

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

In the Matter of the Accusation Against:

MICHAEL CHRISTOPHER AGUILAR, Respondent

Case No. 1-272957422

OAH No. 2019090083

PROPOSED DECISION

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 18, 2019, in Fresno, California.

Karen R. Denvir, Deputy Attorney General, represented complainant Mary Vixie Sandy, Ed.D., Executive Director of the California Commission on Teacher Credentialing (Commission).

Attorney Joshua F. Richtel represented respondent Michael Christopher Aguilar (respondent), who was present throughout the hearing.

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on December 18, 2019.

FACTUAL FINDINGS

Procedural Background

1. On February 1, 1998, the Commission issued a Clear Single Subject with English Learners and English Authorizations Teaching Credential to respondent.¹ The Credential expires October 1, 2023, unless renewed or revoked. At hearing, there was no evidence presented of prior discipline of the credential.²

2. On December 21, 2018, the Commission's Committee of Credentials determined that probable cause existed to recommend that the Commission bring an adverse action against respondent's credential. Respondent timely requested an administrative hearing challenging that recommendation.

3. On June 7, 2019, complainant, acting solely in her official capacity, signed an Accusation seeking to discipline respondent's credentials based on his unprofessional conduct, immoral conduct, evident unfitness for service, commission of an act involving moral turpitude, and addiction to the use of intoxicating beverages to excess.

¹ The Accusation incorrectly identified September 6, 2003 as the date of issuance.

² The Accusation alleges that on June 3, 2012, the Commission suspended respondent's credential for 21 days based on the convictions identified in Factual Findings 7 through 9. At hearing, complainant submitted evidence of those convictions, but no evidence of prior discipline based on them.

Causes for Discipline: Criminal Convictions (2016 – 2017)

4. On May 27, 2016³, in the Superior Court of California, County of Fresno, case number F16902831, respondent was convicted, on his plea of no contest, of violating Penal Code section 273.5, subdivision (a) (corporal injury on a spouse or cohabitant), a felony (domestic violence). He was sentenced to 76 days in jail, with credit for time served, and ordered to pay fines and fees. He was also placed on formal probation for three years.

The circumstances underlying the conviction occurred on April 30, 2016, while respondent was driving with his live-in girlfriend. They argued, and respondent slapped, grabbed, and attempted to strangle her.

5. On November 7, 2016, in the Superior Court of California, County of Kings, case number 15CM-4537, respondent was convicted, on his plea of no contest, of violating Vehicle Code section 14601.2, subdivision (a) (driving on a license suspended due to a prior conviction for driving under the influence of alcohol), a misdemeanor. He was sentenced to 10 days in jail and ordered to pay fines and fees.

The circumstances underlying the conviction occurred on May 16, 2015, when respondent drove his vehicle despite having a suspended driver's license. He was stopped by an officer with the Hanford Police Department, who discovered respondent's license was suspended, issued him a misdemeanor citation, and referred the matter to the Kings County District Attorney for prosecution.

³ The Accusation incorrectly identified September 2, 2016 as the date of conviction; September 2, 2016, was the date of sentencing.

6. On September 22, 2017, in the Superior Court of California, County of Fresno, case number M16921354, respondent was convicted, on his plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content [BAC] of 0.08 percent or greater), a misdemeanor (DUI). He also admitted a sentencing enhancement under Vehicle Code section 23546 (two prior DUI convictions within the previous 10 years). He was sentenced to 364 days in jail. Imposition of sentence was suspended for five years, and respondent was placed on informal probation on conditions that: (1) 204 days of jail time would be suspended while he was enrolled in a Secure Continuous Remote Alcohol Monitoring (SCRAM) program; (2) he install an Ignition Interlock device on his vehicle for two years; and (3) he pay fines and fees.

The circumstances underlying the conviction occurred on April 30, 2016, when respondent drove after drinking alcohol and crashed his vehicle into a grape vineyard. He stipulated that his BAC was 0.08 percent.

Matters in Aggravation: Criminal Convictions (2009 – 2010)

7. On July 8, 2009, in the Superior Court of California, County of Madera, case number CCR025820, respondent was convicted, on his plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving with a BAC of 0.08 percent or greater), a misdemeanor (DUI). He also admitted a sentencing enhancement under Vehicle Code section 23578 (BAC of 0.15 percent or greater). He was sentenced to three days in jail, with credit for time served. Imposition of sentence was suspended for three years, and respondent was placed on informal probation on conditions that he enroll in a three-month DUI course and pay fines and fees.

The circumstances underlying the conviction occurred on January 31, 2009, when respondent drove after drinking alcohol. He stipulated that his BAC was 0.15 percent.

8. On July 13, 2009, in the Superior Court of California, County of Merced, case number MM227173, respondent was convicted, on his plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving with a BAC of 0.08 percent or greater), a misdemeanor (DUI). He was sentenced to two days in jail, ordered to enroll in a DUI course, and ordered to pay fines and fees.

The circumstances underlying the conviction occurred on August 29, 2008, when respondent drove after drinking alcohol. He stipulated that his BAC was 0.14 percent.

9. On October 5, 2010, in the Superior Court of California, County of Madera, case number SCR010604, respondent was convicted, on his plea of no contest, of violating Penal Code sections 136.1, subdivision (b)(1) (attempting to prevent or dissuade a victim of a crime from reporting the victimization) and 243, subdivision (e)(1) (battery on a person in a dating relationship), both misdemeanors. Imposition of sentence was suspended for two years, and respondent was placed on informal probation on conditions that he enroll in a 52-week batterer's program, complete 100 hours of community service, and pay fines and fees.

The circumstances underlying the conviction occurred on April 2, 2010, while respondent was driving with his girlfriend. They argued, and respondent punched her in the face.

Respondent's Evidence

10. Respondent testified at hearing. He admits he is an alcoholic, but says he did not realize it until mid-2016 when he began attending a rehabilitation center in Laguna, Florida (rehab). He started drinking alcohol in ninth grade, and "self-medicated to take away the pain" of a difficult upbringing. He continued to drink alcohol throughout his adolescence and adult life. While in rehab, he attended Alcoholics Anonymous (AA) meetings, had an AA sponsor, and worked AA's 12-step recovery program. He stopped attending AA meetings in 2018. He has not used alcohol since May 5, 2016, but no longer has a sponsor, and no longer actively works AA's 12-step program. Instead, his relapse prevention plan includes playing golf and talking to friends and family.

11. Regarding his 2016 domestic violence conviction, respondent explained that he and his girlfriend had spent the night drinking alcohol and gambling at a local casino. He had lent her \$400, and she lost it gambling. On the drive home, they argued. While the vehicle was in motion, she attempted to open the door to exit. Respondent grabbed her arm to prevent her from falling out. He does not recall slapping or strangling her.

12. Respondent eventually stopped the vehicle, and his girlfriend exited. She yelled for help, and a passerby gave her a ride to a nearby hospital. When police officers arrived at the hospital, they observed a red abrasion on her collar bone, a bruise on her right arm, and redness on her left arm. She reported to the police that respondent had caused her injuries by slapping her and trying to strangle her with his right hand while he drove.

13. After respondent's girlfriend exited the vehicle, respondent drove away. Shortly thereafter, respondent crashed his vehicle into a grape vineyard while trying to turn onto a dirt road. His vehicle became lodged on top of grape vines and was disabled. California Highway Patrol received a call about the collision and dispatched officers to the scene. When they arrived, the officers questioned respondent. He told them he was not driving, but rather had gone to that location with a friend to drink beer. He exhibited objective signs of alcohol intoxication, and officers administered field sobriety tests. Respondent performed unsatisfactorily, and was arrested.

14. Respondent has been an English Language Development teacher at Duane E. Furman High School in the Madera Unified School District for the past 15 years. Following his 2016 domestic violence conviction, his name and mugshot were featured on a local news story about Fresno's Most Wanted. In addition, respondent's SCRAM program required him to wear an ankle monitor at all times. Respondent has knowledge that his students and coworkers were aware of both his local media coverage and his ankle monitor, and discussed them at the school.

Morrison Factors

15. 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.) The Court outlined factors for consideration when determining whether an educator's conduct demonstrates unfitness to teach (*ibid.*), and the Commission adopted those factors by enacting California Code of Regulations, title 5, section 80302.

LIKELIHOOD OF ADVERSE EFFECT ON STUDENTS OR FELLOW TEACHERS

16. "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 [his] care and protection." (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 552.) Respondent's repeated disregard for the law reflects poorly on him individually, and on teachers generally. Moreover, the nature of respondent's criminal activity demonstrates a severe lack of sound judgment. Because students are impressionable and may try to emulate their teachers, it is essential that an educator's behavior be beyond reproach. Respondent's multiple convictions and the underlying conduct demonstrated behavior inimical to the well-being of students, and portrayed both him and the teaching profession negatively. Furthermore, respondent wearing an ankle monitor at school "may have adversely affected others," and "especially would have adversely impacted [respondent's] ability to earn the respect of [his] students." (*Broney v. California Comm. on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 477.)

TYPE OF CREDENTIALS HELD

17. Respondent's Single Subject with English Learners and English Authorizations Teaching Credential authorizes him to teach students learning English as a second language. As a result, he may be the teacher with whom his students have the most in common, and his students may have a deeper connection with him than their other teachers. Therefore, it is even more imperative that he exemplify the type of behavior society wants emulated by students and possess sound judgment. Respondent's convictions and the underlying conduct raise concerns over whether he is an appropriate role model for his students.

EXTENUATING OR AGGRAVATING CIRCUMSTANCES

18. Neither the Education Code nor the regulations adopted by the Commission specify what constitutes "extenuating circumstances." However, the California Code of Regulations defines "mitigating factor" as "an event or circumstance which demonstrates that the public, schoolchildren and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever." (Cal. Code Regs., tit. 5, § 80300, subd. (m).) The Commission's regulations also define "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." (*Id.* at § 80300, subd. (b).)

19. The repeated nature of respondent's convictions and underlying conduct demonstrates a pattern of misconduct involving both domestic violence and the consumption of alcohol. Furthermore, respondent's convictions for driving on a suspended license and attempting to prevent or dissuade a victim of a crime both demonstrate a flagrant disrespect for the law. Taken together, respondent's convictions and the underlying conduct demonstrate the need for a greater degree of adverse action to ensure public protection. Respondent did not offer any evidence of mitigating circumstances.

PRAISEWORTHINESS OR BLAMEWORTHINESS OF THE MOTIVES RESULTING IN THE MISCONDUCT

20. Respondent bears the sole blame for his convictions and underlying conduct. An argument about \$400 led to his 2016 domestic violence conviction. His

lack of respect for the law led to his convictions for driving on a suspended license and DUI.

LIKELIHOOD OF RECURRENCE

21. Respondent has already been convicted of domestic violence twice and DUI three times. His second domestic violence conviction occurred after he had already taken a 52-week batterer's program. In addition, he no longer attends AA, has a sponsor, or actively works a 12-step recovery program. The evidence suggests his criminal behavior is likely to reoccur.

PUBLICITY OR NOTORIETY OF MISCONDUCT

22. Following his 2016 domestic violence conviction, respondent's criminal conduct was featured on local media. In addition, he wore an ankle monitor at school, and his students and coworkers had knowledge of both of these circumstances.

Discussion

23. It was undisputed respondent had three convictions between May 2016 and September 2017. The persuasive evidence established the criminal conduct underlying those convictions involved domestic violence, driving while under the influence of alcohol, and driving on a suspended license. The clear and convincing evidence established that respondent demonstrated evident unfitness for service, engaged in unprofessional and immoral conduct, and committed acts involving moral turpitude. In addition, respondent acknowledged being an alcoholic. When considering the relevant *Morrison* factors, respondent's conduct demonstrated his unfitness to teach for the reasons explained in Factual Findings 15 through 22.

Therefore, cause exists to discipline his credential. In light of the serious and repeated nature of his criminal conduct, respondent's credential should be revoked.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving the existence of grounds for disciplining respondent's credentials and certificate, and must do so by clear and convincing evidence to a reasonable certainty. (*Daniels v. Department of Motor Vehicles* (1983) 33 Cal.3d 532, 536 ["When an administrative agency initiates an action to suspend or revoke a license, the burden of proving the facts necessary to support the action rests with the agency making the allegation"]; *Gardener v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1036, 1039-1040 [recognizing that the clear and convincing evidence standard applies to proceedings to discipline a teacher's credential, whereas the lesser preponderance of the evidence standard applies to proceedings to dismiss a teacher from particular employment].) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

2. The California Supreme Court has recognized that the terms "immoral conduct" and "unprofessional conduct" substantially overlap one another and that conduct which constitutes one, often includes the other. (See, *Morrison v. State Board of Education, supra*, 1 Cal.3d 214, 221, fn. 9.) "Unprofessional conduct" includes "'that which violates the rules of ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing.'" (*Board of Education v.*

Swan, supra, 41 Cal.2d at p. 553; quoting, 66 Corpus Juris, p. 55.) In describing what constitutes “immoral conduct” within the context of the Education Code, the court in *Board of Education of San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, said:

In *Orloff v. Los Angeles Turf Club*, 36 Cal.2d 734, at page 740 [227 P.2d 449], the Supreme Court quotes with approval the following statement from Words and Phrases, permanent edition, volume 20, pages 159-160: “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.”

(*Id.*, at p. 811.)

3. The court in *San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, said the following about the definition of immoral or unprofessional conduct:

Moreover, 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." [Citation.]

(*Id.*, at p. 1466.)

4. And the following has been said about the analysis for determining whether particular conduct constitutes sufficient cause for taking adverse action against a credential:

Goldsmith v. Board of Education, 66 Cal.App. 157, 168 [225 P. 783], quoted in *Board of Education v. Swan*, 41 Cal.2d 546, 553-554 [261 P.2d 261], found that the standards for judging the propriety of a teacher's conduct, and the extent to which that conduct may be the basis for the revocation of a credential, involves many aspects. " . . . the 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 matters of major concern in a teacher's selection and retention."

(*Moser v. State Board of Education* (1972) 22 Cal.App.3d 988, 991.)

5. The Commission may discipline a credential for unprofessional conduct. (Ed. Code, § 44421.) The clear and convincing evidence established respondent engaged in unprofessional conduct. Therefore, cause exists to discipline his credential pursuant to Education Code section 44421.

6. The Commission may discipline a credential for immoral conduct. (Ed. Code, § 44421.) The clear and convincing evidence established respondent engaged in immoral conduct. Therefore, cause exists to discipline his credential pursuant to Education Code section 44421.

7. The Commission may discipline a credential "for any cause that would have warranted the denial of an application for a credential or the renewal thereof." (Ed. Code, § 44421.) An application for a credential may be denied if the applicant "has committed any act involving moral turpitude." (Ed. Code, § 44345, subd. (e).) The clear and convincing evidence established respondent committed acts involving moral turpitude. Therefore, cause exists to discipline his credential pursuant to Education Code section 44421, as that statute relates to Education Code section 44345, subdivision (e).

8. The Commission may discipline a credential for evident unfitness for service. (Ed. Code, § 44421.) The clear and convincing evidence established respondent's evident unfitness for service. Therefore, cause exists to discipline his credential pursuant to Education Code section 44421.

9. An application for a credential may be denied if the applicant "is addicted to the use of intoxicating beverages to excess." (Ed. Code, § 44345, subd. (c).) The clear and convincing evidence established respondent "is addicted to the use of intoxicating beverages to excess." Therefore, cause exists to discipline his credential pursuant to Education Code section 44421, as that statute relates to Education Code section 44345, subdivision (c).

10. Cause exists to discipline respondent's Clear Single Subject with English Learners and English Authorizations Teaching Credential for the reasons explained in

Legal Conclusions 5 through 9, individually and collectively. When all admissible evidence is considered, respondent did not produce sufficient evidence of his continued fitness to perform the duties authorized under his credential, even on a probationary basis. Therefore, his credentials should be revoked.

ORDER

The Clear Single Subject with English Learners and English Authorizations Teaching Credential issued to respondent Michael Christopher Aguilar on February 1, 1998, is REVOKED.

DATE: January 15, 2020

DocuSigned by:

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SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings