

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

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

**LINDA PAPPAS, a permanent certificated employee,**

**Moving Party,**

**and**

**GALT JOINT UNION ELEMENTARY SCHOOL DISTRICT,**

**Responding Party.**

**OAH No. 2022100554**

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

Administrative Law Judge Deena R. Ghaly, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Los Angeles, California on November 18, 2022.

Attorney Matthew Chevedden, Langencamp, Curtis, & Price represented moving party Linda Pappas (Respondent).

Christian M. Keiner and Chelsea Tibbs, Dannis, Woliver Kelly, represented responding party Galt Joint Union Elementary School District (District).

## **BACKGROUND**

Respondent is a permanent certificated employee of the District, assigned to teach special education at Vernon E. Greer Elementary School. On September 22, 2022, the District issued a Statement of Charges and Notice of Immediate Suspension Without Pay and Charges for Dismissal (SOC). The SOC charges Respondent with immoral conduct, unprofessional conduct, evident unfitness for service, and persistent violation of, and refusal to, obey applicable laws or the District's or the school board's regulations (willful refusal).

The charges are based on the following alleged conduct: (i) on August 22, 2018, Respondent "physically re-directed" a student; (ii) after a school official had instructed Respondent not to place her hands on students unless it was to ensure their protection or safety, on January 16, 2019, Respondent was observed plugging the nose of a student in an attempt to compel the student to comply with direction during a dental screening; (iii) after further instruction to Respondent, including review of Board and school directives with her, on October 24, 2019, the school principal observed Respondent appearing frustrated and unable to provide support for a threatened student; (iv) on January 12, 2022, a student reported Respondent stated "you try to get out of shit" and "you are gay;" and (v) on August 22, 2022, Respondent stated to a student, "no, I will spank your hand."

Respondent demanded a 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 opposition to the motion, and counsel for both parties presented oral argument at the motion hearing.

## **Respondent's Contentions**

Respondent asserts the SOC's factual allegations, even if true, are insufficient to constitute a basis for immediate suspension without pay. Respondent contends the factual allegations are too vague and broad to support an allegation of immoral conduct, which she maintains are limited to certain categories of wrongdoing. Respondent also contends allegations of using inappropriate language such as swear words cannot support a charge of immoral conduct in the context of teacher disciplinary proceedings. Regarding the willful refusal charge, Respondent asserts the District failed to properly plead it as grounds for placing Respondent on an unpaid suspension pending the dismissal hearing, arguing this charge fails as a basis for immediate suspension in the absence of pled facts establishing a willful state of mind to be insubordinate.

## **The District's Contentions**

The District asserts that its SOC alleges sufficient facts constituting immoral conduct and willful refusal as causes for dismissal and immediate suspension, pursuant to Education Code section 44939. The District argues there are no specific limitations on what can constitute "immoral conduct" in the context of teacher discipline and cites authority, *Crawford v. Commission on Professional Competence* (2020) 53 Cal.App.5th 327 holding to the contrary.

Regarding whether the SOC is sufficiently specific in setting out facts to establish either immoral conduct or willful refusal, the District asserts it is not required to specify the details surrounding, and evidence supporting, the charges at issue and

that the SOC need only provide the employee with sufficient notice to the end that the Respondent will be able to prepare a defense.

## **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 motion for immediate reversal of the suspension with the Office of Administrative Hearings. (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 "'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.'" (*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.)

Though not all conduct involving inappropriate language has been deemed immoral, there is no absolute prohibition on basing charges of immoral conduct on use of language. (See, e.g. *Palo Verde Unified School District of Riverside County v. Hensey* (*Hensey*) (1970) 9 Cal.App.3d 967). In *Hensey*, a junior college teacher who used vulgar language such as "whore" and "whorehouse." In finding grounds for dismissal based in part on immoral conduct, however, the whole of his actions, which included other instances of misconduct were taken into consideration: "all of the incidents taken in the aggregate serve as a substantial basis for the trial court's determination that the charges of "immoral conduct" and "evident unfitness for service" were true and constituted cause for dismissal." (*Ibid.* at pp. 974-975.)

In *Morrison v. State Board of Education* (1969) 1 Cal. 3d 214, The California Supreme Court considered the possibility that, without further explanation, the term "immoral conduct" may be too vague to give teachers fair notice of prohibited conduct. The *Morrison* court set out factors to be considered in determining what constitutes immoral conduct for purposes of deciding whether sufficient grounds exist to warrant dismissal. The *Morrison* court noted the 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." (*Ibid.* at 233.) Though later codified as regulations and augmented by later caselaw (see Cal. Code of Regs, title 5 (Reg. or Regulation), § 80302 and *Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462), the factors are commonly referred to as the Morrison Factors. The applicable Morrison Factors here 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.

A full application of the Morrison Factors requires a factual analysis of the surrounding circumstances as developed through the hearing process, something not possible by simply reviewing the charges and accepting their truth for purposes of deciding the motion. The limited review possible does establish, however, there are sufficient criteria under the factors to support a strong likelihood of immoral conduct. To wit, Respondent interfered with her students in clearly adverse ways, particularly by blocking a student's airways, using insulting and sexualized language, and threatening corporal punishment. Some of her conduct occurred and was reported to others within the school community, which can reasonably be inferred to cause a level of adverse impact and notoriety beyond the subject student. While a fuller picture of the facts and circumstances may tip the balance in the other direction, the information available here supports a finding that Respondent engaged in immoral conduct.

A teacher may be placed on an immediate unpaid suspension where she is charged with willful refusal. (Ed. Code, § 44939 subd. (b).) Willful refusal is properly plead in the SOC based upon the alleged misconduct. Respondent's regular assignments include adherence to the directives issued by her administrators. The California Supreme Court has ruled that the refusal of a teacher to accept assignments, which the school authorities have the power to make, constitutes a violation of school laws and grounds for dismissal and placement on unpaid suspension. (*See Board of Education, City of Los Angeles v. Swan* (1963) 41 Cal. 2d 546, 551-52.) Here, Respondent's willful refusal to abide by the directives given to her about avoiding

"hands-on" student discipline is straightforward and yet, according to the allegations in the SOC, she failed to comply. Accordingly, the willful refusal charge is a further basis to suspend Respondent without pay pending the disciplinary hearing.

## **ORDER**

Respondent's motion for immediate reversal of suspension is denied.

DATE: 12/01/2022

Deena R. Ghaly  
Deena R. Ghaly (Dec 1, 2022 11:17 PST)

DEENA R. GHALY

Administrative Law Judge

Office of Administrative Hearings