

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

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

BRENDA CHAVEZ, Moving Party,

v.

RIVERSIDE UNIFIED SCHOOL DISTRICT, Responding Party.

OAH No. 2022030008

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

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard oral argument on this matter by telephone on March 25, 2022.

Arthur N. Four, Attorney, Reich Adell & Cvitan, represented moving party Brenda Chavez (Chavez).

Christopher D. Keeler and Lisa Martin, Attorneys, Fagen Friedman & Fulfroost, LLP, represented Riverside Unified School District (District).

Procedural History

On January 25, 2022, the District served Chavez with a Statement of Charges, immediately suspending her without pay and providing her with notice of its intent to dismiss her as a permanent certificated teacher. (Ed. Code, § 44932.) (All further statutory references are to the Education Code, unless otherwise noted.) Chavez timely filed a Demand for Hearing and Notice of Defense. The hearing has not yet been scheduled.

On February 24, 2022, Chavez filed a Notice of Motion and Motion for Immediate Reversal of Suspension (Motion) to challenge her immediate suspension without pay. (§ 44939, subd. (c).) Chavez contends the Statement of Charges does not set forth a sufficient basis for immediate unpaid suspension. Specifically, Chavez asserts the allegations do not rise to the level of “immoral conduct” and “willful refusal to perform regular assignments without reasonable cause” justifying an immediate unpaid suspension. (§ 44939, subd. (b).)

On March 15, 2022, the District filed an Opposition to the Motion. Chavez filed a Reply on March 23, 2022. Oral argument on the Motion was heard on March 25, 2022.

Based on the reasoning set forth below, the Motion is denied because the facts alleged in the Statement of Charges are sufficient to support a charge of immoral conduct. Chavez’s immediate unpaid suspension shall, therefore, remain in effect.

Motion for Immediate Reversal of Suspension

Section 44939, subdivision (b), allows a school district to immediately suspend a permanent employee without pay who has been charged with, among other things,

immoral conduct and willful refusal to perform regular assignments without cause. An employee who has been placed on such suspension may, however, file a motion for immediate reversal of suspension (MIRS). (§ 44939, subd. (c)(1).) In reviewing a MIRS, 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.*)

STATEMENT OF CHARGES

Chavez was assigned as an Early Childhood Preschool Teacher at Sunshine Early Childhood Center. The District alleges multiple instances of conduct by Chavez in 2021 and 2022 including, but not limited to: placing and physically restraining a student in a "ski" chair (chairs with metal arms and a flat bottom); placing two to three masks on students with an additional mask tied around the back of their heads to keep the masks in place; physically restraining students when they tried to remove their masks; pulling students hair back and tying masks to their hair to keep them on; and withholding food from students on numerous occasions if they did not use the correct hand gestures to request the food items. (¶¶ 1-21.)

IMMORAL CONDUCT

"[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. Commission on Professional Competence* (2020) 53 Cal.App.5th 327, 337, quoting *Morrison v. State Board of Education* (1969) 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.

(*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811, quoting *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740 and *Palo Verdes Unified School District of Riverside v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

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 regards to other callings."

(*San Diego Unified School Dist. V. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466, quoting *Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820, 824.) "Thus, the term must be 'considered in the context in which the Legislature considered it, as conduct which is hostile to the welfare of the general public . . . more specifically in this case, conduct which is hostile to the welfare of the school community.'" (*Crawford, supra*, 53 Cal.App.5th at p. 337, quoting *Morrison, supra*, 1 Cal.3d at p. 224.)

Analysis – Immoral Conduct

The allegations Chavez engaged in misconduct in her actions towards students could support a finding of immoral conduct if proven at hearing.

The parties' written submissions and oral argument have been considered. The District alleged sufficient facts in the Statement of Charges that, if true, would constitute a basis for immediate suspension based on immoral conduct, pursuant to section 44939, subdivision (b). The Motion is therefore denied on that basis.

WILLFUL REFUSAL TO PERFORM REGULAR ASSIGNMENTS WITHOUT REASONABLE CAUSE

A teacher may be discharged, but not immediately suspended without pay, for unprofessional conduct or unsatisfactory performance. (Ed. Code, § 44932, subd. (a)(2), (5).) The violation of a school district's reasonable regulations, even the repeated violations of those regulations, likewise subjects a teacher to discharge but not to unpaid suspension. (Ed. Code, § 44932, subd. (a)(8).) Immediate suspension is only warranted based on a "willful refusal to perform" which must be evident on the face of the pleadings.

Analysis – Willful Refusal to Perform Regular Assignments without Reasonable Cause

While well-pleaded facts must be accepted as true for purposes of this Motion, the ALJ is not required to accept "contentions, deductions or conclusion of fact and law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Here, the District argues that the ALJ should make inferences from the facts pled in the Statement of Charges that Chavez's failure to follow regulations was willful. However, absent an evidentiary hearing, multiple plausible conclusions could potentially explain those factual allegations. Accordingly, whether Chavez willfully followed regulations without reasonable cause cannot be determined solely on District's pleadings but requires evidence of the context in which the facts occurred. Therefore, the District has not met the

requirements for immediate suspension based on the allegations of "willful refusal to perform regular assignments without reasonable cause" pursuant to section 44939, subdivision (b).

ORDER

The Motion for Immediate Reversal of Suspension is denied. The immediate suspension without pay shall remain in effect.

DATE: 03/30/2022

Irina Tentser

IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings