

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

JESSE WATKINS,

Employee,

versus

GROSSMONT UNION HIGH SCHOOL
DISTRICT,

District.

OAH No. 2019010427

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

(Ed. Code, § 44939, subd. (c))

Administrative Law Judge (ALJ) Eric Sawyer, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Los Angeles, on February 8, 2019.

Jon Cadieux, Esq., represented Jesse Watkins (Employee). Ellen C. Wu, Esq., represented the Grossmont Union High School District (District).

The District filed a statement of charges (Charges) against Employee, which seeks his termination, and places him on immediate unpaid suspension, as of December 14, 2018. The suspension in the Charges is based on allegations that Employee engaged in immoral conduct in violation of Education Code sections 44932, subdivision (a), and 44939. On December 28, 2018, the District filed an amended statement of charges (Amended Charges), which allege the immediate unpaid suspension is based on immoral conduct, as well as respondent's willful refusal to perform regular assignments without reasonable cause, in violation of Education Code section 44939, subdivision (b).

Employee timely filed a Motion for Immediate Reversal of Suspension (motion) with OAH, pursuant to Education Code section 44939, subdivision (c)(1). The various papers filed by the parties in connection with the motion were described on the record during the hearing. The parties also presented oral argument during the hearing.

The ALJ considered the written submissions of the parties and oral argument made during the hearing. Based upon a review of the papers filed in the instant matter, and as set forth in detail on the record during the telephonic hearing, the motion is denied as follows.

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 and/or willful refusal to perform their regular assignments. 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.”

Although well-pleaded facts must be accepted as true for purposes of this motion, the ALJ need not accept “contentions, deductions or conclusions of fact or law.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) A motion such as this is analogous to a demurrer. A demurrer can be sustained when a plaintiff’s “conclusory characterization of defendant’s conduct as intentional, willful and fraudulent” was “patently insufficient.” (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.)

Which Pleading is to be Considered?

The new allegations contained in the Amended Charges should not be considered because the District’s suspension order was based on the allegations in the Charges. Nothing in Education Code section 44939 permits the retroactive application of new allegations made after the initial statement of charges to support the original suspension order. (*Board of Trustees of Placerville Union School Dist. v. Porini* (1968) 263 Cal.App.2d 784, 789 [statutes pertaining to teacher discipline should be “strictly construed”].) The appeal procedures set forth in section 44939, subdivision (c), are predicated on service of the “initial pleading” in the matter. (Ed. Code, § 44939, subd. (c)(2) [“The motion shall be served upon the governing board of the school district and filed with the Office of Administrative Hearings within 30 days after service upon the employee of the *initial pleading* of the matter.” (Emphasis added).]) Any other result would allow a school district to continually amend its charges to address any pleading deficiencies pointed out by Employee and maintain a teacher’s suspension indefinitely. Such action would contravene the seeming intent behind section 44939 to provide an efficient, cost-effective, and quick procedure to litigate unpaid suspensions.

Immoral Conduct

“Immoral conduct,” pursuant to Education Code sections 44932, subdivision (a)(1), and 44939, has been defined to mean conduct that is 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. It is sometimes used as synonymous with dishonesty or a high degree of unfairness. (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811 [*Weiland*].)

Immoral conduct also can be construed according to common usage. “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.” (*Palo Verde etc. Sch. Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

In *Weiland*, the teacher was charged with falsifying attendance records of her adult-typing classes by signing the names of students to such records when the students were in fact absent in order to secure her continued employment and defraud the State and the school district. The court upheld the teacher’s dismissal, finding that her conduct constituted immoral conduct as a basis for her dismissal. (*Weiland, supra*, 179 Cal.App.2d at pp. 810-812.)

In this case, the Charges accuse Employee with falsifying Individualized Education Program (IEP) documents by deliberately and intentionally copying old, outdated and inaccurate IEP document information and using it to falsely “complete” and/or “update” newer IEP documents to feign compliance with his regular assignments and obligations. It is also alleged that Employee’s alleged misconduct was designed to serve only himself, by essentially cutting corners in his work for his own purposes and to the detriment of the students he served. It is further alleged that Employee’s actions disserved and misled students, parents/guardians, and the District and its staff, and created potential liability exposure for the District and jeopardized the District’s ability to ensure and establish students were provided free and appropriate public education (FAPE), as required by law.

Accordingly, Employee’s alleged misconduct was hostile to the welfare of the students and public, contrary to good morals, evidences a moral indifference to the opinions of others, shows a disregard for how his conduct impacts students and the District, and demonstrates an inconsiderate attitude towards good order and the public welfare. (*Weiland, supra*, 179 Cal.App.2d at p. 811.) Similar to the teacher in *Weiland*, Employee has been charged with essentially falsifying legally required documents, the IEPs, to falsely represent that he engaged in the effort required to complete them according to state and federal law, and also falsely represented the involved students’ academic abilities and deficits. In this regard, the District has pleaded a sufficient claim of immoral conduct against Employee in the Charges.

Willful Refusal to Perform Regular Assignment


The District, through the Amended Charges, attempted to interject into this case additional charges supporting an immediate unpaid suspension, i.e., that respondent willfully refused to perform his regular assignment without reasonable cause. The fact that the Amended Charges are not considered in this motion is of no consequence, because, as discussed above, the allegations of immoral conduct set forth in the Charges support an immediate unpaid suspension. Therefore, it is unnecessary to consider whether the new allegations of willful refusal to perform also support an immediate unpaid suspension.

Conclusion

Since the District has pleaded facts which, if true, support a cause for immediate unpaid suspension for immoral conduct, the motion is denied.

IT IS SO ORDERED.

DATED: February 8, 2019

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ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings