

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

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

OZELIA HARRIS, Moving Party,

A Permanent Certificated Employee, and

POMONA UNIFIED SCHOOL DISTRICT, Responding Party.

OAH No. 2024090475

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

Taylor Steinbacher, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, held a hearing by videoconference on the motion filed by Ozelia Harris for immediate reversal of suspension (Motion) on October 11, 2024.

Justin M. Crane, The Meyers Law Group, A.P.C., represented the moving party Ozelia Harris (Harris).

Matthew Vance and Zuzanna Tkaczow, Fagen Friedman & Fulfrost, LLP, represented the responding party Pomona Unified School District (District).

Background

The District assigned Harris to work as a kindergarten teacher. On August 14, 2024, the District filed an Amended Statement of Charges (SOC) against Harris and issued her a Notice of Intent to Immediately Suspend Without Pay and Dismiss. Briefly, the SOC alleges that:

(1) in August and September 2020, Harris failed to effectively use her virtual classroom for instruction and virtual communication tools to communicate with District employees and parents during the COVID-19 pandemic, did not attend mandatory training, and refused to participate in a meeting with her school's principal by video and later removed the principal from the virtual classroom twice when the principal attempted to observe Harris's class (SOC, ¶ 2);

(2) on August 10, 2020, Harris sent an email containing confidential student information to the parent of an unrelated student (SOC, ¶ 3);

(3) in November 2023, Harris failed to assist a student who soiled themselves in class, and when she was notified by another student this had happened, Harris failed to determine whether the student had, in fact, soiled themselves. When questioned about this incident, Harris denied the student had soiled themselves while in her class but admitted she noticed the student's pants were soiled when the student was exiting her class at the time of dismissal. The student went home in soiled clothing and had a fever of 102 degrees at the time of dismissal (SOC, ¶¶ 4–5);

(4) in November 2023, Harris made unprofessional comments to a school counselor and the school principal after the counselor pulled one of Harris's students out of her class for 10 minutes (SOC, ¶ 6);

(5) Harris operated a hidden camera in her classroom that recorded District students, parents, and staff between August 2023 and May 2024 without the District's knowledge or approval (SOC, ¶ 7); and

(6) shortly after being placed on administrative leave on April 8, 2024, when Harris was permitted to return to her classroom to retrieve her personal belongings, Harris instead damaged District property, including the classroom walls and student work product, emptied the contents of student pencil cases onto the floor in a manner that made it impossible to distinguish which items belonged to which student, and threw a brand new textbook in the trash. When Harris was allowed to return to finish retrieving her personal property the next day, she instead opened file cabinets in her classroom and removed student work product (SOC, ¶ 9).

The SOC alleges the following grounds for dismissal:

- (1) immoral conduct under Education Code section 44932, subdivision (a)(1) (subsequent undesignated statutory references are to the Education Code);
- (2) dishonesty under section 44932, subdivision (a)(4);
- (3) evident unfitness for service under section 44932, subdivision (a)(6); and
- (4) persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district employing her under section 44932, subdivision (a)(8).

The SOC further alleges the following grounds for immediate suspension without pay under section 44969, subdivision (b): (1) immoral conduct, and (2) willful

refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district.

On September 13, 2024, Harris filed the Motion, seeking immediate reversal of the District's decision to suspend her without pay. The Motion contends Harris should not be immediately suspended because: (1) the charges in the SOC are impermissibly vague or uncertain; (2) certain allegations in the SOC are beyond the statute of limitations for teacher dismissal proceedings; (3) the SOC fails to allege acts amounting to immoral conduct; and (4) the SOC fails to allege acts amounting to a willful refusal to perform her regular assignments without reasonable cause.

On October 1, 2024, the District filed an Amended Opposition to the Motion. On October 4, 2024, Harris filed her Reply.

The ALJ reviewed and considered the SOC, the written submissions of the parties, and the oral argument made during the hearing on the Motion. For the reasons stated below, the Motion is DENIED.

Legal Standard

Section 44939, subdivision (b), provides that a school district may immediately suspend a permanent certificated employee who has been charged with certain specified conduct. 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."

Motions made under section 44939, subdivision (c)(1), are analogous to a demurrer because the properly pleaded facts in the statement of charges must be

accepted as true in resolving the motion. That said, 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, "conclusory characterization of [an employee's] conduct as intentional, willful and fraudulent" is "patently insufficient." (See, e.g., *Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.)

Applicable Law

IMMORAL CONDUCT

Engaging in immoral conduct is a basis for a teacher's dismissal as well as their immediate suspension. (§§ 44932, subd. (a)(1); 44939, subd. (b).) "Immoral conduct" has been defined as conduct

which is hostile to the welfare of the general public and contrary to good morals. [It] 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 Ed. of San Francisco Unified Sch. Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811 (*Weiland*); *Palo Verde etc. Sch. Dist. v. Hensey* (1970) 9 Cal. App.3d 967, 972.) The term "immoral conduct" has been used interchangeably with the term "moral turpitude" which in turn is sometimes used as synonymous with dishonesty or a high degree of unfairness. (*Weiland, supra*, 179 Cal.App.2d at p. 811.) Moreover, as noted in *Morrison v. State Board of Education* (1969) 1 Cal. 3d 214, 224, "immoral conduct" is

not “considered in the abstract. It must be considered in the context in which the Legislature considered it, as conduct which is hostile . . . to the welfare of the school community.”

WILLFUL REFUSAL TO PERFORM REGULAR ASSIGNMENTS WITHOUT REASONABLE CAUSE

Willful refusal to perform regular assignments without reasonable cause (“willful refusal”) is a basis for a teacher’s immediate suspension. (§ 44939, subd. (b).) Willful refusal is distinguished, however, from other forms of conduct that may subject a teacher to dismissal but not immediate suspension. These include, for example, unprofessional conduct, unsatisfactory performance, and persistent violation of the school district’s reasonable regulations. (See § 44932, subds. (a)(2), (a)(3), and (a)(8).) Thus, the threshold for immediate suspension is higher than the threshold for dismissal—unsatisfactory performance or even persistent violation of school district regulations is not enough. Rather, the employee’s refusal to perform their regular assignment must have been “willful.”

In the context of a public employee’s engaging in “willful” misconduct, 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.) Consequently, a willful refusal to perform a regular assignment must be more than an unsatisfactory, unprofessional, negligent, or even persistent failure to perform a regular assignment; instead, it must be an intentional, volitional refusal to perform any part of a regular assignment.

Analysis – Immoral Conduct

Here, the District has alleged sufficient facts in the SOC that, if true, could constitute immoral conduct and thus are sufficient to support Harris's immediate suspension. Specifically, the District alleged Harris exhibited a callous disregard for a kindergarten student's health and well-being by failing to determine whether the student had soiled themselves in class, and then upon noticing the student's pants were soiled at the time of dismissal, did nothing to assist the student. Those allegations, if proven, could constitute immoral conduct. Similarly, the allegations that Harris damaged District property and student work product, as well as created a mess in her classroom by emptying the contents of the students' pencil cases onto the classroom floor, could constitute immoral conduct if proven. Finally, the allegations that Harris surreptitiously recorded her classroom, including students, parents, and staff without the District's knowledge or consent, and in violation of District policy, could constitute immoral conduct if proven.

Analysis – Willful Refusal

Given the above, it is unnecessary to consider the District's claim of willful refusal.

Harris's Contentions

Harris argues that the SOC is not sufficiently certain because it does not specify which allegations support which bases for immediate suspension. This argument is meritless. As noted above, the legal standard here is similar to a demurrer; demurrers for uncertainty are disfavored and are granted only if the pleading is so incomprehensible that a responding party cannot reasonably respond. (*Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 848, fn. 3.) In other words,

where a pleading contains “substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled[.]” (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.) The District’s SOC meets this low bar.

Harris also argues that allegations about conduct occurring four years before the filing of the SOC are improper because evidence about that conduct cannot be introduced by the District in the dismissal proceeding. (See § 44944, subd. (b)(2)(A).) But the conduct discussed above that could amount to immoral conduct occurred well within the limitations period. Thus, Harris’s statute of limitations argument does not support granting the Motion.

Disposition

For the reasons stated above, Harris’s Motion for Immediate Reversal of Suspension is DENIED.

IT IS SO ORDERED.

DATE: 10/21/2024

Taylor Steinbacher

TAYLOR STEINBACHER

Administrative Law Judge

Office of Administrative Hearings

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

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

**KATELAND JEAN HARTE, a Permanent Certificated Employee,
Moving Party,**

v.

**SAN FRANCISCO UNIFIED SCHOOL DISTRICT,
Responding Party.**

OAH No. 2024010615

**ORDER DENYING MOTION
FOR IMMEDIATE REVERSAL OF SUSPENSION
(Ed. Code, § 44939, subd. (c)(4))**

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on February 9, 2024, by videoconference. Attorney Clarissa Romero represented moving party Kateland Jean Harte, who was not present. Senior Deputy General Counsel Christine Lee represented responding party San Francisco Unified School District.

Moving party Kateland Jean Harte is a permanent certificated employee of responding party San Francisco Unified School District (SFUSD). SFUSD filed and served a statement of charges against Harte on December 12, 2023, alleging cause to terminate her employment with SFUSD. SFUSD also suspended Harte's employment, without pay, effective that same day.

Harte filed a timely motion for immediate reversal of her unpaid suspension. SFUSD opposes this motion. The parties provided written and oral argument.

Education Code section 44939, subdivision (b), authorizes a school district immediately to suspend a permanent employee of the school district who the district has charged with "immoral conduct" or with "willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district." A timely motion to reverse the suspension asks the Office of Administrative Hearings to evaluate "whether the facts as alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension." (Ed. Code, § 44939, subd. (c)(1).) Ruling on the motion is "without prejudice to consideration by the Commission on Professional Competence, based upon the full evidentiary record before it, of the validity of the grounds for dismissal." (*Id.*, subd. (c)(4).)

In this matter, the SFUSD statement of charges against Harte alleges facts that, if true, are sufficient to constitute a basis for immediate suspension on grounds both of immoral conduct and of willful refusal to perform regular assignments without reasonable cause.

ORDER

The motion by Kateland Jean Harte for immediate reversal of her suspension from employment with SFUSD, and for reimbursement of pay and benefits during the suspension period, is denied.

DATE: 02/15/2024

A handwritten signature in black ink that reads "Juliet E. Cox". The signature is written in a cursive, flowing style.

JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings