

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

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

CHARLES H. SO, Respondent.

Case No. 1-965417194

OAH No. 2022050538

PROPOSED DECISION

Administrative Law Judge Sarah Sandford-Smith, State of California, Office of Administrative Hearings, heard this matter on August 25, 2022, by videoconference.

Deputy Attorney General Timothy McDonough represented Mary Vixie Sandy, Ed.D., Executive Director of the Commission on Teacher Credentialing, State of California.

Respondent Charles H. So represented himself and was present throughout the hearing.

The record was closed and the matter was submitted for decision on August 25, 2022.

FACTUAL FINDINGS

1. Mary Vixie Sandy, Ed.D., made the accusation and statement of issues solely in her capacity as the Executive Director of the California Commission on Teacher Credentialing (Commission).

2. The Commission is responsible for issuing teaching credentials, including Certificates of Clearance and 30-Day Substitute Permits.

3. Respondent Charles H. So holds the following:

a) A Preliminary Single Subject Teaching Credential with an authorization in English, issued in 2018, authorizing respondent to teach English to students in grades 12 and below, and in classes organized primarily for adults.

b) A English learner authorization, issued in 2018, authorizing respondent to provide English language development to English learners.

4. Respondent formerly held the following:

a) A Certificate of Clearance¹, issued on November 4, 2015, which expired on December 1, 2020.

¹ The Certificate of Clearance is a document issued by the Commission to an individual who has completed the Commission's background process, including submission of fingerprints, and who has been deemed to meet the personal qualifications necessary for a teaching credential. (Cal. Code Regs., tit. 5, § 80028.)

b) A 30-Day Substitute Teaching Permit, issued on May 25, 2016, which expired on June 1, 2017.

c) A 30-Day Substitute Teaching Permit, issued on July 5, 2017, which expired on August 1, 2018.

d) A 30-Day Substitute Teaching Permit, issued on August 1, 2018 which expired on August 1, 2019.

5. On November 15, 2020, respondent submitted an application for a Certificate of Clearance. The application was submitted under penalty of perjury.

6. On December 7, 2020, respondent submitted an application for a 30-Day Substitute Teaching Permit. The application was submitted under penalty of perjury.

7. On May 28, 2021, the Commission notified respondent that the Committee of Credentials found probable cause to recommend revocation of his teaching credential and all other certification documents, and to recommend denial of respondent's applications, based on respondent's possession of an unlocked, loaded firearm in his classroom on August 29, 2018.

8. Respondent timely requested an administrative hearing.

Respondent's Criminal Conduct

9. On October 23, 2018, respondent was charged in the Superior Court of California, County of Santa Clara, with violating Penal Code section 626.9, subdivision (b) (possession of a firearm on school grounds), a felony. On August 12, 2020, the charge was dismissed after respondent successfully completed a court-ordered diversion program available to military veterans.

10. The incident underlying the criminal charge against respondent occurred on August 29, 2018. Two police officers entered Chaboya Middle School, where respondent was working as a middle school teacher, to arrest respondent in connection with his involvement in a February 2018 road rage incident. The officers conducted a search incident to respondent's arrest and discovered an unsecured, loaded semi-automatic handgun in respondent's satchel near his desk.

Additional Evidence

11. At hearing, respondent accepted responsibility for his misconduct.

12. Respondent explained that he is a combat veteran who suffers from post-traumatic stress disorder (PTSD), after his deployment during the surge in Iraq. Respondent's PTSD manifests itself through anger and hypervigilance. On February 21, 2018, respondent was involved in a road rage incident in which he was not able to control his anger. Respondent honked at a car, and in response, the individual driving the car directed a racial slur towards respondent. Respondent followed the individual and confronted him, verbally and physically, after the individual parked and exited his car.

13. Respondent started working as a middle school teacher at Chaboya Middle School, in the Evergreen School District, at the start of the 2018-2019 school year. He explained that he was not in the right state of mind at that time due to his untreated PTSD. Respondent was overwhelmed by stories of classroom shootings, and believed that if he had a gun ready to go, he would be safe and could protect his students. At hearing, respondent acknowledged that he made a grave mistake, and that his actions could have had tragic consequences.

14. The Evergreen School District asked respondent to resign from his teaching position after the August 29, 2018, incident. Respondent resigned from the school district effective December 27, 2018, and apologized to the District for his conduct.

15. The criminal case relating to respondent's possession of a firearm on school property was resolved by way of a two-year diversion program for military veterans. As part of the diversion program, respondent participated in counseling and therapy, and met weekly with appointed administrators from the Veterans Treatment Court to review respondent's progress.

16. Through his therapy and counseling, respondent acquired strategies to manage his anger and hypervigilance. Respondent learned de-escalation skills and how to practice mindfulness, to maintain an even keel. After respondent successfully completed the diversion program in 2020, he stopped going to formal counseling or therapy, but continued to meet with his therapy and counseling cohorts on an informal basis.

17. Respondent explained that the most important thing he learned through his therapy and counseling is that he must be aware of his PTSD and work on himself daily. Respondent discussed the importance of having people to speak with regarding what he experienced during his deployment and how those experiences affect his everyday life. Respondent's support system includes his girlfriend, the friends he met during his time in the army, and the veterans he met through his diversion program.

18. Respondent served in the United States Army from 2005 through 2009, when he was honorably discharged. Respondent spent approximately 15 months deployed overseas in Iraq. During respondent's military service, he earned

commendations for his bravery and roles in combat missions and patrols, and for his assistance in training Iraqi police.

19. After respondent was discharged from the Army, he immediately started working at Starbucks, where he was employed for approximately one year. Respondent then attended Foothill Community College, and subsequently transferred to San Jose State University. Respondent graduated from San Jose State University with an English major. After respondent resigned from his position with the Evergreen School District, respondent worked for a short time for the Department of Defense, in the Human Resources Division. Respondent subsequently took a position as a caseworker with Jobworkers of America, an organization that helps veterans find jobs and housing. As of the date of the hearing, respondent continued to be employed by Jobworkers of America.

20. Respondent wants to return to teaching because he loves working with youths. He wants to help children develop and believes he could be a good role model. Ideally, respondent would like to work at a continuation school, to serve students who are less privileged and have difficulty attending regular high schools.

LEGAL CONCLUSIONS

1. Education Code section 44421 authorizes the Commission to discipline a teaching credential for "immoral or unprofessional conduct." Education Code sections 44421 and 44345², subdivision (e), authorize the Commission to discipline a teaching

² At hearing, complainant amended the accusation and statement of charges to correct two citations to the Education Code. In its "Third Cause for Discipline" and

credential, or deny an application for a Certificate of Clearance and a 30-Day Substitute Teaching Permit, for the commission of an act of moral turpitude.

2. The standard of proof applied in a hearing to discipline a teaching credential is clear and convincing evidence, and the burden is on the complainant. (*Cornell v. Reilly* (1954) 127 Cal.App.2d 178, 183-184.) The standard of proof applied in a hearing to deny an application for a Certificate of Clearance and a 30-Day Substitute Teaching Permit is a preponderance of the evidence, and the burden is on respondent. (*Martin v. Alcoholic Beverage Control Appeals Bd.* (1959) 52 Cal.2d 238; Gov. Code, § 11504; Evid. Code, §§ 115, 500.)

First Cause for Discipline (Immoral Conduct) and Second Cause for Discipline (Unprofessional Conduct)

3. Immoral conduct is "hostile to the welfare of the general public and contrary to good morals." It includes "shameless conduct showing moral indifference to the opinions of respectable members of the community" and "an inconsiderate attitude toward good order and the public welfare." (*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811.) "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 of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553.)

4. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, the California Supreme Court held that for purposes of imposing discipline on a teacher's credential,

"First Cause For Denial of Credential" sections, the correct citations are to Education Code section 44345, subdivision (e), not Education Code section 44325, subdivision (e).

"immoral conduct" and "unprofessional conduct" must be limited to conduct indicating that a teacher is "unfit to teach." The factors relevant to determining whether a teacher's conduct indicates unfitness to teach, are: "the likelihood that the conduct may have adversely affected students or fellow teachers, the degree of such adversity anticipated, the proximity or remoteness in time of the conduct, the type of teaching certificate held by the party involved, the extenuating or aggravating circumstances, if any, surrounding the conduct, the praiseworthiness or blameworthiness of the motives resulting in the conduct, the likelihood of the recurrence of the questioned conduct, and the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers." (*Morrison, supra*, at pp. 229-230.) The California Supreme Court later added "the notoriety and publicity accorded a teacher's conduct" as an additional factor to consider. (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 701, fn. 5.) Only the relevant *Morrison* factors need to be analyzed in any particular matter. (*Morrison, supra*, at p. 229.) Such factors are also set forth in California Code of Regulations, title 5, section 80302.

