

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

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

**KARSTEN PARKER, Moving Party**

**v.**

**LOS ANGELES UNIFIED SCHOOL DISTRICT, Responding Party**

**OAH No. 2024050497**

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

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard oral argument on this matter by Zoom videoconference on June 7, 2024.

Karsten Parker, moving party, appeared on his own behalf.

Brian Davenport, Assistant General Counsel II, represented the Los Angeles Unified School District.

The matter was submitted for decision on June 7, 2024.

On or about March 15, 2024, the district's Chief Human Resources Officer signed a Statement of Charges seeking the immediate suspension without pay and dismissal of Mr. Parker, a permanent certificated employee. The statement of charges and related documents were served on Mr. Parker on April 10, 2024. The statement of charges alleges the following causes for dismissal: immoral conduct, including egregious misconduct; immoral conduct; unprofessional conduct; unsatisfactory performance; evident unfitness for service; persistent violation of or refusal to obey state school laws or regulations prescribed by the district's governing board; and willful refusal to perform regular assignments without reasonable cause. (Ed. Code, §§ 44939 and 44932, subd. (a)(1), (a)(2), (a)(5), (a)(6) & (a)(8).)<sup>1</sup> The district also alleges cause to immediately suspend Mr. Parker without pay based on the allegations. (§§ 44934 and 44939.)

The district did not receive any demand for hearing from Mr. Parker by the expiration of thirty days from the April 10, 2024, date of service of the statement of charges. Accordingly, by letter dated May 10, 2024, the district notified Mr. Parker that he was dismissed as a certified employee of the district effective May 10, 2024. That May 10, 2024, notification was served on Mr. Parker by the district on May 11, 2024.

On May 13, 2024, Mr. Parker submitted an untimely request for hearing, notice of defense and his Motion for Immediate Reversal of Suspension with OAH. Mr. Parker's Motion for Immediate Reversal of Suspension is half-a-page in length and makes only one argument related only to charge seven of the nine alleged charges in the Statement of Charges alleging that Mr. Parker fell asleep during instructional time

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<sup>1</sup> All further statutory references are to the Education Code.

on three dates causing him to fail to provide instruction. Mr. Parker does not address the allegations regarding inappropriate behavior that were indicative of grooming students under 18 years old.

With regard to charge seven, Mr. Parker argues that he fell asleep as a result of a medical condition, namely Long COVID symptoms of extreme fatigue and brain fog, and that the district did not give him accommodations for that disability as required by Government Code section 12940, subdivision (n). Mr. Parker made no arguments regarding any of the remaining eight charges in the Statement of Charges.

The district filed an opposition to the motion on May 28, 2024, arguing as an initial matter that Mr. Parker has waived his right to a hearing before OAH, and that OAH has no jurisdiction to hear the matter because Mr. Parker is no longer an employee of the district. In the alternative, the district argued that it has sufficiently pled allegations, that if true, are sufficient to support suspension without pay for immoral conduct.

On June 6, 2024, Mr. Parker submitted a reply to OAH that addresses the issue of his untimely appeal. He did not, however, include proof of service with this submission showing its service on the district. However, at oral argument Mr. Parker provided the same argument as contained in that reply regarding the issue of his untimely appeal.

As an initial matter, because Mr. Parker failed to timely file a notice of defense, and his position has already been terminated by the district, OAH does not have jurisdiction to hear this matter. No request to set a hearing on Mr. Parker's termination has been provided to OAH, and no hearing on that matter is forthcoming.

Assuming arguendo that Mr. Parker has not waived his right to a hearing related to the Statement of Charges, the following analysis regarding his Motion for Immediate Reversal of Suspension applies.

Section 44939, subdivision (b), authorizes the district to suspend an employee without pay pending the outcome of the hearing based on immoral conduct. Subdivision (c)(1) allows the employee to file a motion for relief from the suspension and requires review of this motion to 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."

There is broad discretion in determining what constitutes immoral conduct in the context of teacher disciplinary matters. (*California Teachers Association v. State of California* (1999) 20 Cal.4th 327.) Immoral conduct has been defined by the courts as follows:

[T]hat 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 wilful, 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.

(*Palo Verde etc. School Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 972, citing *Bd. of Education of San Francisco Unified School Dist. v. Weiland*, 179 Cal. App 2d 808, 811.)

Immoral conduct alone cannot serve as a basis to terminate a teacher unless the conduct indicates the teacher is also unfit to teach. (*Palo Verde, supra*, at p. 972.) 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." (*Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820, 824.)

In *Crawford v. Comm. on Professional Competence* (2020) 53 Cal.App.5th 339, 337, the court rejected Ms. Crawford's contention that there are three fixed categories of conduct that constitute "immoral conduct" as a matter of law. Instead, the court held the term "immoral conduct" in Section 44932, "stretch[es] over so wide a range" of conduct that it "embrace[s] an unlimited area of conduct." (*Ibid.*, citing *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 224-225.) Citing *Morrison, supra*, at p. 224, the court added, 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.*'" [citations] (*Crawford*, at p. 337 [italics in original].) "A teacher's conduct is therefore "immoral" under section 44932, subdivision (a)(1), when it negatively affects the school community in a way that demonstrates the teacher is 'unfit to teach.'" (*Ibid.* [footnote omitted].) The court then addressed Ms. Crawford's argument that the term should be given a colloquial interpretation that includes only conduct that would be deemed "immoral" in an everyday sense, such as criminal activity and using profanity or racial epithets. (*Id.* at p. 338.) The court wrote,

We disagree. Immoral conduct "stretch[es] over so wide a range that [it] embrace[s] an unlimited area of conduct." ([*Morrison, supra*, at pp. 224-225].) Thus, "the proper criteria is fitness to teach" because the term "immoral conduct" is "so broad and vague" that it is "constitutionally infirm." ([citation].)

(Ibid.)

The parties' written submissions and oral arguments having been considered, the district alleged sufficient facts in the Statement of Charges that, if true, could constitute immoral conduct and support immediate suspension under section 44939, subdivision (b).

Based on the conclusion that OAH does not have jurisdiction to hear this matter because Mr. Parker's employment has already been terminated, the motion for immediate reversal of suspension is denied. Alternatively, assuming *arguendo* OAH has jurisdiction, his motion is denied because the district alleged sufficient facts in the Statement of Charges that, if true, could constitute immoral conduct and support immediate suspension.

DATE: June 7, 2024

*Debra D. Nye-Perkins*

DEBRA D. NYE-PERKINS

Administrative Law Judge

Office of Administrative Hearings