

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

In the Matter of the Statement of Issues Against:

CHARLES DROUAILLET, Respondent

Case No. I-992849425

OAH No. 2021070560

PROPOSED DECISION

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on January 20, 2022, remotely utilizing the Microsoft Teams application.

Michael M. Karimi, Deputy Attorney General, Department of Justice, State of California, represented complainant, Mary Dixie Sandy, Ed.D., Executive Director, California Commission on Teacher Credentialing (Commission).

Charles Drouaillet, respondent, represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 20, 2022.

FACTUAL FINDINGS

Background

1. The Commission is responsible for the credentialing of public school teachers, including issuing credentials and taking adverse action¹ against applicants and credential holders.

2. On October 16, 2018, the Commission received respondent's application for a Career Technical Education Teaching Credential. Respondent disclosed that he had suffered a misdemeanor conviction for alcohol-related reckless driving (Veh. Code, § 23103.5), and a misdemeanor conviction for dissuading a witness (Pen. Code, § 136.1, subd. (b)(2)).

3. At its September 16 through 18, 2020, meeting, the Commission's Committee of Credentials (Committee) found probable cause to recommend the denial of respondent's application. At its November 18 through 20, 2020, meeting, the Committee reconsidered respondent's application and recommended to sustain its previous action. Respondent requested an administrative hearing.

4. On May 20, 2021, complainant filed the statement of issues against respondent alleging that the conduct underlying his convictions constituted acts of

¹ An "adverse action" means the denial of an application for a credential, a private admonition, or public reproof of a credential holder, or the suspension or revocation of a credential. (Ed. Code, § 44000.5.)

moral turpitude indicating unfitness to teach. Complainant requested the denial of respondent's application.

Respondent's 2016 Conviction for Wet Reckless

5. On April 25, 2016, in the Superior Court of California, County of Los Angeles, in Case No. 5R105364, respondent was convicted following his plea of nolo contendere for violating Vehicle Code section 23103.5, alcohol-related reckless driving ("wet reckless"), a misdemeanor, which was added to the complaint by interlineation. The original charges of driving under the influence (DUI) and driving with an expired license were dismissed pursuant to a plea agreement. Respondent was placed on 36 months' summary probation, under terms and conditions that included a sentence of one day in county jail with a credit of 1 day for time served, pay fines and fees, and complete a three-month first offender alcohol program and the MADD Victim Impact Program.

6. The circumstances of respondent's wet and reckless conviction are found in a report prepared by the California Highway Patrol (CHP), which was admitted pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448.² On September 26, 2015, officers

² In *Lake*, the California Supreme Court concluded that direct observations memorialized in a police officer's report were admissible under Evidence Code section 1280, the public employee records exception to the hearsay rule, and were sufficient to support a factual finding. The court further concluded that admissions by a party memorialized in such a report were admissible under Evidence Code section 1220 and were sufficient to support a factual finding. Citing Government Code section 11513, the court held that other hearsay statements set forth in the police officer's report

observed a vehicle crossing over lanes and drifting into the right shoulder of the highway. During an enforcement stop, the officers detected a moderate odor of alcohol emitting from respondent who had bloodshot eyes and admitted to consuming three 12-ounce cans of beer before driving. A preliminary alcohol screening (PAS) test measured respondent's blood alcohol concentration (BAC) at 0.096 and 0.098 percent. Respondent was arrested for DUI.

Respondent's 2017 Conviction for Dissuading a Witness

7. On June 19, 2017, in the Superior Court of California, County of Riverside, in Case No. RIM1608313, respondent was convicted following his guilty plea for violating Penal Code section 136.1, subdivision (b)(2), dissuading a witness, a misdemeanor. Respondent was ordered to pay a court operations assessment fee of \$40, a conviction assessment fee of \$30, and pay a restitution fine of \$150. The conviction was expunged on September 19, 2019, pursuant to Penal Code section 1203.4a, whereby the conviction was set aside, a plea of not guilty was entered, and the case was ordered dismissed.

8. The only evidence submitted regarding the circumstances of respondent's conviction for dissuading a witness are found in a declaration prepared by Investigator Ronald Braasch with the Riverside County District Attorney's Office, which was admitted pursuant to *Lake v. Reed*. Inv. Braasch's declaration reported he was assigned to investigate a witness who was being dissuaded to change her account

could be used to supplement or explain other evidence, but they were not sufficient, by themselves, to support a factual finding, unless the hearsay evidence would be admissible over objection in civil actions.

of a crime. The witness was the victim in the case. Inv. Braasch's declaration was in support of an arrest warrant for the victim's adoptive mother – not respondent. The suspect was the victim's adoptive father, since her birth, and he was being investigated for an allegation of sexual assault of the victim. Respondent is the victim's brother. Due to the arrest of her adoptive father, the victim had been placed in the custody of respondent. The victim reported that respondent and her adoptive mother told her to tell her adoptive father's defense attorney that she was "on drugs, bi-polar, dreaming and hallucinating about being molested." Respondent brought her to speak with the defense attorney. However, the victim told the district attorney that she lied to the defense attorney. The victim also stated respondent would only let her go to a friend's house if she told a defense investigator that her mind was "foggy from using drugs and she was bi-polar," but she told the truth, which was that she was molested by her adoptive father.

Respondent's Testimony

9. Respondent's testimony is summarized as follows: Respondent knows his father did something inappropriate with his adopted sister. He does not think his father is innocent because "something obviously happened." His father was convicted of five counts of lewd acts upon a child under 14 years of age, and he is in prison. His adopted sister was adopted by their parents when she was two years old. When the allegations were made against his father, his adopted sister was placed in his custody, at her request. She was 16 or 17 years old when she lived with respondent. She was enrolled in an extended school program and respondent helped her with homework, provided her food and shelter, and she came to him for social and emotional support. They had a good relationship, but she never wanted to talk about the situation with their father, and he understood. At some point, his adopted sister told him she wanted

to speak with their father's defense attorney. Respondent testified, "I'm not a therapist . . . I was hanging on this rollercoaster . . . so when she said she wanted to talk to our father's attorney, I was okay with it." It was a very emotional time for his entire family, and his adoptive sister was going through "a lot of emotional ups and downs." He told her "to do what she needed to do when she was ready and in her heart." He thought it was reasonable that he had questioned some of her details of the allegations because she had been hanging out with the "wrong friends" and their mother had caught her with cigarettes, blunts, and pills. When it came time for the trial, his adopted sister told the district attorney that he and his mother told her "things," and this is something that he regrets. The pain of his adopted sister tears him up every day. The whole situation was traumatic for him and he got caught up.

10. Respondent has custody of his daughter and he raised her on his own. She is now 18 years old. His daughter still hangs out with his adopted sister.

11. Respondent has been an electrician since 2000. In April 2018, he began teaching in the apprenticeship program for his union - IBEU Local 11 – and he teaches at the Electrical Training Institute and City of Commerce. He is a full-time instructor and works 40 hours each week. He sometimes also teaches a three-hour night class. He understands the "parameters of giving someone a credential" with his situation. He "totally understands" how the Commission would be concerned about issuing a credential to someone convicted of dissuading a witness. He does not want to teach kids, and he only wants to be a teacher for electricians and construction workers. He is trying to "give it one last shot" and he understands the Commission is "doing their job," and he knows "it looks horrible." He has been teaching for almost four years. He submitted his excellent reviews from his students to the Commission, but he did not submit them OAH for his hearing. Respondent stated there is "no possible way that

anything like this would reoccur.” Besides teaching how to pull wire and bend conduit, he teaches about harassment and being professional. He has done an excellent job at teaching. He is a blue collar worker who ended up teaching, and he “actually loves it.” He is trying his best, and he is here to let the Commission know that he will not fail them. He stated, “If you haven’t gathered that yet, I appreciate you listening to me.”

Respondent’s Character Letter

12. Respondent submitted a character letter by E. Thomas Dunn, Jr., signed on January 20, 2022. Mr. Dunn is respondent’s former attorney and he represented respondent in the criminal case against him for dissuading a witness. Mr. Dunn wrote, in part:

[I]t was my opinion at the time that the cost and emotional toll of a trial was outweighed by the need to put the family matter behind Charles, and I advised him to enter a plea that I could later have expunged. In time, that is what I did.

The circumstances of Charles’ involvement in the matters I am describing were so minor and so trumped up, it seems to me unfair that he might lose his ability to teach because of the plea I had him enter. Accordingly, I respectfully ask that, to the extent possible, you grant Charles any consideration possible. He is a fine man, an upstanding member of his community, and well worth an investment of trust.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Once an administrative agency presents evidence that supports the denial of an application for licensure, the burden falls upon the applicant to demonstrate rehabilitation and fitness to hold the license. The standard of proof is a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

2. Education Code section 44345, subdivision (e), permits the Commission to deny any application for the issuance of a credential who committed any act involving moral turpitude. As further set forth in Section 44345, any denial must “be based upon reasons related to the applicant’s fitness to teach or fitness to perform other duties for which that applicant is certificated, or competence to perform the duties which the credential would authorize the applicant to perform.”

Evaluation

3. There is broad discretion in determining what constitutes immoral conduct in the context of teacher disciplinary matters. (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327.) Immoral conduct has been defined by the courts as follows:

[T]hat 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 wilful, 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. (*Palo Verde etc. School Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 972, citing *Bd. of Education of San Francisco Unified School Dist. v. Weiland*, 179 Cal. App 2d 808, 811.)

4. By virtue of respondent's convictions for wet reckless and dissuading a witness, he committed an act of moral turpitude, and cause exists to deny his application pursuant to Education Code section 44345, subdivision (e).

RELATIONSHIP TO FITNESS TO TEACH

5. Any denial on the grounds that respondent committed an act of moral turpitude must be based upon reasons related to the applicant's fitness to teach. (Ed. Code, § 44345.) In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 235, the Supreme Court delineated the following criteria to determine whether a teacher's conduct indicates that he or she is not fit to teach: (1) the likelihood that the conduct may have adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of the conduct; (4) the type of teaching certificate held by the teacher; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct in question; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the recurrence of the conduct in question; and (8) the extent to which disciplinary action may inflict an adverse impact or have a chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Id.* at pp. 229-230.) "These factors are relevant to the extent that they assist the board in determining . . . the teacher's fitness to teach, i.e., in determining whether the teacher's future classroom performance and

overall impact on his students are likely to meet the [school district's] standards." (*Id.* at pp. 229–230.) There must exist a "factual nexus between [the teacher's misconduct] and unfitness to teach." (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1982) 135 Cal.App.3d 278, 288.) The statutory definition of immoral conduct "must be considered in conjunction with the unique position of public school teachers, upon whom are imposed 'responsibilities and limitations on freedom of action which do not exist in regard to other callings.'" (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466) [citation omitted].

6. Not all of the *Morrison* factors must be considered, only the most pertinent ones. (*West Valley-Mission Community College District v. Conception* (1993) 16 Cal.App.4th 1766, 1777.) In *Board of Education v. Jack M.* (1970) 19 Cal.3d 691, the Supreme Court detailed the process to be considered in determining fitness to teach. In addition to the *Morrison* factors, the court provided additional factors that may be considered to determine whether there is a nexus between the conduct and a teacher's fitness to teach: (1) likelihood of recurrence of the questioned conduct; (2) the extenuating or aggravating circumstances, if any; (3) the effect of notoriety and publicity; (4) impairment of teachers' and students' relationships; (5) disruption of educational process; (6) motive; (7) proximity or remoteness in time of conduct. (*Id.* at fn. 5.)

7. In considering the relevant *Morrison* factors the following conclusions are reached. Concerning respondent's conviction for wet reckless, the available facts do not indicate that respondent's conduct would have adversely affected students or fellow teachers, except to the extent that they were members of the general public at risk of harm from intoxicated drivers. While respondent is currently teaching adults, the

credential he seeks would allow him to teach middle school and high school students who are impressionable and, if respondent's prior alcohol-related driving conviction became known, this could send students the wrong message that it is acceptable to drink and drive. However, the likelihood of reoccurrence for respondent suffering another alcohol-related conviction is low. He has not been involved in any alcohol-related incidents since his conviction in 2016, and he has maintained full-time employment and managed his responsibilities as a single parent.

Concerning respondent's conviction for dissuading a witness in 2017 – five years ago - is not necessarily remote in time. The blameworthiness of respondent's motives is reflected in his guilty plea. In addition, the conviction in itself sets forth the aggravating circumstance of respondent persuading a witness, who was a minor, to change her allegations. However, respondent's guilty plea did not result in him being sentenced to any jail time, or being ordered to complete any type of court-ordered program, and he was instead ordered to pay nominal amounts in fees and restitution. His conviction was also expunged. In addition, there is little likelihood of recurrence of this type of conduct by respondent. His testimony was credible and he clearly stated the incident caused major emotional turmoil for his entire family. He was torn about being in the middle and he regretted his involvement. He cares for his adopted sister and his family, and it is evident this incident has affected him deeply and he will never again find himself in a position of dissuading a witness. In addition, there is little likelihood that the conduct may have adversely affected students or fellow teachers, as his conduct did not occur in his work setting and involved his family. Finally, the type of teaching certificate being pursued by respondent – a career technical education teaching credential – would permit him to continue teaching adults in apprenticeship programs. While the credential would also allow him to teach middle and high school students, he has never taught nor does he intend to teach students of that age.

8. Finally, an important factor in this case is whether respondent has established rehabilitation. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) While a candid admission of misconduct and full acknowledgment of wrongdoing is a necessary step in the rehabilitation process, it is only a first step; a truer indication of rehabilitation is presented if an individual demonstrates by sustained conduct over an extended period of time that he or she is once again fit to teach. (*In re Trebilcock* (1981) 30 Cal.3d 312, 315-316.)

Respondent accepted responsibility for his conduct and was clear that he regretted the situation in which he found himself being convicted for dissuading a witness. Pertinent mitigating factors are that respondent is regretful; he is motivated by a strong sense of responsibility and a desire to support his daughter; he has sought to continue his teaching career and to teach students the skills in which he excels; he has demonstrated good character as evidenced by his character letter; and he has no alcohol-related arrests and/or convictions since his wet reckless. (Cal. Code of Regs., tit. 5, § 80300, subd. (m).) On balance, these positive factors indicate a decreased likelihood that respondent will repeat his behavior.

9. Based on the foregoing, the appropriate discipline in this case is to grant respondent's application with a period of probation under specified terms and conditions that will protect the public.

ORDER

The application of respondent Charles Drouaillet for a Career Technical Education Teaching Credential is granted and placed on probation for a period of three years under the terms and conditions set forth below.

1. Respondent shall obey all federal, state and local laws and regulations, including, but not limited to, the statutes and regulations of the Commission on Teacher Credentialing (Commission). A full and detailed account of any and all arrests or citations for any violation of law (except minor traffic offenses) shall be reported to the Commission, in writing, within 30 days of the arrest or citation.

2. Respondent shall fully comply with the terms and conditions of this Order and cooperate with representatives of the Commission in its monitoring and investigation of his compliance. Any credentials issued to respondent during the period of probation shall be subject to the conditions contained herein.

3. During the period of probation, respondent shall appear in person at interviews or meetings as directed by the Commission or its representatives upon reasonable notice.

4. Respondent must provide written notice to the Commission within 15 days of any change of residency or address. Periods of residency outside of California shall not apply toward completion of the probationary period.

5. Respondent shall submit quarterly reports, under penalty of perjury, in a form designated by the Commission, certifying and documenting compliance with all terms and conditions of probation. Respondent shall execute release of information forms that may be reasonably required by the Commission or its representatives.

6. During the period of probation, respondent shall inform the Commission, in writing, of all his employment that requires a credential. Respondent shall inform his employer of the reason for, and the terms and conditions of, his probationary status and shall provide a copy of the Commission's Decision to his employer and immediate supervisor. Respondent shall authorize his employer to submit performance evaluations and other reports requested by the Commission. Respondent shall notify the Commission in writing within 72 hours after cessation of any employment that requires a credential. The notification shall contain a full explanation of the circumstances surrounding the cessation of employment.

7. The Commission shall retain jurisdiction over respondent's case during the period of probation. If respondent violates any term or condition of this Order, after giving him written notice and an opportunity to be heard on the issue of his violation of probation, the Commission may set aside the stay order and impose the revocation of respondent's credentials. If an accusation or petition to revoke probation is filed against respondent during probation, the probation period shall automatically be extended until a final decision is made on the accusation or petition.

8. Upon successful completion of the terms of this probation, respondent's credential shall be removed of all restrictions.

DATE: February 23, 2022



JAMI A. TEAGLE-BURGOS
Administrative Law Judge
Office of Administrative Hearings