

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

KEN GOLTARA,
a Permanent Certificated Employee,

Moving Party,

v.

LAKE ELSINORE UNIFIED SCHOOL
DISTRICT,

Responding Party.

OAH No. 2018031142

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

(Ed. Code, § 44939, subd. (c)(4))

Administrative Law Judge (ALJ) Tiffany L. King, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Sacramento, California, on April 20, 2018.

Gregory J. Rolen, Attorney at Law, represented Ken Goltara.

Todd M. Robbins, Attorney at Law, represented the Lake Elsinore Unified School District (District).

The District has suspended Mr. Goltara without pay pending the outcome of its action to dismiss him from his employment as an elementary assistant principal. The basis for the suspension under Education Code section 44939 is immoral conduct. In his Motion, Mr. Goltara seeks an order for the immediate reversal of his suspension. The District opposes the Motion.

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DISCUSSION

Education Code section 44939 states, in relevant part, that a school district may immediately suspend a permanent employee of the school district who has been 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).)

Under 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.*)¹

“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.

The Statement of Charges alleges Mr. Goltara was intoxicated at a staff holiday party and “engaged in multiple acts of inappropriate conduct over a period of several hours, including unwanted kissing and touching of several female co-workers.” It is further alleged that when the principal subsequently approached Mr. Goltara to discuss his behavior at the party, Mr. Goltara “showed little remorse and initially complained that pictures of [him]

¹ “. . . The grant or denial of the motion shall be without prejudice to consideration by the Commission on Professional Competence, based upon the full evidentiary record before it, of the validity of the grounds for dismissal. The ruling shall not be considered by the commission in determining the validity of the grounds for dismissal, and shall not have any bearing on the commission's determination regarding the grounds for dismissal.” (Ed. Code, § 44939, subd. (c)(4).)

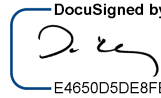
drunk at the party made [him] ‘look fat.’” Mr. Goltara later apologized to the principal and asserted he did not recall his misconduct.

The ALJ has considered the written submissions of the parties and oral argument. It is determined that the District alleged sufficient facts in the Statement of Charges that, if true, would constitute a basis for immediate suspension based upon “immoral conduct” under Education Code section 44939, subdivisions (b) and (c).

ORDER

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

DATED: April 27, 2018

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TIFFANY L. KING
Administrative Law Judge
Office of Administrative Hearings