

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

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

MELISSA D. RIVERA, Moving Party

A Permanent Certificated Employee

and

COMPTON UNIFIED SCHOOL DISTRICT, Responding Party

OAH No. 2019121094

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

Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Los Angeles, California on January 24, 2020.

Melissa D. Rivera (Respondent or Rivera), the moving party, appeared and represented herself.

Barrett K. Green, Attorney at Law, represented responding party Compton Unified School District (District).

BACKGROUND

Rivera was a permanent certificated employee of the District, assigned as a teacher at Cesar Chavez and Dominguez High Schools. On December 11, 2019, the District's Board of Trustees voted to immediately suspend Rivera without pay and dismiss her from her employment as a result of her social media posts and inappropriate attire in the classroom. On November 19, 2019, the District served Rivera with a Notice of Recommendation of Dismissal and Statement of Charges (SOC). The District subsequently notified Rivera of its formal adoption of the SOC on December 12, 2019. On December 12, 2019, Rivera submitted a timely request for hearing pursuant to Education Code sections 44934, subdivision (a) and 44941.

The District's SOC against Respondent alleges that Rivera engaged in immoral conduct by posting numerous lewd and lascivious messages on social media which her students accessed, and by repeatedly dressing provocatively and inappropriately for class.

Rivera asserts that the District exceeded its authority in placing her on unpaid leave because these allegations, are, at best, examples of unprofessional conduct (e.g., conduct which is subject to an opportunity to cure and correct).

LEGAL STANDARDS

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.)

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, supra*, at 811, quoting *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740, *Palo Verde Unified School District of Riverside v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

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

Accordingly, Rivera failed to establish good cause to reverse the immediate suspension.

ORDER

The motion for immediate reversal of suspension is denied.

DATE: February 10, 2020

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Laurie Pearlman
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LAURIE R. PEARLMAN

Administrative Law Judge

Office of Administrative Hearings