

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

**In the Matter of the Accusation and
Statement of Issues Against:**

SHEILA SAMMON MILOSKY,

Clear Single Subject Teaching Credential

Clear Multiple Subject Teaching Credential

Clear Administrative Services Credential

Clear Resource Specialist Added Authorization

Clear Specialist Instruction Credential in Special Education

Respondent.

Agency Case Nos. 2-47463724, 2-160148407

OAH No. 2022080464

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on December 12 and 13, 2022, by videoconference.

Deputy Attorney General Gregory Tuss represented complainant Mary Vixie Sandy, Ed.D., Executive Director of the California Commission on Teacher Credentialing.

Respondent Sheila Sammon Milosky did not appear, and no one appeared on her behalf. Upon proof that complainant had served notice of this hearing to respondent in accordance with Government Code section 11509, the hearing proceeded in respondent's absence as authorized by Government Code section 11520, subdivision (a).

The matter was submitted for decision on December 13, 2022.

FACTUAL FINDINGS

1. Respondent Sheila Sammon Milosky has been a credentialed educator in California for more than 35 years. At the time of the hearing, she held or had held the following credentials:

a. a Certificate of Clearance, which the Commission first issued on October 21, 1983, and which expired without renewal on November 1, 1988;

b. a Clear Multiple Subject Teaching Credential, which the Commission first issued on May 29, 1984, and which expires on May 1, 2025;

c. a Clear Specialist Instruction Credential in Special Education, which the Commission first issued on August 18, 1985, and which expired without renewal on December 1, 2019;

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d. a Clear Resource Specialist Added Authorization, which the Commission first issued on August 21, 1988, and which does not expire;

e. a Clear Single Subject Teaching Credential, which the Commission first issued on November 14, 1994, and which expired without renewal on December 1, 2019;

f. a Preliminary Administrative Services Credential, which the Commission first issued on August 23, 1992, and which expired without renewal on May 1, 2010;

g. a Clear Administrative Services Credential, which the Commission first issued on May 1, 2010, and which expires on May 1, 2025;

2. On December 16, 2019, respondent applied to renew her Specialist Instruction Credential in Special Education. The Commission on Teacher Credentialing has not renewed this credential.

3. Acting in her official capacity as Executive Director of the California Commission on Teacher Credentialing, complainant Mary Vixie Sandy, Ed.D., filed an accusation and statement of issues against respondent in February 2021. Respondent filed a notice of defense and requested a hearing. Complainant filed a first amended accusation and statement of issues in May 2021.

4. Complainant alleges that the Commission should deny respondent's renewal application, and should revoke all respondent's credentials, for multiple reasons:

a. Respondent has a substance use disorder, and appeared at school on several occasions during 2017 and 2018 while she was under the influence of alcohol and possibly other intoxicating substances;

b. On May 1, 2019, respondent punished a student in front of the rest of the student's class by forcing the student into a dark closet and making him stay there for a period of at least several minutes;

c. Respondent has been convicted of misdemeanors, committed on at least three distinct occasions, but denied in her renewal application ever having been convicted of any crime.

Unprofessional Conduct at Rosa Parks Elementary School

5. Beginning in 2014, respondent was a special education teacher at Rosa Parks Elementary School, in San Francisco. The students in her class were approximately 8 to 10 years old.

APPEARING AT SCHOOL WHILE INTOXICATED

6. On one occasion during the 2016–2017 school year, school social worker Barbara Lally, M.S.W., observed that respondent seemed to be under the influence of alcohol during the work day. Respondent was unusually affectionate toward her students, but showed difficulty focusing on or attending to them. Lally later encountered respondent outside the school building, and noted that respondent smelled strongly of perfume. Respondent promised Lally that respondent would not drive her own car, but declined Lally's offer to call someone who could pick respondent up from the school. Lally's perception that respondent was under the influence of alcohol on this occasion is credible and persuasive.

7. On March 19, 2018, Lally had another similar interaction with respondent. Lally attempted to discuss a student with respondent, but found respondent "jumpy" and "difficult to follow." Her pupils also appeared to Lally to be unusually small. Lally's

perception that respondent was under the influence of an intoxicating substance on this occasion is credible and persuasive.

8. Lally had reported the interaction described in Finding 6 to the school's former principal, and reported the interaction described in Finding 7 to principal Darren Kawaii. In April 2018, a teacher also reported to Kawaii that respondent had smelled strongly of alcohol while respondent and the teacher were discussing students during the school day.

9. On May 15, 2018, respondent was late to school. Throughout the morning, several school staff members, including Lally, Kawaii, and speech and language pathologist Jamie Kronenberger observed that respondent seemed slow and confused, and made little to no effort to maintain order among her students.

10. Around 11:15 a.m., school psychologist Kieu Tang reported to Kawaii that Tang believed respondent to be under the influence of alcohol, based on both how respondent behaved and how she smelled. Lally made a similar report soon thereafter.

11. When respondent's students left her classroom for lunch, Kawaii went to the classroom and directed respondent to accompany him to a private office. He spoke there with respondent and Tang, and perceived for himself that respondent smelled of alcohol. He told respondent that he believed her to be under the influence of alcohol, which respondent denied. She then abruptly left the office, gathered her personal belongings from her classroom, and left the building.

12. Respondent had trouble finding her way from the school door to the sidewalk. Kawaii called to respondent as she left that if she attempted to drive her car, Kawaii would summon police to stop her from driving while intoxicated. Respondent answered that Kawaii should not worry about her, because "I'm never coming back."

13. Respondent did not return to school that afternoon, although she did return to complete the 2017–2018 school year.

14. Lally's and Kawaii's perceptions that respondent was under the influence of alcohol during the school day, at school, on May 15, 2018, are credible and persuasive.

CONFINING A STUDENT IN A STORAGE CLOSET

15. Respondent's classroom during the 2018–2019 school year included a large storage closet with a solid wood door and no window. On May 1, 2019, the closet had no working light inside. It held various classroom items including books, balls, and office supplies, piled on shelves and on the floor.

16. Late in the school day on May 1, 2019, respondent was the only adult in her classroom. Her students were working at their desks. Student J.R. left his desk and began disrupting the class.

17. Respondent grasped J.R. by the neck and pushed him into the storage closet. She went into the closet with J.R. briefly, and then exited the closet, leaving J.R. inside. Respondent used her foot or body to hold the door closed, preventing J.R. from leaving the closet. J.R. was alone inside the closet for several minutes. Students in the classroom could hear J.R. "banging," in an apparent bid for respondent to let him out of the closet. When the school day ended, respondent released J.R.

18. Several of J.R.'s classmates went to the school office right away to report having seen respondent put J.R. in the closet. Two of these classmates were in an after-school program at the school, and Lally interviewed them that afternoon about

the incident. Lally interviewed a third classmate, and J.R., the next morning. One of these classmates also testified credibly at the hearing.

19. J.R. has autism spectrum disorder, and his expressive communication skills in May 2019 were limited. Lally interviewed J.R. with Kronenberger's assistance. J.R. told Lally and Kronenberger that respondent had hurt his ear, and had hit him with an umbrella while they both were in the closet.

20. The San Francisco Unified School District placed respondent on leave the next morning (May 2, 2019). A few weeks later, respondent resigned her employment effective June 30, 2019; she remained on leave until then. The District reported respondent's resignation, while charges of professional misconduct were pending, to the Commission.

Criminal Convictions

21. On June 26, 2012, respondent was convicted in the Superior Court of California, County of San Francisco, of misdemeanor violations of Vehicle Code section 23152, subdivisions (a) (driving while under the influence of alcohol) and (b) (driving with a blood alcohol concentration of 0.08 percent or more). The court placed respondent on probation for three years, on terms including a requirement that respondent participate in a nine-month drinking driver program. The evidence did not establish additional facts regarding this crime, or whether respondent ever successfully completed her probation.

22. On July 29, 2013, respondent was convicted in the Superior Court of California, County of Marin, of misdemeanor violations of Vehicle Code section 14601.2 (driving while license under suspension) and section 23152, subdivision (b), in combination with section 23540 (driving with a blood alcohol concentration of 0.08

percent or more, within 10 years after a prior conviction for the same crime). The court placed respondent on probation for three years, on terms including a requirement to install an ignition interlock device in her car and to participate in an 18-month drinking driver program.

23. The crime for which respondent was convicted in July 2013 occurred on December 19, 2012, while respondent was on probation for the crime described in Finding 21. After drinking wine at a party, respondent drove, and drank more wine in her car. She pulled into a service station after sunset with her headlights off, and met a California Highway Patrol officer who was at the service station in his patrol car. After a short investigation, the CHP officer arrested respondent.

24. On April 3, 2015, the court issued a warrant for respondent's arrest, on the charge that she had violated the probation order summarized in Finding 22. The evidence did not establish whether respondent ever completed her probation.

25. On January 14, 2016, respondent was convicted in the Superior Court of California, County of Marin, of a misdemeanor violation of Vehicle Code section 14601.2, subdivisions (a) and (d)(2) (driving while license under suspension, within five years after a prior conviction for the same crime). The court placed respondent on probation for one year, on terms including a requirement that she not drive any vehicle without an ignition interlock device. The evidence did not establish additional facts regarding this crime, or whether respondent ever successfully completed her probation.

26. When respondent applied to renew her Specialist Instruction Credential in Special Education, as described above in Finding 2, the application asked her to disclose whether she had "ever been convicted of any felony or misdemeanor,"

excluding only “misdemeanor marijuana-related convictions that occurred” more than two years earlier. Respondent answered “N.” This denial was false, in light of the matters stated in Findings 21, 22, and 25.

Expert Testimony

27. Complainant presented expert testimony about respondent from David Kan, M.D. Dr. Kan is board-certified in psychiatry and in addiction medicine, and is in private practice emphasizing treatment and forensic analysis of substance use disorders. Dr. Kan testified about respondent at the hearing, basing his opinion solely on the documentary evidence complainant presented at the hearing but not on any in-person examination of respondent.

28. Dr. Kan characterized a substance use disorder as a mental illness involving repetitive, compulsive use of a mood- or cognition-altering substance despite negative consequences for the user. In Dr. Kan’s professional experience, some but by no means all people who commit a single instance of driving while under the influence of alcohol do so because they have alcohol use disorders. Multiple convictions for driving while under the influence of alcohol, however, usually indicate a severe alcohol use disorder. Dr. Kan also noted that most people with alcohol use disorders are employed, rather than unemployed, and neither drink alcohol during work nor work while intoxicated by alcohol. He believes that drinking alcohol on the job, or attempting to work in a professional setting while intoxicated by alcohol, also are behaviors that indicate a severe alcohol use disorder.

29. Although alcohol use disorders are relapsing and treatment-resistant, people do recover from these disorders, even when their disorders are severe. In Dr. Kan’s experience, such persons are rarely if ever able to use alcohol safely and

responsibly in moderation. Rather, complete abstinence from alcohol, with professional and peer support, is necessary for a person who has experienced severe alcohol use disorder.

30. Based on his review of the matters summarized in Findings 6 through 14 and 21 through 23, Dr. Kan considers respondent to have had a severe alcohol use disorder between 2012 and 2018. He believes further that if she still uses alcohol in any amount, or has not received treatment for her alcohol use disorder, respondent likely continues to have this disorder. This opinion is persuasive.

LEGAL CONCLUSIONS

1. For the Commission to deny respondent's application to renew her Specialist Instruction Credential in Special Education, a preponderance of evidence must establish cause for the Commission to deny the application. For the Commission to take adverse action against the credentials respondent still holds, clear and convincing evidence must demonstrate cause for that adverse action. The factual findings above rest on clear and convincing evidence.

Causes for Discipline, Existing Credentials

2. The Commission may suspend or revoke any credential or certificate if the holder has engaged in unprofessional conduct. (Ed. Code, § 44421.) Respondent's behavior as described in Findings 6 through 19 and 21 through 25 was unprofessional conduct.

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3. The Commission may suspend or revoke any credential or certificate if the holder has engaged in immoral conduct. (Ed. Code, § 44421.) Respondent's behavior as described in Findings 6 through 19 was immoral conduct.

4. The Commission may suspend or revoke any credential or certificate if the holder has demonstrated evident unfitness for service. (Ed. Code, § 44421.) As distinct from unprofessional conduct, evident unfitness for service "connotes a fixed character trait" rather than distinct actions or events. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) The matters stated in Findings 6 through 19 and 21 through 25 demonstrate respondent's evident unfitness for service.

5. The Commission may suspend or revoke any credential or certificate if the holder has engaged in any act that would have warranted denial of an application for a credential or certificate, including if the holder has an active substance use disorder. (Ed. Code, §§ 44421, 44345, subd. (c).) The matters stated in Findings 6 through 14, 21 through 23, and 27 through 30 demonstrate that respondent has an alcohol use disorder.

6. The Commission may suspend or revoke any credential or certificate if the holder has engaged in any act of moral turpitude. (Ed. Code, §§ 44421, 44345, subd. (e).) As described in Findings 6 through 19, respondent committed acts of moral turpitude.

Causes to Deny Renewal Application

7. The Commission may deny an application for any credential or certificate if the applicant is "addicted to the use of intoxicating beverages to excess." (Ed. Code,

§ 44345, subd. (c).) The matters stated in Findings 6 through 14, 21 through 23, and 27 through 30 demonstrate that respondent has an alcohol use disorder.

8. The Commission may deny an application for any credential or certificate if the applicant has engaged in any act of moral turpitude. (Ed. Code, § 44345, subd. (e).) As described in Findings 6 through 19, respondent committed acts of moral turpitude.

Disciplinary Considerations

9. The California Supreme Court has held that discipline on any ground stated in Education Code section 44421 may occur only if the evidence overall shows a clear relationship between the teacher's misconduct and his or her overall fitness and competence for teaching. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229.) Likewise, the Commission may deny a certificate application on any ground stated in Education Code section 44345 only if the circumstances reflect the applicant's "fitness to perform [the] duties for which the applicant is certificated." (Ed. Code, § 44345.) Relevant considerations include adverse impact on students and fellow teachers, the type of credential at issue, extenuating or aggravating circumstances, praiseworthiness or blameworthiness of the teacher's motives, likelihood of recurrence, and publicity or notoriety. (*Morrison*, 1 Cal.3d at pp. 229-230; Cal. Code Regs., tit. 5, § 80302.)

10. All of these relevant considerations militate in favor of revoking respondent's credentials. Her conduct, summarized in Findings 6 through 19, harmed her students and the school community. Her special education credentials (Finding 1) and elementary school special education assignment (Finding 5) placed her in a position of responsibility for especially vulnerable students, but as summarized in

Findings 15 through 19, respondent abused this position. The matters stated in Findings 27 through 30 show that respondent's misconduct is likely to recur; and the matters stated in Finding 26 underscore respondent's unreliability. Unless and until respondent successfully addresses the challenges described in Findings 27 through 30, student safety and public welfare require the Commission to prevent her from working as a credentialed educator.

ORDER

1. All credentials, certificates, and authorizations issued by the Commission on Teacher Credentialing to respondent Sheila Sammon Milosky are revoked.

2. The application by respondent Sheila Sammon Milosky for a Specialist Instruction Credential in Special Education is denied.

DATE: **12/16/2022**



JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings