

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

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

DARBY MAAS, Moving Party,

A Permanent Certificated Employee and

**ROSEVILLE JOINT UNION HIGH SCHOOL DISTRICT,
Respondent Party.**

OAH No. 2022040643

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

Carmen D. Snuggs-Spraggins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard oral argument on the Motion for Immediate Reversal of Suspension (Motion), filed by Darby Maas in this matter on May 20, 2022.

Matthew Chevedden, Eric Lindstrom, and Katrina Gould, Attorneys at Law with Langenkamp, Curtis, Price, Lindstrom, & Chevedden, LLP, represented the moving party, Darby Maas (Employee).

Michelle L. Cannon, Attorney at Law, with Lozano Smith, represented the responding party, the Roseville Joint Union High School District (District).

District's Charges

On March 25, 2022, the District filed a Statement of Charges (SOC) against Employee and placed him on unpaid suspension pending the outcome of its action dismiss Employee. The basis for the suspension under Education Code section 44939 is the allegation that Employee engaged in immoral conduct. (The SOC also alleges the following grounds for dismissal under Education Code section 44932: dishonesty; evident unfitness for service; and persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed by the State Board of Education or the school district.)

The SOC alleges that Employee engaged in overly personal conversation with students on numerous occasions. Specifically, the SOC alleges that: in November 2021, Employee asked Student 1 about her relationship with her boyfriend including whether they were having sex; in January 2022, Employee asked Student 1 about her ex-boyfriend, including his legal troubles; on January 7, 2022, during first period, in response to Student 1 stating she was having a bad day and suffering from menstrual cramps, Employee went into the English Book Room with Student 1, closed the door, stated Student 1's "cramps shouldn't be severe" since she is a "virgin," and asked whether Student 1 was "having sex," and whether she was pregnant. (SOC, p. 3.) The SOC further alleges that during that conversation, Employee told Student 1 she was "tall," "smart," and pretty," and commented that "I am confused as to why you have not had sex because you're so pretty" and/or "I'm surprised nobody has gotten into your pants," or words to that effect. (*Ibid.*) Also on January 7, 2022, Employee is alleged to have: asked Student 1 about her age and referred to the fact that Student 1

could sign herself out of class if she was 18; asked Student 1 to see a picture of a girl Student 1 was conversing with on Snap Chat; and inquired about Student 1 and Student 2's sexual orientation and/or preferences and whether they would consider dating each other.

The SOC further alleges that in the Fall of 2021, Employee told Student 1, who may have been on the waitlist for Employee's spring 2021 journalism class, that he could "get her in" to the class and proceeded to email and speak with Student 1's counselor to request that Student 1 be enrolled in the class; and during the 2021 Winter Break, Employee began "following" Student 1 on Instagram, and subsequently admitted that he followed over 200 students on Instagram and commented and "liked several students" posts. (SOC, p. 2.)

Employee is alleged to have complimented Student 1 on her appearance in January 2022, by stating "you look more lady-like in jeans, you should wear them more often," you should model because you are beautiful," and complimented her on her eyes, body, and height. (SOC, p. 3.)

Employee is alleged to have engaged in overly personal conversation with a female student in 2018, as well as touching her arm and tapping her "upper butt" when hugging the student. (SOC, p. 4.) That female student asked to be transferred from Employee's class. The student's allegations were sustained following an investigation, and Employee was given directives regarding future conduct with students, including the complaining student.

The Motion and Opposition

On April 21, 2022, Employee filed the Motion. Employee contends: the charges in the SOC do not constitute immoral conduct; District has not met the statutory

requirements of Education Code section 44939, subdivision (b); and his suspension should be immediately reversed.

On May 10, District filed its opposition to the Motion in support of its suspension order. Employee filed his reply brief.

The ALJ reviewed and considered the SOC, the written submissions of the parties, and oral argument made during the hearing. The Motion is denied as set forth below.

Applicable Statutes

Education Code section 44939, subdivision (b), provides that a school district may immediately suspend a permanent certificated employee who has been charged with, among other things, immoral conduct. Education Code section 44939, subdivision (c)(1), allows a suspended employee to file a motion for review of the suspension, and review of that 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."

A motion made pursuant to Education Code section 44939, subdivision (c)(1), like the current Motion, is analogous to a demurrer because the properly-pleaded facts must be accepted as true for purposes of resolving the motion. However, the ALJ need not accept "contentions, deductions or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Additionally, as with a demurrer, the Motion can be granted if the District's "conclusory characterization of [Employee's] conduct as intentional, willful and fraudulent" is "patently insufficient." (See e.g., *Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.)

Immoral Conduct

“Immoral conduct” has been defined as conduct “which is hostile to the welfare of the general public and contrary to good morals. [It] 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 of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811 [*Weiland*].)

The SOC alleges, among other things, that Employee asked whether Student 1 was having sex, talked about Student 1 being a virgin and his surprise that she abstained from sex, asked Student 1 and Student 2 about their sexual preferences and whether they would date each other, and made statements about how Student 1’s looks. Employee’s alleged conduct evidences a moral indifference to the opinions of others, and demonstrates an inconsiderate attitude towards good order and the public welfare. As defined in general, Employee’s alleged conduct with Student 1 constitutes immoral conduct.

However, the determination of what constitutes immoral conduct must be contextual. As noted in *Morrison v. State Board of Education* (1969) 1 Cal. 3d 214, 224 (*Morrison*), “immoral conduct” is not “considered in the abstract. It must be considered in the context in which the Legislature considered it, as conduct which is hostile . . . to the welfare of the school community.” The *Morrison* court determined a teacher’s actions cannot constitute immoral conduct or conduct involving moral turpitude unless those actions indicate his unfitness to teach. Given the Education Code’s additional due process protections and higher threshold to justify immediate

suspension, the SOC should be required to sufficiently allege facts demonstrating a nexus to teaching, just as would be required for dismissal.

In conducting this analysis, it is important to note that teachers act as role models for students. As noted in *Board of Education v. Swan*, 41 Cal.2d 546, at 552 (overruled on other grounds in *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575, 588, fn, 7.), "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 (students) coming under her care and protection. . . . Lessons are learned from example as well as from precept."

The *Morrison* Court provided a list of possible factors to aid in the analysis as follows:

In determining whether the teacher's conduct thus indicates unfitness to teach the board may consider as the likelihood that the conduct may have adversely affected students or fellow teachers, the degree of such adversity anticipated, the proximity or remoteness in time of the conduct, the type of teaching certificate held by the party involved, the extenuating or aggravating circumstances, if any, surrounding the conduct, the praiseworthiness or blameworthiness of the motives resulting in the conduct, the likelihood of the recurrence of the questioned conduct, and the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. These

factors are relevant to the extent that they assist the board in determining a teacher's fitness to teach.

(1 Cal. 3d 214, 229-230. Emphasis added.)

The SOC's allegations sufficiently demonstrate an unfitness to teach. Employee's conduct was antithetical to his role as an example for students, was hostile to the welfare of the school community, and shows a disregard for the impact of his conduct on students and the District.

Employee argues that his conduct does not constitute immoral conduct as defined by the law and "mere words are generally insufficient to constitute immoral conduct." (Memo. Pts. & Auth., pp. 3-5.) However, the authorities cited by Employee in support of his argument are distinguishable from the facts here. *In Governing Board v. Haar (Haar)* (1994), 28 Cal.App.4th 369, a teacher was accused of telling a student that she was "cute" and the teacher's favorite, and stating "'you look so cute, when you go to high school are you going to bring mace in case anyone tries to get you.'" (*Haar*, supra, 28 Cal.App.4th at p. 382.") The teacher also dressed up like Santa Clause and told female students he would give them an extra raffle ticket if they sat on his alp and gave him a hug and kiss. (*Id.* at p. 379.) The court found that the weight of the evidence supported the trial court's conclusion that the teacher's statements about sitting on his lap and giving him a kiss were unwise, but not immoral. (*Id.* at pp. 379-390.) In addition, the court found that the teacher's comments that the student is cute and questioning if she would carry mace, without more, are insufficient to sustain a charge of immorality. (*Id.* at pp. 382-383.) However, the court affirmed the trial's conclusion that the teacher's conduct was immoral where the teacher told a student on numerous occasions that she was cute and touched her hand several times over a five-month period. (*Id.* at p. 383.) There, the court found that "on its own, a comment

that a student is cute is insufficient to comprise immoral conduct, [but] the repeated and pervasive nature of [the teacher's] conduct taken as a whole supports" the charge of immorality. (*Ibid.*) Here, in addition to calling Student 1 cute, Employee is alleged to have repeatedly made comments to Student 1 regarding the status of her sex life, her sexual orientation, the fact that she is a virgin, his surprise that she had not had sex, and the possibility of Student 1 and Student 2 dating each other. The statements attributed to Employee are indecent, prurient, and sexual in nature.

The other cases cited by Employee are unpersuasive and distinguishable from the facts of this case.

The allegations in the SOC satisfy enough of the *Morrison* factors to further demonstrate an unfitness to teach. The SOC alleges activity occurring on a District campus, involving Employee's repeated use of language with students that is sexual in nature and indecent, which may have adversely impacted the students involved. In addition, his alleged conduct is likely to recur and proximate in time, occurring less than one year ago. Moreover, there is nothing praiseworthy, instead only blameworthy, about Employee's alleged conduct.

Based on the foregoing, the facts alleged in the SOC, if true, are sufficient to establish a basis for Employee's immediate suspension under Education Code section 44939, subdivision (b), for immoral conduct.

///

Disposition

Since the District has pleaded facts which, if true, support a cause for immediate unpaid suspension for immoral conduct, the Motion is denied.

IT IS SO ORDERED.

DATE: 06/02/2022

Carmen Snuggs-Spraggins

CARMEN D. SNUGGS

Administrative Law Judge

Office of Administrative Hearings