

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

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

JOHN HOTCHNER, a Permanent Certificated Employee,

Moving Party

and

CARPINTERIA UNIFIED SCHOOL DISTRICT,

Responding Party

OAH Case No. 2022100388

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

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Sacramento, California, on November 4, 2022.

Estephania Villalpando, Attorney at Law, represented John Hotchner (Hotchner).

Vanessa Lee, Attorney at Law, Fagen, Friedman & Fulfroft, LLP, represented Carpinteria Unified School District (District).

Procedural History

On September 14, 2022, the District served Hotchner with a Notice of Intent to Immediately Suspend Without Pay and Dismiss (Notice). The Notice was based on a Statement of Charges, dated September 13, 2022, and alleged cause to dismiss based on immoral conduct (Ed. Code, § 44932, subd. (a)(1)¹; unprofessional conduct (*id.*, subd. (a)(2); dishonesty (*id.*, subd. (a)(4); evident unfitness for service (*id.*, subd. (a)(6); and persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district employing him (*id.*, subd. (a)(8)). The Notice alleged cause to immediately suspend Hotchner without pay for immoral conduct. (§ 44939, subd. (b).) Hotchner timely filed a Request for Hearing.

On October 14, 2022, Hotchner also filed a Notice of Motion and Motion for Immediate Reversal of Suspension (Motion) pursuant to section 44939, subdivision (c). He contends that the Statement of Charges does not adequately allege immoral conduct sufficient to support an immediate unpaid suspension. On October 25, 2022, the District filed its opposition to the Motion. On November 1, 2022, Hotchner filed a reply brief. Oral arguments on the Motion were heard on November 4, 2022.

¹ All further statutory references are to the Education Code, unless otherwise specified.

Motion for Immediate Reversal of Suspension

Section 44939 states, in relevant part, that a school district may immediately suspend without pay 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 employing school district, or with violation of section 51530. . . .” (§ 44939, subd. (b).)

An employee who has been placed on such suspension may file a motion for immediate reversal of suspension. (§ 44339, subd. (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. (*Ibid.*)

STATEMENT OF CHARGES

The District alleges multiple instances of misconduct by Hotchner, occurring from 2018 to 2022. The allegations can be divided into two broad categories: engaging in inappropriate and sexually suggestive conversations with students; and creating a hostile classroom environment.

Examples of the first include Hotchner: (1) telling students he loves them; (2) suggesting that he and a female student could have a sleepover party and wear “footie pajamas”; (3) telling a student he wanted to give them a hug and hold their hand; (4) telling a female student to put on her fuzzy sweater because he wanted to pet her; (5) asking students if they felt a “love connection” with him; (6) asking a student for an invitation to her birthday party and offering to buy her a gift; and (7) making sexual

comments to students, and then stating, "I am kidding, unless you don't want me to be kidding."

Examples of the second include Hotchner: (1) ridiculing students' clothing and appearance; (2) regularly making comments in front of the class that a particular student was "stupid"; (3) taking photos and videos of students despite their objections, purportedly to document dress-code violations; (4) kicking students' feet and desks; and (5) subjecting students to gratuitous and inequitable punishment.

The District contends that immediate suspension without pay is warranted because Hotcher's behavior constitutes immoral conduct.

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* (1960) 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 & *Palo Verde 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 regard 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.)

The parties' written submissions and oral arguments have been considered. The District alleged sufficient facts in the Statement of Charges that, if true, would constitute immoral conduct and support immediate suspension under section 44939, subdivision (b). Accordingly, the Motion must be denied.

//

//

ORDER

The Motion for Immediate Reversal of Suspension is DENIED.

DATE: November 16, 2022

Matthew Block

MATTHEW S. BLOCK

Administrative Law Judge

Office of Administrative Hearings