

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

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

**LEISA VALLO, a Permanent Certificated Employee, Moving
Party**

and

MORONGO UNIFIED SCHOOL DISTRICT, Responding Party

OAH Case No. 2020060515

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

Administrative Law Judge (ALJ) Ed Washington, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Sacramento, California on July 10, 2020.

Jon Cadieux, Attorney at Law, represented Leisa Vallo.

Brian D. Bock, Attorney at Law, represented the Morongo Unified School District (District).

PROCEDURAL HISTORY

On April 1, 2020, the District served Ms. Vallo, a permanent certificated employee, with a Notice of Proposed Intent to Immediately Suspend Without Pay and Dismiss (Notice), which included a Statement of Charges, signed by the District's Assistant Superintendent of Human Resources. The Notice was based on charges including, but not limited to, immoral conduct. (Ed. Code, §§ 44932, subd. (a), & 44939, subd. (b).) The District governing board immediately suspended Ms. Vallo without pay pursuant to Education Code section 44939. Ms. Vallo timely filed a Demand for Hearing and Notice of Defense.

On June 15, 2020, Ms. Vallo filed a Notice of Motion and Motion for Immediate Reversal of Suspension (Motion) pursuant to Education Code section 44939, subdivision (c), on grounds that the Statement of Charges does not set forth a sufficient basis for immediate unpaid suspension. Specifically, Ms. Vallo argues that the well-pleaded allegations demonstrate conduct that was unprofessional, at best, but did not rise to the level of immoral conduct.

ANALYSIS

Education Code section 44939 states, in relevant part, that a school district may immediately suspend a permanent employee of the school district 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 with violation of [Education Code] section 51530." (Ed. Code, § 44939, subd. (b).) "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.” (Ed. Code, § 44939, subd. (c).)

“Immoral conduct” is to be construed according to “its common and approved usage having regard for the context in which the legislature used” the term. (*Palo Verde Unified School District of Riverside County v. Hensey* (1970) 9 Cal.App.3d 967, 971.) In *Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811, the court held:

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.

Education Code section 44944, subdivision (b)(2), provides the following regarding dismissal or suspension proceedings initiated pursuant to Section 44934:

(A) A witness shall not be permitted to testify at the hearing except upon oath or affirmation. Testimony shall not be given or evidence shall not be introduced relating to matters that occurred more than four years before the date

of the filing of the notice, except in one of the following circumstances:

(i) Testimony or evidence regarding allegations of behavior or communication of a sexual nature with a pupil that is beyond the scope or requirements of the educational program...

(ii) Testimony or evidence regarding allegations of an act described in Section 288 of the Penal Code (lewd and lascivious acts with a minor) with respect to a pupil of any age, Section 288.3 of the Penal Code (contacting a minor to commit a felony), Section 44010 of the Education Code (certain sex offenses, including rape, sodomy, oral copulation, unlawful sexual intercourse, making a child under the age of 16 available for any lewd or lascivious act, or aiding or abetting in the commission of these or similar offenses).

(B) Evidence of records regularly kept by the governing board of the school district concerning the employee may be introduced, but no decision relating to the dismissal or suspension of an employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years before the filing of the notice, except as allowed pursuant to subparagraph (A).

The Statement of Charges alleges that, from 2002 through 2006, while working as a counselor for the Yucca Valley High School (YVHS), Ms. Vallo engaged in an extremely close and inappropriate relationship with student D.L., which involved sharing personal information and engaging in extensive “sexualized” communications. The Statement of Charges alleges that Ms. Vallo engaged in a sexual relationship with D.L. in or around 2008 and 2009, when D.L. was 20 or 21 years old and two to three years after D.L. graduated from YVHS.

The Statement of Charges alleges that Ms. Vallo had sexual intercourse with B.L., a former YVHS student, three times, in approximately July 2004, when B.L. was 18 years old and weeks after B.L. graduated from high school.

The Statement of Charges also alleges that Ms. Vallo was dishonest during the investigation of these and other related events.

The ALJ has considered the written submissions of the parties and oral argument. Based upon a review of the Statement of Charges, the District failed to allege facts, which, if true, are sufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b). Specifically, the well-pled factual allegations establish that between 10 to 15 years ago, Ms. Vallo engaged in sexual intercourse with two adult former students of YVHS, whom she came to know through her employment with YVHS as a school counselor. The District failed to establish that such factual allegations constituted immoral conduct. The District also failed to establish that those alleged facts occurred less than four years before the date of the filing of the Notice, as required by Education Code section 44944, subdivision (b)(2)(B), or fell within either exception delineated in Education Code section 44944, subdivision (b)(2)(A).

ORDER

Good cause having been established, the Motion for Immediate Reversal of Suspension is GRANTED. The School District shall make Ms. Vallo whole for any lost wages, benefits, and compensation within 14 days after service of this Order. (Ed. Code, § 44939, subd. (c)(5).)

DATE: July 24 , 2020

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Ed Washington
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ED WASHINGTON

Administrative Law Judge

Office of Administrative Hearings