

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

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

**CHRISTI TUCCINARDI, a Permanent Certificated Employee,  
Moving Party**

**and**

**TORRANCE UNIFIED SCHOOL DISTRICT, Responding Party**

**OAH Case No. 2021060563**

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

On July 2, 2021, Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard telephonic argument on the instant motion for immediate reversal of suspension from Sacramento, California.

Alejandra Gonzalez-Bedoy, Attorney at Law, Law Office of Carlos R. Perez, represented movant Christi Tuccinardi (Tuccinardi).

Michael T. Travis, Attorney at Law, Parker & Covert LLP, represented the Torrance Unified School District (District).

On July 2, 2021, the motion was submitted for decision.

## **Procedural Background**

On May 17, 2021, Tim Stowe, Ed.D, Secretary to the District's Board of Education, signed and served the Statement of Written Charges on Tuccinardi, a permanent certificated employee, based on charges of immoral conduct (Ed. Code, § 44932, subd. (a)(1))<sup>1</sup>; evident unfitness for service (*id.*, subd. (a)(6)); willful 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 (*id.*, subd. (a)(8)), and alcoholism or other drug abuse that makes the employee unfit to interact or associate with children (*id.*, subd. (a)(11)). On May 17, 2021, Stowe also signed and served a Notice of Unpaid Suspension and Intention to Dismiss on Tuccinardi, seeking her dismissal and notifying her of her immediate suspension without pay under section 44939. Tuccinardi timely filed a Request for Hearing.

On June 11, 2021, Tuccinardi also filed a motion for immediate reversal of suspension pursuant to section 44939, subdivision (c), on grounds that the Statement of Charges does not set forth a sufficient basis for an immediate unpaid suspension. On June 22, 2021, the District filed its opposition to the motion, along with a Declaration of Tim Stowe with several attachments. On June 29, 2021, Tuccinardi filed a reply brief, objections to the Declaration of Tim Stowe, and a request for judicial notice of three case decisions: (1) *In the Matter of Patricia Crawford*, OAH Case No.

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<sup>1</sup> All further statutory references are to the Education Code, unless otherwise specified.

2017051349; (2) *In the Matter of Allen Umbarger*, OAH Case No. 2017061109; and (3) *Jurupa Unified School District v. Commission on Professional Competence*, Case No. D076213, decided January 21, 2020 (unpublished).

## **Analysis**

Section 44939 states, in relevant part, that a school district may immediately suspend without pay 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 section 51530. . . .” (§ 44939, subd. (b).)

An employee who has been placed on such suspension may file a motion for immediate reversal of suspension. (§ 44939, subd. (c)(1).) “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.*)

## **THE RECORD**

Before turning to the specific charges at issue, the court addresses Tuccinardi’s objections to the Declaration of Tim Stowe and her request for judicial notice.

Tuccinardi’s objections to the Declaration of Tim Stowe, including all attachments, are sustained. Under section 44939, subdivision (c), the court may only consider the factual allegations within the four corners of the Statement of Charges; extraneous exhibits and evidence cannot be considered.

Tuccinardi's request for judicial notice of the above-mentioned decisions is granted. The District did not object to taking judicial notice, and the parties were given an adequate opportunity to argue the decisions' potential relevance.

## **THE CHARGES AT ISSUE**

Here, the District relies on only two specific charges to support the immediate suspension without pay: (1) immoral conduct; and (2) willful 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 the teacher.

### **Immoral Conduct**

"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 County 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.

Here, the Statement of Charges alleges that, on January 22, 2021, Tuccinardi was under the influence of alcohol and/or drugs while hosting her fourth-grade distance learning class at Seaside Elementary School via Zoom. Tuccinardi was observed speaking in slurred and incoherent sentences, repeating the same thing ad nauseum, having trouble keeping her eyes open, and being unable to focus on a specific topic. She dramatically swayed in her chair and appeared to lack control of her bodily movements. Tuccinardi's behavior was observed by her students, some parents, the principal, the health clerk, and the District nurse. Based on the advice of the health clerk and District nurse, the principal removed Tuccinardi from the class. Tuccinardi later informed the District that she had been hospitalized at a rehabilitation center that same day and released on January 30, 2021.

The parties' written briefs and oral argument have been considered. 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 section 44939. At a minimum, the District alleged sufficient supporting facts to reasonably infer that Tuccinardi was intoxicated while teaching students over Zoom. Such conduct in front of vulnerable and impressionable school-aged children, if proven, is plainly hostile to the welfare of the general public and contrary to good morals, and thus constitutes immoral conduct.

Tuccinardi's argument that there could be alternative explanations for her conduct on January 22, 2021, such as mental health problems or adverse reactions to prescribed medication, is unavailing. Although Tuccinardi may raise such matters as potential defenses at an evidentiary hearing before the Commission on Professional Competence, they do not defeat the adequacy of the District's allegations in the Statement of Charges for purposes of the instant motion.

Tuccinardi also counters that the District's allegations of her intoxication in the Zoom classroom instead fall under section 44932, subdivision (a)(11) ("[a]lcoholism or other drug abuse that makes the employee unfit to instruct or associate with children"), which is not a basis for immediate suspension without pay under section 44939. Because the Legislature created a specific cause for dismissal based on alcoholism/drug abuse under section 44932, subdivision (a)(11), Tuccinardi argues, the alcohol/drug-related misconduct can only be analyzed under that provision and cannot constitute immoral conduct. That argument is unpersuasive.

First, Tuccinardi provides no case law or other authority supporting her interpretation. Second, Tuccinardi's argument incorrectly assumes that alcohol/drug-related immoral conduct is always associated with a diagnosis of alcoholism or drug addiction. If a teacher teaches students while intoxicated, but that intoxication results from a single instance of alcohol consumption prior to class, an additional charge of alcoholism under section 44932, subdivision (a)(11), may well be unsupported. By contrast, if the intoxication during class results from habitual drinking and alcohol addiction, a charge of alcoholism under section 44932, subdivision (a)(11), may be appropriate. Additionally, a teacher who meets the criteria for alcoholism under section 44932, subdivision (a)(11), has not necessarily engaged in any immoral conduct within the meaning of section 44939. Thus, although the charges of immoral conduct and alcoholism/drug abuse may overlap in some cases and factual scenarios involving alcohol or drugs, they are not duplicative.

In sum, the District has pled sufficient facts to support a charge of immoral conduct under section 44939. Accordingly, the motion must be denied.

## **Willful Refusal to Obey Laws and Regulations**

Given that conclusion, it is unnecessary to consider whether any willful refusal to obey laws and regulations by Tuccinardi alternatively supports a suspension without pay.

### **ORDER**

The Motion for Immediate Reversal of Suspension is DENIED.

DATE: July 6, 2021

*Wim vanRooyen*

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings