

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

In the Matter of the Accusation Against:

ANDREA ROSE VANDEUSEN¹, Respondent

Case No. 2-74908862

OAH No. 2021110101

PROPOSED DECISION

Marion J. Vomhof, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter via telephone and videoconference on March 10, 2022, and March 23, 2022.

Amie J. Flynn, Deputy Attorney General, represented complainant, Mary Vixie Sandy, Ed.D., Executive Director of the California Commission on Teacher Credentialing (commission), State of California.

Heather A. Melone, Attorney at Law, Wellspring Law, represented Andrea Rose Van Deusen, respondent.

¹ The correct spelling of respondent's last name is Van Deusen.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on March 23, 2022.

FACTUAL FINDINGS

Background

1. Commission is responsible for the credentialing of public-school teachers, including issuing credentials and taking adverse action against applicants and credential holders. The commission's Committee of Credentials (committee) is responsible for investigating alleged acts or omissions that may be cause for the commission to take adverse action. 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.)

2. On September 15, 2011, the commission issued to respondent a Clear Multiple Subject Teaching Credential, which was in effect at all times relevant to this matter and is set to expire on October 1, 2026, unless renewed.

3. On June 1, 2017, the commission issued to respondent a Clear Education Specialist Instruction Credential, which was in effect at all times relevant to this matter and is set to expire on July 1, 2022, unless renewed.

4. Respondent previously held the following credentials:

- A Preliminary Multiple Subject Teaching Credential, issued on May 21, 2009, and expired on June 1, 2014;

- A Level 1 Education Specialist Instruction Credential, issued on May 21, 2009, and expired on September 1, 2017;
- An Emergency 30-Day Substitute Teaching Permit, issued on February 13, 2008, and expired on March 1, 2010; and
- A Certificate of Clearance issued on October 10, 2007, and expired on November 1, 2012.

5. At its October 14 through 16, 2020, meeting, 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 2020 felony conviction for two counts of conspiracy to commit securities fraud. Respondent timely requested an administrative hearing.

6. On May 21, 2021, the commission filed an Accusation seeking the revocation of respondent's teaching credentials based upon four causes for discipline: (1) unprofessional conduct; (2) immoral conduct; (3) evident unfitness for service; and (4) addiction to intoxicating beverages to excess. The underlying allegations were that on November 13, 2019, respondent was convicted of violating Vehicle Code section 232152, subdivision (b), driving with a blood alcohol content (BAC) of 0.08 percent or more, with admitted allegations of a BAC of 0.15 percent or more.

In aggravation, complainant alleged that a greater degree of adverse action is needed to protect the public, schoolchildren, or the profession because respondent

has a prior record of adverse action,² including a suspension in 2014, and a criminal conviction in 2015, resulting in a suspension in 2016.

Prior Discipline

7. Pursuant to a Resignation Agreement, on June 30, 2013, respondent resigned from teaching at Lake Elsinore Unified School District while charges of misconduct were pending. The commission investigated the charges of misconduct and on May 23, 2014, adopted a Consent Determination, suspending her credentials for 45 days. The statement of charges included immoral or unprofessional conduct, dishonesty, evident unfitness for service, and persistent violation of or refusal to obey reasonable regulations of the school district. The specific acts or omissions substantiating the charges were that respondent: misappropriated funds, engaged in alcohol or intoxicant related behavioral misconduct, failed to perform safety duties, used poor judgment, and engaged in inappropriate behavior toward students and parents.

8. On February 1, 2015, in Criminal County Court in Galveston County, Texas, respondent was convicted on her plea of guilty of driving while intoxicated (DWI) with a BAC of 0.15 percent or more. On July 1, 2016, the commission adopted a Consent Determination, suspending her credential for 21 days and granting her application for a Level I Education Specialist Instruction Credential upon completion of the suspension.

² 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.)

Complainant's Evidence

RESPONDENT'S 2019 CONVICTION

9. The present allegations involve respondent's 2019 conviction. On November 13, 2019, in Riverside County Superior Court, respondent was convicted upon her plea of guilty of violation of Vehicle Code section 23152, subdivision (b), driving with a BAC of 0.08 percent or more, a misdemeanor. Sentencing was suspended and respondent was placed on four years' summary probation, with terms and conditions that required her to serve in the Work Release Program, complete an Impaired Driver Program, complete a 60-day alcohol monitoring program, attend Alcoholic Anonymous (AA) meetings, complete a Mothers Against Drunk Driving Victim Impact Panel, install an ignition interlock device in her vehicle, and pay fines and fees.

RIVERSIDE COUNTY SHERIFF'S DEPARTMENT INCIDENT REPORT

10. The facts and circumstances of respondent's arrest are found in a Riverside County Sheriff's Department (RCSD) Incident Report (incident report) which was received in evidence under *Lake v. Reed* (1997) 16 Cal.4th 448, 461-462. The report documented that on September 25, 2019, at approximately 9:07 p.m., Deputy Mike Marston responded to a possible driving under the influence (DUI) driver. The reporting party stated that a female in the Finch bar, who was intoxicated and falling out of her chair, left the bar location in a white Honda sedan with a black truck following her. The reporting party provided a license number for the Honda. Deputy Marston searched the area and did not locate the vehicle. He drove to the registered owner's residence where he observed the vehicle and a black truck in the driveway. He knocked on the front door and spoke with respondent and Charles Van Deusen,

identified as respondent's father. Mr. Van Deusen stated that he followed his daughter home from the bar after she refused to get in the truck. They arrived home less than 10 minutes before Deputy Marston arrived at the residence. Respondent admitted to consuming one drink at the bar. Deputy Marston observed that respondent was displaying objective signs of being under the influence of alcohol, including bloodshot, watery eyes and a strong odor of alcohol emitting from her breath. Deputy Marston summoned Corporal Perry Willow of the RCSD to the scene for a DUI investigation. At the hearing, Deputy Marston explained that Corporal Willow has experience investigating DUIs and Deputy Marston does not.

Corporal Willow arrived at the residence and was given the above summary by Deputy Marston. Corporal Willow spoke with respondent, whom he identified from her California driver's license. He observed that her eyes were blood shot and watery, her eyelids were droopy, and she had an odor of alcohol emitting from her breath. Respondent told Corporal Wilson that she consumed at least two drinks at the bar, and drove home safely and did not hurt anyone, so "why were we here?" Corporal Willow observed that respondent was upset and at times she was crying. She yelled that he should not arrest her because she was a teacher, and because it was his fault rather than hers. She said she called her dad because she always let him know where she was, and she did not need him to drive her home. Mr. Van Heusen stated that he went to the bar and respondent refused to get in his car.

Corporal Willow told respondent that he was going to conduct field sobriety tests (FSTs). He explained and administered the horizontal gaze nystagmus (HGN) test which respondent failed. He demonstrated the walk and turn test, and told her not to start until he told her to start. She started to walk and he told her to stop and follow instructions. Respondent said, "just take me in." Corporal Willow asked if she was

willing to submit to a Preliminary Alcohol Screen (PAS), a type of breath test. She initially refused. He advised her that she would be arrested for DUI. She spoke with her father and agreed to the test. At 10:02 p.m. she gave a breath sample with a BAC of 0.236 percent. Based on his entire investigation, Corporal Willow arrested respondent at 10:03 p.m. for DUI. He told her she could give a breath sample or a blood sample; she chose to give a breath sample. Her first breath sample at 10:07 p.m. registered at 0.20 percent BAC; her second breath sample at 10:10 p.m. registered at 0.22 percent BAC. Respondent was transported to jail and booked.

TESTIMONY OF DEPUTY MIKE MARSTON

11. Deputy Marston testified at the hearing and his testimony was consistent with the incident report. Deputy Marston stated that the call for service was received by dispatch at 9:07 p.m. regarding a possible DUI driver. The dispatcher called Deputy Marston "about 40 seconds later." The reporting party stated that about five minutes earlier a white sedan drove away from the bar followed by a black truck. Deputy Marston was driving in the area "and arrived [at the bar] within a minute." He was unable to locate the vehicle in the area of the bar. He obtained the name and address of the registered owner and drove to the owner's residence which was "down the road" from the bar. He arrived at the residence at 9:16 p.m.

Deputy Marston knocked on the door and Mr. Van Deusen answered. Deputy Marston asked if respondent was home. Mr. Van Deusen made a statement to the effect that she had a drinking problem; Deputy Marston took the information as background as part of his investigation. Respondent came to the door. He noticed signs of intoxication. Respondent was "very upset." She told him that the incident was going to get her fired. Deputy Marston estimated that it was less than 15 minutes from the time respondent was seen leaving the bar until he spoke with her.

TESTIMONY OF CORPORAL PERRY WILLOW

12. Corporal Willow arrived at the scene at about 9:20 p.m. Deputy Marston gave him a summary of what had occurred prior to his arrival. Corporal Wilson prepared the incident report, and he relied on the information from Deputy Marston, his body camera, and his memory to prepare the report. He testified at hearing and his testimony was consistent with his report as summarized above.

TESTIMONY OF CHARLES VAN DEUSEN

13. Charles Van Deusen is respondent's father. He acknowledged that he is testifying today pursuant to a subpoena served upon him by complainant. Respondent was living with him at the time of the incident. At times, when she was leaving work or when she was drinking, she would call him to let him know where she was. He had a concern that she would drink and drive. He never saw her drink and drive; he never saw her drunk.

On the night of the incident, respondent called him from the Finch bar, which is one mile from his home. She had stopped at the bar to eat dinner on her way home from work. He did not recall specifically what she said, but he "thinks that two women were haggling her." He drove to the bar. When he arrived, respondent was walking out of the restaurant and he saw women in the parking lot. Respondent "looked fine and not inebriated." She drove her car and he followed her home. He believes she drank after she came home because she did that at times, although not often. He never saw her drink more than one glass of wine and never drink anything other than wine.

He estimated it was one hour, maybe less, from the time he arrived home until Deputy Marston arrived. Deputy Marston asked to speak with respondent. Mr. Van Deusen asked why. Deputy Marston said they wanted to talk to her about driving

home from the Finch bar inebriated because he had received a report that she was inebriated at the bar.

14. In 2019, Mr. Van Deusen "didn't believe she had a drinking problem." He believes she was going to AA "because of her prior issues." She was going to counseling at a clinic in Temecula, although he did not know the dates. He "knows she used alcohol." He "had seen her struggle with alcohol."

Mr. Van Heusen then testified that prior to the 2019 incident, respondent had begun drinking again. He had tried to get her into treatment before the incident. He told her to "go to meetings, stay strong." She stopped drinking after her arrest. Mr. Van Heusen's statements contradicted his earlier testimony that in 2019, he did not think she had a drinking problem.

Respondent moved to Texas in August 2014 and was convicted of DWI (driving while intoxicated) in Texas in February 2015. In connection with the commission's investigation regarding her DWI, he and his wife submitted a letter to the commission. They wanted to support her in her sobriety and everyone in the house was going to abstain from alcohol. Respondent has since moved out of his house. He said, "there is no alcohol in the house."

Mr. Van Heusen was shown a letter to the commission dated March 15, 2016, from him and his wife. He recalled submitting the letter but did not recall its contents. He did not recall telling the commission that his family was going to abstain from alcohol. After her DWI, respondent returned to California. He gave her "a room and a home, and supported her." She had a teaching position at San Marcos High School (SMHS.)

15. On cross-examination, Mr. Van Deusen said when he arrived at the bar, respondent walked to his car. He did not see her stumble or lose her balance. He did not smell alcohol, although she was outside his car.

When they arrived home, Mr. Van Heusen went the garage and respondent went into the house. When Deputy Marston arrived, he went to get respondent from her room. Respondent was crying while the deputies were talking with her, but he does not recall her yelling or blaming them for her arrest. He said she was cooperative with them.

Mr. Van Heusen has seen her drink at home. It was not an everyday event. She would drink on weekends or during the week. She did not drink a lot at a time. Respondent has since gone back to church and has become a deacon. She "is nothing but motivated."

Respondent's Evidence

TESTIMONY OF RESPONDENT

16. Respondent graduated from California State University San Marcos in 2007. She was issued a Multiple Subject Teaching Credential and an Education Specialist Instruction Credential in 2009.

17. In early 2009, she was student teaching at Lake Elsinore Unified School District and in August 2009 she began teaching at Lakeside High School in Lake Elsinore. In addition to teaching, she was a cheer coach for several squads, volunteered in a program for at-risk students, and volunteered to supervise Saturday work study, where students who were habitually truant were required to attend to complete homework.

18. An assistant principal at Lakeside High School, Jason Moscowitz, had been very supportive of respondent and had become her mentor. In October 2011, he was killed in a traffic accident. After his death her demeanor changed. Her parents noticed the change. She self-isolated.

In 2012, she had been "drinking one to two evenings [a week] at home to relax." In September 2012, respondent was home after hours when she received a call from a junior varsity (JV) coach. The call was regarding two girls involved in an altercation. Respondent "had had drinks" and she called and spoke with one of the girls. She said, "It was not my finest hour." In February 2013, the same girl was a "no-show" for an event, and respondent removed her from the squad. Respondent learned that their telephone call had been recorded, and the recording was turned over to the school. When respondent heard the recording, she was "embarrassed and disappointed in myself."

19. In August 2013, she moved to Arizona and taught high school for the 2013-2014 school year. In May 2014, she entered into a Stipulated Consent Determination and received a 45-day suspension. She knew she "had made some poor decisions and thought it was time for a new start." In August 2014, she moved to Texas and got a job teaching at a high school for the 2014-2015 school year. On February 1, 2015, she pled guilty to DWI in Texas. She was ordered to one year of probation and met all probation terms. The DWI did not affect her skills or her capacity as a teacher.

20. In June 2015 she moved back to California. In November 2015, she voluntarily entered an Intensive Outpatient Substance Abuse Treatment Program at MFI Recovery Center (MFI) in Murrieta. A February 22, 2016, MFI recovery progress letter from Christine M. Mormino, a substance abuse counselor, reported that respondent had completed 25 of the 32 group sessions as of that date; she had

complied with random drug screenings; and she was participating in sessions regarding relapse prevention, recovery skills, anger management, and honesty.

21. On the night of the incident, respondent believes it was about 8:00 p.m. when she arrived at the Finch bar. She and the bartender were acquaintances. She ordered a double vodka soda. She “exchanged nasty looks” with two women at the bar. She explained that she did not fall out of the chair, but her boot got caught and she stumbled; it had nothing to do with alcohol. She does not recall when she called her dad. After he arrived, she drove home, went to her room, and drank wine. She estimated she had been home about 30 to 45 minutes when the officers arrived. She entered a guilty plea and received 48 months’ summary probation. She is currently on probation, which is scheduled to end in November 2023. She has completed all the court and probation requirements. The incident did not involve the school or her students.

22. When she submitted her personal statement to the commission in connection with her 2019 conviction, she did not realize there was an error regarding her sobriety date. At her attorney’s request, she signed and dated the statement as of June 26, 2021. She did not review the statement prior to signing. The statement incorrectly stated that her sobriety date was October 2020. Her new sobriety date is July 25, 2021. On July 25, 2021, after a weekend with her girlfriends, she decided to completely stop drinking. Between December 2020 and July 25, 2021, she was never intoxicated and “only drank a handful of times.” She never drove or went to work after drinking.

Respondent “loves working with families and seeing the progress of students,” and those students who do not like school but succeed. She “loves everything about education.” The impact of not teaching would be “devastating” to her. She said, “It has

been my life for 13 years.” She is trying to do the right things. She has acknowledged her mistakes. The DUI had no impact on her students. In fact, her experience has helped her to gain better perspective of what some of her students are going through. High school is a time when students start experimenting with drugs and alcohol.

23. Respondent has never received complaints from students about her treatment of any student. She wrote a personal statement in March 2016, in response to the commission’s investigation regarding her 2015 DWI conviction. She wrote that she was working toward recovery, but at the time, she had no time frame in mind. She has never stopped working toward recovery. She attended “a few months of” AA while she lived in Arizona. but she had no sponsor. In Texas, she was working the steps and had a sponsor. In June 2015 she returned to California and started at MFI that fall. She started drinking again. She has no records of AA attendance during 2017 and 2018. She tried to maintain her sobriety through her church. But she was still drinking. She was not faithful to the program. Even in 2020 she did not maintain sobriety like she knew she should.

24. She acknowledged that she chose to drink on September 25, 2019. She went to the Finch Bar. She walked in, said hello to the bartender, and he began making her a drink. He often stopped at the bar on her way home from work, probably one or two times a week. She called her dad but she did not recall if she asked him to come to the bar. She was getting “dirty looks” from some women in the bar, and she felt uncomfortable. When her dad arrived, she told him she was fine. She went home and had wine in her room. She thinks she had one and a half glasses and fell asleep.

25. Regarding the charges underlying the 2014 Consent Determination, one charge involved a woman who said that respondent had called her, and respondent was slurring her speech. At the time, she and the woman were friends. Another charge

was that when athletes she was coaching were injured, respondent told them to “suck it up” or that they were “cry babies.” Respondent said these statements were taken out of context; she never said them in a serious tone. She is a “fun-loving person,” and her delivery was not taken in the way she meant. Another charge was that she “engaged in bullying, coercion, and intimidation against students and parents” She said the “parents turned on me.” They were angry with her so they said she was bullying. This was all after the phone call recording was turned over to the school.

Respondent coached cheer teams from 2009 to 2013. Most of the complaints were during the last year. She said, “I was struggling with Jason’s death and struggling in my personal life. Alcohol was part of my life.” She agreed to the Consent Determination in May 2013 because she had no support from the school administration, although she did have family support. She was blindsided by her friend. She stopped talking to everyone and focused on Arizona. She thought that once she resigned, she “would be done,” with no discipline, but she was disciplined by the commission in 2014 for conduct at Lake Elsinore.

26. Respondent had gastric bypass surgery in 2014. She lost about 90 pounds but was not happy with herself. She attended psychological counseling prior to surgery but did not think it helped. After the surgery she noticed that alcohol affected her differently and more quickly. Even after her surgery she did not completely abstain from consuming alcohol.

27. To be assured she will maintain her sobriety, respondent is doing weekly drug tests, she is participating in AA and working the 12 steps slowly, and she is seeing three counselors. She has maintained her sobriety for eight months. She remains on probation for her 2019 DUI. She is scheduled to complete probation in November 2023.

28. Respondent acknowledged that her drug testing is not random. Because she chooses the days when she is drug tested, the fact that none of her drug test results have been positive for alcohol or banned substances is not significant.

She stated that she is seeing three counselors. She is currently working with Jonathan David Fryer, a LCSW, Hilary Rodman, a LMFT, and Christine M. Mormino, a substance abuse counselor with MFI. Mr. Fryer wrote that she is currently working on relapse prevention, a recovery program, and building a support network in sobriety. Ms. Rodman wrote that respondent has incorporated psychotherapy sessions with Ms. Rodman and a Licensed Addiction Specialist, who was not identified.

Respondent stated that this time her sobriety is different because she is 100 percent invested, she is "in a good place," and has a solid regimen of therapy. She has embraced AA "wholeheartedly" with her current sponsor. She is working the 12 steps. She loves her job. Both of her brothers support her, and she has a better relationship with her mother. She has her church family and her faith.

29. Respondent participates in a ministry at her church where she serves as an extraordinary minister of holy communion, assisting in the distribution of holy communion. She has seen a change in herself since she started this ministry.

COUNSELORS

30. Hilary Robman is a Licensed Marriage and Family Therapist (LMFT). In a letter dated December 7, 2021, she wrote that respondent had participated in 15 weekly therapy sessions with Ms. Robman so far. She has been "actively participating in our treatment plan and interventions, which pairs traditional Talk Therapy, Cognitive Behavioral Therapy, Relapse Management, and Mindfulness Techniques." Respondent has incorporated psychotherapy sessions with Ms. Rodman and a Licensed Addiction

Specialist, who was not identified. At this time, Ms. Robman does not think respondent poses a risk to her students, the public, or herself.

31. In a June 3, 2021, letter, Jonathan David Fryer, a Licensed Clinical Social Worker (LCSW), confirmed respondent's participation in Kaiser Permanente's Addiction Medicine four-week outpatient program. He wrote that respondent had recently started working on relapse prevention, working a recovery program, and building a support network in sobriety. Mr. Fryer is her current therapist who she sees on a regular basis.

CHARACTER WITNESSES AND CHARACTER REFERENCE LETTERS

Testimony of Jorge Cabrera

32. Jorge Cabrera is a teacher at SMHS and works closely with respondent. He testified and provided a character reference letter, which was consistent with his testimony.

Mr. Cabrera co-teaches two Algebra II classes with respondent each day. Respondent is a special education specialist and Mr. Cabrera is an Algebra II specialist. They work together well. He has co-taught with about 20 teachers, and he would rank respondent in the top three. She is always well prepared to teach.

He met respondent in the summer of 2019. He is aware of her circumstances. She told him of her two DUIs and that she had stopped drinking. She was embarrassed but frank and honest. She seemed remorseful. He has never observed inappropriate actions or unfair treatment of students. He has never seen her consume alcohol. As far as he knows, no students are aware of her DUIs or issues with alcohol. No child was

placed at risk due to her DUIs. He is aware of her July 25, 2021, trip with friends to Palm Springs. She told him she had relapsed.

Respondent engages with students in a positive manner. Students respect her; they know she has their back. She is a good role model and positive influence. She is very patient and loves working with "problem children." Respondent excels at her job.

Testimony of Adam Dawson

33. Adam Dawson is Principal at SMHS. He was Assistant Principal for four years and has been principal for five years. He testified and provided a character reference letter; his testimony was consistent with his report. He hired respondent eight years ago, and they have worked together since that time.

Respondent is consistently hardworking and collaborative with her colleagues. She is a source of support for her department. Respondent has the ability to connect and make relationships with her students, all of whom have learning disabilities. She makes her students feel valued. Mr. Dawson is impressed with the level of work she is able to get them to do. She works with parents in IEP meetings.

Her students respect her, and she holds them to high expectations. She treats students with respect, and they know they are valued. She has been honest and expressed authentic remorse regarding her actions.

Respondent is a caring teacher who loves her students. She is paying for her mistakes. Mr. Dawson would be "greatly impacted" if respondent was no longer able to teach.

Professional Reference Letters

34. Stephanie Duhamel has worked with respondent at Lakeside High School for five years. She is aware of the commission's allegations and wrote that this conduct was out of character. Respondent "dedicates her entire self to her programs" and she is an "incredible mentor" for students. She described respondent as "one of most incredible educators that I know."

35. Danielle Birk is an Education Specialist at SMHS, and she has known respondent for seven years. She is aware of the allegations. Respondent has a strong work ethic, and she is dedicated to the teaching profession.

36. Bianca Kimsey is a San Marcos Union School District (SMUSD) school psychologist, and she has known respondent for four years. Respondent excels as a teacher of students with disabilities and as an Individualized Education Plan case manager. She has struggled with the recent allegations. She decided not to be defined by her past but to create a better future for herself.

37. Giovanni Patalano is a Math Department Team Lead at SMHS. She has worked with respondent for five years and she is aware of respondent's situation. She said that respondent goes above and beyond for her students; they have a relationship of mutual respect. She "has brought a lot of value to our district."

38. Jonathan LeBeau has known respondent for about 6 years. He co-taught Algebra I with her for two years. She is an "awesome educator." She has made wonderful connections with the students and they trust her. She expressed great regret and embarrassment for her past, and she would do whatever is needed to make changes in her life. She is honest and trustworthy and deserves a second chance.

39. Tabitha Seaver has been an Education Specialist for 12 years and is SMHS's Department Chair of Special Education. She has worked alongside respondent for six years. Respondent is honest and trustworthy and willing to go above and beyond what is expected of her to help students become successful at whatever they chose. On a personal level, she is putting in the effort and commitment to make lifestyle changes.

40. Judith Fink was a math instructor at SMHS until she retired in 2019. She and respondent were colleagues for 3 years. Respondent is loved and respected by students, she is firm and fair. She is a role model and she makes a real difference in the lives of her students and colleagues.

41. Kelly Brown has been an Assistant Principal at SMHS for six years. Respondent believes in students and their ability to be successful, and she provides support to help students believe in themselves. "I know she is remorseful" regarding her past. She has changed lives of countless students, contributed to the success of special education and math departments. She is a professional and an advocate.

42. Wendy Lee Dunn-Gammarano is a Program Specialist with Escondido Union High School District. She and respondent worked together for four years at SMUSD. She wrote that respondent was very aware of her addiction and had expressed embarrassment and disappointment in herself. She abstains from alcohol, attends AA meetings, and meets with an addiction therapist. Ms. Dunn-Gammarano believes that past indiscretions do not call into question her capacity as a good educator; leniency is warranted to allow her to continue to teach.

Additional Character Reference Letters

43. Elsa Saldana has known respondent since 2002 when they both attended a cheerleading class. Respondent has made some poor decisions in the past but, "I have seen [respondent's] growth and strength in sobriety."

44. Respondent's brother, Nicholas Van Deusen, wrote that she has made mistakes and battled with this addiction, but he confidently believes she is sober and will remain sober. She has improved many of her students' lives with her personal sacrifices and teaching practices. He asks that she be granted the opportunity to continue to impact the lives of her students.

45. On February 2, 2022, Sherie Breckenridge wrote that she met respondent at an AA meeting, and she has been working with her for about 18 months. She believes that respondent is very remorseful for the incident. Ms. Breckenridge knows how much teaching and working with students means to respondent. Respondent is a good role model for her students.

PERFORMANCE EVALUATIONS

46. Respondent provided nine performance evaluations conducted at SMHS during the period March 2019 and February 2022. These included evaluations of respondent individually, working with a co-teacher, conducting IEP meetings, and teaching in the virtual classroom. The overall assessments were positive.

CERTIFICATES, ACCOLADES, AND ACCOMPLISHMENTS

47. Respondent provided the following documents:

- Certificate of Training, 3 hours, SEIS (Special Education Information Systems) for Teachers – Level 1, September 15, 2015.
- Certificate of Training, 3 hours, Behavior Basics, September 29, 2015.
- Acknowledgement of Professional Development Participation, 7 hours, Valley Vista High School, 2013-2014 School Year.
- Cheerleading Accolades - coach of four cheerleading squads from 2009 through 2011; January 2011 letter from Lake Elsinore Unified School District congratulating her on her varsity cheer team's second place award at a competition.
- Thank-you notes from students, parents, colleagues, and principal.
- Attended an average of three AA meetings per month since May 2020.
- February 2020 - Designated Extraordinary Minister of Holy Communion.

LEGAL CONCLUSIONS

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 Education Code Sections

2. Education Code section 44000, et seq., and California Code of Regulations, title 5, section 80001, et seq., provide that the commission is responsible for credentialing of public-school teachers, including issuing credentials and taking adverse action against applicants and credential holders.

3. Education Code section 44421 states:

The Commission on Teacher Credentialing shall privately admonish, publicly reprove, revoke or suspend for immoral or unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system, or for any cause that would have warranted the denial of an application for a credential or the renewal thereof, or for evident unfitness for service.

4. Education Code section 44246 states:

When a hearing is held to deny, suspend, or revoke a credential, the proceeding shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commission shall have all the powers granted therein.

5. Education Code section 44345 states as follows in part:

The commission may deny any application for the issuance of a credential or for the renewal of a credential made by any applicant who falls under any of the following categories:

[¶] . . . [¶]

(c) Is addicted to the use of intoxicating beverages to excess.

[¶] . . . [¶]

(e) Has committed any act involving moral turpitude. . . .

6. Under Education Code section 44345, 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." (Ed. Code 44345.)

7. Education Code section 44440, subdivision (b) states:

(b) The suspension or expiration of any credential, its surrender without the written consent of the commission, or a revocation pursuant to Section 44423 does not deprive the commission of its authority to do any of the following:

(1) Institute or continue a disciplinary proceeding against the credential holder upon any ground provided by law.

(2) Enter an order suspending or revoking the credential.

- (3) Issue a public reproof or private admonition to the credential holder.

Applicable Regulations

8. California Code of Regulations, title 5, section 80300, subdivision (b), defines an aggravating factor as "an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession. These aggravating factors may include, but are not limited to, the following:

- (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;

9. California Code of Regulations, title 5, section 80302, subdivision (a) sets forth the factors used in determining the relationship between the alleged misconduct and the applicant's or holder's fitness, competence, or ability to effectively perform the duties authorized by the credential.³ These factors include, but are not limited to:

³These factors must be applied in determining whether a teacher's conduct indicates an unfitness to teach.

- (1) the likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated;
- (2) The proximity or remoteness in time of the conduct;
- (3) The type of credential held or applied for by the person involved;
- (4) The extenuating or aggravating circumstances surrounding the conduct;
- (5) The praiseworthiness or blameworthiness of the motives resulting in the conduct;
- (6) The likelihood of the recurrence of the questioned 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;
- (8) The publicity or notoriety given to the conduct.

Evaluation of Causes for Discipline

FIRST CAUSE FOR DISCIPLINE - UNPROFESSIONAL CONDUCT

10. Cause exists under the First Cause for Discipline for adverse action against respondent's credentials pursuant to Education Code section 44421, in that it

was established by clear and convincing evidence that respondent engaged in unprofessional conduct.

Unprofessional conduct is "conduct that violates the rules or ethical code of a profession and is unbecoming a member of a profession in good standing." (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553, internal quotation marks omitted, overruled, in part on another ground in *Berkiaris v. Board of Education* (1972) 6 Cal.3d 575, 588, fn.7.) In this case, respondent acted unprofessionally by driving a vehicle while under the influence of alcohol placing herself and members of the public at risk of serious harm or death.

SECOND CAUSE FOR DISCIPLINE - IMMORAL CONDUCT

11. Cause exists under the Second Cause for Discipline for adverse action against respondent's credentials pursuant to Education Code section 44421 because it was established by clear and convincing evidence that respondent engaged in immoral conduct. 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.)

12. 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].)

Driving while under the influence of alcoholic beverages demonstrates an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770.)

On September 25, 2019, respondent willfully drove a vehicle while under the influence of alcohol placing herself and members of the public at risk of serious harm or death. Her conduct reflected moral indifference to her unique position as a high school teacher who is seen as a role model to and is respected by her students. Her actions represented an inconsiderate attitude toward good order and the public welfare.

FOURTH CAUSE FOR DISCIPLINE - ADDICTION TO INTOXICATING BEVERAGES TO EXCESS

13. Cause does not exist under the Fourth Cause for Discipline for adverse action against respondent's credentials pursuant to Education Code sections 44421

and 44345, subdivision (c), because it was not established by clear and convincing evidence that respondent was addicted to intoxicating beverages to excess.

Diagnosing a substance use disorder requires a thorough evaluation and often includes an assessment by a psychiatrist or a psychologist. Most mental health professionals use criteria in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). A finding of addiction is a clinical finding which requires expert testimony. No expert testimony was presented.

THIRD CAUSE FOR DISCIPLINE - EVIDENT UNFITNESS FOR SERVICE

14. Evident unfitness for service "means clearly not fit or suitable for teaching ordinarily by reason of a temperamental defect or inadequacy." (*Woodland and Joint Unified School District v. Commission on Professional Competence* (1969) 2 Cal.App.4th 1429, 1444-1445 [Woodland].) "'Evident unfitness for service' connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Ibid.*) Based on respondent's evidence of rehabilitation thus far, it was not established that she possesses an unremediable character trait.

15. Adverse action against a credential is warranted when such misconduct demonstrates an unfitness to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229 [*Morrison*].) In *Morrison*, the Supreme Court set out seven factors relevant to a determination of unfitness to teach: (1) "the likelihood that the conduct may have adversely affected students or fellow teachers [and] the degree of such adversity anticipated;" (2) "the proximity or remoteness in time of the conduct;" (3) "the type of teaching certificate held by the party involved;" (4) "the extenuating or aggravating circumstances, if any, surrounding the conduct;" (5) "the praiseworthiness

or blameworthiness of the motives resulting in the conduct;" (6) "the likelihood of the recurrence of the questioned conduct;" and (7) "the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers." (*Broney v. California Comm. on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 474. [*Broney*], quoting *Morrison*, supra, 1 Cal.3d at p.229.) The Supreme Court later added an eighth factor: "the notoriety and publicity accorded a teacher's conduct." (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 701, fn.5.)

16. 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. Commission 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 District v. Burman* (1988) 45 Cal.3d. 208, 220-221 (*Burman*); *Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384.)

17. 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.)

18. In considering the relevant *Morrison* factors regarding respondent's conduct, 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

19. No evidence was presented to indicate that any of respondent's students were adversely affected by her 2019 DUI conviction. The DUI itself occurred after school hours and away from students or her colleagues. Mr. Cabrera co-teaches with respondent two hours each day, and he testified that to the best of his knowledge, no students were aware of her DUI or issues with alcohol, and no child was placed at risk. He has never seen her drink alcohol. He has never seen her come to work smelling of alcohol or appearing to be impaired. The professional reference letters confirmed that many of her colleagues or former colleagues were aware of the allegations and what had occurred, and they continued to support her.

Respondent acknowledged that she is a role model for her students. She stated that the DUI did not affect her skills or her capacity as a teacher. She never went to work after drinking. She believes that her experience has helped her to gain better perspective of what her high school students may be going through.

PROXIMITY OR REMOTENESS OF THE CONDUCT

20. Respondent was convicted in November 2019. The commission sent her a letter of inquiry on June 3, 2020. The accusation was filed on May 21, 2021. Respondent is currently on summary probation in connection with the conviction and will not be released from probation until November 2023. The incident is not remote in time.

EXTENUATING OR AGGRAVATING CIRCUMSTANCES

21. California Code of Regulations, title 5, section 80300, subdivision (b), states in part that “an aggravating factor is an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession.” Aggravating factors may include a prior record of adverse action, misconduct that evidences a pattern of misconduct, or conduct that demonstrates indifference toward the consequences of the misconduct.

Respondent admitted that she knew she should not drive home from the Finch bar on September 25, 2019. Her father had already driven to the bar in response to her call, and he could have driven her home, yet she chose to drive her vehicle after consuming alcohol.

Respondent’s credentials had been suspended on two prior occasions. On May 23, 2014, the commission adopted a Consent Determination, suspending her credential for 45 days. The underlying allegations included that respondent had engaged in alcohol related behavioral misconduct and used poor judgment. On July 1, 2016, the commission adopted a Consent Determination, suspending her credential for 21 days, based on her February 1, 2016, guilty plea and conviction for DWI with a BAC of 0.15 percent or higher.

MITIGATING FACTORS

22. In mitigation, respondent is currently “working the 12 steps (of AA) slowly,” she is working with Jonathan David Fryer, a LCSW, on relapse prevention and building a support system, and weekly with Hilary Rodman, a LMFT, on a treatment plan and interventions.

Respondent stated that she is 100 percent invested in recovery. She has embraced AA “wholeheartedly” with her current sponsor. She is working the 12 steps slowly. She has maintained her sobriety for eight months. She has support from her brothers, her church family, and her faith. She participates in a ministry at her church.

Respondent presented numerous professional reference letters from teachers with whom she has worked. The authors described her as an incredible mentor who is dedicated to the teaching profession. However, while the evidence reflects favorably upon respondent’s skills as a teacher, this does not change the fact of her conviction.

THE PRAISEWORTHINESS OR BLAMEWORTHINESS OF THE MOTIVES RESULTING IN THE CONDUCT

23. “The lack of praiseworthiness in [plaintiff’s] conduct speaks for itself.” (*Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 477. Respondent acknowledged that she chose to drink, and she chose to drive home after she had been drinking. Her father could have taken her home, but she chose to drive. There is nothing praiseworthy about respondent’s conduct.

THE LIKELIHOOD OF THE RECURRENCE OF THE CONDUCT IN QUESTION

24. While there is never a guarantee, respondent appears to be putting in a consistent effort to prevent a relapse. In a June 26, 2021, personal statement submitted to the commission, she wrote: “I believe that I will always have to put in work towards my addiction.” She is “extremely remorseful” for her actions. She believes that “this time is different” because she is completely invested and is “in a good place.” As stated previously, she has a job that she loves, and support system from her brothers, her church family, and colleagues at work, including Mr. Cabrera

and Principal Dawson. She is working the 12 steps of AA and working with two therapists.

Disposition

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. In summary, cause was established for discipline of respondent's credential, but not revocation. Respondent's 2019 DUI 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 her 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 license is revoked, the revocation is immediately stayed, and respondent's credentials are placed on probation for a period of five years.⁴

⁴ The commission has never promulgated disciplinary guidelines although proposed disciplinary guidelines have been drafted.

ORDER

All teaching credentials and certificates issued to respondent Andrea Rose Van Deusen are hereby revoked. However, the revocation is immediately stayed, and her credentials 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.

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 commission. 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. Compliance with Probation. Respondent shall fully comply with the terms and conditions of this order and cooperate with representatives of the commission in its monitoring and investigation of her compliance. Any credentials issued to respondent during the period of probation shall be subject to the conditions contained herein.

Respondent shall submit quarterly reports, under penalty of perjury, in a form designated by the commission, certifying and documenting compliance with all terms

and conditions of probation. Respondent shall execute release of information forms that may be reasonably required by the commission or its representatives.

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

4. Banned Substances Testing. Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program, previously approved by the commission, for the detection of banned substances, including alcohol, all controlled substances, and dangerous drugs. The length of time and frequency will be subject to approval by the commission. The respondent is responsible for keeping the commission informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the commission, as directed. Any confirmed positive finding shall be reported immediately to the commission by the program and respondent shall be considered in violation of probation.

5. Therapy or Counseling Program. Respondent, at her expense, shall participate in an on-going counseling program until such time as the commission releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

6. Attendance and Participation in Group Support Meetings. Within five (5) days of the effective date of this Order, respondent shall begin attendance at an addictive behavior support group (e.g., Alcoholics Anonymous, or other similar

support group), which has previously been approved by the commission. Respondent shall attend at least one meeting of the approved support group per week for the duration of probation, or as otherwise directed by the commission. Verified documentation of attendance shall be submitted by the respondent with each written report as required by the commission.

7. Continuing Education. In each year of probation, respondent shall successfully complete a continuing education course in professional conduct and ethics. Respondent shall bear the costs thereof and provide written proof satisfactory to the commission of his completion of said coursework.

8. Maintain Current Contact Information. Respondent must provide written notice to the commission 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.

9. Notifications. The commission shall be informed, in writing, of all employment of respondent that requires a credential. Respondent shall inform her employer of the reason for, and the terms and conditions of her probationary status and shall provide a copy of the commission's Decision to her employer and immediate supervisor. Respondent shall authorize her employer to submit performance evaluations and other reports requested by the commission. Respondent shall notify the commission 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.

10. Violation of Probation. The commission shall retain jurisdiction over respondent's case during the period of probation. If respondent violates any term or

condition of this Order, after giving her written notice and an opportunity to be heard on the issue of her violation of probation, the commission 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.

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

DATE: April 29, 2022

Marion J. Vomhof

MARION J. VOMHOF

Administrative Law Judge

Office of Administrative Hearings