

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

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

CRAIG BRENNAN, Respondent

OAH No. 2020050378

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

Administrative Law Judge Ed Washington, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Sacramento, California on June 12, 2020.

Attorney Ernest H. Tuttle, III, represented Craig Brennan (respondent).

Attorney Marlene L. Sacks represented the Antioch Unified School District (District).

Procedural Background

On March 2, 2020, the District's Superintendent signed a Statement of Charges, recommending to the District's Board of Education that respondent, a permanent certificated employee, be immediately suspended without pay and dismissed from employment. The Statement of Charges is based on allegations that respondent

engaged in: 1) immoral conduct; 2) evident unfitness for service; 3) dishonesty; and 4) persistent violation of, or refusal to obey the District's policies and regulations, and other rules governing employment. (Ed. Code, §§ 44932, subds. (a)(1), (4), (6), and (8); 44939, subd. (b).) Respondent timely filed a Demand for Hearing and Notice of Defense.

On May 14, 2020, respondent filed a Notice of Motion and Motion for Immediate Reversal of Suspension (motion) pursuant to Education Code section 44939, subdivision (c). Respondent contends that the Statement of Charges does not set forth a sufficient basis for immediate unpaid suspension, because the allegations do not rise to the level of immoral conduct or willful refusal to perform regular assignments without reasonable cause. Specifically, respondent argues that the Statement of Charges fails to allege that he willfully refused to perform regular assignments, and that conduct alleged in the Statement of Charges does not constitute immoral conduct, primarily because his alleged touching of students was incidental and not sexual in nature.

The District filed its opposition on June 2, 2020. The District argues that respondent's repeated touching of his students in a manner that made them feel uncomfortable constitutes immoral conduct. And, that respondent's continued touching of students, after being specifically directed to stop, and his failure to comply with mandated reporting requirements, constitutes persistent violation of or refusal to obey the District's policies, regulations, or other rules governing his employment.

Respondent filed a reply on June 9, 2020. Oral argument was heard on June 12, 2020.

Discussion

Education Code section 44939 states, in relevant part, that a school district may immediately suspend a permanent employee 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 with violation of [Education Code] section 51530. . . .” (Ed. Code, § 44939, subd. (b).)

Pursuant to Education Code section 44939, subdivision (c)(1), an employee who has been placed on such suspension may file a motion for immediate reversal of suspension. “Review of a motion filed pursuant to this section 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.*)

“Immoral conduct” is to 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 District of Riverside 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, 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 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.

Respondent has worked as a physical education teacher at Antioch Middle School since August 28, 2014. The Statement of Charges alleges in part, that prior to May 2, 2017, one of respondent's students asked to be removed from his class because she felt uncomfortable around respondent after he touched her on two occasions; once on her shoulder and once on her leg. During an investigation, other students confirmed that respondent regularly touched his students on the shoulders to console them. On May 2, 2017, Principal Lindsay Wisely issued respondent a documented verbal warning directing him to "never make physical contact with students [and] [n]ever touch students on the shoulder or leg."

The Statement of Charges alleges that on September 13, 2019, respondent touched a sixth-grade student around her waist in a manner that made her feel uncomfortable, resulting in that student and two other students leaving class and not returning. During the investigation of this incident, a seventh-grade student reported that respondent touched her hips on September 13, 2019, and made her "feel weird." Another sixth-grade student reported that on that same date, while walking behind her outside of class, respondent touched her from behind in a manner that made her feel uncomfortable. On September 20, 2019, a seventh-grade student reported that, on multiple unspecified dates, she felt uncomfortable due to respondent's actions. The student reported that respondent "touches [her]" and "rubs [her] back so his hand touches [her] butt a little," and also stands uncomfortably close to her when speaking.

The Statement of Charges also alleges that respondent failed to satisfy his mandatory reporting requirements when he obtained information indicating one of his

students was being abused at home, but failed report it to Child Protective Services, and that respondent was dishonest during the District's investigation of the allegations against him.

The parties' written submissions and oral argument have been considered. Respondent's arguments were not persuasive and do not support the immediate reversal of his unpaid suspension. The District alleged sufficient facts in the Statement of Charges that, if true, would constitute a basis for immediate suspension based upon "immoral conduct" pursuant to Education Code section 44939, subdivisions (b) and (c). Accordingly, respondent's motion must be denied.

ORDER

Good cause having not been established, the Motion for Immediate Reversal of Suspension is DENIED.

DATE: June 24 , 2020

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Ed Washington
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ED WASHINGTON

Administrative Law Judge

Office of Administrative Hearings