

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

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

**PAMELA FINLEY,**

**Moving Party,**

**and**

**LYNWOOD UNIFIED SCHOOL DISTRICT,**

**Responding Party.**

**OAH No. 2022040897**

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

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard oral argument on a Motion for Immediate Reversal of Suspension (MIRS), filed by Pamela Finley in this matter on May 20, 2022, by telephonic conference.

Pamela Finley, the moving party, represented herself. Paul A. Aguilar, Attorney, represented the responding party, the Lynwood Unified School District (District).

## **District's Charges against Ms. Finley**

On November 1, 2021, the District served Ms. Finley with a written Notice of Proposed Dismissal and Statement of Charges (Statement of Charges), charging Ms. Finley with evident unfitness for service under Education Code section 44932, subdivision (a)(6), and a physical or mental condition unfitting the employee to instruct or associate with children under Education Code section 44932, subdivision (a)(7). (All further statutory references are to the Education Code.) The charges were based on Ms. Finley's alleged conduct at school during the 2013-2014 and 2015-2016 school years, and on subsequent events.

The Statement of Charges alleges as follows:

a. The District, believing her conduct showed Ms. Finley to be suffering from a mental illness rendering her incompetent to teach, issued her a notice of suspension under section 44942, on February 12, 2016. Ms. Finley appeared before the District's board to refute the charges, after which the board suspended her and scheduled a mental health evaluation. The evaluation, by two psychiatrists and a psychologist, took place on February 24, 2016. The panel members unanimously concluded Ms. Finley was not fit to continue working as a preschool teacher. The District continued her suspension and placed her on mandatory sick leave effective April 15, 2016.

b. Ms. Finley demanded a hearing, under section 44942, subdivision (g). Accordingly, the District filed a complaint in the Superior Court of the State of California, County of Los Angeles, "asking the court to inquire into the charges and determine whether or not the charges are true, and if true, whether they constitute sufficient grounds for placing Finley on mandatory sick leave of absence." (Statement

of Charges, p. 3.) "The Trial Court found in favor of the District, and ruled that (1) the District was entitled to judgment as a matter of law; (2) that Appellant suffered from mental illness of such a degree as to render her incompetent to perform her duties as a preschool teacher; (3) that the severity of Appellant's mental illness constituted sufficient grounds for placing her on mandatory sick leave of absence; and (4) the District's charges against Appellant were established and constituted sufficient grounds for placing her on mandatory sick leave of absence. Accordingly, on May 2, 2017, the Trial Court entered Judgment in favor of the District, finding that the charges against Appellant were true and that the charges constituted sufficient grounds for placing her on mandatory sick leave of absence." (*Ibid.*)

c. Ms. Finley filed an appeal from the judgment to the Court of Appeal, Second Appellate District.

d. Ms. Finley requested a panel to conduct a second mental health evaluation. Though the request was late, under section 44942, the District agreed on June 21, 2018, to have another panel evaluate her. The District scheduled the second evaluation for September 28, 2018, and asked Ms. Finley to select three panelists by September 4, 2018. Ms. Finley failed to do so. The District allowed Ms. Finley to remain on an unpaid leave of absence "as a temporary accommodation." (Statement of Charges, p. 4.) From April to July 2019, the District corresponded with Ms. Finley about scheduling another panel.

e. On August 1, 2019, the Court of Appeal affirmed the trial court's order and judgment, finding that Ms. Finley "failed to proffer 'any coherent argument, other than vague, unsupported references to having been denied due process.'" (Statement of Charges, pp. 4-5.)

f. The District served on Ms. Finley a Notice of Intent to Dismiss, on October 9, 2019. At a Skelly hearing on November 6, 2019, Ms. Finley's lawyer claimed that Ms. Finley was being singled out on the basis of a disability and was qualified to return to work. The District and Ms. Finley engaged in an interactive process, until on July 7, 2020, Ms. Finley wrote that she was not requesting an accommodation or claiming any disability and would not continue to participate in the interactive process.

g. The District notified Ms. Finley on July 21, 2020, that it would convene a new panel to conduct a second mental health examination. Ms. Finley again failed to select panel members. The District informed her she could not return to work with students until medically cleared to do so, and kept Ms. Finley on an unpaid leave of absence. After Ms. Finley failed to select panel members, maintaining nevertheless that she was fit to teach, the District selected panel members. The panel conducted a mental health evaluation, which Ms. Finley refused to attend, and adopted the medical findings of the first panel, confirming Ms. Finley remains unable to return to work.

h. The District scheduled a meeting with Ms. Finley for December 17, 2020, to ascertain whether she would be interested in a vacant alternative position. Ms. Finley failed to attend. The District nevertheless identified three vacant non-teaching positions as possibilities for Ms. Finley and asked her to apply by December 29, 2020. She did not do so.

i. The District ultimately filed the Notice of Dismissal and Statement of Charges, alleging that "no fitness for duty panel, court, or any other binding authority under Education Code section 44942 has concluded that Finley is competent to perform her assigned duties. Indeed, the multiple, above-detailed medical findings and court decisions establish that Finley is not medically fit to instruct or associate with students at the District, with or without accommodations. As such, the District is

hereby proceeding with dismissal in accordance with Education Code sections 44942(i), 44932, and 44934.” (Statement of Charges, p. 9.)

