

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

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

**DANIEL ALVAREZ, A Permanent Certificated Employee,
Respondent and Moving Party**

OAH No. 2023030970

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

Sean Gavin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on April 14, 2023, from Sacramento, California.

Matthew Chevedden, Attorney at Law, represented Daniel Alvarez (respondent).

Davis Adams and Gabriela Flowers, Attorneys at Law, represented the Sacramento City Unified School District (the District).

The matter was argued and submitted for decision on April 14, 2023.

Procedural History

On February 16, 2023, the District's Chief Human Resources Officer signed and subsequently sent to respondent a Notice of Intent to Dismiss; Placement on Immediate Unpaid Suspension Pending Outcome of Disciplinary Proceedings; and Statement of Charges. The Statement of Charges alleged grounds to terminate respondent. The Statement of Charges also alleged grounds to immediately suspend respondent without pay for immoral conduct under Education Code¹ section 44939.

On March 29, 2023, respondent filed a Motion for Immediate Reversal of Suspension (Motion) pursuant to section 44939, subdivision (c), in which he alleged the allegations and charges contained in the Statement of Charges are insufficient to authorize the District to suspend him without pay pending his hearing before the Commission on Professional Competence. The District filed a written opposition to respondent's Motion, and respondent filed a written reply to the opposition.

Summary of Facts Alleged in the Statement of Charges²

Respondent is a high school teacher for the District. The Statement of Charges alleged respondent made sexualized comments in class; made inappropriate comments to students regarding the female menstrual cycle; talked about ejaculation

¹ Statutory references are to the Education Code, unless otherwise specified.

² Section 44939, subdivision (c), requires the facts in the Statement of Charges to be treated as true for purposes of this Motion. Consequently, the statements below are not findings of fact, but rather summaries of the allegations as they appear in the Statement of Charges.

and masturbation; talked about rubbing a penis; inappropriately discussed sexual intercourse; called students "assholes" and "bitches"; berated and ridiculed students; inappropriately touched students' hands and faces; tripped students; and threw water on students.

Analysis

The District may immediately suspend a permanent employee who has been charged with immoral conduct. (§ 44939, subd. (b).) The suspended employee may then move for immediate reversal of the suspension. (*Id.* at subd. (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." (*Ibid.*)

"[T]he term 'immoral conduct' in section 44932, subdivision (a)(1) 'stretch[es] over so wide a range' of conduct that it 'embrace[s] an unlimited area of conduct.'" (*Crawford v. Comm'n on Professional Competence* (2020) 53 Cal.App.5th 327, 337, quoting *Morrison v. State Bd. of Ed.* (1960) 1 Cal.3d 214, 224-225.)

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.

(*Bd. of Ed. v. Weiland* (1960) 179 Cal.App.2d 808, 811, quoting *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740.)

Moreover, the definition of immoral or unprofessional conduct must be considered in conjunction with the unique position of public school teachers; upon whom are imposed "responsibilities and limitations on freedom of action which do not exist in regard to other callings."

(*San Diego Unified School Dist. v. Comm'n on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466, quoting *Bd. of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820, 824.)

The ALJ has considered the parties' written submissions and oral argument. Based on a review of the Statement of Charges, the District has alleged facts which, if true, are sufficient to constitute a basis for immediate suspension under section 44939, subdivision (b). Accordingly, the Motion must be denied.

ORDER

Respondent's Motion for Immediate Reversal of Suspension is DENIED.

DATE: April 26, 2023


Sean Gavin (Apr 26, 2023 16:20 PDT)

SEAN GAVIN

Administrative Law Judge

Office of Administrative Hearings