

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

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

JENNIFER KAISER, Moving Party

A Permanent Certificated Employee and

Rocklin Unified School District, Responding Party.

OAH No. 2023050765

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

On June 16, 2023, Carmen D. Snuggs-Spraggins, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard oral argument on the Motion for Immediate Reversal of Suspension (Motion) filed by Jennifer Kaiser.

Matthew Chevedden, Attorney at Law, Lagenkamp, Curtis, Price, Lindstrom & Chevedden LLP, represented moving party Jennifer Kaiser (Employee or Respondent).

Michelle Cannon and Jaspreet Lochab, Attorneys at Law, Lozano Smith, represented responding party the Rocklin Unified School District (District).

District Charges

On April 20, 2023, the District filed a Statement of Charges (SOC) against Employee and thereafter placed her on unpaid leave pending the outcome of its action to dismiss her. The basis for the suspension under Education Code sections 44932, subdivision (a)(1) and 44939 is immoral conduct. (The SOC also alleges the following grounds for dismissal: unprofessional conduct (Ed. Code, § 44932, subd. (a)(2); evident unfitness for service; (Ed. Code, § 44932, subd. (a)(6) and persistent violation of or refusal to obey school laws of the state or reasonable regulations prescribed by the State Board of Education or the school district. (Ed. Code, § 44932, subd. (a)(8).)

Employee is a Special Education Teacher at Rockling High School (RHS). The SOC alleges that on January 24, 2020, Employee expressed anger after learning that her child, who attended an elementary school within the District, was sent to the office by their teacher. Specifically, multiple witnesses reported that Employee, while in the school office, said her child's teacher need to "shut the fuck up." (SOC, Factual Allegations, ¶ 1.) On February 14, 2020, the District's Associate Superintendent of Human Resources (AS) spoke with Employee about the incident, reminded Employee that she was expected to exhibit professional behavior at all school sites, and issued a Conference Summary Memorandum to her summarizing their conversation.

On a date not established by the SOC, two parents complained to the District about their interactions with Employee on February 18, 2022. On that date, the parents were protesting mask mandates and supporting students who walked out of school that day. The parents were holding signs in support of their protest. (SOC, ¶ 2.) The SOC alleges that Employee approached the parents in her car as she was leaving RHS and told them "You know, you both should go to the district to do this," "You're

wasting your time here, we don't have any control, "We don't make the rules, the District has all the power." (*Ibid.*) Employee also allegedly told the parents "You look like two fucking idiots standing here with your signs" in "a raised voice with an agitated tone. You flipped them off as you drove away." (*Ibid.*) On May 2, 2022, the AS issued a Conference Summary Memorandum to Employee after an investigation into the incident. Employee stated she felt the parents were bullies who were creating a "ruckus" and she was tired of it. (*Ibid.*)

The SOC also alleges that in July 2022, when an instructional aide informed Employee that she was transferring to a different school site due to unprofessional conduct in the workplace, Employee became upset and verbally assaulted the instructional aide, making comments to the effect of "You are so unprofessional! You fucked me, and when someone fucks me, they are done! You will never work at Rocklin High again." (SOC, ¶ 3.) On October 14, 2022, the AS issued a Notice of Unprofessional Conduct and Unsatisfactory Performance to Employee that included directives to treat all students, staff, and community members with respect and dignity and refrain from using profanity on school grounds. (*Ibid.*)

On September 15, 2022, a parent filed a formal complaint against Employee alleging that she "overstepped her role as a teacher" because Employee sent emails to the parent commenting on the student missing class when a family member passed away, when the student attended a dentist appointment, and when the student attended baseball camp. Employee also sent an email to the parents regarding the student potentially moving schools and an email to the parents justifying placement of the student in a child development class. (SOC, ¶ 4.) The SOC alleges that during an August 20, 2022 meeting regarding the emails, Employee raised her voice and pointed

her finger at the parent as Employee left the meeting. (*Ibid.*) The District's Director of Personnel issued a Letter of Reprimand to Employee on December 19, 2022.

On December 14, 2022, the District received a complaint from a parent regarding Employee's conduct that occurred that same date during an RHS wrestling match. The District investigated the complaint and made the following conclusions:

- a. [Employee] approached a group of [RHS] students multiple times throughout the course of the match in anger with [a] raised voice, and used profanity towards these students as specifically as: "You are a fucking disgrace," "You are a fucking loser!" "You shouldn't be wearing Rocklin colors!" and "You shouldn't be here."
- b. [Employee was] involved in an unprofessional verbal altercation with Mr. and Mrs. [P.], a student's parents, after the conclusion of the wrestling match in which [Employee] screamed at and used profanity toward the parents. [Initials are used to protect the student's confidentiality.] Additionally, [Employee] stated to the family that they were a "fucking disgrace."
- c. You had consumed alcohol prior to the event and other parents reported you seemed intoxicated.

(SOC, ¶ 5.)

On February 7, 2023, the District provided Employee with an Investigations Findings Letter regarding the complaint.

The Motion and the Opposition

On May 19, 2023, Employee filed the Motion, seeking immediate reversal of District's unpaid suspension order. Employee contends the charges in the SOC do meet the requirements of Education Code Section 44934, subdivisions (a) and (b), in that the charges were not filed with the Board of Education (Board) nor were they approved by a majority vote of the Board. Employee further contends that even if the charges were filed with Board and approved by majority vote, the charges do not constitute immoral conduct and her suspension should be immediately reversed.

On June 6, 2023, the District filed its opposition to the Motion and the Declaration of Jaspreet Lochab. The District submitted a copy of the minutes of the Board's April 19, 2023 regular meeting showing that a motion regarding "Public Employee discipline/dismissal/release pursuant to Government Code 54957" was passed. (Lochab Decl., Ex. A.) In addition, the District argued Employee's conduct meets the definition of immoral conduct and the Motion should be denied.

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 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.)

Because Education Code section 44939, subdivision (c)(1), limits review of a motion for immediate reversal of suspension to a determination of whether the facts as alleged in the SOC, if true, are sufficient to constitute a basis for immediate suspension under the statute, the parties’ contentions and arguments regarding whether the charges against Employee were filed with or approved by a majority vote of the Board are not analyzed.

Immoral Conduct

“Immoral conduct” is to be construed according to “its common and approved usage having regard for the context in which the Legislature used” the term. (*Palo Verde Unified School District of Riverside v. Hensey* (*Hensey*) (1970) 9 Cal.App.3d 967, 971.) “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." (*Hensey*, supra, 9 Cal.App.3d at 971-972; *Board of Education of the San Francisco Unified School District v. Weiland* (*Weiland*) (1960) 179 Cal.App.2d 808, 811.)

In *Hensey*, a junior college professor described the college's bell system as sounding like "a worn out phonograph in a whorehouse," said the words "whore and "whorehouses" in class numerous times during a semester, and said to Mexican-American students so that the whole class could hear "I understand you have been to San Luis; I understand they have super-syphilis there, and you know that they don't have drugs to cure that. Be careful when you're there." (*Hensey*, supra, 9 Cal.App. 3d at pp. 969-970.) The court found the statements to be vulgar and in bad taste but not rising to the level of immorality. (*Id.* at p. 974.)

In *Pickering v. Board of Education* (*Pickering*) (1968) 391 U.S. 563, a teacher was dismissed after sending a letter to a local newspaper criticizing the handling by the Board of Education and the superintendent of schools of proposals to raise revenue for the schools. The Court explained that "State . . . interests as an employer in regulating the speech of its employees" for purposes of orderly school administration must be balanced with a teacher's interest in commenting upon matters of public concern. (*Id.* at p. 568.) The Court held that the teacher's exercise of the right to speak as a citizen on issues of public importance cannot be the basis of dismissal from public employment. (*Id.* at 574.) Conversely, "[w]hen employee expression cannot be fairly considered as relating to any matter of political, social, or other concern to the community, government officials should enjoy wide latitude in managing their offices, without intrusive oversight by the judiciary in the name of the First Amendment."

(*Connick v. Myers (Connick)* (1983) 461 U.S. 138, 146.) Therefore, if an employee is speaking as an employee upon matters only of personal interest, the speech is generally not afforded First Amendment protection. (*Id.* at p. 147.)

The facts alleged in paragraphs 3 and 5 of the SOC, if true, are sufficient to justify Employee's immediate suspension under Education Code 44939 for immoral conduct. Employee's comments are hostile to the welfare of the students, her colleagues, and the general public and contrary to good morals. Employee's comments show an indifference to the opinions of respectable members of the RHS community and the District, an inconsiderate attitude toward good order, and disrespect for RHS students and employees. While Employee used profanity when referring to her child's teacher and speaking with the picketing parents, "overstepped" in sending the emails described in paragraph 4, and raised her voice, and pointed her finger at a parent as also described in that paragraph, Employee's conduct, while perhaps unprofessional, does not constitute immoral conduct as defined by *Hensley* and *Weiland*.

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 administrative law judge 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. "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, revd. on other grounds.) 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 her role as a special education teacher, sufficiently supports her suspension without pay under Education Code section 44939.

In the Motion, Employee argues that her conduct constitutes constitutionally protected activity as she was confronting hate speech at the wrestling match and speaking on matters of public concern. (Motion, pp. 6-9.)

Employee's contentions are without merit and the authorities she cites are unpersuasive. The teachers' conduct and statements in *Pickering* and the other line of cases cited by Employee do not apply to the conduct alleged in paragraphs 3 and 5. Nothing in the SOC suggests that Employee's statements alleged in those paragraphs were made to address a public concern. Moreover, Employee's use of profanity

towards students and levelling threats to the instructional aide run counter to the District's interest in orderly school administration and managing its campus.

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.

The motion is denied.

IT IS SO ORDERED.

DATE: 06/28/2023

Carmen Snuggs-Spraggins

CARMEN D. SNUGGS-SPRAGGINS

Administrative Law Judge

Office of Administrative Hearings