The Notice of Dismissal and Statement of Charges went to hearing before a panel, presided over by an OAH ALJ, from May 9 to 13 and May 16, 2022. The hearing concluded and the matter is under submission. No decision has yet issued.

## **The MIRS**

On April 22, 2022, Ms. Finley served her MIRS on the District. She argued, under section 44939, subdivision (c)(1), that the Statement of Charges does not allege facts sufficient to support a charge that she is evidently unfit for service under Education Code section 44932, subdivision (a)(6), or that she has a physical or mental condition unfitting her to instruct or associate with children under Education Code section 44932, subdivision (a)(7).

## **Applicable Statutes**

Upon filing written charges that a permanent employee is incompetent due to mental disability, a school district may immediately suspend the employee. (§ 44939, subd. (b).)

A suspended employee may file a motion to immediately reverse the suspension. The employee must serve the motion on the school district and file it with OAH within 30 days after being served with the statement of charges, “the initial pleading in the matter.” (§ 44939, subd. (c)(2).)

An ALJ’s 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.” (§ 44939, subd. (c)(1).)

## Discussion

As a preliminary matter, the District argued that OAH lacks jurisdiction to consider the motion on its merits because (a) the motion was not timely filed and served, and (b) the motion is moot.

First, Ms. Finley served the motion on April 22, 2022, five months and three weeks after the District served on Ms. Finley the Statement of Charges. That was over four months beyond the statutory 30 days from the date of service of the Statement of Charges. (§ 44939, subd. (c)(2).) The motion is, therefore, untimely.

The District argues further that it did not immediately suspend Ms. Finley upon filing the Statement of Charges. Ms. Finley's suspension and leave of absence were in effect as of April 2016, so the MIRS was served six years too late. That argument, too, has merit.

In either case, whether measuring from the April 2016 suspension or the November 2021 service of the Statement of Charges, the MIRS was served long past the time limits of the statute governing the motion, section 44932, subdivision (c)(2). That statute precludes consideration of the motion on its merits, and on this ground alone the MIRS must be denied.

Second, the purpose of a MIRS is to allow the moving party to reverse a suspension and continue to be paid pending the resolution of the Statement of Charges. In this case, the hearing on the Statement of Charges (in OAH case no. 2022010263) occurred from May 6 to 10 and on May 13, 2022. That matter was taken under submission and a decision has not yet issued. The fact that the underlying matter has been submitted should not preclude a moving party from seeking partial

relief by immediately reversing the suspension until a decision issues on the Statement of Charges. The District's argument on this point is not well taken.

As for the substantive basis for the MIRS, the District argues the motion lacks merit. The District is correct. The issue in considering a MIRS is "whether the facts *as alleged* in the statement of charges, *if true*, are sufficient to constitute a basis for immediate suspension under this section." (§ 44939, subd. (c)(1), italics added.) Well-pleaded facts must be accepted as true for purposes of this Motion.

The Statement of Charges contains well-pleaded facts, to the effect that Ms. Finley has been found, by the District and by a panel of mental health professionals, to be evidently unfit to teach and to have a physical or mental condition unfitting the employee to instruct or associate with children. The Statement of Charges alleges those findings were upheld by the Los Angeles Superior Court, the Court of Appeal, and a second panel of mental health professionals. The Statement of Charges alleges that there have been no subsequent authoritative findings by any mental health professionals that Ms. Finley is now fit to teach. For purposes of this motion, those facts are accepted as true. (Cf. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Ms. Finley's arguments, among which are that the trial court was incorrect and that she has been denied due process, are beyond the scope of a MIRS, which looks only at the facts as alleged. Whether the alleged facts can be proven is an issue presumably to be resolved through a hearing on the Statement of Charges, a hearing that was held two to three weeks ago.

## **Order**

The ALJ has considered the written submissions of the parties and oral argument. For reasons stated above, the MIRS must be denied because it was not

timely filed and served. Even if the motion had been timely filed and served, the District has alleged facts in the Statement of Charges which, if true, would be sufficient to constitute a basis for immediate suspension under section 44939, subdivision (c).

Good cause not having been established, the Motion for Immediate Reversal of Suspension is denied.

It is so ordered.

DATE: 06/01/2022

  
Howard W. Cohen (Jun 1, 2022 15:46 PDT)

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings