

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

In the Matter of the Accusation Against:

PETER ALMANZAR, Respondent

Case No. 1-809637860

OAH No. 2022060645

PROPOSED DECISION

Jami A. Teagle-Burgos, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on October 25, 2022.

Nicole M. Kennedy, Deputy Attorney General, Department of Justice, State of California, represented complainant, Mary Vixie Sandy, Ed.D., Executive Director, California Commission on Teacher Credentialing (CTC).

Ellen Doty, Attorney at Law, Rothschild Wishek & Sands LLP, represented respondent Peter Almanzar, who was present throughout the hearing.

The matter was submitted on October 25, 2022.

PROTECTIVE AND SEALING ORDER

The 2021 Findings of the Committee of Credentials, at Exhibit 5, pages A45 through A52, is subject to a protective order. Any document received as evidence in this matter that contains this record shall be redacted before any disclosure to the public. No court reporter or transcription service shall transcribe the contents of this record, but shall instead refer to it solely as the "2021 Findings of the Committee." To protect privacy and confidential personal information from inappropriate disclosure, Exhibit 5, pages A45 through A52, is ordered sealed. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517, may review the document subject to this order, provided that such documents are protected from release to the public.

FACTUAL FINDINGS

Background

1. The CTC is responsible for the credentialing of public school teachers, including issuing credentials and taking adverse action¹ against applicants and credential holders. The CTC's Committee of Credentials (Committee) is responsible for

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.)

investigating alleged acts or omissions that may be cause for the CTC to take adverse action.

2. The CTC issued respondent a Crosscultural, Language, and Academic Development Certificate (certificate) on October 8, 2007. The certificate does not have an expiration date.

3. The CTC originally issued respondent a Level II Education Specialist Instruction Credential (credential) on November 29, 2005. An Added Authorization in Autism Spectrum Disorder was issued on March 26, 2015. The credential will expire on December 1, 2025, unless renewed.

4. The CTC previously issued respondent a Certificate of Clearance on March 13, 2003, which expired on April 1, 2008, and an Intern Education Specialist Instruction Credential, on November 3, 2003, which expired on December 1, 2005.

5. At its November 17 through 19, 2021, meeting, as documented in a letter dated April 30, 2021, the Committee found probable cause to recommend the revocation of respondent's credential and certificate. The findings were based on allegations relating to respondent's misdemeanor convictions in 2019 for public intoxication and disturbance by loud or unreasonable noise, and respondent's two misdemeanor convictions in 2021 for driving under the influence (DUI). Respondent timely requested an administrative hearing.

6. On March 21, 2022, complainant signed the accusation alleging respondent's underlying conduct resulted in the aforementioned convictions. As causes for discipline, complainant alleges respondent committed unprofessional conduct, immoral conduct, and acts of moral turpitude, and respondent demonstrated

an addiction to intoxicating beverages and evident unfitness for service. Complainant seeks the revocation of respondent's credential and certificate.

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

Respondent's Criminal Convictions and Underlying Conduct

2021 CONVICTION FOR DUI

8. A police report by Officer William Deutsch at the California Highway Patrol (CHP) was received pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448.² On June 13, 2020, Officer Deutsch responded to a solo traffic collision along the 405 freeway in Irvine. A vehicle driven by respondent had gone down an embankment. Officer Deutsch observed respondent had slurred speech, watery eyes, and a strong odor of an alcoholic beverage. Respondent admitted to drinking two alcoholic beverages. Respondent was unable to stand unassisted, could not perform any field sobriety tests, and thought he was in San Diego. Officer Deutsch arrested respondent for driving

² In *Lake*, 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 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.

under the influence and driving at an unsafe speed. Respondent submitted to blood testing at the CHP office, which determined his blood alcohol concentration (BAC) level was 0.36 percent.

9. On June 29, 2021, in the Superior Court of California, County of Orange, Case No. 20HM07305, respondent was convicted on his guilty plea of violating Vehicle Code sections 23152, subdivision (a), driving under the influence of alcohol, and 23152, subdivision (b), driving with a BAC of 0.08 percent or more, both misdemeanors. The court placed respondent on informal probation for five years.

2021 CONVICTION FOR DUI

10. A police report by Officer K. Bicskei of the Irvine Police Department was received pursuant to *Lake, supra*. On November 29, 2019, the Orange County Fire Authority (OCFA) observed respondent driving and swerving across lanes on Portola Parkway in Irvine before pulling into a private property area. OCFA believed respondent may have suffered a medical emergency and followed him to provide assistance. OCFA observed respondent had slurred speech and an odor an alcoholic beverage emitted from the sunroof of respondent's vehicle. Paramedics transported respondent to a hospital due to him having an altered mental state and low blood sugar. Officer Bicskei went to the hospital to speak with respondent who reported he passed out in his car. Respondent had slurred speech and Officer Bicskei asked if he had been drinking. Respondent replied that he wanted to speak with a lawyer. Respondent refused to answer most of Officer Bicskei's questions and refused to cooperate in field sobriety testing. Respondent submitted to a Preliminary Alcohol Screening (PAS) test, but he appeared to block the tube with his teeth and tongue. Officer Bicskei arrested respondent for driving under the influence of an alcoholic beverage, which was based on Officer Bicskei's observations of respondent having

slurred speech and an odor of an alcoholic beverage, and the observations of OCFA. Respondent submitted to blood testing at the hospital, which determined his blood alcohol concentration (BAC) level was 0.25 percent.

11. On June 29, 2021, in the Superior Court of California, County of Orange, Case No. 20HM03866, respondent was convicted on his guilty plea of violating Vehicle Code sections 23152, subdivision (a), driving under the influence of alcohol, and 23152, subdivision (b), driving with a BAC of 0.08 percent or more, both misdemeanors, and with an enhancement for violating Vehicle Code section 23538, subdivision (b)(2), driving with a BAC of 0.20 percent or more. The court placed respondent on informal probation for three years.

2019 CONVICTION FOR DISTURBING BY LOUD OR UNREASONABLE NOISE AND TESTIMONY OF OFFICER ELLISON

12. A police report submitted by Officer Robert Ellison of the Anaheim Police Department was received pursuant to *Lake, supra*. Officer Ellison testified at the hearing, and his testimony is consistent with his police report. On March 3, 2019, Officer Ellison and officers responded to a report of a male, identified as respondent, lying on the roadway with a young child who was identified as respondent's son. A witness reported that he was driving on Weir Canyon Road – a very busy road – when he saw respondent lying on the sidewalk with a baby underneath him. Respondent reported he was trying to sleep, and he "messed up." Officer Ellison observed woodchips on the backs of the jackets of respondent and his son, and respondent had a strong odor of an alcoholic beverage, slurred speech, and he was swaying while holding his son. At one point, respondent dropped his son who fell onto the sidewalk and sustained a slight abrasion above his eyebrow. Respondent stated he lived nearby, but when he was asked where he was coming from, he replied, "My bad." Officer

Ellison reported respondent “eventually fell onto his back and stopped answering questions.” Officer Ellison released the child to his mother, and arrested respondent for public intoxication and child endangerment.

13. On December 12, 2019, in the Superior Court of California, County of Orange, Case No. 19NM03487, respondent was convicted on his guilty plea of violating of Penal Code section 415(2), disturbance by loud and unreasonable noise, a misdemeanor. The court dismissed the remaining charges for violating Penal Code sections 273, subdivision (b), willful cruelty to a child, and 647, subdivision (f), public intoxication. The court placed respondent on informal probation for three years.

2019 CONVICTION FOR PUBLIC INTOXICATION AND TESTIMONY OF Ms. ARTEAGA

14. A police report submitted by Officer N. Lopez of the Baldwin Park Police Department was received pursuant to *Lake, supra*. On March 31, 2018, officers responded to a call from a female, identified as Leslie Herrera Arteaga, reporting that an unknown male, identified as respondent, was sleeping on her couch. When officers arrived at the scene, both respondent and Ms. Arteaga were standing in front of her residence. Officer Lopez observed respondent had a lax face and jaw, watery eyes, slurred speech, and an odor of an alcoholic beverage, and he was unable to maintain his balance and required assistance to stand. Respondent admitted to drinking two Modelo beers. When asked what city he was in, respondent responded, “Los Alamitos,” although he was in Baldwin Park. Respondent reported he entered the residence because the door was unlocked. Officer Lopez reported that Ms. Arteaga called her father who arrived and escorted respondent out of the residence. Officer Lopez determined respondent was under the influence of alcohol and unable to care for himself, and he arrested respondent for public intoxication.

15. On June 4, 2019, in the Superior Court of California, County of Los Angeles, Case No. 8EM02605, respondent was convicted on his plea of nolo contendere of violating of Penal Code section 647, subdivision (f), public intoxication, a misdemeanor. On June 4, 2018, respondent was placed on a one-year pretrial diversion program, which was diverted on June 4, 2019. He was placed on summary probation for one year, and ordered to attend 52 Alcoholics Anonymous (AA) meetings and pay fines and fees.

16. The following is a summary of the testimony of Leslie Herrera Arteaga. On March 31, 2018, she was driving and approached her residence, and she noticed respondent was driving behind her and parked his vehicle a few cars behind her vehicle. She observed respondent exit from his vehicle faster than she did, and he entered her residence through an open garage door. Her parents had left the garage door open because she was on the way home. She thought maybe respondent was a friend of her parents or a handyman. She did not recognize him. She entered the house, and respondent was sleeping on the couch with a pillow. She said, "Hello," and he was unresponsive. Her immediate reaction was "fear" because respondent's actions were not normal or appropriate. She knew that her brother was upstairs, so she called him and told him to leave. She called her parents who returned to the residence. Her father and a neighbor entered the residence and carried respondent out to the front of the residence. She noted respondent was not talking and showed "no coherency," as he looked like he was "a few seconds from passing out." He was "not responsive at all" when the police arrived.

Respondent's 2007 Suspension by the CTC

17. On August 9, 2007, the CTC suspended respondent's credentials and certifications for a period of 14 days because he failed to disclose that criminal charges

were pending against him due to his arrest for DUI on July 7, 2006, and he failed to disclose that he suffered DUI convictions in 2004 and 1996.

Respondent's Testimony

18. The following is a summary of the testimony of respondent. He has been an educator for 25 years in California. He was an instructional assistant for eight years, and the remaining years he has been a special education teacher. He is a "mild-moderate education specialist" and he holds an autism certificate. He provides supplemental instruction in social studies and health science. He co-teaches at Willard Intermediate School in Santa Ana. He works in a grade seven class that he shares with a general education co-teacher. He integrates special education students with general education students. It is a collaborative model that is written into the Individualized Education Plan (IEP) for each of his students. He enjoys working with his students in this program, called "Promise," because most of them are at a grade two level in reading and math but it does not mean they cannot hold a job later in life. One summer, he visited the family of each incoming student in grade six and it set the tone for them when they entered middle school. He believes that one day schools will all be online, but he knows that special education students will always need to physically attend school. The "burn out rate" for special education teachers is five to seven years, but it "comes naturally" to him. He has been nominated for "teacher of the year" a couple of times. The school administrators and his teacher colleagues have always appreciated him. He usually coaches a few sport teams at school, each year, but last year a student asked him to be the advisor for the business club and it was a "cool experience" because he tried something new. He has volunteered at lunch, twice a week, for the last 10 years. He has done this because he wants people to see him at lunch and see that he is not drinking.

19. Respondent stated he was at the hearing because he has "alcohol use disorder." He thinks of his condition as being an allergic reaction because even if he consumes half of a beer – "thing go awry." He cannot take a sip of alcohol. He cannot have a toast of alcohol at a wedding. He is fully abstaining from consuming alcohol. He has never consumed alcohol at work, and he has never missed work because of alcohol. He has never been disciplined by his district due to his conduct in the classroom.

20. When asked about his past disciplinary action by the CTC in 2007, and what has changed, he testified that he stopped drinking for a period of time, but he started drinking again and he "completely regrets it." He had nightmares for six months after the incident with his son. He wishes that he would have completely stopped drinking and would have not relapsed. He did not change until he had an "awakening" when his doctor told him, in January 2022, that he had "severe alcohol use disorder." He realized that he had to move forward. He was voluntarily admitted to a sober living home where he stayed from January 2022 until April 2022, and he submitted to random alcohol and drug screenings. After he was discharged from the sober living home, he went to live with his mother where he continues to reside. He has changed his approach to AA this time around. He "worked the entire 12 steps" and he trusted others who went through the steps and takes their suggestions. He has "full acceptance" and he wakes up each day to a "higher power" and says the Serenity and Set-Aside Prayers. He is committed to his AA group and is a secretary and sets up meetings. He meets with his AA sponsor once a month, and he has four close AA associates who have helped him get through this period in his life. He completed an 18-month course to regain his driver's license, and he is driving again. He was "extremely selfish with [his] loved ones." He stated, "Words can't explain what it did to my Mom – she hoped I would have stopped years ago. It damaged [my] relationship

with folks. It continued [with] . . . my job being on the line.” He said, “It’s horrific that I put my son in a position like that. It was horrible . . . I had nightmares that I smashed his face, and I’m grateful that he’ll never have to see me like that.” He felt horrified at what he did to Ms. Arteaga, and stated, “Thank God I’m not a violent person and I didn’t wake up and attack her . . . I wanted to shut off my camera [during the hearing] in case she had problems looking at me. But it was necessary for me to listen.” He is “not that person” any more. He stated that when he reads the reports about his alcohol-related incidents, he can finally see “that was me . . . [the] one singular thing was alcohol.” His sobriety date is January 7, 2022. He added that having his son has been the “best thing that happened to me.” His son is now four years old and he has custody of him each week from Tuesday to Sunday.

21. The testimony of respondent was contrite and forthright.

Respondent’s Supporting Evidence and Witness Testimony

22. Respondent voluntarily submitted to an ethyl glucuronide (EtG) nail test on October 1, 2022, which reveals if a patient has consumed any alcohol in the previous three months. Respondent’s test results were negative.

23. Respondent submitted a document showing that his school nominated him for Teacher of the Year in 2007.

24. The following is a summary of the testimony by Bertha Benavides-Lopez, which is consistent with her letter of support. She has been in the field of education for 24 years. She has been issued credentials in multiple subject, single subject in Spanish literature, administrative, and student drop-out. She has worked as an adjunct professor in the teacher credential program at Pepperdine University. She is currently the principal at Willard Intermediate School. She is respondent’s immediate supervisor.

She observes him during walk-throughs in the classroom, at IEP meetings, special events, and when he is a student chaperone and lunch volunteer. Respondent is “very interactive, loving, respectful, attentive to detail” with his students and their needs. She has never seen respondent be in an unsafe situation at work. He is a reliable employee. He puts his name on the list to cover for other teachers and he is a club advisor. Respondent is a credentialed special education teacher, which allows him to bring his students into a general education setting in a collaborative model with mainstream teachers. It would be especially drastic to lose respondent at her school site. The schools are struggling to get special education teachers. She has never had a concern about whether respondent can do his job. She is aware of his four alcohol-related convictions. She is not concerned about respondent because he is a professional at school, and the students come first – if she sees anything, she will be the first to report it.

25. The following is the testimony of Lloyd Bennet. He holds a mild moderate credential, education specialist credential, and preliminary administrative credential. He worked with respondent at Willard Intermediate School for 15 years. Respondent was a team player, always took on extra roles, worked with the students and parents, and always respectful with the students. He knows respondent is from the community of Santa Ana and wants to give back to it. He has never seen respondent under the influence of alcohol while teaching. He believes respondent should be able to retain his credential and certificate because respondent is committed to the students. Being a special education educator is a “special calling” and “year after year,” respondent is there before school, after school, and during summer. He stated it would be “hard to find a more dedicated educator than [respondent].”

26. The following is a summary of the testimony of Tricia Bregman. She has known respondent through their AA fellowship since July 2013. In the past, respondent would attend meetings, then not attend meetings, come back, then stop attending, and come back again. However, since the beginning of 2022, respondent is different because he consistently attends AA meetings and he volunteers on a weekly basis to set up meetings. She remarked the "return rate" at AA is "not that promising . . . [and] people with addictions by and large don't come back." She explained that "coming back" is a "humbling experience." She has admiration for respondent because he "did come back." She has observed that respondent is now maintaining long-term and strong relationships, and he has a "heightened commitment." She noticed that he has normal sleeping patterns now, and he is "doing what needs to get done" as far as going through AA. She volunteered to be a witness on behalf of respondent because she believes that he finally "hit his bottom" and embraced that he is an alcoholic. He is no longer "fighting it" and instead he has embraced his recovery.

27. Respondent submitted letters of support from Errin Landry, M.Ed., respondent's assistant principal at Willard Intermediate School, and Matt Popejoy, respondent's AA sponsor. Respondent submitted a declaration by Michael Weber, a colleague of his at Willard Intermediate School. These authors wrote how respondent is an excellent, reliable, and trustworthy educator and person, and highly skilled in special education. Ms. Landry and Mr. Popejoy specifically referenced respondent's struggles. Ms. Landry wrote that she was "proud of [respondent's] dedication and genuine desire to continue growing and developing". Each author wrote that they fully support respondent.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (Evid. Code § 115.) The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is clear and convincing evidence. (*Ettinger v. Bd. of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; it requires sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

Relevant Statutes

2. Education Code section 44421 permits the CTC to take adverse action against a credential for "immoral or unprofessional conduct" or "for any cause that would have warranted the denial of an application for a credential or the renewal thereof."

3. Education Code section 44345 lists as grounds to deny any application for the issuance of a credential an applicant who "has committed any act involving moral turpitude" (subd. (e)). Any denial on the grounds of moral turpitude 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."

Moral Turpitude and Immoral Conduct

4. 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 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. (*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.)

5. A criminal act constitutes moral turpitude if it involves a serious breach of a duty owed to another or society. (*In re Lesansky* (2001) 25 Cal.4th 11, 16.) Acts of moral turpitude involve "bad character" and "readiness to do evil." (*People v. Zataray* (1985) 173 Cal.App.3d 390, 400.) Moral turpitude has also been described as "any crime or misconduct committed without excuse, or any 'dishonest or immoral' act not necessarily a crime." (*Clerici v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027.) A crime of moral turpitude is "an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general,

contrary to the accepted and customary rule of right and duty between man and man.”
(*In re Craig* (1938) 12 Cal.2d 93, 97.)

6. The second and third causes for discipline allege respondent committed multiple acts of moral turpitude and immoral conduct. Regarding the 2019 convictions for disturbance by noise and public intoxication, respondent’s conduct was acting with indifference to others in the community – namely his child and Ms. Arteaga.

7. While a drunk driving conviction does not per se establish moral turpitude, moral turpitude may be found depending on the circumstances surrounding multiple convictions for DUI. (*In re Kelley* (1990) 52 Cal.3d 487, 494.) In *People v. Forster* (1994) 29 Cal.App.4th 1746, 1757, the court noted that repeatedly driving under the influence after previously having been convicted of that crime can evidence the sort of “conscious indifference” toward duties owed society in general that is a hallmark of moral turpitude.

8. An aggravating circumstance in this case is that respondent suffered four alcohol-related convictions in a two-year period, which individually and collectively, are acts of moral turpitude and immoral conduct.

Unprofessional Conduct

9. The term “unprofessional conduct” is conduct such as to indicate unfitness to teach. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.) Unprofessional conduct has been defined as “that conduct which breaches the rules or ethical code of a profession or conduct which is unbecoming a member in good standing of a profession.” (*Shea v. Bd. of Medical Examiners*, (1978) 81 Cal. App.3d 564, at 575; *Bd. of Education v. Swan* (1953) 41 Cal.2d 546, 553.)

10. The finding that respondent engaged in immoral conduct and acts of moral turpitude necessitate a finding of unprofessional conduct. Respondent's two DUIs, and other convictions, within a three-year period reflects a pattern of disregard for the law unbecoming of the profession.

Addiction to Intoxicating Beverages

11. The commission may deny any application or renewal for a credential if an applicant is addicted to the use of intoxicating beverages to excess. (Ed. Code § 44345, subd. (c).) Respondent's convictions all occurred while he was intoxicated from alcohol consumption. At the time of his convictions, respondent was addicted to alcohol. He was forthcoming and now accepts he is an "alcoholic" and he is committed to his sobriety.

Relationship to Fitness to Teach

12. Any adverse action 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.) 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. Comm. on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466) [citation omitted].)

13. In *Morrison v. State Bd. 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.) Not all 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.) Additionally, the *Morrison* factors may be applied to all the charges in the aggregate. (*Woodland Joint Unified School Dist. v. Comm. on Professional Competence* (1992) 2 Cal.App.4th 1429, 1456-1457.) The determination of fitness for service required by *Morrison* is a factual one. (*Id.* at fn. 3); (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d. 208, 220-221; *Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384.) For purposes of taking adverse action against a teaching credential, the factors enumerated in *Morrison* have been codified in regulation. (Cal. Code Regs., tit. 5, § 80302.)

14. In considering the relevant *Morrison* factors in conjunction with the sustained allegations the following conclusions are reached.

**THE LIKELIHOOD THAT THE CONDUCT MAY HAVE ADVERSELY AFFECTED
STUDENTS, FELLOW TEACHERS, OR THE EDUCATIONAL COMMUNITY, AND THE
DEGREE OF SUCH ADVERSITY ANTICIPATED**

15. There was no evidence that any parents, students, or teachers were aware of respondent's convictions or that there was any notoriety associated with the convictions. While there was no evidence that news of respondent's convictions has reached fellow teachers or students, that is not to say that the possibility that this

information would come to light in the future is remote. Criminal records are easily accessible online, and it would not be beyond more than a hypothetical possibility that a student, parent, or another teacher could discover respondent's criminal past. It is axiomatic that teachers are role models for students. (*Bd. of Education of the City of Los Angeles v. Swan* (1953) 41 Cal 2d.546, 552.) Their knowledge of the existence of the conviction would certainly be adverse to an appropriate and productive learning environment. However, this factor provides little bearing on respondent's fitness to teach because it is speculative that a parent or student might find out about respondent's convictions.

THE PROXIMITY OR REMOTENESS IN TIME OF THE CONDUCT

16. The misconduct in question occurred from 2018 through 2020. The most recent convictions occurred one-and-a-half years ago, and respondent remains on criminal probation. The events were therefore not remote in time. (*Broney v. California Comm. on Teacher Credentialing*, (2010) 184 Cal.App.4th 462, 477 [conduct was not remote in time where the CTC took action against the credential three years after the criminal conduct occurred].)

EXTENUATING OR AGGRAVATING CIRCUMSTANCES

17. California Code of Regulations, title 5, section 80300 provides definitions for aggravating and mitigating factors which demonstrates that a greater or more lenient degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession. These factors are instructive, but not exhaustive, in evaluating extenuating or aggravating circumstances related to fitness to teach.

Aggravating factors include:

- (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.
- (*Id.* at subd. (b).)

Mitigating factors include:

- (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. (*Id.* at subd. (m).)

18. There are aggravating factors involving respondent's misconduct. There are multiple acts of wrongdoing that demonstrate a pattern of misconduct:

Respondent suffered four alcohol-related convictions within three years, and the CTC suspended respondent in 2007 for 14 days for similar conduct, yet he did not rectify his behavior in response to this previous disciplinary action.

19. In mitigation, no individual was harmed by respondent's misconduct, with the exception of his son who suffered a slight abrasion on his forehead and Ms. Arteaga who was terrified by a drunk stranger entering her residence. Respondent is highly involved in the education community and appears to be respected by his peers, and those who testified and wrote letters of support were aware of respondent's misconduct. It is recognized that respondent has initiated the process of rehabilitation beyond what was ordered by the court by regularly attending AA, being more committed to his AA fellowship as a secretary, voluntarily residing at a sober living home for three months, and working with his AA sponsor.

THE LIKELIHOOD OF THE RECURRENCE OF THE CONDUCT IN QUESTION

20. 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 has a sustained period of rehabilitation for nearly one year. He has fully acknowledged his relapse and his history as an alcoholic, and he has "hit bottom" and changed his approach in his recovery by taking ownership of his conduct, those he has hurt from his conduct, and he is finally moving forward in the right direction by having a meaningful commitment to the AA steps and to his AA fellowship and AA sponsor. He has appeared to be

transparent with his school principals with his struggles, and commitment to his sobriety. He fully committed to his date of sobriety, and understands the consequences should he relapse again.

21. In consideration of the *Morrison* factors and totality of the circumstances, respondent's conduct in the aggregate does not indicate a factual nexus between his conduct and unfitness for service.

Cause Exists to Take Adverse Action Against Respondent's Credential

22. Cause exists to take adverse action against respondent's credential and certificate in that he committed acts of unprofessional conduct, immoral conduct, moral turpitude, and his behavior demonstrates an addiction to intoxicating beverages. (Ed. Code, §§ 44421; 44345, subds. (c) & (e).)

23. Cause does not exist to take adverse action against respondent's credential and certificate as it is not evident that he is unfit for service. (Ed. Code, § 44421.)

Appropriate Discipline

24. Teachers are in a unique position in that they are responsible for the care and training of young minds. They are role models to their students in and out of the classroom. We expect teachers to be honest and trustworthy.

25. Licensing disciplinary matters like this are not designed to punish an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, a licensing agency should be primarily concerned with protecting the public. (*Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) In this regard, rehabilitation is an important consideration. (*In re Conflenti* (1981) 29 Cal.3d 120, 124-125.)

26. The appropriate level of discipline that ensures the public's protection is to place respondent on probation for five years with the CTC's probation monitor having the ability to have respondent submit to random drug and/or alcohol screens.

27. While respondent's most recent DUI convictions were in 2021 and his criminal probation is not scheduled to terminate until 2026, the evidence of his commitment to his sobriety and other mitigating factors outweighs the recentness of his convictions and sobriety. Respondent is in the early stages of his rehabilitation, as he has been sober since January 2022. However, he has successfully completed a voluntary sober living program and demonstrates meaningful commitment and involvement in his AA program. His AA fellow participant testified regarding the difference in respondent's recent sobriety compared to his last period of sobriety when he was not truly committed to AA and he suffered a relapse in 2018. The AA fellow participant has known respondent since 2013, and she was keenly aware that his commitment to his sobriety and to AA is different this time and he has accepted his alcoholism in order to move forward and stay sober.

28. This case entails respondent's relapse in his alcohol addiction from 2018 until 2020, after he had been able to sustain a long period of sobriety for 12 years from 2006 until 2018. Respondent's suspension by the CTC in 2007 for similar conduct occurred a long time ago between 1996 and 2006. Unfortunately, in 2019, he suffered a conviction for public intoxication in 2018. His relapse continued for the next two years when he suffered three more alcohol-related convictions for his conduct in 2019 and 2020. However, respondent was able to become sober again in January 2022 when he had a wake-up call from his doctor, and he has maintained his sobriety to this day.

29. Respondent had three strong character witnesses who spoke about his commitment to his sobriety and his strong skills as a special education teacher at the

same district for many years. His AA fellow participant spoke about the notable difference in respondent's recent commitment to AA. His school principal and teacher colleague spoke about his excellent teaching skills and dedication to the students, and the extra mile he goes when helping his students, including making home visits during the summer, volunteering at lunch, being a club advisor, and co-teaching in a collaborative model with his special education students in a general education setting.

30. Moreover, respondent has shown humility and responsibility for his actions that lead to his convictions, and he expressed remorse and shame for those that his conduct has negatively affected, including his son, his mother, and Ms. Arteaga – the stranger whose home he walked into and passed out on her couch. He discussed a positive change in his life of becoming a parent and being very involved in the life of his four-year-old son for whom he shares 50 percent custody.

31. Based on the discussion above, it would be unduly harsh to fully revoke respondent's certificate and credential and it is sufficient for public protection to place respondent on a lengthy probation in order for the CTC to monitor his progress and conduct random drug and alcohol screenings, if his probation monitor determines that such testing is necessary. Such a restrictive probation will ensure that respondent maintains his sobriety and he is held accountable to the CTC.

32. Finally, respondent is strongly urged to make every effort to maintain his sobriety and comply with each and every term of his probation, as he will not likely be afforded a similar grace, should he violate any term of his probation.

33. In conclusion, cause was established for discipline of respondent's credential and certificate, but not revocation. Respondent's convictions had no adverse impact on the educational community, did not involve students, parents, or school

staff. The *Morrison* factors do not show respondent is unfit to teach. Respondent established a satisfactory level of rehabilitation and permitting him to continue teaching in the classroom would not be inconsistent with public protection provided that a period of probation is imposed where respondent is monitored. Therefore, respondent's certificate and credential are revoked, the revocation is immediately stayed, and respondent's certificate and credential are placed on probation for a period of five years.³

ORDER

All teaching credentials and certificates issued to respondent Peter Almanzar, including his Level II Education Specialist Instruction Credential and Crosscultural, Language, and Academic Development Certificate, are hereby revoked. However, the revocation is immediately stayed, and his teaching credential and certificate are placed on probation for a period of five years on the following terms:

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of probation, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remaining conditions of probation, and each of them, and all other applications thereof, shall not be affected. Each condition of probation shall separately be valid and enforceable to the fullest extent permitted by law.

³ The commission has never promulgated disciplinary guidelines although proposed disciplinary guidelines have been drafted.

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

2. New Credentials Subject to Order. Any new credential issued by the CTC to respondent during the period of probation shall be subject to this order, and respondent shall be subject to the same terms and conditions of probation with respect to any such new credentials, as set forth herein.

3. Compliance with Probation. Respondent shall fully comply with the terms and conditions of this order and cooperate with representatives of the CTC in its monitoring and investigation of his compliance.

4. Cooperation with CTC. During the entire period of probation, respondent shall fully cooperate with the CTC in its monitoring and investigation of respondent's compliance with probation.

5. Drug and Alcohol Screening. Respondent shall submit to random drug and alcohol screenings during the period of probation, if the CTC designated probation monitor determines that such testing is necessary. Respondent shall submit to screenings only at screening facilities approved by the CTC designated probation monitor. Respondent shall pay the costs associated with such screenings.

6. Abstain from Consumption of Alcohol and/or Drugs. Respondent shall fully abstain from any consumption of alcohol and/or drugs.

7. Interviews/Meetings with CTC. During the period of probation, respondent shall appear in-person or be available by telephone at interviews or meetings as directed by the CTC or its representatives upon reasonable notice.

8. Notifications. The CTC shall be informed, in writing, of all employment of respondent 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 CTC's Decision to his employer and immediate supervisor. Respondent shall authorize his employer to submit performance evaluations and other reports requested by the CTC. Respondent shall notify the CTC 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.

9. Maintain Active, Current Credentials. During the entire period of probation, respondent shall maintain active, current credentials with the CTC.

10. Maintain Current Contact Information. Respondent must provide written notice to the CTC within ten days of any change of residency or address. Periods of residency outside of California shall not apply toward completion of the probationary period or period of suspension.

11. Probation Monitoring Costs. Respondent shall pay the costs associated with probation monitoring, as designated by the CTC, for each year of probation. Probation monitoring costs shall be made payable to the California Commission on Teacher Credentialing. Within 30 days of the effective date of this order, respondent shall pay the CTC the prorated probation monitoring costs for the number of months remaining in the calendar year. Beginning with the second year of probation, the full year of probation monitoring costs shall be paid to the CTC on or before January 31st

of each calendar year. The total probation monitoring costs for each calendar year may be adjusted by the CTC on an annual basis.

12. Violation of Probation. The CTC shall retain jurisdiction over respondent's case during the period of probation. If respondent violates any term or condition of this Order, after giving his written notice and an opportunity to be heard on the issue of his violation of probation, the CTC may set aside the stay order and impose the suspension of respondent's credential. 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.

13. Completion of Probation. Upon successful completion of the terms of this probation, respondent's credentials and certificates shall be fully restored.

DATE: November 28, 2022



JAMI A. TEAGLE-BURGOS

Administrative Law Judge

Office of Administrative Hearings