission issued a Preliminary Single Subject Teaching Credential to respondent, which expired on June 1, 2020. On May 28, 2020, the commission issued a Clear Single Subject Teaching Credential and a Certificate of Clearance to respondent. Both credentials issued on May 28, 2020, were in full force and effect at all times relevant to this proceeding.

3. At its July 20-22, 2022, meeting, the Committee of Credentials found probable cause to recommend suspension of respondent's credentials. Respondent requested an administrative hearing.

4. On January 26, 2023, complainant Mary Vixie Sandy, Ed.D. signed an accusation in her official capacity as Executive Director of the commission, seeking to impose discipline on the respondent's credentials, due to respondent's conviction for domestic violence. Respondent filed a notice of defense, and this hearing followed.

Conviction

5. On January 25, 2022, in the Superior Court of California, County of Riverside, respondent was convicted on his guilty plea, of violating Penal Code section

273.5, subdivision (a), inflicting corporal injury resulting in a traumatic condition upon a spouse (domestic violence), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on probation for a period of three years with terms and conditions that included serving 90 days in custody, which were to be served in a work release program; completing a 52-week domestic violence program; completing 20 hours of community service; and payment of fines and fees.

6. The facts and circumstances of the offense are that on May 8, 2021, respondent became angry at his wife for interrupting his ping pong game with a friend. Respondent began yelling at his wife and his friend left. After the friend left, respondent continued yelling at his wife and started towards her. She grabbed a bar stool to try to keep separation from him. Respondent grabbed a chair and began swinging it at his wife. She dropped her bar stool, but respondent continued swinging the chair striking his wife several times on her back and left side, causing several scrapes on her left arm and a two-inch lump on her left elbow. A video of the incident was captured by an in-house camera.

Respondent's Evidence

7. At hearing, respondent accepted responsibility for the misconduct that led to his conviction. Respondent admits that when his wife called the police, he thought he was "ok" because he believed his wife started the fight. Respondent stated his domestic violence program has helped him learn different strategies for responding to his wife being upset.

8. Respondent has been married to the victim for over 30 years. There were no prior or subsequent acts of violence toward his wife. Respondent maintains that he never denied striking his wife but told the police that "she started it." Respondent

regrets what happened and the impact it has had on his life. He watched the video of the incident, and it disturbed him. Respondent admits that he was angry because he felt he “lost face” to his friend. He realized he should have walked away when he lost his temper. Respondent is ashamed of his behavior.

9. Respondent is currently teaching Mandarin Chinese in the Simi Valley School District. He states that the district is aware of his conviction. He has completed the community service, paid the fines and fees, and had one more domestic violence program meeting to complete that requirement. His probation is scheduled to end in January 2025.

10. Respondent testified at hearing in an open, forthright, and credible manner, consistent with one who was telling the truth.

11. Respondent has taken responsibility for his actions. He is remorseful and ashamed of his behavior.

LEGAL CONCLUSIONS

1. The Commission is responsible for the credentialing of certificated personnel, including issuing credentials and taking adverse action against credential holders. (Ed. Code, § 44000 et seq.; Cal. Code Regs., tit. 5, § 80000 et seq.) Adverse action includes the suspension or revocation of a credential. (Ed. Code, § 44000.5.)

2. The burden of proof is on complainant to show cause for discipline by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853; Evid. Code, § 500.)

3. Expiration of a credential does not deprive the Commission of its authority to impose discipline. (Ed. Code, § 44440, subd. (b).)

4. Administrative proceedings regarding the discipline of professional licenses are intended not to punish the applicant or licensee, but to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

Causes for Discipline

5. Education Code section 44421 authorizes the Commission to privately admonish, publicly reprove, suspend, or revoke the credential of a credential holder who has engaged in "immoral or unprofessional conduct," demonstrated "evident unfitness for service," or for any cause that would warrant the denial of an application for a credential. Education Code section 44345, subdivision (e), authorizes the Commission to deny an application for a credential if the applicant has committed any act of moral turpitude. Complainant alleges four causes for discipline against respondent's credentials: unprofessional conduct, immoral conduct, acts of moral turpitude, and evident unfitness for service.

6. "Unprofessional conduct" is conduct that "violates the rules or ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing." (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553 [citation omitted], overruled, in part, on another ground in *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575, 588, fn. 7.) Respondent's causing corporal injury to his wife, constituted unprofessional conduct. Cause for discipline exists pursuant to Education Code section 44421.

7. "The term 'immoral' has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals." (*Board of Education v.*

Weiland (1960) 179 Cal.App.2d 808, 811.) Respondent's battery of his wife causing corporal injury to her, constituted immoral conduct. Cause for discipline exists pursuant to Education Code section 44421.

8. "Moral turpitude is sometimes used as synonymous with dishonesty, or a high degree of unfairness." (*Board of Education v. Weiland, supra*, 179 Cal.App.2d at p. 811 [citation omitted].) Respondent's battery of his wife causing corporal injury to her was an act of moral turpitude. Cause for discipline exists pursuant to Education Code sections 44421 and 44345, subdivision (e).

9. Evident unfitness for service" means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) Unprofessional conduct is often a lesser included form of behavior within evident unfitness for service, but evident unfitness for service "requires that unfitness for service be attributable to a defect in temperament — a requirement not necessary for a finding of 'unprofessional conduct.'" (*Id.* at p. 1445.) Respondent's battery of his wife because he was angry that he "lost face" with his friend, demonstrated evident unfitness for service at the time of that conduct. Cause for discipline exists pursuant to Education Code section 44421.

Morrison Factors

10. In accordance with *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 and California Code of Regulations, title 5, section 80302,¹ an examination must

¹ All regulatory citations are to title 5 of the California Code of Regulations.

be made to determine the relationship between the misconduct and the credential holder's fitness, competence, or ability to perform the duties authorized by the credential. Factors to be considered include, but are not limited to, the following: (1) likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated; (2) proximity or remoteness in time of the conduct; (3) type of credential held; (4) extenuating or aggravating circumstances surrounding the conduct; (5) praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) likelihood of recurrence of the conduct; (7) the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved or other certified persons; and (8) the publicity or notoriety given to the conduct.

11. Upon consideration of all the *Morrison* factors, it is determined that respondent's misconduct was related to his fitness, competence, and ability to discharge the duties authorized by his credentials. The factors are discussed below.

12. The first *Morrison* factor focuses on the "likelihood" the conduct "may have" adversely affected students and teachers, and can include adverse impact on the ability to earn the respect of students. (§ 80302, subd. (a)(1); *Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 477.) It is likely that knowing that respondent battered his wife because she caused him to "lose face" would adversely affect both students and teachers.

13. Respondent's criminal act occurred two years and one month ago. (§ 80302, subd. (a)(2).)

14. Respondent held a teaching credential at the time. (§ 80302, subd. (a)(3).)

15. The fourth *Morrison* factor examines the extenuating or aggravating circumstances surrounding the conduct. (§ 80302, subd. (a)(4).) The governing regulations also enumerate aggravating factors and mitigating factors to be considered in determining the degree of discipline. (§ 80300, subds. (b), (m).)

“Aggravating factors” are circumstances demonstrating that a greater degree of adverse action is needed to adequately protect the public, schoolchildren, or the profession. (§ 80300, subd. (b).) None of the aggravating factors listed in the regulation apply to this case.

“Mitigating factors” are circumstances demonstrating that the public, schoolchildren, and the profession would be adequately protected by a more lenient degree of adverse action. (§ 80300, subd. (m).) Potential mitigating factors include: (1) absence of any prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious; (2) lack of harm to the person who is the object of the misconduct; (3) emotional or physical difficulties suffered by the holder which substantially contributed to the misconduct, provided that the difficulties were not the product of illegal conduct such as illegal substance abuse, and further provided that the holder has established through clear and convincing evidence that he no longer has such difficulties; (4) attestations to the holder’s good character by individuals from the educational or general community who are aware of the extent of the holder’s misconduct; (5) objective action by the holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing designed to timely make amends; (6) proximity or remoteness in time of the misconduct relative to the seriousness of the misconduct; and (7) the nature and extent of subsequent rehabilitation. (§ 80300, subd. (m).)

Respondent has no prior record of adverse action over years of service; however, his misconduct is “serious.” Respondent did not provide any character references. He is remorseful for his misconduct. It has only been two years since respondent’s misconduct, and he is currently on criminal probation. Respondent reported a change in his temperament and how he would respond to a similar situation.

16. Respondent’s motives for battering his wife are blameworthy, not praiseworthy. (§ 80302, subd. (a)(5).)

17. Respondent was married to his wife for almost 30 years when the misconduct occurred. He has since changed his attitude towards his behavior. This change in attitude is an important factor in assessing whether or not the behavior is likely to recur. (See, e.g., *Singh v. Davi* (2012) 211 Cal.App.4th 141, 149 [in considering rehabilitation criteria, change in attitude is “arguably the most important in predicting future conduct”].)

18. Disciplinary action against respondent would not inflict an adverse impact or chilling effect on respondent or others, because there is no constitutionally protected speech or behavior involved. (§ 80302, subd. (a)(7).)

19. There was no publicity or notoriety given to the misconduct. (§ 80302, subd. (a)(8).)

Determination of Discipline

20. As determined above, cause for discipline exists, and respondent’s misconduct is related to his fitness to hold credentials, such that adverse action may be taken against his credentials. The question is what degree of discipline is required

for protection of the public, schoolchildren, and the profession. Respondent's misconduct was very serious and involved violence. Nevertheless, respondent has submitted sufficient evidence of rehabilitation and mitigating factors to show that outright revocation of his credentials would be punitive, as it is not necessary to protect the public.

21. Education Code section 44421 provides statutory authority for the Commission to privately admonish, publicly reprove, suspend, or revoke the credential of a credential holder. Suspending respondent's credential for 180 days is sufficient to ensure the protection of students and the public.

ORDER

All credentials issued to respondent Fang Jia are hereby suspended from 180 days from the effective date of this decision.

DATE: June 28, 2023



TRACI C. BELMORE

Administrative Law Judge

Office of Administrative Hearings