

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

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

**STEVEN FARWELL, A Permanent Certificated Employee,  
Respondent and Moving Party**

**OAH No. 2024010160**

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

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on January 26, 2024, from Sacramento, California.

Matthew Chevedden, Attorney at Law, represented respondent and moving party, Steven Farwell.

Steve Ngo, Attorney at Law, represented the Elk Grove Unified School District (the District).

The parties submitted written briefing before the hearing. The parties argued their positions and submitted the matter for decision on January 26, 2024.

## **Procedural History**

On December 5, 2023, the District's Chief Human Resources Officer signed and subsequently sent to respondent a Notice of Intent to Dismiss; Placement on Immediate Unpaid Suspension Pending Outcome of Dismissal Proceedings; and Statement of Charges (SOC). The SOC alleged grounds to terminate respondent under Education Code section 44932 for: (1) immoral conduct; (2) dishonesty; (3) evident unfitness for service; (4) persistent violation of, or refusal to obey, the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district employing him; and (5) conviction of a felony or any crime involving moral turpitude. (Ed. Code, § 44932, subd. (a)(1), (4), (6), (8) & (9).) The SOC also alleged grounds to suspend respondent immediately without pay for immoral conduct and conviction of a felony or any crime involving moral turpitude. (Ed. Code, § 44939.)

On January 8, 2024, respondent filed a Motion for Immediate Reversal of Suspension (Motion) pursuant to section 44939, subdivision (c), in which he argued the District must immediately reverse his suspension for three reasons. First, respondent argued the SOC does not state it was either written by or filed with the District's governing board. Therefore, in respondent's view, the District violated the requirements of Education Code section 44934, subdivision (b), which dictates the procedure for filing the SOC. As such, respondent argued, "if the [SOC] do[es] not meet the requirements of [section] 44934, the employee cannot be placed on unpaid leave pursuant to [section] 44939."

Second, respondent argued the District included allegations in the SOC that it cannot legally consider. Specifically, respondent argued the SOC includes allegations

relating to matters that occurred more than four years before it filed the SOC, in violation of Education Code section 44944, subdivision (b)(2)(A).

Separately, respondent argued the District cannot suspend him based on his conviction because he pled no contest to a misdemeanor. Finally, respondent argued if his conviction and conduct more than four years ago are excluded, the District's remaining allegations do not constitute immoral conduct.

The District filed a written opposition to respondent's Motion, and respondent filed a written reply to the opposition.

## **Facts as Alleged in the SOC**

Education Code section 44939, subdivision (c), requires the facts in the SOC to be treated as true for purposes of this Motion. Consequently, the statements below are not findings of fact, but rather summaries of the allegations as they appear in the SOC.

## **WARNINGS AND REPRIMANDS**

Respondent is a high school math teacher for the District. In June 2015, the District issued respondent a letter of reprimand for insulting, threatening, grabbing, and hitting students. In December 2016, the District issued respondent a letter of warning for being rude and confrontational in department staff meetings. In December 2019 and April 2021, the District issued respondent a reprimand and a warning for inappropriate conduct towards students and staff. Specifically, in April 2021, the District reprimanded respondent because,

[O]n March 4, 2021, [he] engaged in a racist, unprofessional, and inappropriate conversation in front of [his] students,

when [he] and another colleague discussed the recent hiring of a woman of color into the math department. [He] criticized [the school's] administrators and the Chair of the Math Department for hiring a woman of color, referring to them as "racist" to "hire a female and a non-white."

Respondent made these comments during a videoconference while his microphone was unmuted and students in his class overheard him. Multiple students complained. When school administrators approached respondent about his comments, he ignored their emails and then ultimately denied making the comments.

### **CONVICTION AND SUSPENSION OF CREDENTIAL**

In January 2022, respondent was convicted, on his no contest plea, of violating Penal Code section 273a, subdivision (b), (child endangerment or cruelty under circumstances or conditions other than those likely to produce great bodily harm or death), a misdemeanor. The conduct underlying the conviction occurred in July 2021, when respondent punched his child, who was also a District student, in the face.

In February 2022, the California Commission on Teacher Credentialing (CTC) suspended respondent's teaching credential. In March 2022, the District placed respondent on unpaid administrative leave based on his suspended credential. After respondent's appeal, the CTC upheld his suspension for 180 days, effective January 15 through July 13, 2023.

### **Analysis**

Education Code section 44939, subdivision (b), lists causes for immediate suspension without pay of permanent employees, including, as relevant here, "immoral

conduct” and “conviction of a felony or of any crime involving moral turpitude.” When evaluating a motion to reverse the suspension, review is limited to “a determination as to whether the facts as alleged in the [SOC], if true, are sufficient to constitute a basis for immediate suspension under this section.” (Ed. Code, § 44939, subd. (c)(1).) Here, as explained below, the facts alleged in the SOC, if true, are sufficient to constitute a basis to suspend respondent for immoral conduct but not for conviction of a crime involving moral turpitude.

### **IMMORAL CONDUCT**

As used in the Education Code, the term “immoral conduct” must be construed “according to [its] common and approved usage having regard for the context in which the legislature used” the term. (*Palo Verde Unified School Dist. of Riverside Cnty. v. Hensey* (1970) 9 Cal.App.3d 967, 971.) In *Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811 (*Weiland*), the court held:

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.

Here, the District alleged in the SOC that respondent engaged in a pattern of inappropriate conduct towards students and staff over multiple years despite several warnings. In March 2021, he criticized school administrators as racist for hiring a non-white woman into the Math Department. His students overheard his comments and were upset. Respondent then denied making such comments. Those facts do not constitute immoral conduct as defined in *Weiland*.

However, the District also alleged in the SOC that in July 2021, respondent punched his child, who was also a student in the District, in the face. Such conduct constitutes immoral conduct as defined in *Weiland*. Consequently, those facts alleged in the SOC, if true, constitute immoral conduct and form a basis to suspend respondent.

### **CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE**

The California Supreme Court has defined moral turpitude as “an act of baseness, vileness or 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.” (*In re Craig* (1938) 12 Cal.2d 93, 97; *Golde v. Fox* (1979) 98 Cal.App.3d 167, 184.) Moral turpitude has also been defined as a general readiness to do evil. (*People v. Castro* (1985) 38 Cal. 3d 301, 314.) To determine whether a crime involves moral turpitude, one must evaluate the crime’s elements.

Respondent was convicted of violating Penal Code section 273a, subdivision (b), which provides,

Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts

thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.

Respondent did not argue Penal Code section 273a, subdivision (b), is not a crime involving moral turpitude. The District argued it does involve moral turpitude, citing to *Donley v. Davi* (2009) 180 Cal.App.4th 447, 461 (*Donley*). However, *Donley* held a different statute, Penal Code section 273.5, is a crime involving moral turpitude. (*Ibid.*) *Donley* did not address whether section 273a, subdivision (b), is a crime involving moral turpitude. It appears there is no caselaw on whether a conviction for misdemeanor child cruelty or endangerment, under Penal Code section 273a, subdivision (b), is a crime of moral turpitude.

However, in the context of using a prior conviction to impeach a witness, the Fifth District Court of Appeal held felony child endangerment is not necessarily a crime of moral turpitude. (*People v. Sanders* (1992) 10 Cal.App.4th 1268, 1274-1275.) Felony child cruelty or endangerment occurs “under circumstances or conditions likely to produce great bodily harm or death” (Pen. Code, § 273a, subd. (a)), whereas misdemeanor child cruelty or endangerment occurs “under circumstances *other than those* likely to produce great bodily harm or death” (Pen. Code, § 273a, subd. (a) (emphasis added)). If felony child endangerment is not a crime of moral turpitude as a matter of law, then it follows a misdemeanor offense is also not a crime of moral turpitude as a matter of law. Therefore, based on the facts as alleged in the SOC,

respondent's conviction does not constitute a basis to suspend him under Education Code section 44939, subdivision (b).

### **RESPONDENT'S ADDITIONAL ARGUMENTS**

Each of respondent's additional arguments in his Motion have been considered and rejected.

### **ORDER**

GOOD CAUSE NOT HAVING BEEN ESTABLISHED, the Motion for Immediate Reversal of Suspension is DENIED.

DATE: February 12, 2024

  
Sean Gavin (Feb 12, 2024 16:21 PST)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings