

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

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

**KARA LEE BURNS, Respondent**

**Case No. 1-707806261 & 1-995849427**

**OAH No. 2021120192**

**PROPOSED DECISION**

Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter, via video conference, on September 28, 2022.

Diane de Kervor, Deputy Attorney General, represented Marie Vixie Sandy, Ed.D., Executive Director of the California Commission on Teacher Credentialing.

Ellen N. Doty, Attorney at Law, of Rothschild, Wishek & Sands, LLP, represented Kara Lee Burns.

Testimony and documentary evidence was received. The record was closed, and the matter was submitted for decision on September 28, 2022.

## **FACTUAL FINDINGS**

### **Jurisdictional Matters**

1. Marie Vixie Sands, Ed.D. (complainant) filed this Petition to Revoke Probation in her official capacity as the Executive Director of the California Commission on Teacher Credentialing (Commission).

2. On January 19, 1994, the Commission issued a Multiple Subject Teaching Credential (Credential) to Kara Lee Burns (respondent). At all times relevant to the charges in the Petition, the Credential was in full force and effect and will expire on May 1, 2026, unless renewed or revoked.

3. On April 12, 2011, the Commission issued a Crosscultural, Language and Academic Development Certificate (CLAD Certificate) to respondent. At all times relevant to the charges in the Petition, the Certificate was in full force and effect and has no expiration date.

### **Prior Disciplinary Action**

4. In a disciplinary action entitled "*In the Matter of Accusation Against Kara Lee Burns*," Case No. 1-707806261 and 1- 995849427, the Commission issued a Decision and Order, effective August 14, 2020, in which respondent's Credential and Certificate (Credentials) were revoked. However, the revocation was stayed, and respondent's Credentials were placed on probation for five years with certain terms and conditions.

5. The factual bases for the discipline are as follows:

### **SUMAC ELEMENTARY**

- During the 2016/2017 school year, respondent was assigned as a kindergarten teacher at Sumac Elementary School in the Los Virgenes Unified School District (District). Parents and teachers reported that respondent smelled of alcohol while at work. Her face was described as being red and her hands shaky. Respondent was seen stumbling.

### **LUPIN HILL ELEMENTARY SCHOOL**

- During the 2017/2018 school year, respondent was assigned as a kindergarten teacher at Lupin Hill Elementary School in the District.
- On August 21, 2017, during kindergarten orientation with the kindergartners and their parents, respondent's voice shook and was jittery as she went through the orientation packet. She was disorganized during orientation. Respondent perspired heavily and had the smell of alcohol on her breath.
- On August 23, 2017, the first day of school, respondent appeared at work under the influence of alcohol. When she first arrived at school, S.F. smelled alcohol on respondent as she walked to her classroom. Parents who dropped off their children complained to S.F. that respondent smelled of alcohol.

On this day, respondent's speech was slurred as she attempted to direct students into the classroom. Respondent spoke with her eyes closed, was disorganized and was incoherent at times. She had difficulty reading a children's book. Respondent stumbled around the classroom; she walked

into a wall, a chair, and a student. The incident was reported to the Los Angeles County Sheriff's Office, and respondent was arrested.

- On November 14, 2017, the District issued respondent a Notice of Unprofessional Conduct.
- On November 17, 2017, respondent and the District entered into a settlement agreement; respondent agreed to an 11-day suspension from November 13, 2017, through December 4, 2017.

#### **CHAPARRAL ELEMENTARY SCHOOL**

- After the suspension period, on January 2, 2018, respondent returned to work.
- On March 29, 2018, respondent was assigned to work as a substitute kindergarten teacher at Chaparral Elementary School. After respondent reported for work, K.T. walked into respondent's classroom to discuss a student. While speaking with respondent, K.T. smelled the odor of alcohol.
- On May 3, 2018, E.R. met with respondent; again, respondent smelled of alcohol.
- On May 21, 2018, D.W. met with respondent to discuss her responsibilities as a substitute teacher for the day. During their conversation, respondent appeared confused and disoriented. Later that morning, K.L. met with respondent about a student. During this meeting, respondent seemed confused and disoriented. Respondent kept closing her eyes during the meeting. K.L. smelled alcohol on respondent's breath. S.B. spoke with respondent, who seemed disoriented and confused. While speaking with

S.B., respondent kept closing her eyes. S.B. smelled alcohol on respondent's breath.

The incident was reported to the Los Angeles County Sheriff's Office. After deputies arrived at the school, respondent submitted to a Pre-Alcohol Screening test. The results of the test were 0.152 percent blood alcohol content (BAC) at 1033 hours and 0.156 BAC at 1038 hours.

- On October 8, 2018, pursuant to a settlement with this District, respondent resigned with allegations of misconduct pending.

## **Probation Conditions**

6. At all times after the effective date of the Commission's Decision and Order placing respondent on probation, **Condition 13** stated:

**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 an 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 credentials, or if the Attorney General's Office has been asked to prepare a Petition to Revoke Probation against Respondent's Credentials, the probationary period shall be extended and shall not expire until final action is taken on the Petition by the Commission.

7. At all times after the effective date of the Commission's Decision and Order placing respondent on probation, **Condition 10** stated:

**Submit to Tests and Samples.** Respondent shall submit to bodily fluid testing for the presence of alcohol, cannabis, or controlled substances at the request of Respondent's employer, immediate supervisor, or law enforcement.

In addition, Respondent shall, at her expense, fully cooperate with the Commission or any of its representatives, including the assigned compliance monitor, during the period of probation and shall, when requested, submit to such tests and samples as the Commission or the assigned monitor may require for the detection of alcohol, cannabis, or controlled substances.

Respondent's failure or refusal to submit to testing as required above shall constitute a probation violation. **In addition, any positive test for alcohol, cannabis, or a controlled substance, not lawfully prescribed by a licensed health care professional as part of documented medical treatment, shall constitute a probation violation.** Two diluted test results during the period of probation shall also constitute a violation of probation.

8. At all times after the effective date of Respondent's probation, **Condition 9** stated:

**Abstain from Possession, Consumption, or Use of Alcohol, Cannabis, and Controlled Substances.**

Respondent shall completely abstain from the possession, consumption, or use of alcohol, cannabis, and controlled substances, except when ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall provide documentation of prescriptions, recommendations, orders, and treatment plans of health care professionals for the use of these prohibited substances within five days following the request of the monitor. Failure to comply with these provisions shall be a violation of probation.

9. At all times after the effective date of probation, **Condition 2** stated:

**Compliance with All Terms of Probation.** Respondent shall fully comply with all the terms and conditions of this Order and cooperate with the California Commission on Teacher Credentialing (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. 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.

## **Violations**

10. Between August 2020 and November 2021, Sarah Mistler, a Commission investigator (investigator Mistler), served as respondent's probation monitor.

11. On September 4, 2020, investigator Mistler conducted a probation orientation with respondent; they discussed the terms of respondent's probation; respondent stated she took no medication that would interfere with her obligation to comply with **Condition 9 (Abstain from Possession, Consumption, or Use of Alcohol, Cannabis, and Controlled Substances.)**

12. As part of her duties, investigator Mistler contacted respondent, periodically and at random, to tell her to go for alcohol/drug testing.

On March 4, 2021, she called and texted respondent, letting her know that she should go to test for alcohol/drugs that day. Respondent confirmed that she received investigator Mistler's message. In compliance with the probation monitor's order, on March 4, 2021, respondent submitted a urine specimen for testing.

On March 11, 2021, the sample tested positive for ethyl glucuronide (EtG) and ethyl sulfate (EtS), metabolites of alcohol. Investigator Mistler received an email from



Momeau Shepell Drug Testing Center stating respondent received a positive-dilute test for alcohol.

13. As a result of the test result (Finding 12), by letter, dated March 22, 2021, investigator Mistler notified respondent of the probation violation, that the matter would be referred to the Office of the Attorney General for the filing of a Petition to Revoke Probation, and that she would remain on probation until final action was taken on the Petition by the Commission.

14. Respondent's probation is subject to revocation for failure to comply with Probation Conditions 13, 10, 9, and 2.

## **Explanation and Rehabilitation**

15. On May 27, 2021, respondent filed a quarterly report covering the period February 15, 2021, to May 14, 2021. In this report, respondent disclosed that she violated probation because she was found to have alcohol in her system on March 4, 2021.

16. Respondent explained the facts and circumstances underlying her relapse. On the evening of March 3, 2021, she and her husband of 29 years were in the process of divorce and had lived separately since February 2019. He moved back into the home to help prepare it for sale. Her son was present as well. Both men drank alcohol and had alcohol in the home. In the past, this had not been a problem for respondent. However, March 3, 2021, had been a day of particularly stressful interactions between her (now ex) husband and respondent. As she was preparing to go to bed, she went into the kitchen, found a bottle of alcohol, and drank from the bottle. The next morning, she received the call from her probation monitor instructing her to report for testing. She has not had a drink of alcohol since March 3, 2021.

17. Respondent is devastated, embarrassed and remorseful. She understands that, considering her misconduct which led to discipline of her certificates, she was fortunate to be given another chance by Commission and put on probation; drinking the alcoholic beverage was a tremendous mistake, and she regretted it immediately.

18. Respondent acknowledges she is an alcoholic, and alcohol is poison for her. When she experienced her relapse in March 2021, respondent acted immediately to address the relapse.

19. Respondent took steps to avoid being around alcohol and the stressful situation. She moved from the home and into an apartment. Since the incident, she has not been around her ex-husband, except to turn over the keys to their home (June 2021) and at her father's funeral (July 2022). Her son now lives in San Diego, not around respondent. Since March 2021, respondent has experienced stressful events, such as her divorce (August 2022), the death of her father (July 2022), serving as the trustee of her father's estate, paying his debts, dividing his assets and working with her siblings to sell his home.

20. Immediately following her relapse, respondent increased her attendance at Alcoholics Anonymous (AA) meetings. According to the terms of her probation, she is required to attend at least one AA meeting a week. After her relapse, respondent began and continues to attend AA meetings four to five times a week. When she was no longer able to do so in person, respondent attended meetings by Zoom.

Respondent finds AA meetings "encouraging and beneficial". It has been helpful for her to hear from participants who have been in similar situations and have overcome the temptation to drink.

Respondent has become a member of several online communities of recovering women and participates in online meetings and “exchanges through these groups.” Since her relapse, she has read books regarding women and alcoholism. In their stories, she has learned about the inherent risks in drinking alcohol, the positive role models, and the success that has come to women who abstain from drinking.

21. Respondent provided evidence of the treatment and therapy she has received since September 9, 2017, when she began her efforts at sobriety. She has participated in treatment in the Kaiser Permanente Behavioral Health Clinic, Department of Addiction Medicine, Chemical Dependency Recovery Program; in addition to therapy, she has completed a three-week intensive outpatient program for recovery, weekly relapse prevention group meetings, the return-to-work intensive outpatient program and a six-week mindfulness group. According to letters from her therapist, respondent voluntarily participated in therapy and these programs. In a letter, dated February 27, 2018, her therapist stated respondent demonstrated “such high clinical progress” that she reduced the number of sessions respondent attended. These programs were completed prior to incidents that were bases for discipline.

22. Since March 3, 2021, respondent has increased her therapy to once a week. In June 2021 respondent had a “mental shift” in her thinking regarding alcohol. She has changed from thinking of herself as a “person who is not allowed to drink alcohol,” to a “person who chooses not to drink alcohol.” Respondent believes this is a healthier way of thinking for herself. According to respondent, her therapist believes this shows growth as a person. When in a situation with alcohol present, respondent no longer feels punished, misses it, or wishes to have a sip. Instead, she enjoys the social time and the feeling of going home and waking up sober.

23. Respondent provided evidence to establish she has remained sober since March 3, 2021.

24. Except for violation in March 2021, respondent has complied with all terms of probation, including testing negative for alcohol.

25. In addition to compliance with the terms of probation, she has been testing with Soberlink, a breathalyzer test that provides results instantly and relies on facial recognition. Between October 9, 2021, and September 20, 2022, respondent has been testing twice daily through Soberlink, in the morning and in the evening. The results are sent to her therapist and the principal at the school at which she teaches. All results have been negative, except once; respondent explained that, on July 11, 2022, there was an environmental issue; on that date, following her father's death, she travelled to her family home; according to the test result, "the identity was declined" because the room was too dark; she missed the next test because she fell asleep. Respondent is willing to continue with Soberlink, at her cost, as a condition of probation.

26. Respondent had a hair follicle test to confirm that she was not only sober but had been at least 90 days prior to testing. On August 17, 2022, a hair follicle was collected from respondent to test whether she had ethyl glucuronide in her system; the hair follicle test is valid for 90 days prior to the test date. The results were negative for ethyl glucuronide, which meant she had no alcohol in her system.

27. Respondent explained that she had remained sober through stressful events, such as her divorce, the death of her father and working with her siblings on her father's estate.

28. Respondent explained she is a different person from the woman who engaged in the misconduct which resulted in her discipline. Except for drinking alcohol on March 3, 2021, she has not violated the terms of probation or engaged in any misconduct. She has not driven under the influence of alcohol; she has not missed work because of alcohol.

29. Respondent loves teaching and always has. She testified about the reasons that she does and established that she is a good teacher. In addition to her own testimony, respondent provided: (1) her evaluations prior to the incidents that resulted in her discipline, (2) letters of support from family, friends, and colleagues, and (3) the testimony of administrators at the school at which she teaches in support of the foregoing.

30. During her career, respondent has received evaluations as a teacher that met or exceeded standards.

31. Respondent provided 24 letters of support from family, friends, and colleagues. They are dated in or about 2019 and appear to have been written in support of respondent before the Commission placed her on probation. Others appear to support her application for employment. Only a few writers appear to be aware of that the Commission was seeking to discipline respondent's credentials. The writers of the letters attest to her skills and character traits as a teacher.

32. Since September 2021 respondent has been employed at Ivy Academia Entrepreneurial Charter School. For the 2021/2022 school year, she taught fifth grade; for the current school year, she teaches kindergarten.

Joe Herzog, Executive Director, and Thomas Kuhny, principal, of the school, testified on respondent's behalf. These school administrators are familiar with

respondent, her duties at the school and have had an opportunity to observe her during her employment. Respondent provided each of them with a copy of the Commission's Consent Determination and Order, which set forth the factual and legal bases for discipline and the terms of probation.

Administrators at the charter school, at which she teaches, believe respondent will reinvigorate the kindergarten program and will help increase the number of students at the school. In addition, the administrators have asked respondent to serve as a mentor teacher in the California Induction Program for less experienced teachers or teachers who are new to the district. Even without being a mentor, respondent has assisted new or returning teachers to maneuver within the school program. Respondent is proud that her abilities in education have been noticed and valued.

33. Except for the violation of probation in March 2021, respondent has violated no other terms of probation.

### **Other Facts Considered**

34. Respondent admitted she relapsed twice, on May 21, 2018, and again on March 3, 2021. She had great difficulty admitting that she relapsed on May 3, 2018. This caused the trier of fact concern about respondent's ability to continue her compliance with the Commission's terms of probation. However, despite this testimony, respondent's actions, and her attitude change since March 3, 2021, cannot be disregarded and are considered.

35. The administrators at the school at which respondent teaches deeply respect her and described the service she has provided to the school, teachers, parents, and students and would expect her to continue to provide if allowed to retain her Credentials. However, they are aware of her violations and would not tolerate her

presence at school while under the influence of alcohol or even after drinking alcoholic beverages. Their concern, as the Commission's, is the best interest of the families and students who attend their school. As such, they are available to provide another source of monitoring of respondent's sobriety.

## **LEGAL CONCLUSIONS**

1. In a disciplinary action entitled *In the Matter of Accusation Against Kara Lee Burns*, the Commission issued a Decision and Order, effective August 14, 2020, in which respondent's Credentials were revoked; the revocation was stayed, and respondent's credentials were placed on probation for five years with terms and conditions.

Respondent violated Conditions 10 (Submit to Tests and Samples), Condition 9 (Failure to Abstain from Alcohol), and Condition 2 (Failure to Comply with Probation) when she tested positive for alcohol on March 4, 2021.

2. Considering the factual bases for discipline of respondent's Credentials and her violation of the terms of probation, the issue is the appropriate measure of discipline. The Commission seeks revocation of probation and imposition of the disciplinary order that was stayed revoking respondent's Credentials. Respondent seeks to maintain her Certificates on whatever terms the Commission deems appropriate. Respondent should be allowed to maintain her credentials only if the people, including students, can be adequately protected. Otherwise, respondent's Credentials should be revoked.

There is no issue regarding respondent's competency as a teacher. The problem is her alcoholism and her failure to cope with her disease. The factual bases for her

discipline were egregious. Repeatedly, she exercised poor judgment and went to school in the presence of students, parents, and colleagues while under the influence. Some of the incidents occurred while she was receiving therapy. Despite being given a "second chance" and being placed on probation, after meeting with a probation monitor and discussing the terms of probation, seven months later, respondent violated the terms of probation by testing positive for alcohol. Consideration has been given to her failure to acknowledge her relapse on May 3, 2018. However, based on (1) the evidence of her conduct that resulted in discipline of her license, (2) her actions since the relapse on March 3, 2021, and (3) her demeanor during the hearing, respondent demonstrated that she takes her sobriety and probation seriously, has increased her efforts at sobriety and has successfully done so.

Additional terms of probation can be included to protect the public, including having the option of including SoberLink and requiring her administrator to notify the Commission should respondent appear at work under the influence.

## **ORDER**

1. The Commission on Teacher Credentialing's request to revoke probation and to revoke the Multiple Subject Teaching Credential and Crosscultural, Language and Academic Development Certificate issued to Kara Lee Burns is denied.

2. The Multiple Subject Teaching Credential and Crosscultural, Language and Academic Development Certificate issued to respondent Kara Lee Burns are revoked, the revocation is stayed, respondent's probation is reinstated and respondent shall remain on probation until August 20, 2025, subject to the same terms and conditions and shall include the following additional terms and conditions.



17. **SoberLink Reports.** No later than 30 days from the effective date of this decision, respondent shall provide evidence that she is continuing to participate in SoberLink monitoring, at her cost. She shall test twice a day, in the morning and in the evening. The results shall be provided to an administrator at the school at which respondent works and to an individual designated by the Commission. Respondent shall notify the Commission or Commission designee of who the administrator is at her school.

A positive test result for any substance prohibited by the terms of probation shall constitute a violation of probation. Failure to test, without excuse, shall constitute a violation of probation.

The Commission or its designee may issue a Cease Practice letter and may refer the matter to the Office of the Attorney General for the filing of Petition to Revoke Probation. The terms of probation shall remain in effect until the matter is resolved.

18. **Administrative Notification.** Prior to commencing or resuming work at any school, an administrator at the school shall be identified who will notify the Commission or its designee, if respondent appears at work under the influence of alcohol. The notification shall be in writing and within 24 hours of such an incident.

Respondent shall provide the name of the administrator and acknowledgment of the administrator that he/she is willing to assume this responsibility. Both the name of the administrator and the acknowledgment shall be in writing and is respondent's obligation to provide to the Commission or its designee.

If the Commission or its designee receives notice respondent has appeared at work while under the influence of alcohol, this shall constitute a violation of probation. The Commission may issue a Cease Practice letter and may refer the matter to the Office of the Attorney General for the filing of Petition to Revoke Probation. Respondent shall remain on probation until the matter is resolved.

DATE: October 20, 2022

*Vallera Johnson*

VALLERA J. JOHNSON

Administrative Law Judge

Office of Administrative Hearings