

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

In the Matter of the Accusation Against:

APRIL SMITH, Respondent

Agency Case No. 2-351856481

OAH No. 2023051034

PROPOSED DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 16, 2024, from Sacramento, California.

Phillip L. Arthur, Deputy Attorney General, represented Mary Vixie Sandy, Ed.D. (complainant), Executive Director of the California Commission on Teacher Credentialing (Commission).

Lucy McAllister, Attorney at Law, represented April Smith (respondent), who was present throughout the hearing.

Evidence was received, the record was closed, and the parties submitted the matter for decision on January 16, 2024.

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 1, 2009, the Commission issued respondent a Clear Multiple Subject Teaching Credential, which will expire on July 1, 2024, unless renewed.

2. On September 17, 2001, the Commission issued respondent an Emergency Substitute Teaching Permit for Prospective Teachers. The permit expired on October 1, 2002.

3. On June 18, 2004, the Commission issued respondent an Emergency 30-Day Substitute Teaching Permit. The permit expired and was reissued at various times between July 2005 and November 2017.

4. On March 31, 2011, the Commission issued respondent a Child Development Site Supervisor Permit, which expired on April 1, 2016. The site supervisor permit was reissued on July 6, 2016, and expired on August 1, 2019.

5. On February 3, 2014, the Commission issued respondent a Short-Term Staff Permit, which expired on June 1, 2014. On March 27, 2017, the Commission issued respondent a Certificate of Clearance, which expired on April 1, 2022.

6. On August 7, 2017, the Commission issued respondent an Intern Multiple Subject Teaching Credential, which expired on September 1, 2020.

7. On July 15, 2020, the Commission issued respondent a Preliminary Multiple Subject Teaching Credential. The Preliminary Multiple Subject Teaching Credential was in full force and effect at all times relevant to the charges in the Accusation and will expire on August 1, 2025, unless renewed.

8. On April 27, 2023, complainant, acting solely in her official capacity, signed and thereafter filed an Accusation seeking to discipline respondent's credential based on her alleged unprofessional conduct, evident unfitness for service, immoral conduct, and moral turpitude. Specifically, complainant alleged that on February 16, 2022, while working as a transitional kindergarten (TK) teacher, respondent left a bag containing edible marijuana gummies in her classroom within students' reach. Respondent timely filed a Notice of Defense. This hearing followed.

Complainant's Evidence

9. As of February 2022, respondent worked as a TK teacher at Team Charter School (Team) in Stockton, California. After the school day ended, Marisa Brown, an After School Education and Safety (ASES) recreational leader, used respondent's classroom to supervise a group of first- and second-grade students.

10. On February 16, 2022, the regular school day ended at approximately 12:30 p.m. At approximately 12:45 p.m., Ms. Brown entered respondent's classroom with her ASES group. When she entered, she noticed a yellow bag on the floor under a whiteboard. She noted the bag seemed out of place, but she did not touch it, as she had instructions not to disturb any items in the host teachers' classrooms.

11. Shortly thereafter, a student in Ms. Brown's ASES group reported she found a bag in the classroom with marijuana gummies inside. Ms. Brown asked the student to show her. The student brought her the yellow bag. Ms. Brown inspected its contents and saw cartons with the label "THC" on them. (Tetrahydrocannabinol (THC) is the psychoactive component of marijuana.) Ms. Brown then brought the bag and its contents to the front office to alert Team's administration.

12. Ms. Brown typically supervised approximately 15 children in the ASES program. However, on February 16, 2022, another ASES leader called out sick, so Ms. Brown supervised closer to 30 children. She texted the other ASES leader to complain about how many students she had to supervise. To illustrate how crowded the classroom was, she took and sent a photograph of the students in the room. The yellow bag appears in the photograph.

13. After Ms. Brown notified Team's administration about the bag, the administrators investigated the issue. As part of their investigation, they asked Ms. Brown to write a memorandum summarizing her recollection of the events. On February 23, 2022, she wrote the following:

On Wednesday February 16th we came into the classroom and I had more kids than usual due to another staff member being out. I had around 30 children and was dealing with a lot of behaviors. I was consoling another child when a student [A.T.] comes up to me and said "teacher there's edibles in here." When she told me I disregarded it because she is not always the most reliable. After she said it again I asked her where and she bought me a yellow bag and when I looked inside it was little cartons and I wasn't sure what it was but the outside of the package said THC. So I immediately took the bag to Vanessa in the front and told her to handle it then I went back to my classroom.

14. With her written statement, Ms. Brown also sent Team's administrators the photo she had taken of the classroom, including the yellow bag. At hearing, Ms.

Brown testified consistently with her written statement. She specifically recalled seeing the yellow bag on the floor under the whiteboard when she and the students entered respondent's classroom. She did not touch the bag until after the student told her it contained marijuana gummies.

15. Guadalupe Perez is a human resources (HR) manager at Team. In early 2022, she was transitioning from an HR generalist to an HR manager. Part of her job duties in both positions involved handling teacher discipline. She is aware of Team's investigation and discipline of respondent in February and March 2022.

16. After Ms. Brown notified Team's administrator about finding the bag of marijuana gummies in respondent's classroom, Team put respondent on administrative leave and began an investigation. During the investigation, Ms. Perez interviewed respondent. Respondent admitted the bag of gummies was in her classroom and explained she left them in a storage locker. She acknowledged they should not have been on campus at all. Respondent expressed remorse and regret over her behavior, which Ms. Perez believed was sincere. Respondent further explained the gummies were for her mother and that the stress from dealing with her mother's severe medical condition contributed to her lack of judgment.

17. Ultimately, Team terminated respondent's employment on March 4, 2022, based on its "Drug-Free Workplace" policy. Ms. Perez noted respondent was an excellent and well-liked teacher. She opined "if [respondent] didn't do this, she'd probably still be working here," because she was "a great teacher."

Respondent's Evidence

18. Respondent testified at hearing. She started working with kids at a private preschool in 1996. She then earned her bachelor's degree in child development

and her teaching credential. She wanted to be a teacher since first grade because of the impact her teacher had on her. She has tried throughout her career to emulate the care and guidance she received as a young child.

19. Respondent's job at Team was her "dream come true." She loved working with four- and five-year-olds. She never received any discipline or negative employment evaluations. To the contrary, she routinely received positive feedback and praise about her teaching skills and demeanor.

20. Respondent has never used controlled substances. She saw her sister's use of controlled substances and how they negatively affected her life and the lives of her children. Respondent did not want that influence in her life. She almost never uses alcohol, and when she does drink, she does so socially and never to excess.

21. In November 2019, respondent's mother suffered a serious stroke. In addition to seeing her mother ill, the experience was stressful for respondent because her mother was the primary caregiver for respondent's young sons while she and her husband worked. In April 2020, her mother moved into respondent's house so respondent could care for her.

22. In late October 2021, respondent's husband was killed in a road-rage incident while picking up their five-year-old son from Team. Respondent received a call from the police and realized her husband's body was just outside the school where she worked. She went to get her son and was forced to see her husband "lying in the street with a gunshot wound to the head."

23. Respondent's husband's death had a sudden and strong impact on her life. In addition to grieving the death, she "lost the person [she] depended on for just about everything [and her] children lost their father." Her three sons began to

experience emotional and behavioral problems. Respondent became depressed, anxious, and paranoid. She began to develop digestive and sleep disturbances. She continued to work at Team, but altered her route so she would not have to pass the scene of the event.

24. In addition, respondent's mother was traumatized by the loss. She would "cry for long periods of time," often inconsolably. Her mother experienced depression and insomnia, which exacerbated her already weakened state. Respondent grew hopeless about how to help her mother. She discussed her situation with a friend, who suggested edible marijuana products might help respondent's mother sleep. Respondent was unfamiliar with where or how to buy such products, but her friend said she could buy them for her. Respondent felt increasingly desperate and agreed.

25. At approximately 11:00 a.m. on February 16, 2022, respondent's friend contacted her and said she was at the school to drop off the gummies. Respondent took them and put them in a storage locker near the back of her classroom. When her classes ended at approximately 12:30 p.m., she left the classroom to eat before a staff meeting at 1:00 p.m. It did not occur to her in the moment that she was leaving a marijuana product behind in a classroom that children in the ASES program would use that afternoon.

26. Respondent regrets her behavior. She knows now, and knew then, that drugs were never permitted on campus. She attributed her "negligent mistake" to the cumulative stress and trauma she was experiencing at the time. After her husband's death, she tried to take care of her children and her mother to soften their suffering. As a result, she neglected to take care of her own needs. As soon as Team administrators told her she had left the gummies in a classroom and that a student had found them, she recognized that she had put "the students and staff in jeopardy."

She noted, "As I reflect on this, I realize that I endangered my students and committed an irresponsible offense just by bringing the edibles onto the school grounds. There is no excuse for my choice, as even if I thought the edibles were in a safe location, clearly, they were not."

27. After respondent's termination, she realized her emotional state had caused her to risk a job and career she loved. She realized she was not coping with her grief and loss as well as she thought. She realized she needed help.

28. In June 2023, respondent began treating with Jerry Mermis, a licensed marriage and family therapist. Respondent treated with Mr. Mermis for several months, typically seeing him every other week. Mr. Mermis testified at hearing and wrote a report in January 2024 summarizing his work with respondent. In his opinion:

[Respondent] has demonstrated a solid understanding and effective implementation of the therapeutic tools of rational emotive behavioral therapy, as-well-as [*sic*] family systems concepts. [Respondent] reports and demonstrates she does not exhibit mental health symptoms, or clinically significant distress, currently. Other life stressors are no longer causing clinically significant distress.

29. Mr. Mermis has specialized training in substance use and addiction counseling. He has no concern that respondent has any history or risk of substance use problems. Instead, he believes she was genuinely trying to help her mother and exercised poor judgment in accepting and keeping the gummies on campus. During their sessions, he noted respondent took responsibility for her actions and did not deflect blame. They discussed the negative consequences that could have happened if

a child had ingested the marijuana products. They also discussed how respondent can avoid similar lapses of judgment in the future. As chronicled in Mr. Mermis's report, respondent acknowledged:

I realize now that I was not functioning effectively, and my decision making was extremely deteriorated. Bringing those edibles into the classroom, even to store, lacked rational judgement. I now deal with problems head on, and don't cut corners or run from them. Before starting therapy and other classes, I had not spent much time examining my thoughts and attitudes in an introspective way. I have gained a lot of personal insight that now helps me to respond to life's concerns with more resilience. For example, I have found a lot more patience in dealing with life since this incident. I now exercise regularly to keep my mind and body continually busy with positive energy. I volunteer to help others. I keep personal boundaries with friends [and] coworkers to ensure I am not put into a difficult situation. I continually review my own actions and decisions in every part of my life, to be thoroughly responsible in my decisions and actions. I want to ensure the safety of everyone in my life as much as possible. I now utilize alternative ways to manage stress, or anxiety, such as: regular exercise, mindfulness, meditation, deep breathing, humor, social support.

30. Mr. Mermis believes respondent's insight into her behavior and her genuine excitement for self-care and self-improvement situate her to continue teaching productively and to avoid similar misconduct in the future. In his opinion, she is better able to handle her stress and trauma because of the amount of time that has passed and because she has better tools to build boundaries and manage stressful situations without becoming desperate.

31. Sean Geddes, respondent's former brother-in-law, also testified at hearing and wrote a letter of support. Mr. Geddes used to be married to respondent's older sister. He has known respondent since she was in high school and interacts with her and her family regularly. In his experience, after respondent's husband's death, she "was putting her own feelings aside" so she could comfort others. He praised her for her openness about her termination and the reasons for it. He was shocked because, in the 31 years that he has known respondent, he has never seen her use alcohol or any controlled substance.

32. Mr. Geddes also praised respondent for seeking counseling and other help to address the problems underlying her misconduct at work. He fully supports respondent and believes she is "learning in counseling" to help deal with her husband's death.

33. In addition to treating with Mr. Mermis, respondent took several courses through Open Path Mental Health Education. Specifically, in 2023, she took a 12-hour course called Relationships 101, a six-hour course called Self Esteem 101, a three-hour course called Burnout Prevention, a 12-hour course called Communication Skills, a 12-hour course called Parenting 101, and a 12-hour course called Alcohol and Other Drugs. She also paid for hair follicle testing in June and December 2023 to show she was negative for all tested substances.

34. In August 2022, respondent returned to work as a TK teacher at Stockton Unified School District. She submitted her April 2023 employee evaluation, which showed she met or exceeded all employer expectations. She disclosed her termination from Team and the reason for it before she was hired. She is happy to be back at work with students and grateful for the second chance.

LETTERS OF SUPPORT

35. Respondent submitted three letters of support from former supervisors at Team. All three individuals wrote their letters after respondent's termination. The Team Assistant Principal wrote, in relevant part, "It is with great pleasure that I would highly recommend [respondent] for a teaching position" and "[respondent] accomplishes all these tasks with great initiative and with a positive attitude. I recommend [respondent] to you without reservation." The Team Director of Education wrote, in relevant part, "[respondent] was very personable and made all her students and parents feel like they were a part of her family. She went out of her way to ensure all students had an enjoyable time in her class. She often showed up early or stayed late to make sure her class was ready for her little learners." She added, "[respondent] will be an asset to any employer." The Team Kindergarten-Grade Level Lead wrote, in relevant part, "As a fellow teacher, I am a witness to the remarkable qualities of [respondent]" and "I am happy to recommend her for a teaching position. I am confident that she would contribute effectively to your school."

36. Respondent also submitted a letter of support from a lifelong friend. Her friend is also a teacher and described respondent as "a valuable asset to the teaching community." She noted that, during their private conversations, respondent expressed she "completely regrets the incident that happened with the student [and] has been tearfully apologetic." Respondent's friend also noted that after knowing respondent

for 35 years, she has never seen her use any illegal drugs because “[t]his is not a recreation that she chooses to take part in.”

Analysis

37. The facts in this case are mostly undisputed. The parties agree that on February 16, 2022, respondent had edible marijuana gummies delivered to her TK classroom, where she left them unattended and accessible to first- and second-grade students using her classroom through the ASES program. The parties also agree a student found the bag of gummies and alerted Ms. Brown about them.

38. The parties disagree about where respondent left the gummies when she exited the classroom. Respondent asserted she left them in a storage locker in the classroom. Ms. Brown asserted she saw the bag containing the gummies in plain view under a whiteboard when she and the students first entered the classroom. Both versions of events were credible and are reconcilable with one another.

39. Respondent credibly testified she left the gummies in a storage unit when she exited the classroom at approximately 12:30 p.m. However, she acknowledged the classroom and storage unit were both unlocked. Ms. Brown credibly testified the gummies were in the middle of the classroom when she entered at approximately 12:45 p.m. Given that both the classroom and the storage unit were unlocked and accessible, someone could have moved the bag between 12:30 and 12:45. More importantly, it is unnecessary to resolve this conflict because whether respondent left the gummies in a storage unit or in the classroom is immaterial to her wrongdoing. She clearly left the gummies in a place where students could access them.

40. Complainant argued leaving the gummies in the middle of the room demonstrated respondent's indifference to the consequences of her actions, which is an aggravating factor. (See Cal. Code Regs., tit. 5, § 80300, subd. (b)(5).) That argument is rejected. Although respondent possessed marijuana gummies on school grounds and left them unattended in her classroom, those actions alone do not constitute indifference toward the consequences of her conduct. To the contrary, respondent immediately accepted responsibility and credibly explained that she appreciates and understands how her actions endangered the students and her fellow staff members. Respondent's conduct was negligent, but she was not indifferent to its potential consequences.

***MORRISON* FACTORS**

41. A teaching credential cannot be disciplined for immoral conduct, unprofessional conduct, or conduct involving moral turpitude "unless that conduct indicates that the [educator] is unfit to teach." (*Morrison v. State Bd. of Education* (1969) 1 Cal.3d 214, 229.) The *Morrison* Court outlined factors to consider when determining whether an educator's conduct demonstrates unfitness to teach, and the Commission adopted those factors by enacting California Code of Regulations, title 5, section 80302.

Likelihood of Adverse Effect on Students or Fellow Teachers

42. "A teacher [. . .] in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the children coming under [her] care and protection." (*Bd. of Education v. Swan* (1953) 41 Cal.2d 546, 552.) Respondent's conduct reflected poorly on her individually

and on teachers generally. Moreover, respondent's conduct demonstrated a lapse in sound judgment.

43. Because students are impressionable and may try to emulate the adults in their lives, including teachers, it is essential that an educator's behavior be beyond reproach. Respondent's conduct was contrary to the wellbeing of students and portrayed both her and the teaching profession negatively.

Type of Credential Held

44. Respondent's credential authorizes her to teach in a variety of school settings to students in a wide age range. Therefore, it is even more imperative that she exemplify the type of behavior society wants emulated by students and possess sound judgment. Respondent's conduct was dangerous to students of any age, but even more so for those in the early elementary grades.

Extenuating or Aggravating Circumstances

45. Neither the Education Code nor the regulations adopted by the Commission specify what constitutes "extenuating circumstances." However, the California Code of Regulations defines "mitigating factor" as "an event or circumstance which demonstrates that the public, schoolchildren and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever." (Cal. Code Regs., tit. 5, § 80300, subd. (m).) The definition includes seven examples:

(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 or applicant which substantially contributed to the misconduct; provided that the difficulties were not the product of illegal conduct by the credential holder or applicant, such as illegal drug or substance abuse; and further provided that the credential holder or applicant has established through clear and convincing evidence that he or she no longer has such difficulties;

(4) a demonstration of good character of the applicant or holder attested to by references from the educational community or the general community from individuals aware of the extent of the applicant's or holder's misconduct;

(5) objective action taken by the applicant or holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing which is designed to timely make amends for the consequences of the misconduct;

(6) the proximity or remoteness in time relative to the seriousness of the misconduct; or

(7) the nature and extent of subsequent rehabilitation.

46. Here, the evidence established the presence of all seven mitigating factors. Respondent has no record of prior adverse action, and her present misconduct is not the “most serious” kind of misconduct in which a teacher can engage. Neither the student who found the gummies nor anyone else was harmed. Mr. Mermis, Mr. Geddes, respondent’s childhood friend, and three former supervisors all attested to respondent’s good character before and after the incident. Respondent demonstrated sincere remorse, recognized her wrongdoing, and underwent therapy and self-guided training to gain insight into how she could let her judgment lapse so egregiously. The events in question occurred approximately two years ago. Since then, respondent has gained new employment as a TK teacher at a local public school.

47. Most significantly, at the time of the misconduct, respondent was dealing with multiple emotional difficulties that contributed to her behavior. Specifically, her husband’s tragic death and her mother’s intense reaction to it caused respondent to feel justifiably desperate for help. When her friend suggested she could buy edible marijuana products to help respondent’s mother sleep, respondent agreed. She did not know at the time that her friend would drop the gummies off at school. When her friend arrived, respondent credibly explained how she allowed her good judgment to lapse and allow the gummies in the classroom.

48. The Commission’s regulations also define “aggravating factor” as “an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession.” (Cal. Code Regs., tit. 5, § 80300, subd. (b).) The definition includes six examples:

- (1) a prior record of adverse action including the nature and extent of that record;

- (2) that the misconduct evidences multiple acts of wrongdoing or demonstrate a pattern of misconduct;
- (3) that the misconduct was surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators;
- (4) that the misconduct significantly harmed a child entrusted to the care of a credential holder or applicant, significantly harmed the public or the educational system;
- (5) that the holder or applicant demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders; or
- (6) that the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source.

49. Notably, none of these aggravating factors are present in this case. Respondent has taught for more than 20 years with no prior employer or credential discipline. The wrongdoing in question is an isolated incident. Respondent's conduct did not involve bad faith or dishonesty. Although a child found the bag containing the gummies, neither she nor anyone else was harmed. As explained above, respondent did not demonstrate indifference to the consequences of her actions, but rather accepted responsibility, acknowledged the danger, and underwent significant rehabilitative efforts to ensure a similar lapse of judgment does not recur. Finally, respondent had no prior warnings or reprimands.

Praiseworthiness or Blameworthiness of the Motives Resulting in the Misconduct

50. Although respondent bears the sole blame for her misconduct, her underlying motivation—attempting to help relieve her mother’s suffering and insomnia following a traumatic event—was altruistic. Respondent credibly testified she has never used controlled substances. She also credibly explained the circumstances under which her friend delivered the gummies to the school.

Likelihood of Recurrence

51. Respondent demonstrated significant insight into both the severity and reasons for her misconduct. She accepted full responsibility not only through words, but with actions. She attended therapy and took several hours of educational courses to gain insight into her conduct and learn tools to avoid becoming similarly overwhelmed in the future.

52. “Fully acknowledging the wrongfulness of [one’s] actions is an essential step towards rehabilitation.” (*Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940.) Respondent has acknowledged the wrongfulness of her actions. More significantly, her attitude has changed from that which existed at the time of her misconduct, which is “arguably the most important [factor] in predicting future conduct.” (*Singh v. Davi* (2012) 211 Cal.App.4th 141, 149.) Now, she does not try to manage all her stress privately and independently, but rather seeks and embraces help. She proved through her rehabilitation evidence that similar misconduct is extraordinarily unlikely to recur.

Publicity or Notoriety of Misconduct

53. Apart from the student involved and personnel at Team, there was no evidence that anyone else ever learned of respondent's misconduct. Significantly, she secured a TK teaching position at a local public school even after she disclosed the events, and her former supervisors wrote positive letters of support after the events.

Possible Chilling Effect on Constitutional Rights of Others

54. Neither party presented evidence about the possibility of a chilling effect on any person's constitutional rights. Given the nature of the allegations, such an effect is unlikely.

CAUSES FOR DISCIPLINE

55. As discussed above, the evidence established respondent engaged in the misconduct alleged in the Accusation. Such conduct was unprofessional because it violated the rules or ethical code of the teaching profession and was unbecoming of a teacher in good standing. (*Bd. of Education v. Swan* (1953) 41 Cal.2d 546, 553; quoting, 66 Corpus Juris, p. 55.)

56. However, respondent's conduct was not immoral and did not involve moral turpitude. In describing what constitutes "immoral conduct" within the context of the Education Code, a California appeals court noted:

The term "immoral" 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 as 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 San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811, (quoting *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740.))

57. Respondent's conduct did not indicate corruption, indecency, depravity, or dissoluteness. Nor did her conduct show a "moral indifference to the opinions of respectable members of the community" or an "inconsiderate attitude toward good order and the public welfare." Rather, in her desperation to help her mother, she exercised poor judgment that caused marijuana gummies to be in her classroom on one occasion for approximately two hours. When considering all the circumstances, such conduct, although unprofessional, is not immoral.

58. Finally, respondent's conduct does not demonstrate her evident unfitness to teach. As discussed above in relation to the *Morrison* factors, although respondent's misconduct was serious, it was also isolated and did not lead to harm. Moreover, significant extenuating circumstances and mitigating factors, and respondent's extensive efforts to address those circumstances and factors, make it highly unlikely she will engage in similar misconduct in the future. When considering all the evidence, complainant did not prove respondent's misconduct makes her unfit to teach.

APPROPRIATE DISCIPLINE

59. Complainant proved there is cause to discipline respondent for unprofessional conduct. Such discipline may consist of "a private admonition, or public

reproval of a credential holder, or the suspension or revocation of a credential.” (Ed. Code, § 44000.5.) For unprofessional conduct, the Commission “shall privately admonish, publicly reprove, revoke or suspend” the credential in question. (Ed. Code, § 44421.) When determining what level of discipline to impose, the Commission should consider the aggravating and mitigating factors previously identified. (Cal. Code Regs., tit. 5, § 80300, subds. (b), (m).)

60. As discussed above, all the mitigating factors—and none of the aggravating factors—are present. Consequently, suspending or revoking respondent’s credential is unwarranted and would be unduly punitive. The purpose of an administrative disciplinary action is not to punish the licensee for her misconduct, but rather to ensure she does not exercise her license privileges in derogation of the public interest. (*Camacho v. Youde* (1979) 95 Cal. App. 3d 161, 164.)

61. Instead, the appropriate discipline is to privately admonish respondent. Such private admonishment serves the interests of public protection because it will constitute an “adverse action” and thus can be considered as prior discipline in the event respondent engages in future misconduct. Furthermore, a private admonishment balances the Commission’s interest in regulating its licensees with consideration of the significant mitigating factors present here.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving the existence of grounds for disciplining respondent’s credentials and must do so by clear and convincing evidence to a reasonable certainty. (*Daniels v. Dept. of Motor Vehicles* (1983) 33 Cal.3d 532, 536 [“When an administrative agency initiates an action to suspend or revoke a license, the

burden of proving the facts necessary to support the action rests with the agency making the allegation”]; *Gardener v. Comm’n. on Professional Competence* (1985) 164 Cal.App.3d 1036, 1039-1040 [recognizing that the clear and convincing evidence standard applies to proceedings to discipline a teacher’s credential, whereas the lesser preponderance of the evidence standard applies to proceedings to dismiss a teacher from particular employment].) “The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a high probability [citations].” (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.

2. The Commission may discipline a credential based on the holder’s unprofessional conduct. (Ed. Code, § 44421.) As discussed above, complainant proved by clear and convincing evidence that respondent engaged in unprofessional conduct. Cause therefore exists to discipline her credential for unprofessional conduct pursuant to Education Code section 44421.

3. The Commission may discipline a credential based on the holder’s evident unfitness for service. (Ed. Code, § 44421.) As discussed above, complainant did not prove by clear and convincing evidence that respondent demonstrated evident unfitness for service. Cause therefore does not exist to discipline her credential for evident unfitness for service pursuant to Education Code section 44421.

4. The Commission may discipline a credential based on the holder’s immoral conduct. (Ed. Code, § 44421.) As discussed above, complainant did not prove by clear and convincing evidence that respondent engaged in immoral conduct. Cause

therefore does not exist to discipline her credential for immoral conduct pursuant to Education Code section 44421.

5. The Commission may discipline a credential "for any cause that would have warranted the denial of an application for a credential or the renewal thereof." (Ed. Code, § 44421.) An application for a credential may be denied if the applicant "has committed any act involving moral turpitude." (Ed. Code, § 44345, subd. (e).) As discussed above, complainant did not prove by clear and convincing evidence that respondent committed an act involving moral turpitude. Cause therefore does not exist to discipline her credential for committing an act involving moral turpitude pursuant to Education Code sections 44421 and 44345, subdivision (e).

6. Discipline for unprofessional conduct can consist of private admonishment, public reproof, suspension of the credential, or revocation of the credential. (Ed. Code, § 44421.) As discussed above, the appropriate discipline in this case is a private admonishment.

ORDER

Respondent April Smith's Preliminary Multiple Subject Teaching Credential is privately admonished for unprofessional conduct, pursuant to Education Code section 44421.

Pursuant to Education Code section 44438, the private admonition shall be a warning, in writing, to respondent that states in ordinary and concise language the act or omission of respondent and further states that repetition of that act or omission may result in denial, suspension, or revocation of the credential. The private admonition shall be included in respondent's file, maintained by the Commission.

Respondent's employer at the time of admonition shall receive a copy of the admonition and shall not make such copy accessible or disclose the contents thereof, unless the applicant or credential holder consents, in writing, thereto. The private admonition is deemed a personnel record within the meaning of section 7927.700 of the Government Code. The Commission and respondent's employer shall expunge all records pertaining to the private admonition maintained in her files at the expiration of three years, so long as there is no recurrence of such an offense.

DATE: February 16, 2024


Sean Gavin (Feb 16, 2024 13:52 PST)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings