

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of the Motion for Immediate Reversal of  
Suspension of:**

**BRAD SAUNDERS, A Permanent Certificated Employee**

**Moving Party**

**and**

**SAN MATEO FOSTER CITY SCHOOL DISTRICT**

**Responding Party**

**OAH No. 2019090176**

**ORDER DENYING MOTION FOR IMMEDIATE REVERSAL OF  
SUSPENSION**

Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Los Angeles, California on September 27, 2019.

Tony Rice, Attorney at Law, represented moving party Brad Saunders (Saunders).

Christian M. Keiner, Attorney at Law, represented responding party San Mateo Foster City School District (District).

## **BACKGROUND**

On August 8, 2019, Sue Wieser, the District's Compliance Officer, caused to be served on Saunders a Notice of Intent to Dismiss and Statement of Charges, recommending his dismissal from employment with the District on grounds including unprofessional conduct, immoral conduct, evident unfitness for service, and persistent violation of or willful refusal to perform regular assignments without reasonable cause. The Statement of Charges contains allegations describing incidents of aggressive and antagonistic conduct by Saunders towards his principal, fellow certificated employees, and students.

On August 8, 2019, the District served Saunders with a Notice of Immediate Unpaid Suspension, pursuant to Education Code section 44939, for immoral conduct. Saunders demanded a hearing on the dismissal and moved for immediate reversal of the suspension under Education Code section 44939, subdivision (c)(1). The District filed opposition to the motion, and counsel for both parties presented oral argument at the motion hearing.

Saunders asserts that the facts as alleged in the Statement of Charges, even if true, are insufficient to constitute a basis for immediate suspension without pay. He first asserts that the allegations do not establish willful refusal to perform regular assignments. However, the District concedes that willful refusal was not the basis for its suspension of Saunders without pay.

Saunders next argues that the only acts which constitute immoral conduct by a teacher are sexual harassment or public sexual activity; drug use or possession; or theft of property or compensation. Even accepting as true the allegation that he engaged in conduct towards another staff member which created a discriminatory, threatening, and hostile work environment, Saunders asserts that while such conduct may be unprofessional and unacceptable, it does not constitute immoral conduct.

## **LEGAL STANDARDS**

A school district may immediately suspend a permanent certificated employee who has been charged with "immoral conduct, conviction of a felony or of any crime involving moral turpitude, with incompetency due to mental disability, with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district," or advocating communism. (Ed. Code, § 44939, subd. (b).) A suspended employee may file a motion for immediate reversal of the suspension with the Office of Administrative Hearings. (Ed. Code, § 44939, subd. (c)(1).) An administrative law judge reviews the motion, and the review "shall be limited to a determination as to whether the facts as alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension under this section." (*Ibid.*) Although well-pleaded facts must be accepted as true, the administrative law judge need not accept contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Immoral conduct is conduct "'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.'" (*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811, quoting *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740.)

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.)

The conduct alleged is immoral conduct as it is willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community and constitutes an inconsiderate attitude toward good order and the public welfare. Accordingly, Saunders failed to establish good cause to reverse the immediate suspension.

## ORDER

The motion for immediate reversal of suspension is denied.

DATE: October 14, 2019

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*Laurie Pearlman*  
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LAURIE R. PEARLMAN

Administrative Law Judge

Office of Administrative Hearing