

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

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

ALISON ARMAND, a Permanent Certificated Employee,

Moving Party

and

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT,

Responding Party

OAH No. 2024080859

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

Administrative Law Judge Deena R. Ghaly, Office of Administrative Hearings (OAH), State of California, heard this matter videoconference on September 13, 2024.

Attorney Joshua F. Richtel, Tuttle & McCloskey, represented moving party Alison Armand (respondent). Attorney Alex A. Lozada, Atkinson, Andelson, Loya, Ruud & Roma, represented responding party West Contra Costa Unified School District (District).

The matter was submitted for decision on September 13, 2024.

BACKGROUND

Respondent is a permanent certificated employee of the District, assigned to teach special education at Balboa Children's Center. On July 24, 2024, the District issued a Statement of Charges and Notice of Immediate Suspension Without Pay/Dismissal (SOC). The SOC charges respondent with immoral conduct as defined in Education Code section 44932, subdivision (a)(1). On July 25, 2024, respondent served a demand for hearing on the dismissal and filed a motion for immediate reversal of the suspension (MIRS) under Education Code section 44939, subdivision (c)(1). The District filed an opposition to the MIRS, and counsel for both parties presented oral argument at the motion hearing.

The charges are based on the following alleged facts: On May 2, 2023, a student, GR, in respondent's second-grade classroom became disruptive and aggressive, throwing a small object, running around the classroom and twice lunging at another student, first grabbing her by the neck and pulling her down to the carpeted floor and then, in a second effort, knocking her down again. Respondent's assistant dragged GR away from the other students. Respondent then used an "improper emergency intervention restraint" to subdue GR. Specifically, respondent lifted GR from a small couch where the assistant had placed him, laid him face down on the floor face down and held him down against the floor. GR struggled initially but, as shown in a surveillance video, stopped doing so. Nonetheless, respondent continued to hold him down for four to five minutes after he stopped struggling.

Respondent's Contentions

Respondent asserts the SOC's factual allegations, even if true, are insufficient to constitute the only basis for immediate suspension without pay alleged against her, immoral conduct. Specifically, respondent contends the factual allegations may raise some grounds for dismissal but not immoral conduct.

The District's Contentions

The District asserts that the SOC alleges sufficient facts constituting immoral conduct and respondent's immediate suspension is necessary because her conduct constituted an unnecessary and dangerous overreaction to the misbehavior of a six-year-old boy with special needs.

LEGAL STANDARDS

General Provisions

A school district may immediately suspend without pay a permanent certificated employee who has been charged with "immoral conduct, conviction of a felony or of any crime involving moral turpitude, with incompetency due to mental disability, with [willful refusal]" or with advocating communism. (Ed. Code, § 44939, subd. (b).)

Suspended teachers may file a MIRS with OAH. (Ed. Code, § 44939, subd. (c)(1).) An administrative law judge reviews the motion, and 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*)

Immoral Conduct

Immoral conduct is conduct which is:

[H]ostile 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.)

In *Morrison v. State Board of Education* (1969) 1 Cal. 3d 214, the California Supreme Court set out factors (*Morrison* factors) to be considered in determining what constitutes immoral conduct for purposes of deciding whether sufficient grounds exist to warrant a teacher's dismissal. The *Morrison* court held consideration of these factors protect teachers from being disciplined "merely because they made a reasonable, good faith, professional judgment in the course of their employment with which higher authorities later disagreed." (*Id.* at p. 233.)

The *Morrison* factors are: (i) the likelihood the conduct adversely effected students, fellow teachers or the educational community; (ii) proximity or remoteness in time of the conduct; (iii) the type of credential held by the person involved; (iv) extenuating or aggravating circumstances; (v) praiseworthiness or blameworthiness of the motives resulting in the conduct; (vi) the likelihood of the recurrence of the

questioned conduct; (vii) the extent to which disciplinary action may inflict an adverse impact or chilling effect on the constitutional rights of the person involved, or other certified persons; and (viii) the publicity or notoriety given to the conduct. (*Morrison, supra*, 1 Cal.3d at p. 229.)

Here, respondent, who was responsible for the welfare of all students in her class, reacted - and possibly overreacted- under the pressures of the immediate situation. Based on the limited information provided in the SOC, it is not immediately apparent that her actions can be characterized as corrupt, indecent, depraved, shameless, and the like. As such, they do not evince immoral conduct.

The charges as set out in the SOC provide even less material to establish immoral conduct when analyzed under the Morrison factors, which are necessarily very fact and circumstance specific. Careful review of the facts, as will be more readily possible through development of evidence at hearing, will be necessary to determine whether respondent's actions reach the level of misconduct to support the charges in the SOC, including immoral conduct.

Based on the foregoing, respondent's MIRS shall be granted and the District shall comply with Education Code section 44939, subdivision (c)(5), which provides that an order granting a MIRS "shall become effective within five days of service of the order. The school district shall make the employee whole for any lost wages, benefits, and compensation within 14 days after service of an order granting the motion."

ORDER

Good cause having been established, respondent Alison Armand's motion for immediate reversal of suspension is granted. The District shall make respondent whole

for any lost wages, benefits, and compensation pursuant to Education Code section 44939, subdivision (c)(5).

DATE: 09/27/2024

Deena R. Ghaly
Deena R. Ghaly (Sep 27, 2024 09:01 PDT)
DEENA R. GHALY
Administrative Law Judge
Office of Administrative Hearings