

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Motion for Immediate
Reversal of Suspension Filed by:

OAH No. 2018030687

ELOISA ZUNIGA,

A Permanent Certificated Employee,

Employee,

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

School District.

**ORDER DENYING MOTION FOR
IMMEDIATE REVERSAL OF
SUSPENSION**
(Ed. Code, § 44939, subd. (c)(4))

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically, on April 12, 2018.

Dexter Rappleye, Attorney at Law, represents respondent Eloisa Zuniga.

David Greco, Assistant General Counsel, represented the Los Angeles Unified School District.

On or about February 14, 2018, the district served respondent with a written Statement of Charges, charging her with immoral conduct, unprofessional conduct, persistent refusal to obey rules and regulations, and evident unfitness for service. The Statement of Charges alleged a single incident involving a special needs child being “forced or put” down to the floor by respondent; respondent pinning the child to the floor; respondent encouraging another child to hit her while pinned on the floor; and respondent allowing another child to actually hit her while pinned on the floor.

Education Code section 44939 states, in relevant part, that a school district may immediately suspend a permanent employee of the school district 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 School District, or with violation of [Education Code] section 51530.” (Ed. Code,

§ 44939, subd. (b).) Based on the foregoing charges, the district's governing board immediately suspended respondent from her duties and gave notice of its intent to suspend her.

On March 16, 2018, respondent filed a Motion for Immediate Reversal of Suspension with OAH, pursuant to Education Code section 44939, subdivision (c)(1), alleging that the Statement of Charges does not set forth facts sufficient to support an allegation that she engaged in immoral conduct, which is necessary in this case to sustain the suspension. The motion also requested the administrative law judge hearing the motion take official notice of two unpublished OAH decisions that do not pertain to this matter, and a police report. The request for official notice did not limit the request to mere existence of the documents; rather, the request also argued that facts contained within each document should be considered in reaching a determination on the instant motion.

OAH set the matter for oral argument and established a briefing schedule. The district filed an opposition to the instant motion and respondent's request for official notice. Respondent filed a reply to the district's opposition. All pleadings were read and considered.

On April 12, 2018, the parties orally argued their positions. Respondent argued that the pleading is insufficient because it did not put the single event into context; immoral conduct is limited to the categories of sexual harassment/public sexual activity, a teacher's drug use or possession of drugs, or a teacher's theft of property or compensation; and the factors set forth in *Morrison v. State Bd. of Education* (1969) 1 Cal.3d 214 (*Morrison*) must be considered in determining whether respondent's conduct constituted "immoral conduct." The district argued that the facts, as pled, establish immoral conduct sufficient to sustain the immediate suspension, and that the *Morrison* factors are irrelevant for purposes of a MIRS because the standard to uphold a pre-trial suspension is not the same as the standard to terminate a teacher following an administrative hearing.

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

Under Education Code section 44939, subdivision (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.**" [Emphasis Added]. As such, respondent's request for official notice of the two OAH decisions and police report is denied, as this motion only concerns what is contained in the four corners of the Statement of Charges.

There is broad discretion in determining what constitutes immoral conduct in the context of teacher disciplinary matters. (*California Teachers Association v. State of California* (1999) 20 Cal.4th 327.) Immoral conduct has been defined by the courts as follows:

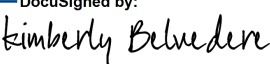
[T]hat which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as wilful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Palo Verde etc. School Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 972, citing *Bd. of Education of San Francisco Unified School Dist. v. Weiland*, 179 Cal. App 2d 808, 811.)

The *Morrison* factors are irrelevant for purpose of a MIRS because those factors come into play only after immoral conduct has been established *at hearing*, and must be considered *at hearing*, to determine whether there is a nexus between the immoral conduct and fitness to teach in order to support a dismissal. This motion is not to determine respondent's fitness to teach and whether she should be dismissed; it is merely to establish whether the district's charges contained within the four corners of the Statement of Charges meet the definition of immoral conduct.

Based on a review of the Statement of Charges, pleadings, and applicable law, it is determined that the district has alleged facts that, if true, are sufficient to constitute immoral conduct, which is a basis for immediate suspension under Education Code section 44939, subdivision (b).

GOOD CAUSE NOT HAVING BEEN ESTABLISHED, the Motion for Immediate Reversal of Suspension is DENIED.

DATED: April 16, 2018

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KIMBERLY J. BELVEDERE
Administrative Law Judge
Office of Administrative Hearings