

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

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

FABIAN LUNA, Moving Party,

v.

**HUNTINGTON BEACH UNION HIGH SCHOOL DISTRICT,
Responding Party.**

OAH No. 2024100053

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

(Ed. Code, § 44939, subd. (c)(4))

Administrative Law Judge Karen Reichmann, State of California, Office of
Administrative Hearings, heard this matter on October 18, 2024, by videoconference.

Attorney Arthur Four represented Fabian Luna, the moving party.

Attorney Lauren Ruvalcaba represented the Huntington Beach Union High
School District (District).

Procedural History

A statement of charges was filed and served against Fabian Luna, pursuant to Education Code section 44932, alleging several causes for dismissal, including immoral conduct. The District placed Luna on immediate suspension without pay, pursuant to Education Code section 44939, based upon the allegations of immoral conduct.

Luna filed a timely motion for immediate reversal of his suspension without pay, pursuant to Education Code section 44939, subdivision (c)(1). He argues that the District has not alleged a sufficient basis to place him on immediate unpaid status because the factual allegations in the statement of charges do not establish that he engaged in immoral conduct. The District opposes the motion.

Discussion

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, 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 School District, or with violation of [Education Code] section 51530.”

Immoral conduct is defined as conduct that is “hostile to the welfare of the general public and contrary to good morals” and 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.” (*Board of Education v. Weiland* (1960) 197 Cal.App.2d 808, 811.)

Pursuant to Education Code section 44939, subdivision (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."

Luna was employed as a high school economics teacher. The statement of charges alleges that during the 2021-2022 and 2022-2023 school years, Luna engaged in inappropriate and harassing behavior towards female students, including staring at their bodies, commenting on their appearance, telling them they needed to spend "one on one" time with him to improve their grades, and allowing them to flirt with him. The District alleges that these actions constitute immoral conduct.

The written submissions and oral argument of the parties have been considered. Based upon a review of the statement of charges, the District has alleged facts sufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b), on the grounds of immoral conduct.

ORDER

Fabian Luna's motion for immediate reversal of suspension is denied. The District's immediate suspension of Fabian Luna is upheld.

DATE: 10/29/2024

Karen Reichmann

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings