

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

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

**DIANE MARIE COLEGATE,**

**Single Subject Teaching Credential,**

**Emergency 30-Day Substitute Teaching Permit,**

**Preliminary Single Subject Teaching Credential**

**Respondent.**

**Agency Case No. 2-82661140**

**OAH No. 2023040685**

**PROPOSED DECISION**

Administrative Law Judge Laurie Pearlman, Office of Administrative Hearings, State of California, heard this matter by videoconference on July 11, 2023.

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

There was no appearance by or on behalf of respondent Diana Marie Colegate, despite her receipt of timely and appropriate notice of the hearing at her address of record, which is the same as the address she provided in her notice of defense.

The matter proceeded as a default pursuant to Government Code section 11520. At hearing, complainant withdrew the second cause to revoke probation (failure to provide updated mailing address.) Testimony and documentary evidence was received from complainant. The record was closed, and the matter was submitted for decision on July 11, 2023.

## **FACTUAL FINDINGS**

### **Jurisdiction**

1. On September 1, 2007, the Commission issued Clear Single Subject Teaching Credential (credential) to respondent with an authorization in Foundational-Level Mathematics. The credential was in full force and effect at all times relevant to the charges brought herein and is scheduled to expire on October 1, 2027.

2. Respondent previously held the following certification documents: Preliminary Single Subject Teaching Credential, issued on September 22, 2005, which expired on October 1, 2010; and an Emergency 30-Day Substitute Teaching Permit, issued on December 1, 2004, which expired on January 1, 2006.

3. On February 10, 2023, complainant, acting in her official capacity, filed the Petition to Revoke Probation. Respondent timely filed a Notice of Defense. On June 20, 2023, complainant, acting in her official capacity, filed the First Amended Petition to Revoke Probation.

## Prior Disciplinary Action

4. In a disciplinary action entitled "*In the Matter of Adverse Action Against Diane Marie Colegate*," Case No. 2-82661140, the Commission issued a Decision (Decision), effective February 18, 2022, finding respondent's breath smelled of alcohol at school, she had failed to comport herself with composure at school, and she had placed her hands on students. Respondent's Single Subject Teaching Credential, 30-Day Substitute Teaching Permit, and Preliminary Single Subject Teaching Credential were revoked. However, the revocations were stayed, and respondent's Single Subject Teaching Credential, Preliminary Single Subject Teaching Credential and Emergency 30-Day Substitute Teaching Permit (collectively Credentials) were placed on probation for a period of five years with certain terms and conditions.

5. Probation Condition 2 requires respondent to comply with all terms of probation.

6. Probation Condition 4 requires respondent to submit written reports.

7. Probation Condition 9 requires respondent to attend support group meetings as required and provide evidence of attendance.

8. Probation Condition 11 requires respondent to submit to tests and samples as required.

9. Probation Condition 12 requires respondent to execute a release form.

10. Probation Condition 14 provides that if respondent violates any term or condition of probation, the stayed license discipline may be imposed after respondent is given notice and an opportunity to be heard.

## **Failure to Comply with Terms of Probation**

11. Berenice Osequera testified at the hearing on behalf of complainant. Ms. Osequera has been employed by the Commission as a special investigator for six years and has served as respondent's probation monitor since March 2022.

12. On March 4, 2022, Ms. Osequera mailed respondent an orientation packet, which instructed her to contact Ms. Osequera by March 18, 2022, to schedule a probation orientation. The orientation packet was sent by certified mail via United States Postal Service. Respondent did not contact Ms. Osequera by March 18, 2022. On March 21, 2022, respondent left a voicemail message for Ms. Osequera, indicating she had opened the orientation packet. On April 6, 2022, respondent completed her probation orientation meeting, during which she was instructed to identify and select a testing facility that met all the Commission's requirements to comply with Probation Condition 11. Additionally, respondent was informed that she could not consume alcohol during the five-year term of probation.

13. On April 9, 2022, respondent informed Ms. Osequera that she had attended support group meetings "every Sunday since February 27." Ms. Osequera requested respondent provide evidence of her attendance. As of the date of hearing, respondent has not provided any evidence of her attendance in support group meetings as required by Probation Condition 9.

14. Between April 19, 2022, and May 26, 2023, Ms. Osequera repeatedly instructed respondent to identify and select a testing facility. As of the date of the hearing, respondent has not identified and selected a testing facility.

15. On June 14, September 16, and November 8, 2022, and January 12 and May 22, 2023, respondent was instructed to submit to bodily fluid testing for the

presence of alcohol, cannabis, or controlled substances as required by Probation Condition 11. As of the date of hearing, respondent has not submitted to any bodily fluid testing.

16. On May 10, 2022, respondent was instructed to execute and submit to Ms. Osequera a Release of Information form that the Commission requires to monitor her probation compliance. As of the date of hearing, respondent has not submitted any Release of Information forms as required by Probation Condition 12.

17. On June 1, 2022, respondent's first quarterly compliance report was due to the Commission. As of the date of hearing, respondent has not submitted any quarterly compliance reports as required by Probation Condition 4.

18. On April 26 and July 1, 2022, and June 5, 2023, Ms. Osequera sent notice to respondent informing her that she was in violation of probation.

## **LEGAL CONCLUSIONS**

### **Commission's Authority**

1. The Commission is responsible for the credentialing of public school teachers, including issuing credentials and taking adverse action against applicants and credential holders, pursuant to Education Code (Code) section 44000 et seq. and California Code of Regulations, title 5, section 80001 et seq.

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

2. Because this case involves a professional license, the burden of proof is on complainant to establish cause for adverse action by clear and convincing evidence

to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.) This means the burden rests with complainant to offer proof that is clear, explicit, and unequivocal, "so clear as to leave no substantial doubt" and "sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478, 487; citations omitted.) In this case, complainant met her burden of establishing cause for revoking respondent's license probation, lifting the stay of the revocation, and revoking her credentials.

### **Bases to Revoke Probation**

3. Cause exists to revoke probation because complainant established by clear and convincing evidence that respondent failed to comply with Probation Condition 2 in that she failed to comply with all probation terms as required. (Factual Findings 4-17.)

4. Cause exists to revoke probation because complainant established by clear and convincing evidence that respondent failed to comply with Probation Condition 4 in that she failed to submit written reports as required. (Factual Findings 4, 6 and 17.)

5. Cause exists to revoke probation because complainant established by clear and convincing evidence that respondent failed to comply with Probation Condition 9 in that she failed to attend support group meetings and to provide evidence of attendance, as required. (Factual Findings 4, 7 and 13.)


6. Cause exists to revoke probation because complainant established by clear and convincing evidence that respondent failed to comply with Probation Condition 11 in that she failed to submit tests and samples, as required. (Factual Findings 4, 8, 14 and 15.)

7. Cause exists to revoke probation because complainant established by clear and convincing evidence that respondent failed to comply with Probation Condition 12 in that she failed to attend execute release forms, as required. (Factual Findings 4, 9 and 16.)

## **ORDER**

1. The First Amended Petition to Revoke Probation is granted.
2. The probation that was granted by the California Commission on Teacher Credentialing in Case No. 2-82661140 is revoked, and the stay on the disciplinary order that was imposed is lifted, thereby revoking Single Subject Teaching Credential, 30-Day Substitute Teaching Permit, and Preliminary Single Subject Teaching Credential, issued to respondent Diane Marie Colegate.

DATE: 08/09/2023

  
[Laurie Pearlman \(Aug 9, 2023 17:04 PDT\)](#)

LAURIE PEARLMAN

Administrative Law Judge

Office of Administrative Hearings