

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

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

JOSE CERVANTES, a Permanent Certificated Employee,

Moving Party,

and

**LOS ANGELES UNIFIED SCHOOL DISTRICT,
Responding Party.**

OAH No. 2024050410

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

Ji-Lan Zang, Administrative Law Judge, Office of Administrative Hearings (OAH),
State of California, heard this matter by videoconference on May 24, 2024.

Shirley Lee, Attorney at Law, represented moving party Jose Cervantes
(Employee).

M. Cristina Cruz, Attorney at Law, represented responding party Los Angeles
Unified School District (District).

District has suspended Employee without pay pending the outcome of its action to dismiss Employee. The basis for the suspension under Education Code section 44939 is immoral conduct. In his motion (Motion), Employee seeks an order for the immediate reversal of his suspension. District opposes the Motion.

Counsel for both parties presented oral argument at the motion hearing. The parties did not dispute that the Statement of Charges, attached as Exhibit A to the Motion, is the operative pleading for this proceeding.

Motion for Immediate Reversal of Suspension

A school district may immediately suspend without pay a permanent certificated employee charged with immoral conduct. (Ed. Code, § 44939, subd. (b).) A suspended employee may file a motion for immediate reversal of the suspension with OAH. (Ed. Code, § 44939, subd. (c)(1).) An administrative judge's review of the suspended employee's motion 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)(1).)

Although the administrative law judge must accept well-pleaded facts in the statement of charges 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.) Conclusory characterizations of conduct as intentional, willful, or fraudulent are "patently insufficient." (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.) Where reading the allegations reveals the existence of an affirmative defense, the complaining party must plead around the defense by alleging specific facts that would avoid the apparent defense. (*Blank, supra*, 39 Cal.3d at p. 318.)

Statement of Charges

During the relevant period, Employee was employed by District as a secondary counselor at Chatsworth Charter High School. The Statement of Charges alleges Employee engaged in immoral conduct in violation of Education Code sections 44932, subdivision (a)(1), and 44939, committed unprofessional conduct in violation of section Education Code section 44932, subdivision (a)(2), and his unfitness for service is evident under Education Code section 44932, subdivision (a)(6).

In support of its charge of immoral conduct, District alleges Employee committed conduct "constituting grooming or was indicative of a person attempting or intending to groom a minor" in relation to three students, S [REDACTED] P., K [REDACTED] F., and J [REDACTED] M. (Statement of Charges, ¶¶ 2, 4, & 6.)

With respect to S [REDACTED] P., Employee allegedly, during a counseling session on or about March 18, 2022, referred to her as "Mami," "Mi Amor" (my love), and "Carina." Employee allegedly closed his office door, tried to hold S [REDACTED] P.'s hand, asked her about her personal life, and told her she could confide in him. The Statement of Charges also alleges Employee said to S [REDACTED] P. words to the effect of: "You have pretty eyes and a pretty body"; "I'm sure a lot of guys want you for that"; "I can give you a free pass to dismiss you from class and you could come to see me anytime"; "I want to get to know you better"; "You're a pretty girl"; "Do you smoke?"; "You have pretty eyes and are very pretty"; and "We could be girlfriend and boyfriend from afar as long as you could be discrete."

With respect to K [REDACTED] F., during a period from August 15, 2022, to August 26, 2022, Employee allegedly saw K [REDACTED] F. on three separate occasions. During at least one of these occasions, Employee allegedly referred to her as "Mami" and "Mi

Amor." The Statement of Charges also alleges Employee failed to change K [REDACTED] F.'s English class per her request, kept her alone in his office for an extended period, touched her on the shoulder, and pulled his chair closer to her while K [REDACTED] F. was seated. Employee allegedly also said to K [REDACTED] F., words to the effect of: "You can share your problems with me"; "I am going to tell you about me"; "You are going to tell me things you like" and "I'll tell you things I like."

With respect to [REDACTED] M., during a period from August 15, 2022, to August 26, 2022, Employee allegedly saw [REDACTED] M. on two separate occasions. During at least one of these occasions, Employee allegedly referred to her as "Mami" and "Mi Amor." The Statement of Charges also alleges Employee was alone with [REDACTED] M. and directed her to stand next to him while he showed her schedule on his computer. Employee allegedly also said to [REDACTED] M., words to the effect of: "I'll change your class if you smile"; and "You can talk to me about your problems."

District contends the foregoing conduct warrants Employee's immediate dismissal without pay. Employee contends District failed to plead sufficient facts to establish immoral conduct. According to Employee, District's claims of immoral conduct are conclusory, and District failed to prove any context of the alleged incidents. Specifically, Employee contends a counselor being alone with a student in his office is not uncommon, and none of the acts alleged in the Statement of Charges rises to the level of immoral conduct.

Immoral Conduct

"[T]he term 'immoral conduct' in [Education Code] 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.) Courts have defined immoral conduct in school settings as 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 wil[l]ful, 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 Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811, quoting *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740.)

Immoral conduct also "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. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466.) "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.)

Disposition

Some of Employee's alleged misconduct in his actions towards S [REDACTED] P., if true, are sufficient to sustain Employee's immediate suspension based on immoral conduct. Specifically, these allegations including Employee saying to her words to the effect of: "You have pretty eyes and a pretty body"; "I'm sure a lot of guys want you for that"; "You're a pretty girl"; "You have pretty eyes and are very pretty"; and "We could

be girlfriend and boyfriend from afar as long as you could be discrete.” Respondent’s comments about S [REDACTED] P.’s physical appearance, men’s desire for her physical attributes, and his suggestion that they become boyfriend and girlfriend constitute sexual advances. They are offensive, indecent, and depraved acts that show flagrant or shameless indifference to community standards and/or are hostile to the students at Employee’s school. Although respondent’s alleged actions towards K [REDACTED] F. and I [REDACTED] M., when viewed in isolation, may seem more innocuous, they constitute a pattern of sexual grooming that rises to immoral conduct when viewed in the context of all three students’ allegations against respondent.

All arguments made by counsel in their briefs and at oral argument have been considered. The facts pleaded in the Statement of Charges, if true, are sufficient to support a claim against Employee for immoral conduct and therefore form a basis for immediate suspension without pay under Education Code section 44939, subdivision (c)(1). Accordingly, the Motion for Immediate Reversal of Suspension is denied.

ORDER

The motion by Jose Cervantes for immediate reversal of his suspension without pay is denied.

DATE: 06/05/2024



JI-LAN ZANG

Administrative Law Judge

Office of Administrative Hearings