

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

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

KAYATEA CAIN, a Permanent Certificated Employee

v.

SHASTA COUNTY OFFICE OF EDUCATION, Responding Party

OAH No. 2021070673

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

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard oral argument on this matter using the Microsoft Teams application on August 20, 2021.

Eric Lindstrom, Attorney at law, represented moving party Kayatea Cain.

Courtney De Groof and Marissa Lincoln, Attorneys at Law, represented the Shasta County Office of Education (County).

The parties' written submissions and oral argument have been considered.

PROCEDURAL BACKGROUND

On July 19, 2021, the County served Ms. Cain a “Notice of Intent to Dismiss; Placement on Immediate Unpaid Suspension Pending Outcome of Disciplinary Proceedings; and Statement of Charges for Dismissal.” The Statement of Charges alleges Ms. Cain engaged in immoral conduct (Ed. Code, §§ 44932, subdivision (a)(1), 44939), dishonesty (*id.* at subd. (a)(4)); persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed by the government of the public schools by the state board or by the governing board of the school district (*id.* at subd. (a)(8)); and evident unfitness for service (*id.* at subd. (a)(6)).

Education Code section 44939 allows a school district to immediately suspend a permanent employee without pay who has been charged with, among other things, immoral conduct. (*Id.* at subd. (b).) The County availed themselves of that provision and placed Ms. Cain on unpaid leave.

On July 21, 2021, Ms. Cain filed the instant motion to immediately reverse her unpaid suspension, pursuant to Education Code section 44939, subdivision (c)(1). A 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.*) In other words, the review is limited to whether the conduct alleged could support a finding of immoral conduct.

In the Statement of Charges, the County alleged 38 paragraphs containing various transgressions and failures to follow law, policy, or instructions. In general, the conduct alleged falls into the categories of being disrespectful to parents, students

and staff, and placing the health and safety of students at risk. The conduct includes, but is not limited to, the following (which are summarized):

- From January through March 2020, Ms. Cain “crossed a boundary” by telling a parent how to parent his or her child outside the classroom; failed to share pictures she had taken of that parent’s child with the parent; and yelled at the parent. (Paragraph 2)
- Allowed a child to attend class for at least seven days with an expired EpiPen, a lifesaving medication, which violated County procedures and placed the student at risk (Paragraph 3)
- On February 10, 2021, had certain items that were poisonous to children (i.e. bleach, soaps, cleaning supplies and chemicals) in an unlocked cabinet and medication (antacid) in an unlocked drawer accessible to children, and in violation of child care licensing regulations (paragraphs 4 and 5)
- Regularly rejecting medical accommodations for children made by parents and (paragraphs 11, 12)
- Breach of lockdown procedures on March 31, 2021, no further description provided (paragraph 15)
- Permitted a child who was coughing severely to remain in class on April 13 and 14, 2021, and when realizing she needed to contact the office, notified the office that the parent of the child tried to give her an inhaler that morning for allergies but Ms. Cain refused to accept it due to improper paperwork (paragraphs 16 and 17)

- On May 13, 2021, had expired Benedryl for a child in the first aid backpack (paragraph 19)
- On September 25, 2019, failed to attend a meeting despite a request to do so (paragraph 21)
- Failure to log distance learning as required for April to June 2020 (paragraph 22)
- Failure to perform certain tasks relating to Individualized Education Plans (paragraph 23)
- Failure to follow virtual meeting and IT notification requirements; failed to timely complete employee tasks in the portal; failed to assist a family in completing orientation; missing various deadlines; failing to maintain certain supplies in the classroom (paragraphs 24, 25, 26, 28 29, 30, 31)
- On October 22, 2020, engaged in unprofessional classroom demeanor¹ (paragraph 27)

¹ Apparently, Ms. Cain was leaving a voice mail for another individual at the school and thought she had hung up the phone; she did not. As Ms. Cain went on to teach her class, “unprofessional conduct” could be heard. The “unprofessional conduct” was not explained in the Statement of Charges; a transcript was noted as “attached.” However, while the transcript could have been incorporated by reference, none of the exhibits referred to in the Statement of Charges were provided to OAH.

- Not permitting perishable food to be placed in the refrigerator; permitting opened/uncovered milk and soda in the refrigerator (paragraphs 32, 35)
- Using personal e-mail for confidential information and rearranging classroom furniture without permission (paragraphs 34, 36)

IMMORAL CONDUCT

"[T]he term 'immoral conduct' in section 44932, subdivision (a)(1) 'stretch[es] over so wide a range' of conduct that it 'embrace[s] an unlimited area of conduct.'" (Crawford v. Commission on Professional Competence (2020) 53 Cal.App.5th 327, 337, quoting Morrison v. State Board of Education (1969) 1 Cal.3d 214, 224-225.)

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.

(Board of Education v. Weiland (1960) 179 Cal.App.2d 808, 811, quoting Orloff v. Los Angeles Turf Club (1951) 36 Cal.2d 734, 740 and Palo Verde Unified School District of Riverside v. Hensey (1970) 9 Cal.App.3d 967, 972.)

Moreover, the definition of immoral or unprofessional conduct must be considered in conjunction with the unique

position of public school teachers, upon whom are imposed
"responsibilities and limitations on freedom of action which
do not exist in regard to other callings."

(San Diego Unified School Dist. v. Commission on Professional Competence (2011) 194 Cal.App.4th 1454, 1466, quoting *Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820, 824.) "Thus, the term must be 'considered in the context in which the Legislature considered it, as conduct which is hostile to the welfare of the general public . . . more specifically in this case, conduct which is hostile to the welfare of the school community.'" (*Crawford, supra*, 53 Cal.App.5th at p. 337, quoting *Morrison, supra*, 1 Cal.3d at p. 224.)

Conclusion

The conduct, as alleged in the Statement of Charges and if assumed to be true, does not constitute "immoral conduct." Nothing, as pled, is inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, or an inconsiderate attitude toward good order and the public welfare. While upon further proof at hearing Ms. Cain's conduct may indeed rise to that level, resolving a motion for immediate reversal of suspension is limited to the four corners of the Statement of Charges. Accordingly, Ms. Cain's motion is granted.

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ORDER

The Motion for Immediate Reversal of Suspension is granted.

DATE: August 23, 2021

Kimberly J. Belvedere

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings