

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

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

CARRIE MAXWELL, Moving Party

A Permanent Certificated Employee,

and

BAKERSFIELD CITY SCHOOL DISTRICT,

Responding Party

OAH No. 2020070538

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

Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Los Angeles, California on August 14, 2020.

Craig Meredith, Attorney at Law, represented moving party Carrie Maxwell (Respondent or Carrie Maxwell).

Bryan J. Park, Attorney at Law, represented responding party Bakersfield City School District (District).

BACKGROUND

1. On June 16, 2020, the District Board of Education (Board) determined that Respondent had engaged in (1) immoral conduct, (2) evident unfitness for service, and (3) 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 of Education or by the governing board of the school district employing her dismissal based upon conduct that occurred on June 5, 2020. A Statement of Charges (SOC) and notice of immediate suspension was approved on June 16, 2012 and served on Respondent on June 17, 2020.

Allegations

2. The SOC contains several grounds for dismissal, as follows: (1) immoral conduct, (2) evident unfitness for service, and (3) 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 of Education or by the governing board of the school district employing her. (Ed. Code §§ 44932, 44939.)

3. The District served Respondent with a Notice of Immediate Unpaid Suspension, pursuant to Education Code section 44939, for immoral conduct and persistent violation 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 of Education. 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.

4. The SOC against Respondent alleges that Respondent is a permanent certificated employee of the District most recently assigned as a second grade classroom teacher. (SOC ¶11.) As a classroom teacher of elementary-aged pupils, Respondent is required to, among other duties, serve as a positive role model for students and the community, maintain positive relationships with parents, and uphold and enforce school rules, administrative regulations, and board policies. (SOC ¶12.) More specifically, the SOC alleges:

A. On or about June 5, 2020, Respondent engaged in inappropriate, harassing, violent and/or threatening behavior towards students, parents, and the community; Respondents conduct was recorded by video, and the video recordings went “viral” (i.e. spread quickly on the internet, social media, and news media) via social media platforms, news reports, and other online resources; and Respondent’s conduct gained such notoriety within and outside of Kern County so as to impair her current and future relationships with the District, students, staff, parents, and the community. (SOC ¶13.)

B. Respondent threatened to kill the mother of an eight (8) year old child, in the child’s immediate presence, making the child fearful, and the child is a District student in the second grade. (SOC ¶13.) The mother and child were peaceful protestors leaving a Black Lives Matter (BLM) protest in Bakersfield and were walking on the public sidewalk near Respondent’s home when Respondent confronted them. (SOC ¶¶ 4 &5.) Respondent stated to the mother: “Get off the street. I’ll fucking kill

you!” and “I don’t give a fuck if your daughter is here” or words to that effect. (SOC ¶15). Respondent resisted attempts by a member of her own household to intercede and diffuse the situation. (SOC ¶15.)

C. Also on June 5, 2020, while the BLM protest was ongoing, Respondent stood in her backyard, peering over the wall separating her property from the public sidewalk and yelled at others to “leave the country,” “Live somewhere else,” and “My son is on the way and is going to shoot you in the head,” or words to that effect.

D. Respondent, through her attorney, has admitted her conduct.

Respondent’s Contentions

5. Respondent asserts that the facts as alleged in the SOC, even if true, are insufficient to constitute a basis for immediate suspension without pay. Respondent argues that the context of the statements and threats, in a pandemic, during civil unrest, with extenuating familial disabilities and stress, are also relevant to the determination of whether Respondent’s immediate suspension without pay should be lifted.

The District’s Contentions

6. The District asserts that its SOC alleges sufficient facts constituting immoral conduct as cause for dismissal and immediate suspension, pursuant to Education Code section 44939. The District contends that it pled sufficient facts and nexus of Respondent’s conduct to the field of teaching and the facts, as alleged,

constitute immoral conduct sufficient to establish a basis for her immediate suspension without pay.

LEGAL STANDARDS

1. A school district may immediately suspend 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 to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district," or advocating communism. (Ed. Code, § 44939, subd. (b).) A suspended employee 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.*) Although well-pleaded facts must be accepted as true, the administrative law judge need not accept contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

2. 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* at 811, quoting *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740

and *Palo Verde Unified School District of Riverside v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

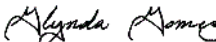
3. The conduct alleged is immoral conduct as it is willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community and constitutes an inconsiderate attitude toward good order and the public welfare.

4. Accordingly, Respondent Carrie Maxwell failed to establish good cause to reverse the immediate suspension.

ORDER

The motion for immediate reversal of suspension is denied.

DATE: August 18, 2020

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GLYNDA B. GOMEZ

Administrative Law Judge

Office of Administrative Hearings