

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

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

DONALD LOPERENA, a Permanent Certificated Employee,

Moving Party

and

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Responding Party

OAH Case No. 2024100058

**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 by videoconference from Sacramento, California, on November 1, 2024.

Jason Wojciechowski, Attorney at Bush Gottlieb, represented Donald Loperena (Loperena), who was not present.

Brian Davenport, Assistant General Counsel II, represented the Los Angeles Unified School District (District).

Procedural History

At all relevant times, Loperena served as a permanent certificated employee assigned as a high school physical education (P.E.) teacher at John F. Kennedy High School. On September 11, 2024, the District served Loperena with a Statement of Charges, dated August 28, 2024, which alleged cause to dismiss based on immoral conduct (Ed. Code, § 44932, subd. (a)(1))¹; unprofessional conduct (*id.*, subd. (a)(2)); unsatisfactory performance (*id.*, subd. (a)(5)); evident unfitness for service (*id.*, subd. (a)(6)); 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)); and willful refusal to perform regular assignments without reasonable cause. (Ed. Code, § 44939.)

The Statement of Charges also alleged cause exists to immediately suspend Loperena without pay based on immoral conduct. (§ 44939, subd. (b).) Loperena timely filed a Request for Hearing. On October 2, 2024, Loperena also filed a Notice of Motion and Motion for Immediate Reversal of Suspension (Motion) pursuant to section 44939, subdivision (c), alleging that the Statement of Charges does not set forth a sufficient basis for immediate unpaid suspension because the allegations therein do not rise to the level of immoral conduct. The District filed its Opposition to

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

the Motion on October 22, 2024. Loperena filed a reply to the Opposition on October 30, 2024.

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 between August 2022 and May 2023. The allegations can be divided into two broad categories: having inappropriate physical contact with female students; and making inappropriate or insensitive remarks to students.

Examples of the first include Loperena: (1) having female students use an iPad to log laps they ran while he was seated with the iPad between his legs against his genitals; (2) sitting in front of female students with his legs spread open while they did

pushups; (3) holding the arms of a female student while she used an exercise machine; (4) placing his hands on the waist of a female student during a volleyball lesson; (5) touching a female student's shoulder and lower back and moving his hand down her arms; (6) placing his hand on a female student's shoulder while telling her he loved her; and (7) repeatedly poking a female student in the stomach while speaking with her.

Examples of the second include Loperena: (1) telling students that overweight people cannot run; (2) telling students to run so they will "have a summer body"; (3) referring to female students as "my girls"; (4) telling female students they have "slutty mouths"; (5) complaining about people from Mexico coming to the United States and taking American jobs, and saying that they should go back to their own country; (6) telling a student she should go back to the kitchen and that she was not worth going to P.E.; and (7) referring to himself as "daddy" in front of his students.

The District contends that immediate suspension without pay is warranted because Loperena'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 4, 2024

Matthew Block

MATTHEW S. BLOCK

Administrative Law Judge

Office of Administrative Hearings