

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

DANNY WASHINGTON,
A Permanent Certificated Employee,

Moving Party,
and,

LOS ANGELES COUNTY
OFFICE OF EDUCATION,

Responding Party.

OAH No.: 2018010562

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

Administrative Law Judge Thomas Heller, State of California, Office of Administrative Hearings, heard this matter telephonically from Los Angeles, California on February 2, 2018.

Rosty G. Gore, Esq., Trygstad, Schwab & Trygstad, represented moving party Danny Washington (Washington).

Patrick Saldaña, Deputy General Counsel, represented responding party Los Angeles County Office of Education (LACOE).

Background

On December 21, 2017, the Superintendent of LACOE filed a statement of charges giving notice of the Superintendent's intent to dismiss Washington from his position as a tenured certificated LACOE employee. The Superintendent also suspended Washington without pay in connection with the charges. Washington timely filed a motion for immediate reversal of suspension under Education Code section 44939, subdivision (c)(1). LACOE filed an opposition, and counsel for both parties presented oral argument at the motion hearing.

The suspension was based on the Superintendent's allegation that Washington engaged in immoral conduct. More specifically, the statement of charges alleged that Washington committed insurance fraud in 2015 and pleaded guilty in 2017 to a felony

involving that conduct. The alleged basis for the criminal case and plea was Washington cashing four disability payment checks from LACOE “due to his purported temporary total disability – while . . . employed for another educational organization. . . .” (Statement of Charges, p. 7, ¶ 18.) In addition, the statement of charges alleged that Washington called in sick on a day he was actually in jail due to the criminal case against him. (*Id.* at p. 6, ¶ 13.)

Washington asserts that the Superintendent’s charges are “vague regurgitation[s] of law or conclusory statements unsupported by specific events or facts” (Motion at p. 5), and are devoid of factual allegations that would constitute immoral conduct if true. Washington also asserts that the allegations about his criminal case do not support suspension because he has now completed all terms of a 12-month court-ordered diversion program he started in April 2017, and will move to dismiss the criminal case at the end of the 12 months.

LACOE asserts that the statement of charges alleges facts constituting immoral conduct that are sufficiently clear for Washington to prepare his defense. LACOE also asserts that Washington may not use his court-ordered diversion program as a shield against adverse employment action based on the facts underlying his criminal case.

Legal Standards

A school district may immediately suspend a permanent certificated employee who has been charged with immoral conduct. (Ed. Code, § 44939, subd. (b).) Immoral conduct is 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 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.)

A suspended employee may file a motion for immediate reversal of the suspension with the Office of Administrative Hearings. (Ed. Code, § 44939, subd. (c)(1).) An administrative law judge reviews the motion, and 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.*) Although well-pleaded facts must be accepted 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.)

Discussion

Many allegations in the statement of charges are conclusory or concern matters irrelevant to suspension. But the allegations about Washington fraudulently cashing disability checks from LACOE and calling in sick when he was actually in jail, if true, are sufficient to constitute a basis for immediate suspension for immoral conduct. The statement

of charges references specific disability checks and dates, and further alleges that Washington's actions concerning the checks resulted in a guilty plea to a felony count involving fraud, which suggests intentional misconduct. (Statement of Charges, p. 7, ¶ 18.) It also alleges the specific instance when Washington allegedly called in sick when he was in jail. (*Id.* at p. 6, ¶ 13.) These allegations are not "vague regurgitation[s] of law or conclusory statements unsupported by specific events or facts," as Washington asserts. (Motion at p. 5.)

In *Board of Education v. Weiland*, a teacher was terminated for immoral conduct, unprofessional conduct, and dishonesty, based upon the teacher falsifying pupil attendance records in order to prevent elimination of her position due to lack of attendance. The court affirmed the termination, finding that "[h]er acts were deliberately designed to defraud the state and the district and were essentially criminal in nature. The charge of immoral conduct and the finding thereon was amply supported." (*Board of Education v. Weiland*, *supra*, 179 Cal.App.2d at p. 812.) Similarly here, the allegations that Washington called in sick while in jail and defrauded LACOE by cashing disability checks while working elsewhere, if true, amply support the charge of immoral conduct.

Washington's argument that the allegations about his criminal case do not warrant suspension because he is in a court-ordered diversion program is misplaced. The Superintendent's alleged basis for his suspension is immoral conduct underlying the criminal case, not the case itself. While the statement of charges spends more time on events in the criminal case than the underlying conduct, it still alleges enough facts amounting to immoral conduct to defeat the motion, as described above.

Therefore, Washington's motion for immediate reversal of suspension is denied.

IT IS SO ORDERED.

DATED: February 16, 2018

DocuSigned by:
Thomas Heller
CFDEA01421714A4...

THOMAS HELLER
Administrative Law Judge
Office of Administrative Hearings