

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

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

**Suspension of:**

**WILLIAM MONTE, Moving Party,**

**a Permanent Certificated Employee,**

**and**

**WALNUT VALLEY UNIFIED SCHOOL DISTRICT,**

**Responding Party.**

**OAH No. 2023020628**

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

On March 17, 2023, a telephonic hearing was held before Administrative Law Judge (ALJ) Eric Sawyer, Office of Administrative Hearings (OAH), State of California.

Tamra M. Smith, Attorney, represented moving party William Monte (Employee).

Alexandria M. Davidson, Attorney, represented responding party Walnut Valley Unified School District (District).

District filed a statement of charges (Charges) against Employee, and placed him on indefinite unpaid suspension. The suspension is based on allegations that Employee engaged in immoral conduct in violation of Education Code sections 44932, subdivision (a), and 44939.

Employee timely filed a Motion for Immediate Reversal of Suspension (motion) with OAH, pursuant to Education Code section 44939, subdivision (c)(1). The various papers filed by the parties in connection with the motion were described on the record during the hearing. The parties also presented oral argument during the hearing. The ALJ considered all papers filed by the parties as well as their oral arguments.

## **Governing Procedure**

Education Code sections 44932 and 44939 allow an employing school district to immediately suspend a permanent certificated employee without pay under certain circumstances, including alleged immoral conduct. In turn, Education Code section 44939, subdivision (c)(1), allows a suspended employee to file a motion for review of the suspension. Review of such a motion "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.*)

A motion such as this is analogous to a demurrer. Although well-pleaded facts must be accepted as true for purposes of a demurrer, "contentions, deductions or conclusions of fact or law" need not be accepted. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Moreover, for purposes of a demurrer, facts appearing in exhibits attached to the complaint also will be accepted as true and, if contrary to the allegations in the pleading, will be given precedence. (*Qualcomm, Inc. v. Certain Underwriters at Lloyd's, London* (2008) 161 Cal.App.4th 184, 191.)

A demurrer can be sustained when a plaintiff's "conclusory characterization of defendant's conduct as intentional, wilful and fraudulent" is "patently insufficient." (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.) With regard to the alleged misconduct of a public employee, the term "wilful" carries a volitional coloration that excludes the notion of accidental or even negligent conduct. (*Coomes v. State Personnel Bd.* (1963) 215 Cal.App.2d 770, 775.)

## **Immoral Conduct**

"Immoral conduct," pursuant to Education Code sections 44932, subdivision (a), and 44939, 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 synonymous with dishonesty or a high degree of unfairness. (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

Immoral conduct also 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 wilful, 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 etc. Sch. Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

## **Analysis of the Motion**

In this case, the cause for Employee's immediate suspension without pay for immoral conduct is solely based on an incident between Employee and student A.Z. involving a laptop computer.

According to the well-pleaded facts alleged in the Charges, the incident took place during Employee's middle school social studies class. The students were taking a test and Employee had directed them to read quietly when they finished the test. Student A.Z., in violation of Employee's instructions, began playing video games on his school-issued laptop. Employee gave A.Z. multiple verbal directives to stop, but A.Z. refused to comply. Employee closed the computer screen while A.Z.'s hands were still on or near the keyboard. Employee then tried to remove the laptop from A.Z.'s desk, but A.Z. grabbed it and refused to let it go. The two began a "tug-of-war" over the laptop. Employee tipped A.Z.'s chair forward, causing A.Z. to stand up. While both were clutching the laptop, A.Z. stepped on Employee's foot and both fell to the floor. After Employee told A.Z. he would report him to the office and his parents, A.Z. let go of the laptop. Employee and A.Z. stepped outside in the hallway to speak for a few minutes. Employee and A.Z. came back into the classroom and apologized to the class for the disruption. (Charges, ¶ 11 at pp. 4-5.)

The District took witness statements about this incident from respondent, A.Z., and many other students present in the classroom at the time of the incident, which are attached to the Charges as exhibits. The substantial weight of the attached statements demonstrates that respondent and A.Z. fell on the floor by accident. In his written statement, A.Z. did not mention his hand being hit when Employee closed the computer screen or otherwise experiencing pain. In a verbal statement he gave to a

school staff member, which was dictated by the staff member, A.Z. said his hand was hit when Employee shut the lid and “[i]t hurts a little bit.” (Charges, Exh. E, p. 067.)

The allegations of the Charges and attached statements do not rise to the level of immoral conduct discussed in the cases cited above. For example, the allegations do not involve dishonesty; prurient comments or actions done in bad taste; or otherwise equate to the kind of corrupt, indecent, depraved, dissolute, or shameless conduct generally outlined in both cases.

District failed to cite any appellate case defining immoral conduct in a way the term can be extended to an incident like this when a teacher justifiably attempted to gain a student’s compliance with a clearly established and reasonable directive.

District mostly relies on the words and phrases from the above cases such as “willful,” “flagrant,” “showing moral indifference,” and “an inconsiderate attitude toward good order and public welfare” in arguing respondent’s conduct was immoral. However, it is not apparent from the Charges that Employee’s methodology was a flagrant breach of moral values or displayed an inconsiderate attitude toward the public. In fact, by trying to gain A.Z.’s compliance with his directive, respondent was trying to uphold order established in the classroom. While Employee’s method in gaining compliance is subject to criticism, and may have been unprofessional, it is hard to conclude that the public viewing this incident would be offended or shocked in the way described by the cases cited above.

District’s argument is not persuasive that Employee’s conduct was immoral because he engaged in corporal punishment prohibited by Education Code section 49001. Subdivision (a) of that statute defines corporal punishment as “the willful infliction of, or willfully causing the infliction of, physical pain on a pupil.” For purposes

of corporal punishment, the word “willfully” refers to a “general intent to inflict upon a child any cruel or inhuman corporal punishment or injury.” (*People v. Sargent* (1999) 19 Cal.4th 1206, 1220.) As the *Coomes* case cited above held, accidental or negligent conduct negates a finding of willfulness.

District argues respondent engaged in corporal punishment by overreacting to a harmless situation with aggressive physical actions that exerted force on A.Z., such as slamming the computer screen down forcefully on A.Z.’s hand, engaging in a “tug-of-war” over the laptop, and causing A.Z. to fall to the floor.

However, a review of the Charges and the attached statements shows respondent was not willfully inflicting punishment on A.Z. but simply trying to get the laptop from him. Moreover, the information gleaned from the attached statements indicates whatever pain A.Z. may have temporarily experienced was inadvertent and not intended by respondent. Thus, it cannot be concluded that respondent engaged in corporal punishment of A.Z.

Based on the above, District failed to sufficiently plead cause for respondent’s unpaid suspension for immoral conduct.

## **Conclusion**

Good cause was established and the motion is granted.

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Pursuant to Education Code section 44939, subdivision (c)(5), this order shall become effective within five days of service, and District shall make Employee whole for any lost wages, benefits, and compensation within 14 days after service of the order.

IT IS SO ORDERED.

DATE: 03/20/2023

  
Eric C. Sawyer (Mar 20, 2023 14:43 PDT)

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings