

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

**In the Matter of the Accusation and Statement of Issues**

**Against:**

**KAUSER FIRDOSY SHAIKH**

**Child Development Site Supervisor Permit**

**Respondent.**

**Case No. 2 57114881**

**OAH No. 2022060551 (Accusation-Primary)**

**OAH No. 2022060552 (Statement of Issues-Secondary)**

**PROPOSED DECISION**

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard these consolidated matters on October 27, 2022.

Complainant Mary Vixie Sandy, Ed.D., Executive Director of the California Commission on Teacher Credentialing (Commission), State of California, was represented by William Gardner, Deputy Attorney General.

Respondent Kauser Firdosy Shaikh, also known as Kauser Inaya Firdosy, (Respondent) appeared at the hearing and was represented by Calvin Schneider, Attorney at Law.

Testimony and written documents were received into evidence. The record was held open until November 2, 2022, for Complainant to submit the recommendation which resulted in the 2011 seven-day suspension referenced in Exhibit 6 (2011 Recommendation) and for Respondent to object to admission of the 2011 Recommendation. The 2011 Recommendation was timely received and marked as Exhibit 10. Respondent did not submit an objection and Exhibit 10 was admitted into evidence.

The record thereafter closed and the matter was submitted for decision on November 2, 2022.

## **PROTECTIVE ORDER**

A written protective order is issued to seal Exhibit 10 and a portion of Exhibit B for the following reasons:

Exhibit 10, the Commission's Committee on Credentials Recommendation, was admitted into evidence. Pursuant to Education Code section 44230, disciplinary records are protected from the public. Exhibit 10 is therefore sealed.

Pages B10-B12 of Exhibit B contain a July 28, 2019 hospital record for Respondent's daughter. The medical and other private information is confidential; therefore, those pages of Exhibit B are ordered sealed.

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This sealing order governs the release of documents to the public. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517 may review the documents subject to this order, provided that the documents are protected from release to the public.

## **FACTUAL FINDINGS**

### **Parties and Jurisdiction**

1. The Commission is the California state agency responsible for credentialing teachers in public schools in California, including issuing credentials and taking adverse action against applicants and credential holders. (Ed. Code, § 44000, et. seq.)

2. On February 25, 2008, the Commission issued Respondent a Child Development Site Supervisor Permit (Credential). The Credential authorizes Respondent to “supervise a child care and development program operating at a single site, provide service in the care, development, and instruction of children in a child care and development program, and serve as a coordinator of curriculum and staff development in a child care and development program.” (Exh. 2, p. A52.) The Credential expired on March 1, 2013. The Credential was reissued on March 19, 2014, and will expire on April 1, 2024, unless renewed.

3. On July 25, 2019, the Commission received an application for a Child Development Director Permit (Application) from Respondent.

4. Respondent was notified that the Commission’s Committee of Credentials (Committee) recommended the Commission take adverse action against Respondent. Respondent timely requested an administrative hearing.

5. Complainant, acting in her official capacity as the Executive Director, filed the Accusation, seeking to revoke Respondent's Credential and the Statement of Issues, denying Respondent's Application on May 11, 2022. All jurisdictional requirements have been met.

6. On July 1, 2022, the Accusation and Statement of Issues were consolidated for hearing and decision, without objection. Complainant agreed a single Proposed Decision could be issued pursuant to Government Code section 11507.3, and California Code of Regulations (CCR), title 1, section 1016, subdivision (d).

## **Licensing History**

7. On January 13, 2009, after receiving an application for a credential not made clear by the record, the Committee conducted a review of Respondent's February 24, 2006 conviction in the matter entitled *The People of the State of California v. Kauser Inaya Firdosy* (Superior Court of California, County of Los Angeles, Case No. 6RI00151). In that case, Respondent was convicted on her plea of nolo contendere to violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content of .08 percent or higher), a misdemeanor. The court suspended imposition of sentence and placed Respondent on summary probation for 30 months under certain terms and conditions, including performing community service for Cal Trans, completing a two-day morgue program, completing a three-month first-offender alcohol and drug education and counseling program, and paying fines and restitution.

8. The facts and circumstances surrounding Respondent's conviction are that on November 4, 2005, Respondent was involved in a traffic collision on the

highway while driving under the influence of alcohol. Respondent's blood alcohol content measured 0.13 percent.

9. Following the review, Respondent's application was granted.

10. During a June 22-24, 2011 meeting, the Committee reviewed the 2006 conviction described in Factual Findings 8 and 9 and a 2009 conviction in the matter entitled *The People of the State of California v. Kauser Inaya Firdosy* (Superior Court of California, County of Los Angeles, Case No. 8WA04140). On March 13, 2009, Respondent was convicted on her plea of nolo contendere to violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content of .08 percent or higher), a misdemeanor. The court suspended imposition of sentence and placed Respondent on five years' summary probation under certain terms and conditions, including serving 96 hours in the County Jail (with credit for two days served), performing 50 hours of community service, participating in an 18-month alcohol treatment and counseling program, completing the Mothers Against Drunk Driving (MADD) Victim Impact Program , and paying fines and fees.

11. The facts and circumstances surrounding Respondent's 2009 conviction are that on November 22, 2008, Respondent drank alcohol and drove. A Los Angeles police officer on patrol observed Respondent's vehicle in the third lane impeding traffic and conducted a vehicle stop. Upon contacting Respondent, the officer immediately smelled the odor of alcohol coming from Respondent. Respondent's speech was slurred and her eyes were bloodshot and watery. A breathalyzer test determined that Respondent had a blood alcohol content of 0.24 percent.

12. On July 1, 2011, the Commission sent Respondent a letter, notifying her that the Committee found probable cause to recommend the suspension of

Respondent's Credential and provided a copy of the Commission's findings, which explained their recommendation. Respondent was further notified the Commission would adopt the Committee's recommendation without further proceedings at its next scheduled meeting unless she requested reconsideration or an administrative hearing.

13. The Committee's decision became final on November 12, 2011, and Respondent's Credential was suspended from November 12, 2011, through November 18, 2011.

## **Application**

14. On July 25, 2019, the Commission received Respondent's Application. Respondent signed the Application on July 24, 2019, certifying under penalty of perjury to the truthfulness of all statements, answers, and representations contained in the Application.

15. Section 4b of the Application required Respondent to answer yes or no to the following question:

Have you ever been convicted of any felony or misdemeanor in California or any other place?

You must disclose:

- all criminal convictions
- misdemeanors and felonies convictions based on a plea of no contest or nolo contendere
- convictions dismissed pursuant to Penal Code Section 1203.4

- driving under the influence (DUI) or reckless driving convictions
- no matter how much time has passed

(Exh. 3, p. A60.)

16. Respondent checked the "Yes" box in response to this question. Respondent then completed the corresponding Professional Fitness Explanation Form (Form). Respondent disclosed the 2009 conviction but did not disclose the 2006 conviction on the Form.

17. One section of the Form asks applicants to describe the incident which led to their arrest and conviction in detail. Respondent wrote, "I deeply regret my choice that occurred more than 10 years ago. I was sitting in a parked car at the time of the incident. However, the car was on a public street and I was under the influence of alcohol. All conditions and requirements were met." (Exh. 3, p. A64.)

18. Section 4e of the Form required Respondent to answer yes or no to the following questions:

Have you ever had any credential, including but not limited to, any Certificate of Clearance, permit, credential, license or other document authorizing public school service, revoked, denied, suspended, publicly reprovved, and/or otherwise subjected to any other disciplinary action (including an action that was stayed) in California or any other state or place?

(Exh. 3, p. A60.)

19. Respondent checked the "No" box in response to this question.

### **July 27, 2019 Incident**

20. On July 27, 2019, Respondent drove with her two minor children while under the influence of alcohol and caused a six-car automobile accident involving Respondent's Acura, a Jeep, a Nissan, a 2013 Toyota, a 2014 Toyota and a Lexus. The five other vehicles were stopped at a traffic signal when Respondent's Acura collided into the rear of the Jeep, starting a chain reaction. The impact with the Jeep caused Respondent's Acura to collide into the driver's side of a Nissan that was stopped in front of the Jeep, and then roll over onto its passenger side before finally coming to a stop after colliding into a dirt embankment.

21. The Jeep collided into the rear of the Nissan and then the rear of a 2014 Toyota. The Nissan subsequently collided into the rear of a 2013 Toyota that was stopped direct in front of it, and then into passenger side of the 2014 Toyota that was stopped in front of the 2013 Toyota.

22. The impact of the Nissan with the rear of the 2013 Toyota caused the vehicle to collide into rear of the 2014 Toyota, causing the 2014 Toyota to collide into the Lexus that was stopped in front of it.

23. California Highway Patrol (CHP) officers responded to the accident scene. During their investigation, all the drivers reported injuries from the accident. CHP Officers also observed three of the vehicles' airbags had deployed (the Acura, Jeep, Nissan), major damage to five of the vehicles (the Acura, Jeep, Nissan, 2013 Toyota, 2014 Toyota) and moderate damage to Lexus.

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24. One of the responding officers accompanied Respondent to the hospital. According to the police report, Respondent reported that she had a bottle of wine before the accident. Respondent, however, declined to answer all the pre-Field Sobriety Test (FST) questions and the officer observed a nurse draw two vials of blood from Respondent's arm, which was then given to the officer.

25. Only one of the two blood vials were analyzed. (Though Respondent argued the fact that only one of the two vials had been analyzed was somehow improper, Respondent failed to present any evidence of any impropriety.) The results of the blood test indicated that Respondent's blood alcohol content (BAC) at the time of the accident was 0.40 percent.

26. On January 6, 2021, in the Superior Court of California, County of Los Angeles, in the matter entitled *The People of the State of California v. Kauser Firdosy Shaikh*, Case Number SA101771, Respondent was convicted on her plea of nolo contendere of violating Vehicle Code section 23153, subdivision (b) (causing bodily injury while driving with a BAC of .15 percent or higher), a felony. The court suspended imposition of Respondent's sentence and placed her on formal probation for 60 months with terms and conditions, which included (among other things), service of 60 days in custody in the county jail; completion of a six-month inpatient residential treatment program; completion of an 18-month second-offender alcohol and other drug education and counseling program; and payment of fines, fees and restitution.

## **Respondent's Evidence**

27. Respondent obtained her bachelor's degree from the University of California, Riverside in 2004. In 2016, Respondent received her Master of Arts in Human Development from Pacific Oaks College.

28. Respondent is the owner operator of five private preschools. She does not currently work at any of the school sites. Respondent has never worked in the classroom providing instruction or provided transportation for the students. Though she does not need the Credential to operate the schools, she obtained it so that the schools could apply for state funding to provide subsidized childcare for low-income families.

29. Respondent asserted that she did not intend to mislead the Commission when she completed her Application. Respondent stated that she did not include information regarding her 2006 conviction because she had the conviction expunged and did not understand that "expunged" convictions were convictions that had been dismissed pursuant to Penal Code section 1203.4, which needed to be disclosed. Respondent simply understood that once she the conviction was expunged it was "completely off her record."

30. Respondent also stated that she responded "No" to question 4e asking if she ever had any permit or credential authorizing public school service suspended because she did not realize her Credential was an "authorized public service." (Exh. 3, p. A60.) As her Credential does not authorize her to operate a public school, she did not believe the question applied to her.

31. According to Respondent, on July 27, 2019, she had attended a pool party with her two children. Respondent intended on staying the night and drank alcoholic punch at the party. While there, she received a phone call from her mother-in-law, who seemed to be in distress. Because she was only a "couple" of miles away, Respondent "recklessly" made the "very foolish decision" to drive to her mother-in-law's home with her two children.

32. As she was exiting the freeway, the vehicle in front of her “stopped immediately.” Though the airbag deployed, she only sustained “minor injuries.”

33. Though the police report states Respondent drank a bottle of wine, Respondent states that she was in shock because of the accident and does not believe she reported drinking a bottle of wine. Instead, she was trying to convey that she had a bottle of wine in her vehicle and that the glass was broken.

34. After the accident, Respondent made some “major life decisions.” She entered a residential treatment center from August 11, 2020, until September 20, 2020, and worked on changing her mentality and attitude towards social settings.

35. Though Respondent stopped drinking and driving after her 2009 conviction, she still drank socially. Since the accident, Respondent and her husband have eliminated alcohol from their lives and she has been sober for three years.

36. When asked if she considers herself to be an alcoholic, Respondent paused and then stated she was. Respondent returned to, the residential treatment center she previously entered, as part of her court ordered probation for her 2021 conviction.

37. Respondent also attended Alcoholics Anonymous (AA) for a period of time. She discontinued those meetings to attend Smart Recovery, another recovery treatment program she finds to be more appropriate for her. She participates in weekly counseling sessions. Respondent intends on continuing counseling indefinitely.

### **CHARACTER REFERENCE LETTERS**

38. Respondent submitted several letters, which were admitted as administrative hearsay. A number of the letters, from staff at Season’s Recovery Center

(Season's) and from staff at Center for Professional Recovery, were letters requesting Respondent be allowed to continue with her treatment program instead of serving jail time, citing Respondent's progress in the program and expressing concerns Respondent's recovery may be halted by incarceration. (Some of the letters indicate Respondent was in treatment at Season's and others indicate Respondent was in treatment at the Center for Professional Recovery.)

39. Respondent also submitted a letter from Barbara Carey, a therapist who was a part of Respondent's treatment team at Season's. Ms. Carey opined that "[Respondent] is an outstanding member of society and should be permitted to continue contributing to the community by keeping her license." (Exh. C, p. B30.)

## **LEGAL CONCLUSIONS**

### **Standard and Burden of Proof**

1. Pursuant to the Education Code (Code), commencing with section 44000, and California Code of Regulations, title 5 (Regulation), commencing with section 80000, the Commission is responsible for credentialing teachers in public schools in California, including issuing credentials and taking adverse action against applicants and credential holders. "Adverse action" is defined in Regulation 80300, subdivision (a), as "a denial, a private admonition, public reproof, suspension or a revocation of one or more credentials." Under Code section 44440, subdivision (c), the Commission has the authority to institute a disciplinary proceeding against a credential holder, suspend or revoke the credential, or issue a public reproof or private admonition against the credential holder. Regulation 80300, subdivision (t), provides that a

suspension may be stayed “on condition of probation,” indicating that adverse action may also take the form of placing a credential on probation subject to terms.

2. Code section 44421 authorizes the Commission to take adverse action against an individual’s credential for specified grounds, including “immoral conduct or unprofessional conduct,” or “for any cause that would have warranted the denial of an application for a credential or the renewal thereof.”

3. Under Code section 44345, the Commission may deny an application if the applicant is “addicted to the use of intoxicating beverages to excess” (subd. (c)); has committed acts involving moral turpitude (subd. (e)); or “has intentionally practiced or attempted to practice any material deception or fraud in his or her application.” (subd. (e)).

## **Standard and Burden of Proof**

4. In the part of this proceeding based on the Accusation to impose discipline on Respondent’s teaching credential, the Commission has the burden to prove its case by clear and convincing evidence to a reasonable certainty. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035.) Therefore, to impose discipline on Respondent’s credential, Complainant is obligated to adduce evidence that is clear, explicit, and unequivocal—so clear as to leave no substantial doubt and sufficiently strong as to command the unhesitating assent of every reasonable mind. (*In Re Marriage of Weaver* (1990) 224 Cal.App.3d 478.) Clear and convincing evidence has been defined as “[e]vidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the fact[s] for which it is offered as proof.” (Cal. Civil Jury Instructions [BAJI] 2.62; accord *Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 847.)

5. In the part of this proceeding based on the Statement of Issues to deny Respondent's Application, the burden of proof is on Respondent to establish by a preponderance of the evidence that she is entitled to the credential that she seeks. (See *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205; *Coffin v. Alcoholic Beverage Control Appeals Bd.* (2006) 139 Cal.App.4th 471, 476.)

"'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations omitted.] . . . The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant." (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325; italics in original.)

Preponderance of the evidence means that "the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side." (*Id.*, at p. 325.)

## **Analysis**

6. The Accusation and Statement of Issues alleges Respondent's conduct on July 27, 2019, of driving a motor vehicle under the influence with her two minor children in her vehicle and causing a six car accident, and failure to disclose her 2006 conviction and 2011 seven-day suspension on her Application as grounds for discipline against her Credential and denial of the Application.

7. Complainant asserts Respondent committed acts of moral turpitude, her conduct constituted immoral and unprofessional conduct, Respondent demonstrated an addiction to the use of alcohol in excess, and Respondent made material misrepresentations in her Application.

8. "Immoral conduct," pursuant to Code section 44932, subdivision (a)(1), has been defined to mean conduct that is 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. It is sometimes used as indicating a high degree of unfairness. (*Board of Ed. of the San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811 (*Weiland*)). Immoral conduct can be construed according to common usage. "The term 'immoral' has been defined generally as that 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 Unified School District of Riverside v. Hensey* (1970) 9 Cal.App.3d 967, 972 (*Hensey*)).

9. "Unprofessional conduct," as used in Code section 44932, subdivision (a)(l), may be defined as conduct which violates the rules or ethical code of a profession or is such conduct that is unbecoming of a member of a profession in good standing. (*Board of Educ. of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553, revd. on other grounds (*Swan*)). "A teacher . . . in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the children coming under her care and protection." (*Swan, supra*, 41 Cal.2d at p. 552; citations omitted.) In *Goldsmith v. Board of Ed. of Sacramento High School Dist.* (1924) 66 Cal.App. 157, 168, the Court noted: "[T]he teacher is entrusted with the custody of children and their high preparation for useful life. His habits, his speech, his good name, his cleanliness, the wisdom and propriety of his unofficial utterances, his associations, all are involved. His ability to inspire children and to govern them, his power as a teacher, and the character for which he stands, are of major concern in a teacher's selection and retention. . . ."

10. Respondent here has been convicted for driving under the influence on three occasions. The circumstances underlying the convictions support the conclusion that these were acts of moral turpitude. In *People v. Forster* (1994), 29 Cal.App.4th 1746, the court concluded continuing to drive while intoxicated despite the knowledge of the serious risks it imposes upon other drivers is indicative of a "conscious indifference or 'I don't care attitude' concerning the ultimate consequences" of the activity (*People v. Ochoa* (1993) 6 Cal. 4th 1199, 1208) from which one can certainly infer a "depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." (*People v. Forster, supra*, 29 Cal.App.4th at p. 1757.) Of particular note is the fact that Respondent was well aware of the risks of driving while intoxicated in that she has previously been involved in a traffic collision in 2005 after driving under the influence.

11. Such conduct also constitutes immoral and unprofessional conduct.

12. Respondent admitted that she was addicted to alcohol. In addition, there are three known occasions where Respondent drove while under the influence. On each occasion, her blood alcohol content was well over the legal limit. The letters Respondent submitted also support the conclusion Respondent is addicted to alcohol.

13. Though the evidence established Respondent failed to disclose her 2006 conviction and 2011 discipline, Complainant failed to establish by clear and convincing evidence that Respondent intentionally practiced a material deception or fraud in her Application. Respondent was aware the Commission knew of the 2006 conviction because the Committee conducted a formal review of her 2006 conviction in 2009 and again in 2011. Prior to any formal review, the Committee is required, pursuant to Code section 44244, to notify an applicant or holder of a credential of the specific



allegations which make the application or credential subject to adverse action. The Committee presumably complied with its statutory duties and notified Respondent that it was reviewing her 2006 conviction during its formal review process.

Respondent's testimony that she did not understand that she was required to disclose the 2006 conviction because it was expunged is therefore credited. Similarly, the Commission notified Respondent of the adverse action in 2011 and was the agency that suspended Respondent's Credential. Therefore, it is not probable that Respondent believed she could deceive the Commission by not disclosing the 2011 discipline and Respondent's explanation that she simply misread the Application is credited.

### **Cause for Discipline**

14. Cause exists to discipline Respondent's Credential pursuant to Code section 44421, in that it was established by clear and convincing evidence that Respondent committed acts of unprofessional conduct by driving a vehicle while under the influence of alcohol, placing herself and members of the public at risk of serious harm or death as set forth in Factual Findings 20 through 26 and Legal Conclusions 9, 10 and 12.

15. Cause exists to discipline Respondent's Credential pursuant to Code section 44421, in that it was established by clear and convincing evidence that Respondent engaged in immoral conduct as set forth in Factual Findings 20-26 and Legal Conclusions 8 and 12.

16. Cause exists to discipline Respondent's Credential pursuant to Code section 44421, in conjunction with Code section 44435, subdivision (e), in that it was established by clear and convincing evidence that Respondent committed acts of moral turpitude as set forth in Factual Findings 19-26 and Legal Conclusion 11.

17. Cause exists to discipline Respondent's Credential pursuant to Code section 44421, in conjunction with Code section 44435, subdivision (c), in that it was established by clear and convincing evidence that Respondent demonstrated an addiction to the use of alcohol to excess as set forth in Factual Findings 7 through 11, 20 through 26, 36, 38, and 39, and Legal Conclusion 13.

18. Cause does not exist to discipline Respondent's Credential pursuant to Code section 44421, in conjunction with Code section 44435, subdivision (g). in that it was not established by clear and convincing evidence that Respondent intentionally practiced or attempted to practice any material deception or fraud in her Application as set forth in Factual Findings 14 through 19, and 29 through 30, and Legal Conclusion 14.

### **Cause for Denial**

19. Cause exists to deny Respondent's Application pursuant to Code section 44435, subdivision (e), in that it was established by clear and convincing evidence that Respondent committed acts of moral turpitude as set forth in Factual Findings 19 through 25, and Legal Conclusion 11.

20. Cause exists to deny Respondent's Application pursuant to Code section 44435, subdivision (c), in that it was established by clear and convincing evidence that Respondent demonstrated an addiction to the use of alcohol to excess as set forth in Factual Findings 7 through 11, 19 through 25, 35, and 37-28, and Legal Conclusion 13.

21. Cause does not exist to deny Respondent's Application pursuant to Code section 44435, subdivision (g), in that it was established Respondent intentionally practiced or attempted to practice any material deception or fraud in her Application

as set forth in Factual Findings 14 through 19, and 29 through 30, and Legal Conclusion 14.

## **Disciplinary Considerations**

22. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, the California Supreme Court concluded that a teaching credential cannot be disciplined for immoral conduct, unprofessional conduct, or conduct involving moral turpitude “unless that conduct indicates that the [educator] is unfit to teach.” (*Id.* at p. 229.) Evident unfitness for service is both a separate basis to impose discipline on a teaching credential, and also must be established before immoral conduct, unprofessional conduct, or an act of moral turpitude can be found as a basis for discipline. The Court outlined factors, commonly known as the *Morrison* factors, to consider when determining whether an educator’s conduct demonstrates unfitness to teach, which have been codified in Regulation 80302, subdivision (a).

23. Pursuant to Regulation 80302, subdivision (a), the following factors should be considered in determining whether alleged misconduct is related to the certificate holder’s fitness, competence, or ability to discharge the duties authorized by the certificate: (1) the likelihood that and the degree to which the conduct may have adversely affected students or fellow teachers, and any anticipated adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of credential or certificate held by the person involved; (4) the extenuating or aggravating circumstances of the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood that the conduct will recur; and (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 certificated persons; and (8) the publicity or notoriety given to the conduct.

24. The factors are applied here as follows:

(1) the likelihood that the conduct may have adversely affected students or fellow teachers, and the degree of such adversity anticipated. No evidence was presented to indicate any students or fellow teachers were adversely affected by Respondent's DUI. The DUI itself occurred after school hours and away from students or her colleagues. Respondent does not provide instruction to students and does not work at the campus of any of her five preschools.

(2) the proximity or remoteness in time of the conduct. Respondent's latest DUI incident occurred on July 27, 2019, and resulted in a criminal conviction in 2021. The conduct and conviction are quite recent.

(3) the types of credentials held or sought by the person involved. Respondent has held a Child Development Site Supervisor Permit since February 25, 2008, and is seeking a Child Development Director Permit. Respondent has considerable authority and is responsible for the child care and development program as a Site Supervisor and would have even greater authority as a Director.

(4) any extenuating or aggravating circumstances surrounding the conduct. Neither the Code nor the applicable regulations specify what constitutes "extenuating circumstances." Regulation 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." The aggravating factors pertinent here are: (1) Respondent has a prior record of adverse action based upon similar misconduct; (2) the misconduct is Respondent's third DUI and demonstrates a pattern of misconduct; (3) the misconduct harmed her children and

significantly harmed members of the public; and (4) Respondent BAC was five times the legal limit when Respondent chose to drive under the influence of alcohol. Her decision to drive in that condition after her 2006 and 2009 convictions and 2011 suspension reflects an indifference toward the consequence of her misconduct.

(5) the praiseworthiness or blameworthiness of the motives resulting in the conduct. "The lack of praiseworthiness in [Respondent's] conduct speaks for itself." (*Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 477. Respondent's decision to drive while under the influence caused a serious six-car accident. There is nothing praiseworthy about Respondent's conduct.

(6) the likelihood of recurrence of the questioned conduct. Respondent has abstained from alcohol since her July 2019 arrest. Though Respondent asserts she has made significant changes to her life, Respondent has not developed significant insight into or taken responsibility for her conduct. Despite the serious damage caused by her conduct, Respondent provided an account of the accident that was inconsistent statements provided by the drivers of the five other vehicles that were involved in the accident. Their accounts explain the damage, which was observed and documented by CHP officers while Respondent's does not. In addition, Respondent minimized the injuries she caused. Respondent, however, appears to be putting in a consistent effort to prevent a relapse, abstaining completely from alcohol, and continuing alcohol abuse treatment by attending weekly counseling sessions. Respondent is supported in her sobriety by her husband.

(7) the extent to which disciplinary action may have an adverse impact or chilling effect upon the constitutional rights of the person involved, or other teachers. Respondent did not offer any evidence to establish any constitutional right of hers will be impacted adversely by this matter.

(8) the publicity or notoriety given to the conduct. There was no evidence of publicity or notoriety related to the criminal convictions.

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 and denial of her Application. The evidence, however, did not establish that revocation of Respondent's Credential is warranted. Respondent's conduct had minimal to no impact on the educational community and did not involve students or fellow staff. Further, Respondent has established a satisfactory level of rehabilitation, such that allowing her to retain her Credential after a period of suspension would not be inconsistent with public protection provided that a period of probation is imposed where Respondent is monitored. Therefore, Respondent's Credential is revoked, the revocation is immediately stayed, and Respondent's Credential is suspended for a period of 180-days after which placed on probation for a period of five years.

## **ORDER**

The application of respondent Kauser Firdosy Shaikh for a Child Development Director Permit is denied.

The Child Development Site Supervisor Permit issued to respondent Kauser Firdosy Shaikh is 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 which include a 180-day period of suspension.

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.

Respondent shall report, in writing, any subsequent arrest or conviction for any crime, whether it is a felony or misdemeanor (other than a minor traffic violation) within 10 days of the arrest or citation. The report shall contain: (1) date and time of the arrest; (2) charges for which Respondent was arrested or convicted; (3) name and address of the law enforcement agency and the court involved; (4) a detailed explanation of the events and circumstances leading to the subsequent arrest and/or conviction; (5) the current status or resulting sentence or disposition; and (6) Respondent's current address and phone number. For purposes of this condition, a "minor traffic violation" is a traffic violation which is punishable by a maximum fine of \$300.00, and does not subject the offender to incarceration or probation.

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.

During the period of probation, Respondent shall submit quarterly reports, under penalty of perjury, on forms designated by the Commission, certifying and documenting compliance with all terms and conditions of probation.

3. COOPERATION WITH COMMISSION: During the period of probation, Respondent shall fully cooperate with the with the Commission in its monitoring and investigation of Respondent's compliance with probation.

4. INTERVIEWS/MEETINGS WITH COMMISSION. During the period of probation, Respondent shall be available for interviews with the Commission in person or by telephone upon reasonable notice.

5. MAINTAIN CURRENT CONTACT INFORMATION. Within seven days of the effective date of this order, Respondent shall notify the Commission of her current mailing address and phone number where voicemail messages may be left. Respondent will notify the Commission in writing of any change of mailing address or residence within ten (10) days of such change.

6. 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. 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.

7. 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.

8. 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, Smart Recovery 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.

9. 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.

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.

12. ACTUAL SUSPENSION: As part of probation, Respondent's Child Development Site Supervisor Permit is suspended for a period of 180 days beginning the effective date of this order.

DATE: 12/08/2022

  
Nana Chin (Dec 8, 2022 15:13 PST)

NANA CHIN

Administrative Law Judge

Office of Administrative Hearings