

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

**In the Matter of the Petition to Revoke Probation Against:**

**MICHELE SIMS, Respondent.**

**Agency Case No. 1-170823567**

**OAH No. 2021100360**

**PROPOSED DECISION**

Carmen D. Snuggs-Spraggins, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 7, 2022.

Complainant Mary Vixie Sandy, Ed.D. (Complainant), Executive Director of the California Commission on Teacher Credentialing (Commission) was represented by Stephen D. Svetich, Deputy Attorney General.

Respondent Michele Sims (Respondent) did not appear at the hearing. After delaying the start of the hearing for a period of time, Complainant requested that the hearing proceed as a default Pursuant to Government Code section 11520. Having determined that Respondent was appropriately notified of the hearing pursuant to Government Code section 11509, the ALJ granted Complainant's request.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on March 7, 2022.

## **FACTUAL FINDINGS**

### **Jurisdictional and Procedural Matters**

1. On May 30, 1984, the Commission issued Life Multiple Subject Teaching Credential with an authorization in General Subjects (credential) to Respondent. The credential has no expiration.

2. On March 21, 2018, Complainant filed an Accusation in in Case No. 1-170823567, seeking the revocation of respondent's teaching credential based upon four causes for discipline, namely: (1) unprofessional conduct, (2) immoral conduct, (3) evident unfitness for service, and (4) moral turpitude.

The underlying factual allegations for each of the four causes of discipline were on April 30, 2014, Respondent was working as a substitute teacher to teach a fifth-grade class at Fifty-Ninth Street Elementary School in Los Angeles, California. Teacher MB, whose class was across the hall from Respondent's, asked Respondent to encourage teacher MB's student LD to do his work. Respondent went to teacher MB's class while teacher MB remained in Respondent's class. Respondent initially spoke nicely to student LD, but when student LD refused to listen to Respondent, she began screaming at student LD and said, "Have you lost your mind?" "Have you gone to crazy land?", or words to that effect. Respondent accused student LD of breaking pencils, which student LD denied. When the class laughed, Respondent said, "shut up" and told the class she should break student LD's arms and legs because he was breaking pencils.

Respondent attempted to get student LD to leave the classroom with her. Student LD put his head on his desk and refused to leave with Respondent. Respondent pulled student LD off his chair. Student LD got under his desk, and Respondent pulled him by his pant leg. Student LD grabbed a desk leg and refused to let go, causing him to hit his head. Respondent left the classroom. When teacher MB returned to the classroom, student LD was still under the desk, and he was crying. Student LD would not come out from under the desk until Special Education Teacher RQ convinced student LD to do so and go with her.

3. The Commission adopted a Decision and Order, effective September 9, 2019, (Decision and Order) in Case No. 1-170823567, in which Respondent's Life Multiple Subject Teaching Credential was revoked; however, the revocation was stayed for a period of three years with terms and conditions that included the following:

Condition 3. Compliance with All Terms of Probation.

Respondent shall fully comply with all the terms and conditions of this Order and cooperate with the Commission and [her] assigned probation compliance monitor (monitor) in the monitoring and investigation of Respondent's compliance with probation terms.

Respondent shall participate in a telephone or in-person review of the probation terms with Respondent's assigned monitor. Respondent must participate in such review within 14 calendar days after written request is mailed by the monitor. Failure to participate in the review of probation terms within the time stated above shall be considered a probation violation.

Respondent shall also respond to all requests made by the monitor, responding to written requests sent by mail within 14 calendar days of the request, and within two business days after a telephone message or email request, unless a different time period is otherwise stated in this Order. Failure to respond within the time specified shall be considered a probation violation.

Condition 12. Violation of Probation. If Respondent violates any term or condition of this Order, the Commission may refer the matter to the Attorney General's Office to file a Petition to Revoke Probation, and after giving Respondent notice and opportunity to be heard, may set aside the stay order and impose the stayed discipline. If during the period of probation, a Petition to Revoke Probation has been filed against Respondent's credential, or the Office of the Attorney has been asked to prepare a Petition to Revoke Probation against Respondent's credential, the probationary period shall automatically be extended and shall not expire until final action is taken on the Petition by the Commission.

4. On October 8, 2019, Respondent filed a Petition for Writ of Mandamus in the Superior Court of California, County of Los Angeles, Case No. 19STCP04362, challenging the Commission's Decision and Order. On March 5, 2020, Respondent filed a First Amended Petition for Writ of Mandate. On August 25, 2021, the court issued a Minute Order denying Respondent's petition for writ of mandamus against the

Commission, and on September 10, 2021, entered judgment against Respondent and in favor of the Commission.

5. There is no evidence the Decision and Order was stayed pending the resolution of the Superior Court matter.

6. On January 20, 2020, Petitioner filed a Petition to Revoke Probation seeking to revoke the Decision and Order and reinstate the previously stayed revocation of Respondent's teaching credential. The petition alleged one cause to revoke probation based upon the allegation that Respondent violated probation by failing to comply with all terms of probation as required by condition number 3.

7. Respondent timely filed a notice of defense, and this hearing followed.

### **Declaration of Commission Investigator**

8. The Declaration of Kristina McKinney, an Investigator with the Commission working in the Division of Professional Practices, was received into evidence pursuant to Government Code section 11514. The declaration was signed on October 17, 2019, under the penalty of perjury that it is true and correct. Investigator McKinney wrote that her duties in her position include probation compliance monitoring. Ms. McKinney further wrote in her declaration as follows:

[¶] . . . [¶]

3. On September 30, 2019, I called Respondent to set up her probation orientation. Respondent refused to set up the probation orientation with me. (Citation omitted).

4. On October 1, 2019, I mailed Respondent an orientation packet, via certified mail, with a cover letter indicating she had to contact me on or before October 15, 2019, to set up her probation orientation or she would be in violation of her probation [citations omitted]. Respondent did not contact me.

5. On October 4, 2019, I called and left Respondent a voicemail requesting that she contact me [citations omitted]. Respondent did not contact me.

6. On October 10, 2019, the Commission received a certified mail receipt, with signature, that Respondent's probation packet was delivered [citations omitted].

7. On October 17, 2019, I went to the USPS Tracking website and entered the tracking number associated with Respondent's probation packet in the search bar, and according to the USPS Tracking website, Respondent's probation packet was delivered on October 4, 2019 at 1637 hours, and was left with an individual at Respondent's address of record [citations omitted].

(Ex. 6, pp. A86-87.)

## **Hearing Testimony**

9. Deidra Waggoner is a Special Investigator with the Commission. Her duties include serving as a compliance monitor for credential holders on probation. On

September 2, 2021, Investigator Waggoner was assigned to act as Respondent's probation compliance monitor and has served in that capacity since that date.

10. After reviewing Respondent's file, Investigator Waggoner discovered Respondent was not compliant with the probation condition requiring Respondent to submit quarterly compliance reports. In fact, Respondent had not submitted any quarterly compliance reports to the Commission.

11. Investigator Waggoner explained that during an orientation meeting, the probation monitor reviews the probationer's decision and order and probation requirements and sets expectations regarding the probationer's conduct. Investigator Waggoner's review of Respondent's file revealed that Investigator McKinney contacted Respondent on September 30, 2019 to set up orientation meeting and that the orientation packet sent to Respondent contained 12 blank quarterly reports for submission by Respondent.

12. On September 3, 2021, Investigator Waggoner contacted Respondent by telephone in an attempt to assist Respondent achieve compliance with her probationary terms and to ensure Respondent received the quarterly reports sent with the orientation packet. Investigator Waggoner spoke to Respondent that date. Respondent asked whether she could call Investigator Waggoner back. Investigator Waggoner gave Respondent a deadline of September 9, 2021, to contact her. Respondent did not call Investigator Waggoner by the deadline. On September 9, 2021, Investigator Waggoner called Respondent and left a message requesting a return telephone call. Respondent did not return the call and had not called Investigator Waggoner as of the date of hearing.

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. Petitioner has the burden of proving each of the causes to revoke probation alleged in the Petition to Revoke Probation, and must do so by a preponderance of the evidence. (*Lone Star Security & Video, Inc., v. Bur. of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 454 [“While the board is required to prove the allegations in an accusation by clear and convincing evidence, it is only required to prove the allegations in a petition to revoke probation by a preponderance of the evidence’ [citation]”]; quoting *Sandarg v. Dental Bd. of Cal.* (2010) 184 Cal.App.4th 1434, 1441.) Evidence deemed to preponderate must amount to “substantial evidence.” (*Weiser v. Bd. of Retirement* (1984) 152 Cal.App.3d 775, 783.) And to be “substantial,” evidence must be reasonable in nature, credible, and of solid value. (*In re Teed’s Estate* (1952) 112 Cal.App.2d 638, 644.)

### **Applicable Statutes and Regulations**

2. Under Education Code section 44000 et seq., and California Code of Regulations, title 5, section 80000 et seq., the Commission is responsible for credentialing teachers in public schools in California, including issuing credentials and taking adverse action against applicants and credential holders. “Adverse action” includes the suspension or revocation of a credential. (Ed. Code, § 44000.5, Cal. Code Regs., tit. 5, § 80300, subd. (a).)

### **Cause Exists to Revoke Probation**

3. Condition 12 of Respondent’s probation provides that if Respondent violates any probationary term, after notice and opportunity to be heard, the



Commission may set aside the stay order and impose the stayed discipline of revocation.

4. Cause exists to revoke Respondent's probation, pursuant to Condition number 9 of the Decision and Order and Education Code section 44000 et seq., in that Respondent violated Condition number 3 by failing to: a) cooperate with her assigned probation compliance monitor; b) participate in a telephone or in-person review of the probation terms with Respondent's assigned monitors within 14 days after written request is mailed by the monitors; and c) respond to all written requests made by the monitors by mail within 14 calendar days of the requests, and by the deadlines set by Investigators McKinney and Waggoner after their telephone messages.

## **Evaluation**

5. A preponderance of the evidence established that Respondent failed cooperate with Investigators McKinney and Waggoner and to comply with any of the probation terms contained in the Decision and Order.

6. Respondent failed to appear at the hearing and presented no evidence in explanation or mitigation. Accordingly, public protection requires revocation of Respondent's teaching credential. Based on the foregoing, Respondent's probation shall be revoked, the stay on the disciplinary order imposed by the Decision and Order shall be lifted, and Respondent's credential shall be revoked.

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## ORDER

The Petition to Revoke Probation Against Michele Sims is granted. The probation that was granted by the California Commission on Teacher Credentialing in Case No. 1-170823567 is revoked, and the stay on the disciplinary order that was imposed is lifted. The Life Multiple Subject Teaching Credential issued to Michele Sims is revoked.

DATE: 04/06/2022

*Carmen Snuggs-Spraggins*

CARMEN D. SNUGGS-SPRAGGINS

Administrative Law Judge

Office of Administrative Hearings