5. Pursuant to California Code of Regulations, title 5, section 80300, subdivision (b), aggravating factors include: that the misconduct evidences multiple acts of wrongdoing or a pattern of misconduct; that the misconduct was surrounded by or followed by bad faith or dishonesty; that the misconduct significantly harmed a child or the public or the educational system; that the individual demonstrated indifference towards the consequences of the misconduct; and that the individual had prior notice, warnings or reprimands for similar conduct.

6. Pursuant to California Code of Regulations, title 5, section 80300, subdivision (m), mitigating factors include: absence of a prior record of adverse action

over many years of educational service coupled with misconduct that is not deemed most serious; lack of harm to the object of the misconduct; emotional or physical difficulties suffered by the individual; a demonstration of good character attested to by references; actions taken by the individual demonstrating remorse and recognition of the misconduct; and the nature and extent of subsequent rehabilitation.

7. Cause for discipline based on immoral conduct was established in light of the matters set forth in Factual Findings 9-10. Bringing an unlocked, loaded gun into a middle-school classroom is hostile to the welfare of the general public and contrary to good morals, and evidences a reckless disregard for life. When analyzed against the *Morrison* factors, such conduct indicates unfitness to teach. The likelihood that respondent's conduct may have adversely affected students is high, and the consequences of such conduct could have been tragic. Moreover, respondent's conduct reflected complete indifference to the safety of his students and colleagues and contains no elements of praiseworthiness.

8. Cause for discipline based on unprofessional conduct also was established in light of the matters set forth in Factual Findings 9-10. Respondent's conduct is contrary to the rules and standards of the teaching profession (and is conduct that is criminal under Penal Code section 626.9, subdivision (b)). As set forth in Legal Conclusion 7, when analyzed against the *Morrison* factors, such conduct indicates unfitness to teach.

Third Cause for Discipline and First Cause for Denial of Credential (Moral Turpitude)

9. Moral turpitude is conduct involving acts of "baseless, vileness or depravity in the private and social duties which a man owes to his fellow men, or to

society in general, contrary to accepted customary rule of right and duty between man and man." (*Yakov v. Board of Medical Examiners* (1968) 68 Cal.3d 67, 73.)

10. Cause for discipline and for denial of respondent's application based on conduct involving moral turpitude was established in light of the matters set forth in Factual Findings 9-10. Respondent's act of bringing an unlocked, loaded firearm to a school classroom, which he left unsecured near his desk, is an extreme departure from societal norms. As set forth in Legal Conclusion 7, when analyzed against the *Morrison* factors, such conduct indicates unfitness to teach.

Disciplinary Considerations

11. Respondent was genuine in his desire to serve his community, whether as a teacher or in some other capacity. Although the matters stated in Factual Findings 11, 13, 14, 16 and 17 show remorse and insight, the matters stated in Factual Finding 16 also show that respondent has not continued treatment that might lessen the likelihood that his misconduct will recur.

12. Respondent's evidence of rehabilitation is insufficient to overcome the seriousness of his conduct. In light of the matters set forth in Factual Findings 9-10, and Legal Conclusions 7, 8, and 10, protection of the public requires revocation of all credentials, certificates, and authorizations issued to respondent. Additionally, it would be against the public interest to grant respondent's applications for a Certificate of Clearance and a 30-Day Substitute Teaching Permit.

ORDER

1. All credentials, certificates, and authorizations issued to respondent Charles H. So are revoked.
2. Respondent Charles H. So's application for a Certificate of Clearance is denied.
3. Respondent Charles H. So's application for a 30-Day Substitute Teaching Permit is denied.

DATE: 09/12/2022

Sarah Sandford-Smith

SARAH SANDFORD-SMITH

Administrative Law Judge

Office of Administrative Hearings