

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

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

**RANDY DRAKE, Moving Party,**

**A Permanent Certificated Employee,**

**and**

**CAMBRIAN SCHOOL DISTRICT, Responding Party.**

**OAH No. 2023020923**

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

On March 17, 2023, a telephonic hearing on the motion filed by Randy Drake for immediate reversal of suspension (Motion) was held before Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California. Clarissa Medrano Romero, of the law firm Beeson, Tayer & Bodine, APC, represented moving party Randy Drake (Employee). Chelsea A. Tibbs, of the law firm Dannis Woliver Kelley, represented responding party Cambrian School District (District).

The District has suspended Employee without pay pending the outcome of its action to dismiss Employee. The grounds for the suspension under Education Code section 44939 are immoral conduct and willful refusal to perform regular assignments without reasonable cause. In the Motion, Employee seeks an order for the immediate reversal of his 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:

### **Governing Procedure**

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 of a complaint. (*Pacifica Homeowners' Ass'n v. Wesley Palms Retirement Community* (1986) 178 Cal.App.3d 1147, 1151.) Well-pleaded facts must be accepted as true for purposes of a demurrer, but "contentions, deductions or conclusions of fact or law" need not be accepted. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Facts appearing in exhibits attached to the complaint also will be accepted as true and, if contrary to the allegations in the pleading, will be given precedence. (*Qualcomm, Inc. v. Certain Underwriters At Lloyd's, London* (2008) 161 Cal.App.4th 184, 191.) 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**

Employee is a permanent certificated employee of the District. He is currently assigned as a physical education (P.E.) teacher at Ida Price Middle School (Price). Employee also performs coaching duties on a regular basis. The District's dismissal action against Employee arises from his alleged conduct in 2021 and 2022 as a P.E. teacher and boys' volleyball coach.

On September 17, 2021, respondent brought his students into the school gym, even though he had been directed not to do so because of an air conditioning leak. Respondent also left two P.E. classes unattended on the school's blacktop.

On October 6, 2021, a parent from another school district sent an email to Price's principal stating that her son plays volleyball and would be in the championship game. The parent stated that her family and others were not excited because they

know, "Your boys['] Volleyball coach [respondent] has exhibited poor sportsmanship all season, [and] we actually call your coach a cheater."

On December 14, 2021, school staff reported an incident inside the school gym, outside of room 51, where respondent angrily spoke to another school employee (Employee 1) expressing his anger over decorations left in the classroom following a dance the previous Friday. Employee 1 provided a solution to implement later in the day and asked respondent why he was so hot. Respondent replied, "I am always hot," referring to his emotional state. This exchange between respondent and Employee 1 was witnessed by students and staff in the school gym.

Also on December 14, 2021, respondent yelled across the school gym to another school employee (Employee 2), "M, we follow the dress policy here, don't we? M, if a student forgets their clothes we give them loaners, don't we?" Respondent's comments were made in a loud voice and heard by Employee 2, Student A, who was not wearing a full P.E. uniform, and several other students who were in the gym. Student A, a female, was shaking when she next went to the girls' locker room with Employee 2. Student A told Employee 2 she was not comfortable wearing loaner shorts because respondent previously told her "she was fat and had no business wearing shorts." Student A's mother had been unable to repair her sweatpants due to illness in the family. Student A was so upset she wanted to go home.

Three other incidents occurred on December 14, 2021. The first incident involved respondent repeatedly stating that his student, Student B, needed to be "kept away from him as [respondent] was upset with him." Another teacher took Student B with her students. The second incident involved respondent demeaning and humiliating Student C for wearing a ball cap. Other students complained they were embarrassed for Student C for being singled out by respondent, and they noted

respondent was also wearing a ball cap that day. The third incident involved respondent confronting two male students in the school gym and telling them in a demeaning manner how disappointed he was about how they lined up for P.E.

During January 2022, a student transferred from respondent's P.E. class to Employee 2's P.E. class. The student's parents had requested the transfer because respondent had "body shamed" their student.

On January 18, 2022, the Price principal issued respondent a Letter of Warning for some of the incidents occurring on December 14, 2021. In the Letter of Warning, respondent was immediately directed to, among other things, refrain from yelling at or using sarcasm with staff or students at all times; talk to students and staff in a respectful manner; demonstrate professionalism in the workplace and at all school events; and consider engaging in outside therapy for dealing with anger.

On January 26, 2022, respondent left the eighth-grade boys' basketball team unattended in the school gym for over an hour.

On March 1, 2022, respondent angrily yelled at Student E, who was a student in Employee 4's P.E. class, because Student E snapped a mask on another student. Respondent's loud yelling and humiliating statements toward Student E were disruptive to all classes on the school's P.E. blacktop.

On March 16, 2022, all P.E. classes at the school were running the mile. Respondent had two female students who chose to walk the mile. Respondent sat down on the track in front of these students and stared at them when they completed the last lap. The two students had to walk right up to respondent, who spoke to them exhibiting negative body language. Other students who witnessed the scene

commented to each other and to school employees about how bad they felt for the two walking female students.

On March 17, 2022, Student F, who was a special needs student in Employee 2's P.E. class, was having difficulty getting his locker to open. Student F's clothes were in the boys' locker room, and he could not dress for P.E. Respondent was asked to assist and when saying "no," was very abrupt and rude to Student F and Employee 2.

On March 22, 2022. Student G suffered "body shaming" and personal "put downs" by respondent. Student G's mother sent an email expressing concerns about how respondent "body shamed" her son. Student G was transferred to Employee 4's P.E. class.

During the last four school years, parents and students have disproportionately requested not to be assigned to, or transferred out of, respondent's P.E. classes.

On May 15, 2022, Student I, who was enrolled in Employee 2's class, cut in line to enter the boys' locker room. Respondent angrily yelled at Student I in front of all the male students lining up to enter the locker room. Respondent yelled at Student I, "I am going to embarrass you in front of all your classmates and your parents." Respondent obtained the telephone number for Student I's parents and also sent them an unprofessional email.

On May 31, 2022, respondent spoke loudly and harshly to Student J for not completing the required amount of jumping jacks during the P.E. warm-up. When Student J admitted he had not completed the required amount, respondent aggressively instructed him to do the jumping jacks over, while the P.E. class waited and watched Student J.

On June 1, 2022, in the school gym, respondent harshly directed Student K to sit in the corner as he was not allowed to participate in P.E. due to being late to class. As Student K sat near the steps to the stage, respondent approached him and was yelling he was not in the correct spot. After Student K moved to another location, respondent aggressively yelled at Student K, "You're still not listening to me. What are you supposed to be doing?"

Also on June 1, 2022, respondent screamed at Student M, "Go talk to School Employee 5 about dress code." This was screamed several times by respondent at Student M, a female student. Student M felt embarrassed and ashamed in front of the class. Student M reported to the school office crying and upset.

On June 8, 2022, at the school picnic, respondent aggressively yelled "No" to Employee 6, after she repeatedly asked respondent to help with a group of students. Respondent aggressively yelled at Employee 6 that he was just there to get his food and that he had a class. Several staff members and students witnessed respondent's outburst and reported being very uncomfortable.

On June 9, 2022, respondent was issued a Letter of Reprimand for the incidents on May 31, June 1, and June 8, 2022.

On August 29, 2022, respondent was given a Notice of Unprofessional Conduct for his actions, with specific directives, including that he refrain from yelling at or using sarcasm with staff or students at all times; talk to students and staff in a respectful manner; and demonstrate professionalism in the workplace and at all school events.

On October 28, 2022, the Price principal issued a Letter of Reprimand to respondent regarding his loud voice and aggressive tone when communicating with three students.

On November 18, 2022, Price's principal received an email from Coach Jeff Argabright, Union Middle School (Union) P.E./Volleyball Coach, regarding respondent's behavior at the West Valley Athletic League (WVAL) Varsity Volleyball Championship Match between Union and Price. As documented by this email, respondent, acting in his capacity as Price's coach, repeatedly, loudly, and vehemently berated a student athlete on the Union team, calling him a jackass. Coach Argabright reported respondent "was screaming and pointing towards us. I cannot overstate how upset he was. I came closer to the net to see what the issue was. He was yelling, 'number three you're a jackass, coach your number 3 is a jackass, you're a poor sport, where's the sportsmanship.'" Since the game was over, Coach Argabright moved his team away from respondent and the crowd, and then gave out the winning medals. As he did so, respondent was still "going off."

On November 18, 2022, Price's principal received an email from Floyd Alexander, the Referee for the Volleyball Championship Match. Mr. Alexander confirmed that respondent was yelling at a student from the Union team, "Number 3 is acting like a jackass." Respondent yelled this statement several times. Mr. Alexander stated, "I felt very threatened and attacked by this underserved [*sic*] hostility. I have been reffing for this league for over twenty years and I have never seen this type of behavior. It makes me not want to continue reffing."

On December 1, 2022, Price's principal received a letter stating, "The West Valley Athletic League would like to inform you that we have made a decision to prohibit [respondent] from participating in coaching any sport within our league. This decision was not made lightly. His behavior has been unacceptable during the boys' volleyball session. We do not wish to continue our program with his unprofessional conduct." By this letter, respondent was banned from coaching in the WVAL.



## **Grounds for Immediate Suspension**

### **IMMORAL CONDUCT**

"Immoral conduct" has been defined to mean conduct that 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.)

### **WILLFUL REFUSAL TO PERFORM REGULAR ASSIGNMENTS WITHOUT REASONABLE CAUSE**

Education Code section 44939 provides that a school district may immediately suspend a permanent employee for "willful refusal to perform regular assignments without reasonable cause." With respect to alleged misconduct of a public employee, the term "willful" carries a volitional coloration which excludes the notion of accidental or even negligent conduct. (*Coomes v. State Personnel Bd.* (1963) 215 Cal.App.2d 770, 775.)

### **ANALYSIS**

The well-pleaded facts alleged in the Statement of Charges, if true, establish grounds for respondent's immediate suspension on grounds of immoral conduct and willful refusal to perform regular assignments without reasonable cause.

As a P.E. teacher and volleyball coach, respondent bullied, body shamed, harassed, mistreated, been hostile, volatile, and yelled at students from Price and another school district. Respondent has also been hostile and rude to other school employees. Respondent's behaviors continued even after he was given directives to correct his behaviors. As a volleyball coach, respondent was described as exhibiting poor sportsmanship and was banned from coaching in the WVAL in 2022 for an incident where he repeatedly, loudly, and vehemently berated a student from the opposing team by calling the student a jackass. The totality of respondent's behavior supports his immediate suspension without pay on grounds of immoral conduct and willful refusal to perform regular assignments without reasonable cause.

### **EMPLOYEE'S CONTENTIONS**

Employee contends the allegations in the Statement of Charges, even if accepted as true, constitute, at most, unprofessional conduct, which is not a basis for immediate suspension under Education Code section 44939. He characterizes the District's allegations as involving him making loud comments to students and staff in an aggressive tone. Employee's contention is not persuasive. According to the well-pleaded facts in the Statement of Charges, Employee engaged in an escalating pattern of behavior towards students and school staff that culminated in his being banned from coaching any sport in the WVAL. When viewed in the context of his role as a P.E. teacher and volleyball coach, the totality of Employee's conduct rises to the level of immoral conduct to support his immediate suspension.

Employee contends he is not subject to immediate suspension for immoral conduct because: (1) the conduct alleged by the District does not fall within one of the three categories of sexual harassment or public sexual activity, drug use or possession,

and theft of property or compensation, and (2) the conduct alleged by the District is not, on its face, immoral. Employee's contentions are without merit.

In *Crawford v. Commission on Professional Competence (Crawford)* (2020) 53 Cal.App.5th 327, the Court of Appeal rejected a teacher's argument there are only three fixed categories of conduct that constitute immoral conduct as a matter of law. The *Crawford* court explained the term immoral conduct 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] 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.' [citations]." (*Id.* at p. 337, italics in original.)

Further, in determining whether Employee's alleged conduct constitutes immoral conduct for an immediate suspension, the ALJ must consider Employee's conduct in the context of a teacher's role in the public school system, and not merely whether the alleged conduct is immoral on its face, as Employee contends. "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, Employee's alleged conduct, when viewed in the context of his role as a P.E. teacher and coach, sufficiently supports his immediate suspension without pay under Education Code section 44939.

Employee's contention that his unpaid suspension should be reversed because the District failed to provide him a pre-deprivation *Skelly* meeting is without merit. A motion under Education Code section 44939 is limited to a determination of whether the facts alleged in the Statement of Charges, if true, are sufficient to constitute a basis for immediate suspension. Employee's *Skelly* argument is outside the scope of this proceeding.

## **Disposition**

Based on the foregoing, 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 and willful refusal to perform regular assignments without reasonable cause.

The Motion is denied.

IT IS SO ORDERED.

DATE: 03/28/2023

Erlinda G. Shrenger  
Erlinda G. Shrenger (Mar 28, 2023 11:06 PDT)

ERLINDA G. SHRENGER

Administrative Law Judge

Office of Administrative Hearings