

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

In the Matter of the Accusation Against:

ANTHONY MARCHMANN SMITH, Respondent.

Agency Case No. 2-90147671

OAH No. 2021080920

PROPOSED DECISION

Administrative Law Judge Traci C. Belmore, State of California, Office of Administrative Hearings, heard this matter on February 1 and 2, 2022, via videoconference.

Deputy Attorney General Leslie E. Brast represented complainant Mary Vixie Sandy, Ed.D., Executive Director of the Commission on Teacher Credentialing.

Attorney Kena Cador represented respondent Anthony Marchmann Smith, who was present at hearing.

The record closed and the matter was submitted for decision on February 2, 2022.

FACTUAL FINDINGS

1. The Commission on Teacher Credentialing (Commission) issued the following credentials¹ to respondent Anthony Marchmann Smith:

- Certificate of Clearance issued May 13, 2019. The certificate will expire on June 1, 2024, unless renewed.
- Pupil Personnel Services credential originally issued on May 19, 2004. The credential was in full force and effect at all times relevant to this proceeding. The credential will expire on June 1, 2024, unless renewed.
- Adult Education Teaching credential issued on May 30, 2019. This credential will expire on June 1, 2022, unless renewed.
- Multiple Subject Teaching Permit issued on June 30, 1999. The permit expired on September 1, 2003.
- Pre-Intern Certificate issued on July 1, 2000. The certificate expired on August 1, 2002.
- Certificate of Clearance issued on November 25, 1997. The certificate expired on December 1, 2002.

¹ Education Code section 44002 defines "credential" as a credential, certificate, life document, life diploma, permit, certificate of clearance, or waiver issued by the Commission.

2. Respondent was employed by the San Francisco Unified School District (SFUSD) between 1998 and 2004, first as an elementary school teacher and later as a high school counselor.

3. On May 3, 2004, respondent received a performance evaluation from SFUSD. The evaluation rated his work performance as unsatisfactory and described his conduct as lacking in honesty, integrity, and credibility, stating that respondent "attempts to cover up his mistakes" and "makes excuses rather than accept responsibility."

4. Respondent was employed as a high school counselor by the Berkeley Unified School District (BUSD) between 2004 and 2015.

5. The Commission suspended respondent's certificates and credentials for seven days effective September 15, 2012. The circumstances underlying the suspension are that respondent engaged in inappropriate behavior with a female student during the 2009-2010 school year.

6. In April 2015, BUSD placed respondent on paid administrative leave while an investigation into his alleged misconduct occurred. In May 2015, BUSD notified respondent of its intent to terminate him. Respondent reached a settlement agreement with BUSD that allowed him to resign in lieu of termination.

7. On August 13, 2019, respondent was again hired by SFUSD. It came to the district's attention that one or more answers in respondent's employment application were not true.

8. On October 23, 2019, SFUSD placed respondent on paid administrative leave, pending an investigation into allegations of misconduct. SFUSD scheduled an

interview with respondent on November 1, 2019. Rather than participate in the interview, respondent resigned on November 1, 2019.

9. SFUSD notified the Commission of respondent's resignation pending an investigation of an allegation of misconduct.

10. At its November 2020 meeting, the Committee of Credentials (Committee) recommended the suspension of respondent's teaching credentials and all other certification documents for a period of 120 days. In a letter dated December 3, 2020, the Committee notified respondent of the recommendation and advised him of his appeal rights. Respondent requested an administrative hearing.

11. On July 28, 2021, complainant Mary Vixie Sandy, Ed.D., in her official capacity as Executive Director of the Commission, filed an accusation alleging five causes for discipline and seeking to revoke all of respondent's credentials, certificates and authorizations. Respondent filed a notice of defense and this hearing ensued.

SFUSD Applications

12. Respondent submitted three applications to SFUSD. In the "Legal Information" section of the application are the following questions:

a. Have you previously resigned or otherwise left any type of employment to avoid discipline or dismissal, or investigation for alleged misconduct?

b. Have you previously resigned or otherwise left employment as the result of an allegation of misconduct or while an allegation of misconduct was pending?

c. Have you ever been issued an evaluation of any kind that denotes less than satisfactory service while serving in any school or school district, public or private,

including evaluations currently pending? *If you answered "Yes", please explain; be sure to include dates and timelines if applicable.

d. Have you ever had a teaching or service credential, application, permit, license, or other authorization suspended, revoked, voided or denied, for any reason, or is any charge or other adverse action pending against any such credential or authorization, in California or elsewhere? *If you answered "Yes," please explain; be sure to include dates and timelines if applicable.

e. Have you ever been convicted of a felony or misdemeanor, or do you currently have a felony or misdemeanor charge pending? Convictions include a plea of guilty, nolo contendere (no contest) and/or a finding of guilty by a judge or a jury. (NOTE: Exclude convictions for marijuana-related offenses more than two years old.)

13. The applications required respondent to certify that he had made "true, correct and complete answers and statements" in the applications.

2015 APPLICATION

14. In an application dated April 24, 2015, respondent omitted his employment at BUSD in the employment section; denied that he had been convicted of a felony or misdemeanor; denied that he had ever resigned or otherwise left any type of employment to avoid investigation for alleged misconduct and/or dismissal;² admitted he had received a less than satisfactory evaluation and gave the explanation

² Prior to November 15, 2016, questions a and b had been combined into one question, "Have you previously resigned or otherwise left any type of employment to avoid investigation for alleged misconduct and/or dismissal?"

that "This [Needs Improvement] evaluation was given to me during the same year of the False accusation"; and admitted that his credentials had been suspended with an explanation stating, "My credential was suspended for [5] working days. I was falsely accused of giving a student a hug."

2016 APPLICATION

15. In an application dated February 23, 2016, respondent denied that he had been convicted of a felony or misdemeanor; denied that he had ever resigned or otherwise left any type of employment to avoid investigation for alleged misconduct and/or dismissal; denied he had ever received a less than satisfactory evaluation; and admitted his credential had been suspended with the explanation, "Suspended [5] working days for alleged misconduct; giving a student a hug..." Respondent did include his employment at BUSD in the employment section of the application but stated he left that employment due to "lack of support." While this answer may have been true, it certainly was not a complete answer.

2019 APPLICATION

16. In an application dated June 11, 2019, respondent denied that he had been convicted of a felony, denied that he had previously resigned to avoid discipline or dismissal for alleged misconduct, denied that he had resigned as the result of an allegation of misconduct or while an allegation of misconduct was pending; denied he had ever been given a less than satisfactory evaluation; and denied that his credentials had ever been suspended. Respondent stated he left his employment at BUSD because it was "time for a change." Again, while this answer might have been true, it certainly was not a complete answer.

2019 SFUSD Employment

17. Respondent's 2019 application resulted in an offer of employment from SFUSD to be Dean of Students at Lowell High School. Prior to commencing employment respondent was required to be fingerprinted so that a criminal history check could be performed. Respondent completed a conviction disclosure form that was submitted with his fingerprints. On that form, respondent stated he had not been convicted of any crime. The criminal history check from the California Department of Justice revealed a 1989 misdemeanor conviction.

18. D'Andre Ball, the Director of Certificate Staffing at SFUSD, contacted respondent regarding the missing conviction information on respondent's disclosure form. Ball requested that respondent send an explanation for the omission. Ball credibly testified that his only interaction with respondent was regarding the conviction disclosure form accompanying respondent's fingerprints. Ball had no knowledge of respondent's credential suspension.

19. On August 8, 2019, respondent sent an email to Ball stating, "I inadvertently failed to check the box regarding a prior disciplinary action....the omission was simply a mistake."

Respondent's Evidence

20. Respondent's focus was almost exclusively on his 2019 application, and especially the question asking if his credentials had ever been suspended. Respondent testified that he had been advised of the position at Lowell High School by the principal, Andrew Ishibashi. Respondent stated that Ishibashi told him of the opening and advised respondent to apply the day before applications for the position were

due. Respondent claimed he inadvertently answered the question negatively in his rush to complete and submit the application.

21. Respondent testified that he noticed the error and had spoken with an employee of the Human Resources department of SFUSD, Riley Collins, about the omission.

22. Respondent testified that Ball left a voicemail message for respondent regarding the suspension of his credentials. During a phone conversation, respondent claims that Ball told him to write something addressing the omission. Respondent claimed he asked Ball if this would be the last time that respondent would be required to address the omission of the credential suspension in his application and Ball replied that it would be.

23. Respondent acknowledged that he made a mistake in replying negatively to the question on his 2019 application regarding credential suspension. Respondent grudgingly admitted that the credential suspension was not the only question he answered incorrectly, but adamantly denied that he had intentionally answered the questions falsely. Respondent stated he had filled out the application hastily and that was why the incorrect answers were made. Respondent had no explanation for why the answers were incorrect on his 2015 and 2016 applications. Respondent's explanation for the false answers on his 2019 application was not credible.

24. Ishibashi wrote a letter and testified on behalf of respondent. Ishibashi considers respondent a colleague and friend. In his letter, Ishibashi stated respondent is a "genuine, honest, straight-forward and dedicated counselor." During testimony, Ishibashi acknowledged that honesty is fundamental in both teaching and counseling. In both his letter and during his testimony, Ishibashi stated respondent told him the

reason for this disciplinary proceeding was solely respondent's failure to include his credential suspension on respondent's 2019 application.

25. Donald E. Evans, Ed.D., wrote a letter and testified on behalf of respondent. Dr. Evans was the Superintendent of BUSD for part of respondent's tenure there. In his letter, Dr. Evans stated respondent was "a very good counselor," "a champion for the students that felt underserved and marginalized," and that respondent "would go above the call of duty to make students feel appreciated and welcomed." During testimony, Dr. Evans agreed that honesty is a bedrock principle for educators. When asked if he would hire an applicant who had given those false answers on more than one application, Dr. Evans stated he would not.

26. Respondent submitted several other reference letters. Vernon L. Walton Jr., Ed.D., a former co-worker, wrote that respondent was "a person of high integrity and honesty." Dr. Walton stated respondent had told him he made errors on his application for SFUSD. Thelette Bennett, a former co-worker, wrote that respondent "brings an area of hope and belief to a district that is sorely deprived of both." Steven Williams, a co-worker, wrote that respondent was "a person who passionately and genuinely cared for the health and well-being of students." Shawn Parker, a friend, wrote that respondent is "professional, respectful, engaging, compassionate and extremely focused on his work." Kimberly Fanady, respondent's former attorney, wrote that respondent is a "good educator and a good person." Jason Tarn, a co-worker, wrote that respondent has demonstrated "compassionate yet respectful student support." Edith Jordan-McCormick, a friend and former colleague, wrote that respondent has "demonstrated the ability to effectively service students and their families." Regina Caudillo, a former colleague, stated that respondent is a "strong and

consistent teacher.” All the authors appeared to have knowledge of respondent’s 2019 application only.

LEGAL CONCLUSIONS

1. The Commission is responsible for the credentialing of public school teachers, including issuing credentials and taking adverse action against credential holders. (Ed. Code, § 44000 et seq; Cal. Code Regs., tit. 5, § 80001 et seq.)³ Adverse action includes the suspension or revocation of a credential. (§ 44000.5.)

Causes for Discipline

2. Section 44421 authorizes the Commission to privately admonish, publicly reprove, revoke or suspend a credential for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system, or for any cause that would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service.

3. Unprofessional conduct is defined as 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 submission of false and

³ All statutory references are to the Education Code, unless otherwise stated.

incomplete answers on three different applications constitutes unprofessional conduct. (Factual Findings 12-16.) Cause for discipline exists pursuant to section 44421.

4. "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 [citation omitted].) Respondent's submission of false and incomplete answers on three different applications constitutes immoral conduct. (Factual Findings 12-16.) Cause for discipline exists pursuant to section 44421.

5. On three different occasions, respondent falsely and incompletely answered questions on an application that he certified were true and complete. Respondent's repeated submission of false and incomplete answers demonstrates a persistent defiance of, and refusal to obey the laws regulating the duties of persons serving in the public school system. (Factual Findings 12-16.) Cause for discipline exists pursuant to section 44421.

6. Respondent's lack of honesty in answering questions in those three applications and his lack of honesty in explaining the complete circumstances of his potential discipline to the individuals writing letters and testifying on his behalf demonstrates temperamental defects or inadequacies indicating an evident unfitness for service. (Factual Findings 12-16 and 24-26.) Cause for discipline exists pursuant to section 44421.

7. Section 44345, subdivision (e), authorizes the Commission to deny an application for the issuance of a credential or for the renewal of a credential if the applicant has committed any act involving moral turpitude. Falsely answering questions on an application and then certifying that the answers were true and

complete is an act of moral turpitude. (Factual Findings 12-16.) Cause for discipline exists pursuant to sections 44421 and 44345, subdivision (e).

***Morrison* Factors**

8. Pursuant to *Morrison v. State Board of Education* (1969), 1 Cal.3d 214, and California Code of Regulations, title 5, section 80302, the Commission shall determine whether a teacher's conduct indicates such unfitness to teach as to warrant disciplinary action. That determination may be based upon factors that include, but are not limited to, the: (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 (*Morrison* factors).

9. While respondent's misconduct is not likely to directly affect any student, the conduct decidedly affects respondent's fellow teachers and the educational community. Fraud in connection with an application for employment impugns the integrity of teachers and the entire educational community.

10. Respondent's most recent misconduct occurred less than three years ago. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(2).)

11. Respondent held a clear pupil personnel services credential, a preliminary three-year adult education teaching credential, a certificate of clearance, an

emergency long-term multiple subject teaching permit, and a pre-intern certificate. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(3).)

12. The fourth *Morrison* factor examines the extenuating or aggravating circumstances surrounding the conduct. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(4).) Aggravating and mitigating factors are to be considered in determining the degree of discipline. (Cal. Code Regs., tit. 5, § 80300.) “Aggravating factors” are circumstances demonstrating that a greater degree of adverse action is needed to adequately protect the public, schoolchildren, or the profession. (Cal. Code Regs., tit. 5, § 80300, subd. (b).)

Respondent has a prior record of adverse action. (Factual Finding 6.) (Cal. Code Regs., tit. 5, § 80300, subd. (b)(1).) Respondent’s submission of false answers occurred on three different applications spanning four years and establishes multiple acts of wrongdoing and a pattern of misconduct. (Cal. Code Regs., tit. 5, § 80300, subd. (b)(2).) Subsequently, respondent was not candid to the Committee about his behavior. (Cal. Code Regs., tit. 5, § 80300, subd. (b)(3).) Respondent demonstrated indifference toward the consequence of his misconduct. (Cal. Code Regs., tit. 5, § 80300, subd. (b)(5).) Respondent had prior notice from a reliable source regarding his honesty. (Factual Finding 3.) (Cal. Code Regs., tit. 5, § 80300, subd. (b)(6).)

13. “Mitigating factors” are circumstances demonstrating that the public, schoolchildren, and the profession would be adequately protected by a more lenient degree of adverse action. (Cal. Code Regs., tit. 5, § 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 or she 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. (Cal. Code Regs., tit. 5, § 80300, subd. (m).)

14. Respondent provided several attestations to his good character. However, it was not clear that the individuals providing the attestations were aware of the full extent of respondent's misconduct. Respondent did not admit any wrongdoing, insisting that haste made him mistakenly answer the questions incorrectly. Even were that true of the 2019 application, respondent had no explanation for the false answers submitted in his 2015 and 2016 applications.

15. Respondent's motive for submitting the fraudulent answers appears to have been to pass the initial screening so that he could obtain the position at Lowell High School, which is blameworthy. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(5).)

16. At hearing, respondent continued to insist that his false answers were due to haste and not an attempt to mislead anyone. The fact that his false answers occurred on three different applications in a four-year period and his refusal to acknowledge his dishonesty make it likely that his misconduct will recur. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(6).)

17. 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. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(7).)

18. There is no evidence that respondent's misconduct received any publicity or notoriety. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(8).)

19. Upon consideration of the *Morrison* factors, it is established that respondent's misconduct was related to his fitness, competence, and ability to discharge the duties authorized by his credentials.

Determination of Discipline

20. Having established cause for discipline of respondent's credentials, the issue is what level of discipline is necessary for protection of the public, students, and the profession. Honesty is a bedrock principle for teachers, who serve as role models. Teachers must be trusted by other teachers, principals, and parents to be honest in all their communications.

This matter involves a series of dishonest communications by respondent. He was dishonest with SFUSD on three different occasions by submitting false answers on his applications for employment. He was dishonest with the Committee by saying he had made a single mistake on his 2019 application. Under these circumstances, protection of the public, students, and the profession requires revocation of respondent's credentials.

ORDER

All credentials issued to respondent Anthony Marchmann Smith are hereby revoked.

DATE: 03/03/2022

A handwritten signature in cursive script that reads "Traci C. Belmore".

TRACI C. BELMORE

Administrative Law Judge

Office of Administrative Hearings