

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

In the Matter of the Petition to Revoke Probation Against:

DIOKA EZENWA OKORIE,

**Clear Multiple Subject Teaching Credential, and
Administrative Services Credential Certificate of Eligibility,
Respondent**

Case No. 1-331539603

OAH No. 2022060092

PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on November 8, 2022, via videoconference.

Molly E. Selway, Deputy Attorney General, represented petitioner, Mary Vixie Sandy, Ed.D., Executive Director of the Commission on Teacher Credentialing of the State of California (Commission).

Chijioke O. Ikonte, Attorney at Law, Law Offices of Akudinobi & Ikonte, represented respondent, Dioka Ezenwa Okorie, who was present.

The record was closed, and the matter submitted for decision on November 8, 2022.

SUMMARY

Petitioner asks that respondent's probation be revoked due to his February 10, 2021, conviction for driving under the influence. Based on the evidence as a whole, while cause exists to revoke respondent's probation, respondent presented sufficient evidence he is rehabilitated that allowing him to remain on probation is not against the public interest. The petition to revoke respondent's probation is denied.

FACTUAL FINDINGS

License History

1. On May 29, 2002, the Commission issued a Clear Multiple Subject Teaching Credential to respondent. The Multiple Subject Teaching Credential was in effect at all times relevant to the charges brought herein and was set to expire on June 1, 2022, according to the license certification admitted as evidence. But, as noted below, respondent stated he has renewed his teaching credential. On January 1, 2007, the Commission issued Administrative Services Credential Certificate of Eligibility to respondent. Information submitted regarding this certification does not indicate whether this certification was in effect during the time relevant to the allegations in this matter or whether the credential/certificate of eligibility has expired.

Disciplinary History and Probation

2. In a disciplinary action entitled "*In the Matter of Accusation Against Dioka Ezenwa Okorie*," Case No. 1-331539603, the Commission issued a Decision, effective September 9, 2019, which revoked respondent's Credentials. However, the revocation was stayed, and respondent's Clear Multiple Subject Teaching Credential and Administrative Service Credential Certificate of Eligibility were placed on probation for a period of five years, with a suspension of 120 days, with certain terms and conditions.

3. In imposing discipline, the Commission determined that respondent disregarded the property rights of the school district where he was working when he did not return the laptop and iPad the school district issued to him and then falsely stated he did not know the whereabouts of those items. The Commission further found his conduct to be obstructive and dishonest. The district was also investigating respondent for molesting a student. That charge in the Commission's decision, however, was dismissed.

4. Among the terms and conditions of respondent's probation, he is required to comply with all terms and conditions of probation and obey all laws. Those specific terms and conditions are as follows:

Condition 7 provides as follows:

Obey all Laws. Respondent shall obey all federal, state, and local laws, including all provisions of the California Education Code. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 30 days of the

effective date of the decision, unless previously submitted as part of the teaching credential application process as determined by the monitor. Failure to comply with these provisions shall be considered a probation violation.

Condition 13 provides as follows:

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

5. On January 31, 2022, petitioner filed the petition to revoke respondent's probation alleging that respondent's probation should be rescinded and his credentials revoked because he violated his disciplinary probation when he was convicted of driving under the influence of alcohol on February 10, 2021, in violation of Vehicle Code section 23152, subdivision (b). Respondent was placed on criminal probation for three years for this offense.

Respondent's Conviction and Respondent's Letter to the Commission

6. The facts and circumstances of respondent's conviction are found in a California Highway Patrol (CHP) report which was received into evidence pursuant to *Lake v. Reed* (1997) 16 Cal.4th 448, 461-464.

As detailed in this report, on December 18, 2019, a California Highway Patrol Officer responded to a report of a car on fire in the Los Angeles area. When the officer arrived, he observed respondent standing outside the car and spoke to respondent. He observed respondent had red, watery eyes and smelled a strong odor of alcohol coming from respondent. Respondent denied consuming alcoholic beverages. The officer administered a series of field sobriety tests (FSTs), which respondent failed. Respondent was then arrested and transported to a nearby hospital for a blood test. Respondent refused to consent to the test, and the officer obtained a warrant to obtain the blood test. After the warrant was obtained, a technician obtained a blood sample from respondent which, when analyzed, showed a blood alcohol concentration of 0.16 percent.

7. Respondent reported his arrest to the Commission on March 20, 2020, based on a March 10, 2020, notice he received for his trial date for driving under the influence. In his letter he stated his car engine caught on fire, and he called the fire department. He denied in the letter that he was drunk or impaired at the time of the fire.

Respondent's Testimony

8. Respondent's testimony is summarized as follows:

Regarding the circumstances of the DUI, he said he was driving from a friend's home in Long Beach when his car engine caught on fire, and he called 911. He didn't realize he was impaired when he called 911. A responding police officer smelled alcohol on his breath and administered FSTs, which he did not successfully complete. He denied that he did not cooperate with the CHP Officer and that he refused to take the breathalyzer or the blood test. He accused the CHP officer of lying.

Respondent testified when he wrote the letter to the Commission denying he was impaired, he didn't have the results of the blood test. Once he received the test results, he did not dispute the results and pled no contest to the DUI. Respondent said he has fully complied with the terms of the DUI probation, and he said he found the requirements meaningful.

After the DUI respondent sought treatment for depression. He attributed his depression to the stress of losing his teaching position, being wrongly accused of molestation, and finding it difficult to obtain employment. Respondent also said the stress of losing his father has contributed to his depression. He said he sees a therapist and has been diagnosed with depression. Respondent said he has been seeing a therapist for eleven months and plans to continue treatment.

Respondent denied he has an alcohol abuse problem. He said he drinks one or two drinks of alcohol once every two weeks. He stressed he does not drink and drive, and if he drinks, he will use a ride-sharing service.

Regarding the status of his Multiple Subject Teaching Credential, respondent said he renewed the credential in late June 2022.

Character References

9. Respondent called as character witnesses Linda Lewis, Dorothy Armstrong, and Ikeena Okorie.

10. Ms. Lewis testified that she has known respondent through their church. She attended daily prayer groups with him and his family. She described him as a very respectful person, who presented as a good husband and father. Ms. Lewis is aware of respondent's DUI. She said the DUI doesn't change her opinion of him because every person can make a mistake.

11. Ms. Armstrong has known respondent for twenty years. They were colleagues at the high school where he taught. She considers him a close friend. She notes that respondent makes himself available to tutor students in math and advanced math. Ms. Armstrong said her own grandchildren see respondent for help in math.

Ms. Armstrong is aware of respondent's DUI. She said everyone makes a mistake, and he was under a lot of pressure at the time. Ms. Armstrong added that she does not believe respondent should lose his ability to teach based on a "lie," referring to the molestation charge that was dismissed against him.

12. Mr. Okorie is respondent's brother. Mr. Okorie testified that respondent is a very wonderful person and a very loving father. He also said regarding the DUI that everyone makes a mistake. Mr. Okorie, in addition, stated that he feels the accusation against his brother was false, referring to the molestation charge.

Parties' Arguments

13. Petitioner argued that due to respondent's history of dishonesty, as the Commission found in its Decision reinstating his certification, it is not in the public interest to allow him to remain credentialed.

14. Respondent asked in closing that he be allowed to remain licensed. Respondent stated he was not dishonest when he said he was not impaired in his letter to the Commission because he held a good faith belief he wasn't, and he hadn't yet received the blood test results showing his blood alcohol content. Once he was presented with this evidence, he pled no contest to the charge. Respondent further has complied with the terms of his criminal probation, and he has complied, for the most part, with the terms of his disciplinary probation. Respondent stated that to revoke his license to teach would be an extreme response given these factors.

LEGAL CONCLUSIONS

Standard of Proof

1. Complainant has the burden of proving by a preponderance of the evidence that the charges in the petition to revoke probation are true. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1441.) A preponderance of the evidence means that the evidence on one side outweighs the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed. In other words, it refers to evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Cause Exists to Revoke Probation

2. Cause exists to find that respondent violated the terms of his probation due to his February 2021 conviction for driving under the influence in violation of Vehicle Code section 12352 subdivision (b). As a result of this conviction, respondent violated Condition # 7, which requires respondent to obey all laws. As a result, under Condition # 13, petitioner may seek to revoke respondent's probation.

Evaluation

3. Now that cause has been found to revoke respondent's teaching credential, the issue is whether revocation of respondent's probation is required to ensure public protection. Considering the facts of record, revocation of respondent's certificate is not needed to ensure public protection. Respondent presented sufficient evidence he is rehabilitated that a contrary conclusion would amount to impermissible punishment. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

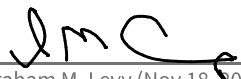
Respondent's DUI, while a serious incident involving failure to obey the law, appears to be an isolated instance of respondent's failure to follow the law. This appears to be respondent's only instance of such behavior. Respondent further testified he took responsibility for his conduct, credibly stated he learned from his mistake, and he sought therapy and continues with therapy. He stated credibly he will not drink and drive again.

Consideration was given to extending respondent's probation due to his probation violation. But based on the factors considered above, and the fact that he still has a substantial period remaining on his probation, extending probation is not needed to ensure public protection.

ORDER

The Petition to Revoke Probation is denied.

DATE: November 18, 2022


Abraham M. Levy (Nov 18, 2022 10:33 PST)

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings