

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

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

**JENNIFER RENNELS-MAGON, a Permanent Certificated
Employee, Respondent**

OAH No. 2022040684

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

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on May 13, 2022, from Sacramento, California.

Michele S. Ancheta, Attorney at Law, represented respondent Jennifer Rennels-Magon.

Barrett K. Green, Attorney at Law, represented the William S. Hart Union High School District (the District).

The matter was argued on May 13, 2022, and submitted for decision on May 16, 2022, to give respondent adequate time to ensure her reply brief was received by the OAH.

Procedural History

On March 9, 2022, the District's Assistant Superintendent, Human Resources, signed and subsequently sent to respondent a Notice of Recommendation of Dismissal and Statement of Charges (SOC). The SOC alleged grounds to terminate and immediately suspend respondent without pay under Education Code¹ section 44932 for: (1) immoral conduct including, but not limited to, egregious conduct; (2) dishonesty; (3) evident unfitness for service; and (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 her. (§ 44932, subd. (a)(1), (4), (6), & (8).)

On April 20, 2022, respondent filed a Motion for Immediate Reversal of Suspension (Motion) pursuant to section 44939, subdivision (c), in which she alleged the allegations and charges contained in the SOC are insufficient under section 44939, subdivision (b), to authorize the District to suspend her without pay pending her hearing before the Commission on Professional Competence. The District filed a written opposition to respondent's Motion, and respondent filed a written reply to the opposition.

¹ Statutory references are to the Education Code, unless otherwise specified.

Facts as Alleged in the SOC²

Respondent is a high school Performing Arts/Drama teacher for the District. On multiple occasions in August and early September 2021, respondent's students complained to her about her teaching style and decisions. The students became frustrated by respondent's behavior and her subsequent unresponsive and dismissive attitude. As a result, on September 23, 2021, the students complained about respondent to their choir instructor, Ms. Anders, and asked for advice about what to do. Ms. Anders relayed the students' concerns to respondent.

In response, respondent cancelled theater rehearsal that day. Additionally, in her regularly scheduled class, she jeered, squinted her eyes, and yelled as she lectured and scolded her students. She said things such as, "I canceled rehearsal because I didn't want to see you for longer than I had to today"; "I just want you guys to know that acting too big for your britches is not an attractive quality, it's not a quality that makes me want to work with you again as an actor"; "I think some of you need to be put in your place because clearly you think way too highly of yourselves if you think you know better than me"; "I hope that you're sitting there feeling bad and feeling ashamed because you should"; and "How dare you. I'm done with you guys today." She also warned the students not to share details about her conduct with Ms. Anders. She then left the class early.

² 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.

Multiple students felt emotionally traumatized by respondent's statements. One student reported shaking, crying, hyperventilating, and having a panic attack. Other students reported feeling anxious, scared, unsafe, overwhelmed, worthless, insignificant, angry, and confused. Students and their parents also reported wanting to drop respondent's class or avoid taking her classes in the future.

Analysis

Section 44932, subdivision (a), lists causes for dismissal of a permanent employee. In contrast, section 44939, subdivision (b), lists causes for immediate suspension without pay of permanent employees, including, as relevant here, "immoral conduct." In both the SOC and subsequent briefing and argument, the District sought to immediately suspend respondent without pay for "immoral conduct, including egregious misconduct," under section 44932, subdivision (a)(1). The District did not contend cause exists to immediately suspend respondent without pay for immoral conduct as that term is used in section 44939, subdivision (b).

More specifically, the District contends it is authorized to immediately suspend respondent without pay because the Legislature recently amended section 44932 to permit terminations of permanent employees for "[i]mmoral conduct, including, but not limited to, egregious misconduct." The term "egregious misconduct" is explicitly limited to sexual misconduct offenses, controlled substances offenses, and child abuse, neglect, willful harming, and injury offenses specified in Penal Code sections 11165.2 to 11165.6, inclusive. (§ 44932, subd. (a)(1).) The District argues the facts in the SOC, if true, "reflect a degree of mental suffering, neglect, and even intentional harm that meets several of the definitions contained in Penal Code sections 11165.2 to 11165.6." (See District's Opposition, p. 7, lines 1-2.) This argument is rejected for two reasons.

First, when the Legislature amended section 44932 to include “egregious misconduct” as a basis for teacher dismissals, the same Assembly Bill amended portions of section 44939 but did not add “egregious misconduct” as a basis for immediate suspensions without pay. (Assem. Bill No. 215 (2013-2014 Reg. Sess.) § 8.) As such, no statutory authority exists to immediately suspend respondent without pay based on an allegation of egregious misconduct. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 786 [“presumably the Legislature knew how to [amend a statute] if it wished to do so and courts generally may not insert what the Legislature has omitted from a statute.”])

Second, respondent’s conduct consists of jeering, squinting, and yelling at students as she lectured and scolded them, warning them not to complain to another teacher, and leaving the classroom early. Even if proven at hearing, this behavior does not rise to the level of criminal child abuse or neglect.

Based on a review of the SOC, and in consideration of the parties’ written briefing and oral arguments, the District failed to allege facts that, if true, are sufficient to constitute a basis for immediately suspending respondent without pay for immoral conduct under Education Code section 44939, subdivision (b). Respondent’s Motion is therefore granted.

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ORDER

Good cause having been established, the Motion for Immediate Reversal of Suspension is GRANTED. The District shall make respondent whole for any lost wages, benefits, and compensation within 14 days after service of this Order. (§ 44939, subd. (c)(5).)

DATE: May 20, 2022


Sean Gavin (May 20, 2022 15:06 PDT)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings