

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

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

**LINDA BROBST, A Permanent Certificated Employee,**

**Moving Party,**

**and**

**CLOVIS UNIFIED SCHOOL DISTRICT,**

**Responding Party.**

**OAH No. 2022040025**

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

On April 22, 2022, a telephonic hearing on the motion filed by Linda Brobst for immediate reversal of suspension (Motion) was held before Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California. Joshua Richtel, Esq., Tuttle & McCloskey, represented moving party Linda Brobst (Employee). David A. Moreno, Esq., Fagen, Friedman, Fulfrost, LLP, represented responding party Clovis Unified School District (District).

The District has suspended Employee without pay pending the outcome of its action to dismiss Employee. The sole basis for the suspension under Education Code section 44939 is immoral conduct. In the Motion, Employee seeks an order for the immediate reversal of her suspension. The District filed a written opposition to the Motion.

Having considered the moving and opposing papers filed by the parties, and the oral argument of counsel, the undersigned ALJ hereby finds and orders as follows:

### **Motion for Immediate Suspension**

Education Code section 44939 authorizes the governing board of a school district, if it deems the action necessary, to immediately suspend a permanent employee from his or her duties, upon the filing of written charges with the governing board charging the employee with immoral conduct, conviction of a felony or any crime involving moral turpitude, incompetency due to mental disability, willful refusal to perform regular assignments without reasonable cause, or violation of section 51530 (teaching communism).

An employee who is suspended pursuant to Education Code section 44939 may serve and file with the Office of Administrative Hearings a motion for immediate reversal of suspension. The motion shall include "a memorandum of points and authorities setting forth law and argument supporting the employee's contention that the statement of charges does not set forth a sufficient basis for immediate suspension." (Ed. Code, § 44939, subd. (c)(1).) Review of the motion "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." (*Id.*)

The review of a motion made pursuant to Education Code section 44939 is analogous to a demurrer, which tests the sufficiency of the allegations in a complaint. (*Pacifica Homeowners' Ass'n v. Wesley Palms Retirement Community* (1986) 178 Cal.App.3d 1147, 1151.) Facts properly pleaded are accepted as true, but contentions, deductions, or conclusions of fact or law should be disregarded. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Conclusory characterizations of conduct as intentional, willful, or fraudulent are "patently insufficient." (*Brousseau v. Jarrett* (1997) 73 Cal.App.3d 864, 872.)

## **Statement of Charges**

The District seeks to dismiss Employee, a permanent certificated employee of the District, for allegedly reporting to work under the influence of alcohol on December 10, 2021. The Statement of Charges alleges causes for dismissal pursuant to Education Code section 44932 for immoral conduct, dishonesty, and evident unfitness for service, and cause for immediate suspension without pay pursuant to Education Code section 44939 for immoral conduct.

Employee is currently assigned as a seventh grade Academic Block Teacher at Clark Intermediate School (School). (Statement of Charges (SOC), Sec. I, ¶ 1.)

On December 10, 2021, at approximately 7:30 a.m., the School's seventh grade Learning Director, Ms. Dodderer, was notified by a teacher that Employee was acting oddly and should not be around students. As Ms. Dodderer proceeded to Employee's classroom, she was stopped by a second teacher who also expressed concern about Employee's behavior and that Employee should not be at school in the state she was in. As Ms. Dodderer approached Employee's classroom door, a third teacher stopped her to express concern about Employee being around students. (SOC, Sec. II, ¶ 1.)

Ms. Dodderer entered Employee's classroom at approximately 7:40 a.m. Employee was sitting and talking with students. Employee did not notice Ms. Dodderer had entered the classroom until she was next to Employee's desk. During their conversation, Employee demonstrated overly loud speech, slurred speech, and overly exaggerated speech and gestures. Ms. Dodderer also detected the smell of alcohol on Employee's person. (SOC, Sec. II, ¶ 2.)

Ms. Dodderer reported to the School's principal, Ms. Barber, her observations that Employee was exhibiting conduct that caused Ms. Dodderer and other staff to believe Employee was under the influence of alcohol while at work. Principal Barber immediately went to Employee's classroom. When she arrived at Employee's classroom, Principal Barber saw the students were seated and Employee was seated at her desk wearing a party hat, waving a box of cereal in the air, and telling the students a story about the sugar in the cereal. At Principal Barber's request, Employee followed her outside the classroom and up to the front office. While following Principal Barber, Employee spoke unusually loudly, slurred her words, and continued to wave the cereal box in the air. (SOC, Sec. II, ¶ 3.)

At the front office, the School's Learning Director, Mr. Dean, and Principal Barber waited with Employee for a District Officer to arrive and conduct a breath test. Both Principal Barber and Mr. Dean observed that Employee smelled of alcohol. Employee requested a Faculty Senate representative. (SOC, Sec. II, ¶ 4.)

Eventually, District Officer Galindo arrived and conducted tests to determine whether Employee was under the influence. Officer Galindo concluded that Employee's symptoms were consistent with being under the influence of drugs or alcohol. In response, Employee admitted to Officer Galindo that she drank a couple glasses of wine the night before, but the wine contained ice cubes which diluted the potency.

Employee also informed the officer she had taken two medications, including a muscle relaxer. (SOC, Sec. II, ¶ 5.)

Principal Barber's observations of Employee's conduct and body on December 10, 2021, which prompted Principal Barber to take action, included: (1) heavy eyelids; (2) blood-shot or red eyes; (3) flushed face; (4) confused, stuttered, mumbled, slurred, loud speech; (5) thick-tongued and mush-mouthed speech; (6) an excited, talkative and care-free attitude; (7) belching; and (8) moderate to strong odor of alcohol. (SOC, Sec. II, ¶ 6.) Additionally, Employee was described by her supervisors as "loud and overly animated" and "silly" in her interactions with staff and students. The supervisors also noted Employee "seemed to have to think very hard to put [her] thoughts together." Also concerning were Employee's comments to her supervisors that her class was having a "fun day today" instead of receiving instruction. (*Ibid.*)

At approximately 9:50 a.m., Principal Barber and Ms. Dodderer drove Employee to the District's medical testing facility, Saint Agnes Occupational Health Center, for alcohol and drug testing. During the 20-minute drive, Employee spoke on the phone with her family members, informing them she was not doing well and needed them to meet her at the medical office. While speaking on the phone, Employee was very emotional and crying heavily, and she repeatedly apologized to Principal Barber and Ms. Dodderer. While in the car, both Principal Barber and Ms. Dodderer observed a strong smell of alcohol emanating from Employee, and they witnessed Employee belch. (SOC, Sec. II, ¶ 7.)

Upon arriving at the testing facility, Employee commented to Ms. Dodderer, "Thank you. I don't think I would have had the strength to do this, but thank you." Per Employee's request, the Faculty Senate President, Ms. Schiro, arrived at the testing facility and waited with Employee. (SOC, Sec. II, ¶¶ 7, 8.)

Employee submitted to blood-alcohol testing, which confirmed she was intoxicated. The results of the first test, administered at 10:20 a.m., measured Employee's blood-alcohol level at 0.092 percent. The results of the second test, administered at 10:38 a.m., measured Employee's blood-alcohol level at 0.084 percent. (SOC, Sec. II, ¶ 9.)

On December 16, 2021, a parent contacted the School to report that Employee had been sleeping during instruction on at least three occasions. A picture and video of Employee sleeping while students were present virtually was provided. (SOC, Sec. II, ¶ 10.)

On January 13, 2022, Employee met with members of the District's administrative team to discuss the results of her alcohol testing. During this meeting, Employee indicated she had stopped drinking wine at approximately 1:30 a.m. on December 10, 2021, and she felt fine that morning to attend work. Employee insisted she would not attend work under the influence. (SOC, Sec. II, ¶ 11.)

Later in the same meeting, Employee acknowledged she had been drinking heavily during the 2021-2022 school year, she was drinking more than two bottles per night, and she was drinking alcohol besides wine. (SOC, Sec. II, ¶ 12.) Employee stated she could have called in sick on December 10, 2021, if she thought she was impaired. Employee claimed she drove to work "just fine" that morning. (SOC, Sec. II, ¶ 13.) However, Employee's blood-alcohol testing nearly three hours after she reported for work on December 10, 2021, still found her legally intoxicated. (*Ibid.*)

## **Analysis**

"Immoral conduct" has been defined to mean that which is hostile to the welfare of the general public and contrary to good morals. It includes conduct

inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness. Or it can be conduct that is 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 of the San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal. App.2d 808, 811.)

The determination of whether Employee's conduct on December 10, 2021, constitutes immoral conduct must be viewed in the context of a teacher's role in the public school system. "A teacher . . . in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the children coming under her care and protection." (*Board of Educ. of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 552, citations omitted.) A teacher "is entrusted with the custody of children and their high preparation for useful life. His habits, his speech, his good name, his cleanliness, the wisdom and propriety of his unofficial utterances, his associations, all are involved. His ability to inspire children and to govern them, his power as a teacher, and the character for which he stands, are of major concern in a teacher's selection and retention. . . ." (*Goldsmith v. Board of Ed. of Sacramento High School Dist.* (1924) 66 Cal.App. 157, 168.)

Here, the facts alleged in the Statement of Charges, if true, are sufficient to justify Employee's immediate suspension under Education Code 44939 for immoral conduct. Employee reported to work on December 10, 2021, showing visible signs of intoxication, including that her speech was loud and slurred, her speech and gestures were overly exaggerated, and she smelled of alcohol. Employee's observed behavior caused three teachers to report to Ms. Dodderer their concerns about Employee being around students and caused Principal Barber to remove Employee from her classroom

for alcohol testing. The results of testing revealed Employee's blood-alcohol level was still over the legal limit three hours after she reported to work at 7:30 a.m. Public intoxication is clearly not the type of behavior teachers should emulate for their students and would not be viewed favorably by respectable members of the community. The totality of the allegations in the Statement of Charges, if true, establish grounds for Employee's immediate suspension for immoral conduct.

In the Motion, Employee contends the allegations of the Statement of Charges are insufficient to establish "immoral conduct" because she "had no intention to imbibe alcohol prior to reporting for duty and had no idea that she was still legally under the influence when she reported to work on December 10, 2021." (Motion, p. 4.) Employee further notes there is no allegation in the Statement of Charges that "she knowingly used alcohol before coming to work intending to be under the influence while at work." (*Ibid.*) Employee's contention is without merit. The Motion cites no legal authority for the proposition that conduct must be intentional in order to constitute "immoral conduct." As noted in the District's opposition, teacher immorality is a broad, factually dependent concept because the calling of a teacher "is so intimate, its duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous, that they are incapable of enumeration in any legislative enactment." (See *Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 812.)

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## Disposition

Based on the foregoing, the ALJ finds the facts alleged in the Statement of Charges, if true, are sufficient to establish a basis for Employee's immediate suspension under Education Code section 44949 for immoral conduct.

The Motion is denied.

IT IS SO ORDERED.

DATE: 04/27/2022

*Erlinda G. Shrenger*  
Erlinda G. Shrenger (Apr 27, 2022 14:51 PDT)

ERLINDA G. SHRENGER

Administrative Law Judge

Office of Administrative Hearings