

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

In the Matter of the Accusation Against:

JESSICA KAKIMOTO,

**Clear Multiple Subject Teaching Credential, Preliminary
Multiple Subject Teaching Credential, Certificate of
Clearance, Emergency 30-Day Substitute Teaching Permit,
Respondent.**

Agency Case No. 2-380509684

OAH No. 2023040520

PROPOSED DECISION

Administrative Law Judge Michael C. Starkey, State of California, Office of Administrative Hearings, heard this matter on June 20, 2023, via videoconference.

Julianne Mossler represented complainant Mary Vixie Sandy, Ed.D., Executive Director of the California Commission on Teacher Credentialing.

Respondent Jessica Kakimoto represented herself.

The matter was submitted on June 20, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. On July 19, 2020, the California Commission on Teacher Credentialing (Commission) issued a Clear Multiple Subject Teaching Credential (Credential) to respondent Jessica Kakimoto. The Credential was in full force and effect at all times relevant to the charges brought herein and is set to expire on August 1, 2025, unless renewed.

2. On January 24, 2018, the Commission issued a Preliminary Multiple Subject Teaching Credential (Preliminary Credential) to respondent. The Preliminary Credential was in full force and effect at all times relevant to the charges brought herein and was set to expire on February 1, 2023. Records provided on April 17, 2023, by the Custodian of Records from the Commission state that this Preliminary Credential is still valid, but do not indicate that it was renewed.

3. On October 16, 2015, the Commission issued a Certificate of Clearance (Certificate) to respondent. The Certificate was in full force and effect at all times relevant to the charges brought herein and was set to expire on September 1, 2025, unless renewed.

4. Respondent previously held an Emergency 30-Day Substitute Teaching Permit, which was issued on September 11, 2017, and expired on October 1, 2018.

5. On or about November 16–18, 2022, pursuant to its authority under section 44242.5 and 44244 of the Code, the Committee of Credentials (Committee) determined that probable cause existed, within the meaning of section 80300, subdivision (o), of title 5 of the California Code of Regulations, for an adverse action

against respondent, and recommended a suspension of her teaching credentials and all other certification documents for a period of 90 days. Respondent timely requested an administrative hearing.

6. On February 27, 2023, complainant Mary Vixie Sandy, Ed.D., issued the accusation solely in her official capacity as the Executive Director of the Commission. Complainant alleges that respondent received from a student a bottle used to store alcohol, hid the bottle, lied to and misled administrators investigating the incident, privately communicated with students in an effort to conceal these actions, resigned from her teaching position with disciplinary charges pending, and that these acts constitute cause to discipline her credentials and certification documents.

7. Respondent timely requested a hearing and this proceeding followed.

April 2022 Misconduct

8. Before hearing, respondent stipulated to the facts set forth in the accusation.

9. From August 17, 2020, through April 22, 2022, respondent was employed as a seventh-grade teacher at Rolling Hills Middle School, in the Campbell Union School District.

10. On April 20, 2022, the Rolling Hills Middle School assistant vice principal received a report that a student in respondent's classroom was in possession of alcohol. Students were interviewed and they indicated that a bottle might be found behind respondent's desk. Student EK reported seeing student TC3 remove a bottle from student AK's backpack, and give the bottle to respondent. Student TC3 admitted

that he removed the bottle from AK's backpack and gave it to respondent, telling her: "This is what they are looking for."

11. A resource teacher reported that when the student interviews were complete, student AK ran to respondent's desk and said, "we got away with it." Respondent shushed AK and whispered something to her. Then AK turned around, looked directly at the resource teacher, and uttered an expletive.

12. The principal and assistant vice principal searched respondent's classroom for the bottle. Respondent had possession of the bottle but pretended to assist the search by moving a backpack and clothing near her desk, searching shelving, and searching behind the white board. Later in the day, respondent sent an email to the principal stating that she could not find the bottle. A different student took the bottle from respondent and disposed of it.

13. On April 21, 2022, respondent exchanged "Snapchats" (social media messages) with a student and instructed him that, if questioned by the principal, he should say he was playing with respondent's water bottle in class that day. Respondent said she would explain why she took the bottle home by saying: "I'm going to say that I said I have to go home and wash it now that you touched the straw." When the student mentioned that other students were saying that AK got drunk, respondent wrote "as long as no one ss [screenshots] then its fine," meaning that the administration could not prove misconduct if the students continued to conceal information.

14. On April 22, 2022, respondent was placed on paid administrative leave.

15. On April 25, 2022, respondent resigned from her teaching position at Rolling Hills Middle School while disciplinary charges were pending because the superintendent of the district told her she would be terminated if she did not resign.

16. Respondent also provided a written statement admitting that student TC3 handed her a bottle and asked her to hide it in her bottom drawer. Respondent stated that she panicked and hid the bottle in her desk. She also stated that students messaged her on Snapchat the next day, and she tried to make them feel better.

Respondent's Additional Evidence

17. Respondent testified at hearing. She is currently employed by the San Jose Unified School District (SJUSD) as a fifth-grade English teacher. She is married and has a young child.

18. Regarding the April 2022 events that led to her resignation, she reports the following: When student TC3 handed her a bottle and asked her to hide it in her bottom drawer, he was panicking. Respondent "absorbed his panic" and instinctively took the bottle from him and put it in her desk drawer. The bottle was empty and respondent later found out it had been rinsed out prior to her possession of it. She wanted to calm him down first, and then try to figure out what was happening, but the situation "escalated quickly" when the principal came into the room to search for the bottle. Respondent knew she had made a mistake, was scared she might lose her job, and lied to protect herself. Respondent thinks she made the choice to lie because the student who was drinking had already been caught. Respondent was leaving town that night for a wedding, which added stress and made it more difficult for her to have further communication with the school's administration.

19. Respondent reports that she deeply regrets her misconduct, and that it "broke me," "traumatized me in a way," and caused her to spend a "lot of time grieving." She reports that she realizes that everyone forgave her, but it took time for her to forgive herself. She contends that she would handle the situation differently if it reoccurred, and would hold the bottle until she understood what was happening. She feels that "one moment" should not define her as a teacher.

20. Respondent submitted evaluations of her teaching performance from her time at Rolling Hills Middle School prior to the April 2022 incident. In each evaluation she received an overall rating of "Meets Standards" and ratings in sub-categories of "Meets Standards" or "Exceeds Standards." The evaluator described respondent as a "warm demander" and "calm and level headed" and reported that she created an atmosphere of "support and inspiration" for her students.

21. Respondent submitted two evaluations of her teaching performance from her first semester teaching in the SJUSD. She received an overall rating of "Meets Standards" from both evaluators. The evaluators were unaware of respondent's April 2022 misconduct. Respondent explained that she wanted the new school district to "get to know her first," and she did not want to be judged based on these events.

22. Respondent submitted letters from a parent and grandparent of one of respondent's former fifth-grade students. Neither author was aware of the April 2022 misconduct. The student suffers from acute anxiety and both authors report respondent's sensitivity to this issue has helped calm the student and greatly improved the student's attitude towards attending school. Both authors regard respondent as an excellent teacher.

23. Respondent also submitted three letters written in late 2017 by respondent's supervisors. The authors recommended her for a teaching position and described her as energetic, knowledgeable, dedicated, and responsive to student needs. One author wrote: "Probably [respondent's] greatest strength is in creating a classroom community and environment that is a safe and effective learning environment for student learning."

24. Respondent submitted the testimony of her husband who reports that respondent has suffered greatly over the last year due to the consequences of her misconduct and the uncertainty of the outcome of these proceedings. He opines that she has been punished enough. He reports that parents of respondent's students were crying and expressing gratitude towards her during the promotion ceremony. He emphasized that respondent was only lying to protect herself, not to prevent discipline of a student consuming alcohol.

25. Respondent appears to regret her misconduct and understand that it was wrong to lie to and mislead the administrators investigating the use of alcohol by a student. However, she appears primarily focused on the consequences she suffered due the discovery of this misconduct, not her responsibility for it. She did not demonstrate insight into the harm she caused her students by failing to model honesty and integrity during these events and by coaching some of them to participate in her deception. Respondent proved little rehabilitation.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Complainant is required to prove cause for discipline of a teaching permit by "clear and convincing proof to a reasonable certainty." (Cf. *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; see Bus. & Prof. Code, § 23.7.) To the extent respondent contends mitigation or rehabilitation, it is her burden to prove those contentions by a preponderance of the evidence. (Evid. Code, §§ 115, 500.)

Causes for Discipline

2. The Commission may discipline the credential of a teacher who commits acts of immoral conduct, moral turpitude, or unprofessional conduct, or who demonstrates evident unfitness for service. (Ed. Code, §§ 44421, 44345, subd (e) [All statutory references are to the Education Code, unless otherwise stated].)

3. "Unprofessional conduct" is conduct that "violates the rules or ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing." (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553 [citation omitted], overruled, in part, on another ground in *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575, 588, fn. 7.)

4. "The term 'immoral' has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals." (*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811 [citation omitted].)

5. "Moral turpitude is sometimes used as synonymous with dishonesty, or a high degree of unfairness." (*Board of Education v. Weiland*, *supra*, 179 Cal.App.2d at p. 811 [citation omitted].) 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. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027.)

6. Respondent helped one of her middle school students hide a bottle used to store an alcoholic beverage from the administrators of the school investigating alcohol use by one or more students; repeatedly lied to and misled these administrators; privately encouraged multiple students to continue to mislead and conceal information from the administrators about these events; and resigned from her teaching position with disciplinary charges pending to avoid termination for this misconduct. (Factual Findings 9–16.) These acts constitute immoral conduct, moral turpitude, and unprofessional conduct; and they demonstrate evident unfitness for service. Cause was established to discipline respondent's credentials under sections 44421 and 44345, subdivision (e).

***Morrison* Factors**

7. Pursuant to *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 and California Code of Regulations, title 5, section 80302, the Commission shall determine whether a teacher's conduct indicates such unfitness to teach as to warrant disciplinary action. That determination may be based upon factors (*Morrison* factors) that include, but are not limited to, the: (1) likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated; (2) proximity or remoteness in time of the conduct; (3) type of credential held; (4) extenuating or aggravating circumstances surrounding the

conduct; (5) praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) likelihood of recurrence of the conduct; (7) the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved or other certified persons; and (8) the publicity or notoriety given to the conduct.

8. The first *Morrison* factor focuses on the “likelihood” the conduct “may have” adversely affected students, teachers, or the educational community, and the degree of adversity anticipated. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(1).) There is no evidence of a quantifiable harm, but respondent modelled dishonest and unethical behavior to multiple students. This factor suggests unfitness to teach.

9. Respondent’s misconduct was committed just over a year ago. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(2).) It was not remote in time. This factor suggests unfitness.

10. Respondent holds a clear multiple subject teaching credential. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(3).) Elementary and middle school children are particularly impressionable. (*Broney v. California Com. on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 477.) This factor suggests unfitness.

11. The fourth *Morrison* factor examines the extenuating or aggravating circumstances surrounding the conduct. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(4).) “Aggravating factors” are circumstances demonstrating that a greater degree of adverse action is needed to adequately protect the public, schoolchildren, or the profession, including a prior record of adverse action; that the misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct; that the misconduct significantly harmed a child entrusted to the care of the credential holder;

and that the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source. (§ 80300, subd. (b).) Respondent's multiple dishonest interactions with her administrators were related to a seventh-grader's consumption of alcohol on campus, and she coached students to continue to hide information from administrators. These are aggravating circumstances.

12. "Mitigating factors" are circumstances demonstrating that the public, schoolchildren, and the profession would be adequately protected by a more lenient degree of adverse action. (Cal. Code Regs., tit. 5, § 80300, subd. (m).) Potential mitigating factors include: absence of any prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious; lack of harm to the person who is the object of the misconduct; emotional or physical difficulties suffered by the teacher which substantially contributed to the misconduct, provided that the difficulties were not the product of illegal conduct such as illegal substance abuse, and further provided that the teacher has established through clear and convincing evidence that he or she no longer has such difficulties; attestations to the teacher's good character by individuals from the educational or general community who are aware of the extent of the teacher's misconduct; objective action by the teacher, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing designed to timely make amends; proximity or remoteness in time of the misconduct relative to the seriousness of the misconduct; and the nature and extent of subsequent rehabilitation. (*Ibid.*)

13. Respondent has shown little in the way of mitigation. She has no previous or subsequent record of teacher discipline, but she has only been teaching for approximately six years. The formal evaluations of her teaching are positive. She

provided supporting character letters, but the authors were unaware of her misconduct. She did not show lack of harm to the students, emotional or physical difficulties which substantially contributed to the misconduct, objective action spontaneously demonstrating remorse at the time of the misconduct, remoteness in time relative to the seriousness of the misconduct, or significant rehabilitation.

14. Respondent's motive for her acts is blameworthy, not praiseworthy. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(5).)

15. Based upon the evidence in the record, it is difficult to predict whether respondent will commit further dishonest conduct. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(6).) She showed little insight into or rehabilitation from her misconduct, but she appears motivated to avoid similar consequences in the future.

16. Disciplinary action against respondent would not inflict an adverse impact or chilling effect on respondent or others, because there is no constitutionally protected speech or behavior in the misconduct at issue. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(7).)

17. Respondent's misconduct was known to at least some of her students and some administrators, but there is no evidence of notoriety in her local community. (Cal. Code Regs., tit. 5, § 80302, subd. (a)(8).)

18. Application of the *Morrison* factors in this matter establishes that respondent's misconduct indicates such unfitness to teach as to warrant disciplinary action. Cause was therefore established to discipline respondent's credentials and all other certification documents under section 44421.

Determination of Discipline and Application

19. Cause for discipline having been established, the remaining question is what level of discipline is necessary to protect the public, schoolchildren, and the profession. The Commission may privately admonish, publicly reprove, suspend, or revoke the credential of a credential holder. (§ 44421.) Respondent argues for a private admonishment. Complainant did not recommend a specific level of discipline.

Respondent appears motivated to avoid similar consequences in the future. However, her misconduct was serious, committed over the course of multiple days, and recent. She misled and lied to school administrators about an alcohol-related incident and coached students to participate in her deception. She showed little insight or rehabilitation.

Upon consideration of the above factors and the record as a whole, it is determined that the recommendation of the Committee of Credentials to impose a 90-day suspension is the appropriate outcome in this matter, and will protect students, the public, and the profession by impressing upon respondent the seriousness of her misconduct and the need to communicate honestly and maintain professional boundaries with students in the future.

ORDER

All credentials and all other certification documents issued to respondent Jessica Kakimoto are suspended for a period of 90 days from the effective date of this decision. Respondent may then resume performance of the duties authorized by the credentials and other certification documents.

DATE: 07/10/2023



MICHAEL C. STARKEY

Administrative Law Judge

Office of Administrative Hearings