

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

LOREN TRATHEN,

Employee,
and

YUCAIPA-CALIMESA JOINT UNIFIED
SCHOOL DISTRICT,

District.

OAH No. 2018030047

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

(Ed. Code, § 44939, subd. (c))

Administrative Law Judge (ALJ) Eric Sawyer, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Los Angeles, on March 30, 2018.

Carlos R. Perez, Esq., represented Loren Trathen (Employee). Mark W. Thompson, Esq., represented the Yucaipa-Calimesa Joint Unified School District (District).

The District filed a statement of charges against Employee, which seeks his termination, and places him on immediate unpaid suspension, as of February 1, 2018. The suspension is based on allegations that Employee engaged in immoral conduct and willfully refused to perform regular assignments without reasonable cause, in violation of Education Code sections 44932, subdivision (a), and 44939, subdivision (b).

Employee timely filed a Motion for Immediate Reversal of Suspension (motion) with OAH, pursuant to Education Code section 44939, subdivision (c)(1). The various papers filed by the parties in connection with the motion were described on the record during the hearing. The parties also presented oral argument during the hearing.

The ALJ considered the written submissions of the parties and oral argument made during the hearing. Based upon a review of the statement of charges filed in the instant matter, and as set forth in detail on the record during the telephonic hearing, the motion is denied as follows.

Education Code section 44939, subdivision (b), provides that a school district may immediately suspend a permanent certificated employee who has been charged with immoral conduct and/or willful refusal to perform their regular assignments. 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.”

Although well-pleaded facts must be accepted as true for purposes of this motion, the ALJ need not accept “contentions, deductions or conclusions of fact or law.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) A motion such as this is analogous to a demurrer. A demurrer can be sustained when a plaintiff’s “conclusory characterization of defendant’s conduct as intentional, willful and fraudulent” was “patently insufficient.” (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.)

Immoral Conduct

“Immoral conduct,” pursuant to Education Code sections 44932, subdivision (a)(1), and 44939, has been defined to mean 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. It is sometimes used as synonymous with dishonesty or a high degree of unfairness. (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

Immoral conduct also can be construed according to common usage. “The term ‘immoral’ has been defined generally as that 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 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.” (*Palo Verde etc. Sch. Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

In this case, it is alleged that in 2014 respondent was advised by his adult son that, while on campus during a District activity, a 14 or 15-year-old female student kissed him in a classroom. Respondent was present on campus at the time; his son was also employed by the District as a walk-on coach of the girls’ softball team. Respondent allegedly told his son to report the incident to the proper authorities, but did not follow up with his son to confirm whether the reporting happened. It is also alleged that respondent failed to make any report of the incident, in violation of relevant provisions of the Penal Code requiring teachers, as mandated reporters, to report observed or suspected child abuse, including sexual encounters with a minor. When respondent was interviewed by a District investigator in 2017 about the incident, he maintained he would do the same thing with another adult in a similar situation.

Based on the definitions of immoral conduct provided by case law, the allegations, when accepted as true, establish Employee engaged in immoral conduct. He violated the Penal Code by failing to report his direct knowledge of a sexual encounter between a minor student and his adult son, another District employee. Employee's intentional failure to follow the law is contrary to justice. By ignoring his own reporting duty, and trusting his son to make his own report, Employee acted contrary to honesty by essentially secreting his knowledge of a sexual encounter between a minor student and his adult son. While the allegations indicate Employee's son described the female student as the aggressor, Employee had no way of knowing that was true. Employee's reporting pursuant to the law would have protected all involved by shedding light on the situation and insuring no more incidents in the future, once the involved parties had been contacted by authorities, had they chosen to investigate. Employee's omission thus can be described as contrary to modesty and good morals. The statutory requirement to report suspected child abuse is a legislative statement that the members of this community require mandatory reporters, including teachers, to be sensitive to suspected child abuse and quick to report their suspicions in order to protect children. Secreting suspicions of a sexual encounter between an adult and a minor is contrary to respectable society and the public welfare. Employee thereby demonstrated willful indifference to the opinions of respectable members of the community, and an inconsiderate attitude toward good order and the public welfare.

Willful Refusal to Perform Regular Assignment

As discussed above, unpaid suspension is also authorized for a willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, pursuant to Education Code section 44939, subdivision (b).

In this case, it is also alleged that the District had enacted policies tracking, and to an extent expanding, the mandatory reporting requirements contained in the Penal Code and discussed above. So, not only was it the law for Employee to report known or suspected sexual contact with a minor student, it was also express District policy. It is alleged that he willfully failed to report a known sexual encounter between a female minor and his adult son. Employee allegedly not only violated the law, but he also willfully refused to carry out District policy, which can be described as a regular assignment. Nowhere is it alleged that Employee had reasonable cause to fail to perform the duties required of him by law and District policy. Assuming the allegations are true, the District has pled facts supporting cause for immediate suspension under Education Code section 44939, subdivision (b).

Morrison Factors

The parties also address whether facts meeting the factors articulated in the case of *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229, have been sufficiently pleaded in this case. They have.

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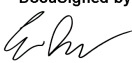
First, the ALJ views the *Morrison* factors as predominantly a test whether the events in question have a sufficient nexus with teaching to warrant discipline of a teaching credential or adverse employment action. The statement of charges clearly alleges activity occurring on the District campus, between a student and a District employee, involving another District employee's failure to report a suspected sexual contact between the student and the District employee. These facts certainly demonstrate a strong and direct nexus with Employee's use of his credential, employment with the District, and fitness to teach.

Second, the bare allegations in the statement of charges alone satisfy enough of the *Morrison* factors to demonstrate the same. In summary, the sexual contact between a minor student and adult District employee raises the likelihood of adversity to both; the incident occurred in 2014, but was apparently discovered in 2017, so the events in question are proximate; Employee allegedly secreted knowledge of the incident, leading to the suspicion he did so to protect his son, which is an aggravating circumstance; Employee's statement to the investigator that he would handle a similar situation the same way today indicates there is a likely recurrence of the questioned conduct; and there will be no chilling impact on constitutional rights by requiring mandatory reporters to follow the law and District policy.

Since the District has pleaded facts which, if true, support causes for immediate suspension for immoral conduct and willful failure to perform a regular assignment, the motion must be denied.

IT IS SO ORDERED.

DATED: April 3, 2018

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ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings