

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

In the Matter of the Accusation Against:

DAVID WARD KECK, Respondent.

Agency Case No. 2-50886402

OAH No. 2022020078

PROPOSED DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on July 18, 2022, by videoconference.

Deputy Attorney General Timothy J. McDonough represented complainant Mary Vixie Sandy, Ed.D., Executive Director of the California Commission on Teacher Credentialing.

Attorney Lucy S. McAllister represented respondent David Ward Keck, who was present.

The record closed and the matter was submitted for decision on July 18, 2022.

FACTUAL FINDINGS

1. Respondent David Ward Keck holds a Clear Single Subject Teaching Credential in the subject "Foreign Language: Spanish" issued by the California Commission on Teacher Credentialing (Commission). The credential was initially issued on May 31, 1995, was in full force and effect at all relevant times, and is renewed through March 1, 2027. Respondent also holds a Clear Certificate of Completion of Staff Development issued by the Commission on September 22, 2006, which was in full force and effect at all relevant times, and does not expire. There is no history of adverse action against respondent's credentials.

Respondent also previously held the following certifications: Preliminary Single Subject Teaching Credential; Designated Subjects Adult Education Teaching Credential: Full-Time; Certificate of Clearance; Single Subject Teaching Permit; 30-Day Substitute Teaching Permit; and 30-Day Substitute Teaching Credential.

2. At its meeting on December 16-18, 2020, the Commission's Committee of Credentials (Committee) found probable cause to recommend adverse action against respondent's credential. Respondent requested an administrative hearing.

3. On October 28, 2021, complainant Mary Vixie Sandy, Ed.D., issued an accusation against respondent in her official capacity as Executive Director of the Commission. Complainant seeks to impose discipline on respondent's credential based on an incident of domestic violence by respondent against his wife, for which he received a misdemeanor conviction. Respondent filed a notice of defense; this hearing followed.

Incident on July 3, 2019, and Criminal Conviction

4. On July 3, 2019, at about 11:19 p.m., police officers responded to a call reporting a domestic violence incident at the home of respondent and his wife, T.K. (Respondent's wife and child are referred to by initials in this decision to protect their privacy.) The 911 call was placed by their 12-year-old child, C.K. Respondent and his wife had argued because respondent wanted C.K. to finish a reading assignment and T.K. wanted C.K. to go to bed. During the course of the argument, respondent hit his wife in the face and she fell down. When officers arrived, they observed that T.K. had a cut lip, loose tooth, and bruised nose. In his statement to police, respondent denied or minimized his conduct, stating that when his wife was using hand gestures during their argument, he "may have" accidentally pushed her hand into her face.

5. On November 26, 2019, respondent was convicted in the Superior Court of California, County of Santa Clara, upon a plea of no contest, of a misdemeanor violation of Penal Code section 273.5, subdivision (a) (inflicting corporal injury on a spouse). Imposition of sentence was suspended and respondent was placed on formal probation for three years, on terms and conditions that included serving 120 days in custody with a recommendation for a weekend work program, completing 20 hours of volunteer work, completing a 52-week domestic violence program, and paying fines and fees.

6. Respondent was granted early termination of probation on June 1, 2021. On July 27, 2021, the court granted respondent's motion for dismissal pursuant to Penal Code section 1203.4 (sometimes referred to as "expungement").

Respondent's Evidence

THE INCIDENT ON JULY 3, 2019

7. Respondent and his wife T.K. both testified at hearing. Their testimony regarding the July 3, 2019 incident was consistent and credible.

In contrast to his attitude at the time of the offense, respondent now accepts full responsibility for hitting his wife in the face. He expressed remorse and an understanding of the wrongfulness of his conduct.

T.K. described the altercation, stating that while she and respondent were arguing, she was in front of him and waving her hands. Respondent put his finger on her chin twice while arguing with her, and she said that if he did it again, she would bite his finger. Respondent touched her chin again, and T.K. bit his finger. Respondent hit T.K. in the face and she fell down. T.K. explained that it was "quite shocking" that respondent raised his hand to her, because he had never done so before. Respondent and T.K. have now been married for 21 years.

Respondent and T.K. have both apologized to their child for this incident, and have explained that C.K. was right to call 911. Respondent has talked with C.K. to make sure that his child knows the incident was respondent's fault.

8. The police made a mandatory report to Child Protective Services (CPS) after the incident on July 3, 2019. A social worker separately interviewed T.K., C.K., and respondent. The social worker made a finding of "inconclusive" as to an allegation of emotional abuse of C.K. by respondent. The social worker encouraged respondent to attend anger management classes, and also encouraged the family to attend counseling.

9. The July 2019 police report stated that T.K. told police respondent had never hit her before, but he pushed her once years ago and put his hand on her throat. At hearing, T.K. disputed the police reporting of her statements to the officers and stated the prior incident was a confrontation in a hallway where respondent put his hand up to stop her. Documents reflect that in 2013, CPS investigated a prior allegation of emotional abuse toward C.K. and made a finding of “inconclusive.” Respondent and T.K. testified that the 2013 investigation was in response to a report from C.K.’s kindergarten teacher after C.K. drew a self-portrait between arguing parents.

COMPLIANCE WITH CRIMINAL PROBATION

10. Respondent complied with all requirements of his probation and received early termination and dismissal, as set forth in Factual Finding 6.

11. Prior to his conviction, respondent enrolled in a domestic violence program and completed 16 sessions through Pathway Society. After his conviction, the court gave him credit for these previous sessions toward his requirement to complete a 52-week program. Respondent then completed his remaining 36 sessions with the court-ordered provider, A Better Choice @ WAVES.

12. While respondent was attending the domestic violence program at Pathway Society, he helped interpret for the Spanish speakers in the class. Respondent spoke with the program manager and volunteered to translate the curriculum materials into Spanish. He spent 40 hours on this task, and his probation officer found it met his court-ordered requirement to complete 20 volunteer hours.

13. A report from A Better Choice @ WAVES to respondent’s probation officer dated September 24, 2020, confirmed that respondent had completed the

remaining 36 sessions and complied with program expectations. The evaluator found that respondent had accepted some responsibility, but was still struggling with a tendency to focus on the other person's behavior instead of his own emotions and behavior.

INDIVIDUAL THERAPY

14. Respondent sought out individual counseling with Jerry Mermis, L.M.F.T. Mermis wrote a letter and testified at hearing. He has reviewed the accusation and police report. Mermis first evaluated respondent on February 8, 2022, and formulated a treatment plan. Mermis conducted 12 sessions of individual therapy with respondent between February and July 2022. The primary modality Mermis used in his work with respondent was Cognitive Behavioral Therapy (CBT), which Mermis also refers as Rational Emotive Behavior Therapy. Respondent's wife also attended one session and Mermis observed the couple's interaction and dynamic.

Mermis credibly testified that through these therapy sessions, respondent has gained insight into his emotions and behaviors, and has learned new tools to address conflict, improve communication, cope with stressors, and regulate his emotions. Respondent has accepted responsibility for his actions and has demonstrated an improved ability to control his emotions, with a positive impact on his family relationships. Mermis does not believe that respondent has an "anger problem." It is Mermis's opinion that respondent is "well suited to go forward as a responsible and productive member of his profession, and of society, at large."

CHANGES IN PERSONAL RELATIONSHIPS

15. Respondent explained that his therapy with Mermis had helped him understand what the instructors in the domestic violence program had been saying

about his problems distinguishing between first-hand and second-hand emotions, and how his feelings of frustration and being disrespected turned into anger. Respondent reported that therapy has helped him understand himself and become a better husband, parent, and teacher. He has learned new strategies for addressing conflict, such as sitting down and listening carefully, then calmly responding.

16. Respondent and T.K. described how respondent used what he learned in the domestic violence classes and therapy to develop more positive relationships. Respondent reported his relationship with his child has “grown tremendously,” and that C.K. shared with him about issues related to the challenges of adolescence. T.K. confirmed that she and respondent have learned to communicate better, and she also reported that he is more compassionate with his students. C.K. submitted a declaration describing a close relationship with respondent, and the ongoing encouragement and support he provides. C.K. remembers the night of the domestic violence incident but has learned to forgive respondent.

TEACHING EXPERIENCE AND CHANGES TO TEACHING METHODS

17. Respondent is employed by Campbell Union High School District, and has worked as a Spanish teacher at Leigh High School in San Jose since 1994. Respondent teaches Spanish 2 and 4, Advanced Placement (AP) Spanish Language and Culture, and AP Spanish Literature. He also works closely with the teacher of the Spanish class for native speakers. Respondent has been the chair of the school’s Modern Languages department for six years.

18. Respondent designed and implemented the school’s first class in AP Spanish Literature seven years ago. His students get good AP scores, with passing

scores above the statewide average, and many are very excited to get university credits.

19. Respondent provided a copy of a positive performance evaluation for an observation of his online teaching in December 2020 by his principal. Respondent also provided a copy of an undated letter from his principal, Kara Butler, which he stated was written during the 2020-2021 school year. Butler described respondent as having creativity and a passion for teaching, an ability to connect with students, and as being organized and student-centered in his activities. He teaches multiple levels of Spanish, and has shifted his focus to projects that put students in real-life experiences to practice their Spanish. His students are engaged and actively participating.

20. Respondent has changed his teaching philosophy in response to the domestic violence incident and what he has learned in his classes and therapy. Respondent and T.K. (who is also a Spanish teacher, at a private high school) discussed how respondent had wanted his own child to do homework late at night, and they talked about the pressure of homework on them as parents. This incident, and the pivot to online teaching during the COVID-19 pandemic, caused respondent to reconsider the importance of homework. Respondent restructured his classes to assign less homework and to emphasize students conversing in Spanish during class time. He reports that this change has worked very well. Respondent also reports that he has learned to be more compassionate with students and less rigid about deadlines, and that he has used his improved communication skills to help defuse student-on-student conflicts at school. He stated he is now more focused on modeling appropriate responses for students in dealing with stressful situations.

21. Respondent reported that the human resources department at the school district is aware of his conviction and the current accusation, but the principal and staff

at Leigh High School are not. There was no evidence that respondent's conviction is widely known in the community.

LEGAL CONCLUSIONS

1. The Commission is responsible for the credentialing of certificated personnel, including issuing credentials and taking adverse action against credential holders. (Ed. Code, § 44000 et seq.; Cal. Code Regs., tit. 5, § 80000 et seq.) The term "credential" includes a credential, certificate, life document, life diploma, permit, certificate of clearance, or waiver issued by the Commission. "Adverse action" includes suspension or revocation of credentials, private admonition, and public reproof. (Ed. Code, § 44000.5.)

2. The burden of proof is on complainant to show cause for discipline by clear and convincing evidence. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 583, 855-856; Evid. Code, § 500.)

3. Administrative proceedings regarding the discipline of professional licenses are intended not to punish the applicant or licensee, but to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

Causes for Discipline

4. Education Code section 44421 authorizes the Commission to privately admonish, publicly reprove, suspend, or revoke the credential of a credential holder for "immoral or unprofessional conduct," for "evident unfitness for service," or for any cause that would warrant the denial of an application for a credential. Education Code section 44345, subdivision (e), authorizes the Commission to deny an application for a

credential if the applicant has committed any act of moral turpitude. Complainant alleges four causes for discipline against respondent's credentials: unprofessional conduct, evident unfitness for service, immoral conduct, and acts of moral turpitude.

UNPROFESSIONAL CONDUCT

5. "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.) Respondent's conduct of domestic violence and subsequent conviction, as set forth in Factual Findings 4 and 5, constitute unprofessional conduct. Cause for discipline exists under Education Code section 44421 on this ground.

EVIDENT UNFITNESS FOR SERVICE

6. "Evident unfitness for service" means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) The term "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.*) Respondent's conduct should be evaluated in its totality. (*Id.* at p. 1457.) The evidence at hearing, as set forth in Factual Findings 4 through 16 and 20, established that respondent's conduct was not by reason of a fixed character trait, and that respondent has grown and changed. Cause for discipline does not exist under Education Code section 44421 on the ground of evident unfitness for service.

IMMORAL CONDUCT

7. Immoral conduct has been defined to mean that which is hostile to the welfare of the general public and contrary to good morals. It includes conduct showing moral indifference to the opinions of respectable members of the community, and conduct showing an inconsiderate attitude toward good order and the public welfare. (*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811 [citation omitted].) The definition of immoral or unprofessional 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. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466 [quotation marks and citation omitted].) Respondent's conduct as set forth in Factual Findings 4 and 5 constituted immoral conduct. Cause for discipline exists under Education Code section 44421 on this ground.

MORAL TURPITUDE

8. California appellate courts have held that a conviction for inflicting corporal injury on a spouse in violation of Penal Code section 273.5, subdivision (a), is a crime involving moral turpitude, due to the special relationship between perpetrator and victim. (*People v. Burton* (2015) 243 Cal.App.4th 129, 134-136.) Respondent's conduct of domestic violence and subsequent conviction, as set forth in Factual Findings 4 and 5, reflected moral turpitude and constitutes cause for discipline under Education Code sections 44421 and 44345, subdivision (e).

Relationship of Misconduct to Fitness to Hold Credentials

9. In accordance with *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 and California Code of Regulations, title 5, section 80302,¹ the Commission must determine the relationship between the misconduct and the credential holder's fitness, competence, or ability to perform the duties authorized by the credential. Factors to be considered (referred to as the "*Morrison* factors") include, but are not limited to, the following: (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.

Only the most pertinent *Morrison* factors need be considered in a particular case. (*West Valley-Mission Community College Dist. v. Concepcion* (1993) 16 Cal.App.4th 1766, 1777.) The factors may be applied to the charges in the aggregate, considering the totality of the teacher's conduct. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence, supra*, 2 Cal.App.4th at p. 1444.)

¹ All regulatory citations are to title 5 of the California Code of Regulations.

10. Upon a consideration of the pertinent *Morrison* factors, it is determined that respondent's misconduct is related to his fitness, competence, and ability to discharge the duties authorized by his credentials.

Respondent's misconduct occurred relatively recently, three years ago. However, he complied with his criminal probation and has received early termination of probation and expungement. Respondent's motives were blameworthy. There is no evidence that respondent's misconduct resulted in publicity or notoriety.

The governing regulations enumerate aggravating factors and mitigating factors to be considered in determining discipline. (§ 80300, subds. (b), (m).)

"Aggravating factors" are circumstances demonstrating that a greater degree of adverse action is needed to adequately protect the public, schoolchildren, or the profession. These include: prior record of adverse action; multiple acts of wrongdoing or a pattern of misconduct; bad faith or dishonesty surrounding the conduct; significant harm to a student, the public, or the educational system; indifference toward the consequence of the misconduct; or prior warnings or reprimands for similar conduct. (§ 80300, subd. (b).) None of these factors apply to this case. Although the accusation alleges a pattern of domestic violence, the evidence at hearing established no such pattern.

"Mitigating factors" are circumstances demonstrating that the public, schoolchildren, and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action. These include, as relevant here: absence of a prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious; and the nature and extent of subsequent rehabilitation. (§ 80300, subd. (m).) While respondent's misconduct was

serious, it did not occur during the course of his teaching, and he has no record of prior adverse action over 28 years of teaching. More importantly, respondent has demonstrated significant rehabilitation since his offense.

Respondent has demonstrated an important change in attitude since the time of the offense, and worked to understand his behavior and develop more appropriate responses and coping strategies. He has effectively employed these strategies in both his personal and professional life. He has not re-offended, despite the increased stress caused by the pandemic. Respondent's misconduct is not deemed likely to recur.

Disposition

11. As determined above, cause for discipline exists, and respondent's misconduct is related to his fitness to hold credentials, such that adverse action may be taken against his credentials. The question is what degree of discipline is required for protection of the public, schoolchildren, and the profession. Education Code section 44421 provides statutory authority for the Commission to privately admonish, publicly reprove, suspend, or revoke a credential. Respondent's misconduct was serious. However, he has provided sufficient evidence of rehabilitation and mitigation to show that revocation or suspension of his credentials is not necessary to protect the public. Upon consideration of the record as a whole, it is determined that a public reproof will be sufficient to ensure public protection.

ORDER

All credentials issued to respondent David Ward Keck are hereby publicly reprovved.

DATE: 08/17/2022



HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings