

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

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

**RUSSELL SHUGARS, a Permanent Certificated Employee,
Moving Party,**

v.

CARMEL UNIFIED SCHOOL DISTRICT, Responding Party.

OAH No. 2024080848

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

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard oral argument on this matter by videoconference on September 13, 2024.

Joseph Cisneros, Attorney, The Biegel Law Firm, represented moving party Russell Shugars (Shugars).

Ingrid A. Meyers, Attorney, Dannis Woliver Kelley, LLP, represented Carmel Unified School District (District).

Procedural History

On August 15, 2024, the District served Shugars with a Statement of Charges, immediately suspending him without pay and providing him with notice of its intent to dismiss him as a permanent certificated teacher. (Ed. Code, § 44932.) (All further statutory references are to the Education Code, unless otherwise noted.) Shugars timely filed a Demand for Hearing and Notice of Defense. The hearing has not yet been scheduled.

On August 23, 2024, Shugars filed a Notice of Motion and Motion for Immediate Reversal of Suspension (Motion) to challenge his immediate suspension without pay. (§ 44939, subd. (c).) Shugars contends the Statement of Charges does not set forth a sufficient basis for immediate unpaid suspension. Specifically, Shugars asserts the allegations do not rise to the level of “immoral conduct” and therefore do not justify an immediate unpaid suspension. (§ 44939, subd. (b).)

On September 3, 2024, the District filed an Opposition to the Motion.

On September 6, 2024, Shugars filed a Reply in support of the Motion.

The hearing on the Motion, including oral argument, occurred on September 13, 2023. The parties submitted on the filed papers.

Based on the reasoning set forth below, the Motion is granted because the facts alleged in the Statement of Charges are insufficient to support a charge of immoral conduct. Shugars’s immediate unpaid suspension shall, therefore, be lifted.

Motion for Immediate Reversal of Suspension

Section 44939, subdivision (b), allows a school district to immediately suspend a permanent employee without pay who has been charged with, among other things, immoral conduct. An employee who has been placed on such suspension may, however, file a motion for immediate reversal of suspension (MIRS). (§ 44939, subd. (c)(1).) In reviewing a MIRS, the review “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.*)

STATEMENT OF CHARGES

Shugars has taught at the District for 16 years, since 2008. Shugars was most recently assigned as a Physical Education (PE) teacher at Carmel River Elementary School. Shugars has also coached wrestling for various programs in the District and has been both the assistant and head coach of wrestling at Carmel High School.

The District alleges multiple instances of conduct by Shugars between March and May 2024, including the following instances in March 2024:

- March 1, 2024: While students were playing jump rope in the multipurpose room for PE, [Shugars] told a 5th grade student (“Student A”) to stop trying to do a stunt because “this has just gone too far!” and “you wouldn’t do this outside so just stop.” [Shugars] also called Student A a “clown” and clarified his statement by saying Student A likes to be [*sic*] center of attention and it’s the “Student A Show.” Student A felt [Shugars] taunted him.

- March 20, 2024: During PE around 10:30 a.m., while it may not have been intentional, it was more likely than not that [Shugars] threw a [traffic] cone at a male student in his class hitting the student in the face.
- March 21, 2024: While students in [Shugars's] class were playing frisbee during PE, [Shugars] told Student A that his throw was "garbage" and had Student A sit out the rest of the time while the other students continued playing frisbee.
- March 21, 2024: During "Run Across America" at approximately 2:50 p.m., it's more likely than not that [Shugars] made intentional body contact with a 5th grade male student ("Student B") not in his PE class at the time. More specifically, while Student B was walking backwards on the track, [Shugars] entered the track and made physical contact with Student B running him around forcefully so Student B would walk forwards. There was no reason for [Shugars's] involvement with another teacher's student.

(Statement of Charges, ¶ 13.)

The District also alleges that on May 2, 2024 Shugars "barged into Carmel River Principal Alberto Ramirez's office looking visibly angry and his face was red. [Shugars] said to Mr. Ramirez, "I have two kids for you. Do you want to speak to them now. . .

Later on, May 2, 2024, [Shugars] returned to the school office asking for the students' teachers' names quite loudly and in an unprofessional manner when parents were present." (Statement of Charges, ¶ 17.)

In addition, the District alleges Shugars "kept giving negative stares to [a parent's] child during PE class making his child fearful of [Shugars] . . . [and] while picking up his child from school, on May 3, 2024, he and his child ran into [Shugars] in front of his officer wherein [Shugars] gave the parent a very negative look and his body language showed an aggressive stature. According to the parent's child this was the same "mean look" [Shugars] gave [the child] during PE class." (Statement of Charges, ¶ 18.)

Finally, the District alleges the following multiple instances of additional conduct in May 2024:

- On May 3, 2024, during PE class [Shugars] was noticeably angry and agitated because students were not paying attention to the PE Assistant or Dance Instructor when preparing for the May Festival. He was also observed becoming increasingly agitated, walking around students, "staring them down," and using a loud forceful voice to scold the students to be quiet and pay attention. [Shugars] looked like he was going to burst.
- On two occasions, on May 3, 2024, [Shugars] stepped away from his class to regain his composure. First, he stepped away and punched his fist into his other

hand in front of another employee and students.

Second, he stepped away and dropped to the ground to do push-ups. [Shugars's] actions shocked the employee and students who observed his actions.

- Respondent was observed on May 3, 2024, walking around scolding students in his PE Class and coming within three feet of the male student whose father filed the May 3, 2024, complaint [against Shugars].

(Statement of Charges, ¶ 20.)

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 Verdes 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 regards 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.)

ANALYSIS – IMMORAL CONDUCT

Generally, the appellate court has held that immoral conduct falls into the categories of sexual harassment or public sexual activity, a teacher's drug use or possession, theft of property or compensation by the teacher, and a teacher making racist comments about students on social media. (See *Weiland, supra*; *Palo Verde etc. Sch. Dist. v. Hensey* (1970) 9 Cal.App.3d 967; *Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820; *Governing Board v. Haar* (1994) 28 Cal.App.4th 369; *Crawford v. Commission on Professional Competence* (2020) 53 Cal.App.5th 339.)

In this matter, however, none of the allegations by the District against Shugars are based on the types of conduct which constitutes immoral conduct as described in relevant case law.

Accordingly, accepting all material facts properly pleaded as true, the Statement of Charges does not allege facts sufficient to constitute a basis for immediate suspension for immoral conduct under section 44939, subdivision (b). The Motion is therefore granted.

ORDER

The Motion for Immediate Reversal of Suspension is granted. This order shall become effective within five days of service and the District shall make Shugars whole for any lost wages and compensation within 14 days after service of the order.

DATE: 09/14/2024

Irina Tentser

IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings