

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

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

FRANCESCA HALULA, Moving Party,

A Permanent Certificated Employee, and

**SIMI VALLEY UNIFIED SCHOOL DISTRICT, Responding
Party.**

OAH No. 2023120517

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

On January 5, 2024, Julie Cabos-Owen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), held a video conference / telephonic hearing on the motion filed by Francesca Halula for immediate reversal of suspension (Motion). Ilissa B. Gold, Attorney at Law with Reich, Adell & Cvitan, represented moving party Francesca Halula (Employee). Erika Anderson, Attorney at Law with Garcia Hernandez Sawhney LLP, represented responding party Simi Valley Unified School District (District).

On October 16, 2023, the District filed a Statement of Charges (SOC) against Employee. On November 15, 2023, the District notified Employee it was immediately suspending her without pay pending the outcome of its action to dismiss her. The basis for the immediate suspension under Education Code section 44939 is immoral conduct. (The SOC also alleges the following grounds for dismissal under Education Code section 44932: evident unfitness for service; persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed by the State Board of Education or the school district; and alcoholism or other drug abuse that makes the employee unfit to instruct or associate with children.)

On December 14, 2023, Employee filed the Motion, seeking the immediate reversal of her unpaid suspension, contending that the charges in the SOC do not constitute immoral conduct and the District has not met the statutory requirements of Education Code section 44939, subdivision (b).

On December 26, 2023, the District filed its opposition to the Motion. On January 2, 2024, Employee filed her Reply.

The ALJ reviewed and considered the SOC, the written submissions of the parties, and the oral argument made during the hearing on the Motion. The Motion is denied as set forth below.

Motion for Immediate Reversal of Suspension

Education Code section 44939, subdivision (b), provides that a school district may immediately suspend a permanent certificated employee who has been charged with, among other things, immoral conduct. Education Code section 44939, subdivision (c)(1), allows a suspended employee to file a motion for review of the suspension, and review of that 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.”

A motion such as the current Motion, made pursuant to Education Code section 44939, subdivision (c)(1), is analogous to a demurrer because the properly pleaded facts must be accepted as true for purposes of resolving the motion. However, the ALJ need not accept “contentions, deductions or conclusions of fact or law.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Additionally, as with a demurrer, “conclusory characterization of [employee’s] conduct as intentional, willful and fraudulent” is “patently insufficient.” (See e.g., *Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.)

Analysis

DEFINITION OF IMMORAL CONDUCT

“Immoral conduct” has been defined as conduct “which is hostile to the welfare of the general public and contrary to good morals. [It] 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 of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811 [*Weiland*]; *Palo Verde etc. Sch. Dist. v. Hensey* (1970) 9 Cal. App.3d 967, 972 [*Hensey*].) The term “immoral conduct” has been used interchangeably with the term “moral turpitude” which in turn is sometimes used as synonymous with dishonesty or a high degree of unfairness. (*Weiland*, 179 Cal.App.2d 808, 811.)

THE SOC SUFFICIENTLY ALLEGES IMMORAL CONDUCT

The SOC alleges that on September 11, 2023, Employee, a Special Education Teacher, arrived at work smelling of alcohol and seemingly disoriented. After initially denying she consumed alcohol, Employee eventually “admitted having a few drinks before coming to work.” (SOC, ¶ 6.) Employee’s blood alcohol test results were 0.084 percent at 10:12 a.m. and 0.071 percent at 10:30 a.m. “Accordingly, [Employee’s] blood alcohol was at or above the legal limit to be considered intoxicated more than two hours after the start of her workday.” (*Id.*, ¶ 7.) As a factor in aggravation, Employee had been previously issued a Letter of Reprimand on August 29, 2022, for being under the influence of alcohol while at work during work hours. On that date, Employee initially denied, but later admitted “that she was under the influence of alcohol and that prior to coming to school that morning, she drank half of a pint of rum.” (*Id.*, ¶ 11.) At 11:45 a.m., Employee’s blood alcohol was 0.168 (over twice the legal limit).

Employee’s alleged reporting to work as a Special Education Teacher under the influence of alcohol, particularly after being previously reprimanded for the same behavior, evidences a moral indifference to the opinions of respectable members of the community and demonstrates an inconsiderate attitude towards good order and the public welfare. The totality of the allegations in the SOC, if true, establish grounds for Employee’s immediate suspension for immoral conduct.

EMPLOYEE’S ARGUMENTS ARE NOT PERSUASIVE

In her Motion and oral argument, Employee asserts that immediate suspension is improper because her conduct “instead can be correctly categorized as falling under the other . . . dismissal causes alleged against [her],” including evident unfitness for service and alcoholism, and that the Legislature did not intend for alcohol abuse to be

a basis for suspension. This argument is not persuasive. Employee correctly points out that "alcoholism ... that makes the employee unfit to instruct or associate with children" is separate and different from "immoral conduct." (Motion., p. 3, lines 12-15.) However, she cites no statute or case law precluding conduct constituting a basis for dismissal under Education Code section 44932 from also being deemed immoral conduct for purposes of immediate suspension under Education Code section 44939. For example, while dishonesty may be a basis for teacher dismissal (Ed. Code, § 44932, subd. (a)(4)), this does not preclude dishonesty from also rising to the level of immoral conduct in cases involving a teacher's theft. In fact, Employee notes in her Motion, "Cases sustaining charges of immoral conduct in the context of a teacher dismissal or credential revocation fall into three categories [including] a teacher's theft of property or compensation." (*Id.*, p. 4, lines 4-17.) In this case, Employee's suspension is based on her immoral conduct of reporting to work intoxicated. It is not based on the separate determinations that she may also be an alcoholic or that she is evidently unfit to teach.

In her Motion and oral argument, Employee contends that public intoxication is not immoral per se. Employee maintains the SOC must allege additional facts to give rise to immoral conduct such as actual student contact or indecent comments to colleagues. (Motion, p. 6, lines 2-4.) These arguments are not persuasive and ignore significant relevant details. Employee was not just intoxicated in "public," but she was intoxicated on school grounds while reporting to work as a Special Education Teacher. Moreover, actual student contact or indecent behavior are not required for her conduct to rise to the level of immoral conduct because her mere presence on campus placed students on campus at risk of exposure to her "inconsiderate attitude towards good order and the public welfare."

Morrison Factors

For purposes of teacher discipline, the determination of what constitutes immoral conduct must be contextual. As noted in *Morrison v. State Board of Education* (1969) 1 Cal. 3d 214, 224 (*Morrison*), "immoral conduct" is not "considered in the abstract. It must be considered in the context in which the Legislature considered it, as conduct which is hostile . . . to the welfare of the school community." The *Morrison* court determined a teacher's actions cannot constitute immoral conduct or conduct involving moral turpitude unless those actions indicate an unfitness to teach. Given the Education Code's additional due process protections and higher threshold to justify immediate suspension, the SOC should be required to sufficiently allege facts demonstrating a nexus to teaching, just as would be required for dismissal.

In conducting this analysis, it is important to note that teachers act as role models for students. As noted in *Board of Education v. Swan* (1953) 41 Cal.2d 546, 552, "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 (students) coming under her care and protection. . . . Lessons are learned from example as well as from precept."

The California Supreme Court in *Morrison* provided a list of possible factors to aid in the analysis of whether a teacher's conduct indicates an unfitness to teach, as follows:

In determining whether the teacher's conduct thus indicates unfitness to teach the board may consider such matters as the likelihood that the conduct may have adversely affected students or fellow teachers, the degree of such adversity

anticipated, the proximity or remoteness in time of the conduct, the type of teaching certificate held by the party involved, the extenuating or aggravating circumstances, if any, surrounding the conduct, the praiseworthiness or blameworthiness of the motives resulting in the conduct, the likelihood of the recurrence of the questioned conduct, and the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. These factors are relevant to the extent that they assist the board in determining a teacher's fitness to teach.

(*Morrison, supra*, 1 Cal. 3d at 229-230.)

The factors articulated in *Morrison* are applicable in determining the propriety of an immediate suspension based on immoral conduct. The *Morrison* factors have been provided to assist in the required analysis of whether conduct has a sufficient nexus with teaching to warrant adverse employment action. *Morrison* does not require that any or all factors be utilized and met. For this inquiry, the factors are reviewed to the extent they assist in determining whether Employee's immoral conduct, as alleged, indicates her unfitness to teach.

The SOC sufficiently alleges an unfitness to teach. Employee's alleged intoxication at work was antithetical to her role as an exemplar for students, was hostile to the welfare of the school community, and shows a disregard for the possible impact of her conduct on students, colleagues, and the District.

Additionally, the allegations in the SOC satisfy enough of the *Morrison* factors to further demonstrate an unfitness to teach. The SOC alleges activity occurring recently (in September 2023) on a District campus, involving Employee's reporting to work as a certificated Special Education Teacher. Her alleged intoxication was purportedly known to other employees, and there was a likelihood that her apparent intoxication may have adversely affected students or fellow teachers. There is nothing praiseworthy about Employee's reporting to work intoxicated; her alleged behavior was only blameworthy. Moreover, there is a high likelihood of recurrence given her recidivism after previously being reprimanded for reporting to work intoxicated.

Disposition

Based on the foregoing, the facts alleged in the SOC, if true, are sufficient to establish a basis for Employee's immediate suspension under Education Code section 44939, subdivision (b), for immoral conduct. The Motion is denied.

IT IS SO ORDERED.

DATE: 01/10/2024

Julie Cabos-Owen

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings