

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

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

**SHANNON SCOTT, a Permanent Certificated Employee,
Moving Party**

and

ONTARIO-MONTCLAIR SCHOOL DISTRICT,

Responding Party

OAH Case No. 2020110247

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

Wim van Rooyen, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Sacramento, California, on December 4, 2020.

Carlos R. Perez, Attorney at Law, Law Office of Carlos R. Perez, represented Shannon Scott (Scott).

Mark W. Thompson, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, represented Ontario-Montclair School District (District).

Procedural Background

On September 29, 2020, Hector Macias, Assistant Superintendent of Human Resources for the District, signed the Statement of Charges against Scott, a permanent certificated employee, based on charges of immoral conduct; unprofessional conduct; dishonesty; evident unfitness for service; persistent violation of or refusal to obey the reasonable regulations prescribed by the governing board of the school district; alcoholism or other drug abuse that makes the employee unfit to instruct or associate with children; and willful refusal to perform regular assignments without reasonable cause, as prescribed by the reasonable rules and regulations of the employing school district. (Ed. Code, §§ 44932, subd. (a), & 44939, subd. (b).)¹ On October 7, 2020, Scott was served with a Notice and Statement of Charges seeking Scott's dismissal and notifying Scott of her immediate suspension without pay. Scott timely filed a Request for Hearing.

On November 5, 2020, Scott also filed a Motion for Immediate Reversal of Suspension (Motion) pursuant to section 44939, subdivision (c), on grounds that the Statement of Charges does not set forth a sufficient basis for an immediate unpaid suspension. On November 24, 2020, the District filed its opposition to the Motion, and on December 1, 2020, Scott filed a reply.

¹ All further statutory references are to the Education Code, unless otherwise specified.

Discussion

Section 44939 states, in relevant part, that a school district may immediately suspend without pay a permanent employee of the school district 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 to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, or with violation of section 51530. . . ." (§ 44939, subd. (b).)

An employee who has been placed on such suspension may file a motion for immediate reversal of suspension. (§ 4339, subd. (c)(1).) "Review of a motion filed pursuant to this section 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.*)

Here, the District relies on only two specific charges to support the immediate suspension without pay: (1) immoral conduct; and (2) willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the District.

IMMORAL CONDUCT

Applicable Law

"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 County v. Hensey* (1970) 9 Cal.App.3d 967,

971.) In *Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811, the court held:

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.

Statement of Charges’ Allegations

The Statement of Charges alleges that, on February 13, 2019, Scott was found in possession of alcohol (a box of wine) on campus in violation of district policy and state law. On August 29, 2019, Scott smelled of alcohol and was suspected of having consumed the alcohol-based hand sanitizer in her classroom. More specifically, the two-liter bottle of hand sanitizer, which had been purchased the day prior, had been depleted by approximately half. On October 3, 2019, Scott was observed:

behaving erratically in front of students in a manner indicative of alcohol intoxication, along with having the odor of alcohol on [her] breath which was observed by multiple staff members. Two large containers of hand sanitizer were found in [her] classroom

On February 20 and 21, 2020, Scott was again observed “behaving erratically at work in a manner indicative of alcohol intoxication, and presenting a disheveled appearance, along with giving off the odor of alcohol.” On February 21, 2020, she also abruptly left one teaching assignment and failed to report for a subsequent teaching assignment. Finally, on August 31, 2020, Scott was observed:

Behaving erratically at work in a manner indicative of alcohol intoxication. [She was] incoherent during online instruction with [her] students, as observed by [her] classroom aide and [her] Principal, including uncoordinated body movements, incoherent speech and periods of near unconsciousness. [She was] escorted by the Assistant Principal to the Principal’s office, during which time [she] displayed incoherent speech and an unsteady gait, along with great difficulty putting [her] shoes on. In the Principal’s office [she] became emotional, remained incoherent, and couldn’t remember what had happened in the classroom.

Sufficiency of Pleading

The parties’ written submissions and oral argument have been considered. The District alleged sufficient facts in the Statement of Charges that, if true, would constitute a basis for immediate suspension based upon “immoral conduct” under section 44939, subdivisions (b) and (c). At a minimum, the District alleged facts indicating that Scott was intoxicated while teaching students on at least two occasions, displaying erratic behavior, having incoherent speech, and/or exhibiting an odor of alcohol. Such conduct in front of vulnerable and impressionable school-aged children,

if proven, is plainly hostile to the welfare of the general public and contrary to good morals, and thus constitutes immoral conduct.

Scott counters that the District's allegations of Scott's intoxication in the classroom instead fall under section 44932, subdivision (a)(11) ("[a]lcoholism or other drug abuse that makes the employee unfit to instruct or associate with children"), which is not a basis for immediate suspension without pay under section 44939. Because the Legislature created a specific cause for dismissal based on alcoholism under section 44932, subdivision (a)(11), Scott argues, the alcohol-related misconduct can only be analyzed under that provision and cannot constitute immoral conduct. That argument is unpersuasive.

First, Scott provides no case law or other authority supporting her interpretation. Second, Scott's argument incorrectly assumes that alcohol-related immoral conduct is always associated with alcoholism. If a teacher teaches students while intoxicated, but that intoxication results from a single instance of consumption prior to class, an additional charge of alcoholism under section 44932, subdivision (a)(11), may well be unsupported. By contrast, if the intoxication during class results from habitual drinking and addiction, a charge of alcoholism under section 44932, subdivision (a)(11), may be appropriate. Additionally, a teacher who meets the criteria for alcoholism under section 44932, subdivision (a)(11), has not necessarily engaged in any immoral conduct within the meaning of section 44939. Thus, although the charges of immoral conduct and alcoholism may overlap in some cases and factual scenarios involving alcohol, they are not duplicative.

In sum, the District has pled sufficient facts to support a charge of immoral conduct under section 44939. Accordingly, the Motion must be denied.

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

Given that conclusion, it is unnecessary to consider whether any willful refusal to perform regular assignments without reasonable cause by Scott alternatively supports a suspension without pay.

ORDER

The Motion for Immediate Reversal of Suspension is DENIED.

DATE: December 14, 2020

Wim van Rooyen

Wim van Rooyen (Dec 14, 2020 11:02 PST)

WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings