

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

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

**TUSHANA HOWARD, Moving Party**

**A Permanent Certificated Employee**

**and**

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

**OAH No. 2020010149**

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

Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Los Angeles, California on January 24, 2020.

Tamra Smith, Attorney at Law, represented moving party Tushana Howard (Respondent or Howard).

Susan Hyman, Assistant General Counsel II, represented responding party Los Angeles Unified School District (LAUSD or District).

## **BACKGROUND**

The District's Statement of Charges (SOC) against Respondent alleges that: during the 2018-19 school year, while employed as a Counselor at Narbonne High School (Narbonne), Howard changed a student's class schedule and grades without the knowledge of administrators or the student's teachers. The SOC alleges that Respondent abused her position to benefit student John Doe, a Narbonne football player. Respondent's intervention substantially raised the student's grade point average so that he was academically eligible to play in Narbonne's varsity football program. Respondent's actions in changing two of John Doe's classes well into the term without authorization also resulted in a substantial improvement in his grades. Respondent's intent was to elevate the student's academic standing so that he could play football at Narbonne. Respondent's conduct tainted Narbonne's football program by ensuring the participation of a student athlete who, but for her intervention, was academically ineligible, and it violated numerous District policies.

The District issued discipline, including a Notice of Unsatisfactory Act and a Notice of Suspension. On December 3, 2019, the District's Board of Education (Board) determined that Howard had committed immoral conduct, justifying her immediate suspension and dismissal.

The SOC contains several grounds for dismissal, as follows: (1) immoral conduct, (2) dishonesty, (3) evident unfitness for service, and (4) 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 of Education or by the governing board of the school district employing her. (Ed. Code §§ 44932, 44939.)

The District served Howard with a Notice of Immediate Unpaid Suspension, pursuant to Education Code section 44939, for immoral conduct. Howard demanded a hearing on the dismissal and filed a motion for immediate reversal of the suspension (MIRS) under Education Code section 44939, subdivision (c)(1). The District filed opposition to the motion, and counsel for both parties presented oral argument at the motion hearing.

## **Respondent's Contentions**

Howard asserts that the facts as alleged in the SOC, even if true, are insufficient to constitute a basis for immediate suspension without pay. Howard argues that there are no facts in the SOC which, if true, demonstrate that she acted fraudulently or immorally, rather than negligently or by mistake. She asserts that allegations that she changed a student's class schedule do not, standing alone, raise an inference of fraud or immoral conduct, even if the alleged changes were not conducted strictly according to policy. Howard contends that there might be various explanations other than fraud and immoral conduct for a counselor to change a student's grades, suggesting that the counselor might be attempting to correct a mistake, or might mistakenly believe she had authority or permission to make the changes.

Howard asserts that there are no factual allegations indicating that she knew the schedule and grade changes were unauthorized and/or against policy. Further, Howard argues that there are no facts suggesting that she acted with a motive to deceive or defraud, or reaped any personal benefit from the alleged schedule and grade changes. Howard contends that equally plausible inferences from the well-pleaded facts are that she negligently failed to follow proper protocol and/or was mistaken about whether she had permission to make the alleged changes.

## The District's Contentions

The District asserts that its SOC alleges sufficient facts constituting immoral conduct as cause for dismissal and immediate suspension, pursuant to Education Code section 44939. The District contends that the SOC is not required to specify all of the details surrounding, and evidence supporting, the charges asserted therein. As supported by case law and statutory authority, the SOC need only provide the employee with sufficient notice to the end that the Respondent will be able to prepare a defense. (Gov. Code, § 11503, subd. (a); Ed. Code, § 44934; *Wright v. Munro* (1956) 144 Cal. App. 2d 843, 848.)

The District contends that it need not plead Howard's intent to establish that she acted deliberately or willfully. It argues that this notion not only contradicts the MIRS standard by requiring the District to present evidence outside of the pleadings to establish intent, but also contradicts established precedent regarding pleading requirements. The District contends that a detailed showing of affirmative intent is not required in any pleading, even at the highest level of our judicial system.

The United States Supreme Court has articulated the pleading standard in a demurrer, even when the allegations include discrimination. In *Ashcroft v. Iqbal* (2009) 556 U.S. 662, 697 [129 S.Ct. 1937], the U.S. Supreme Court upheld its previous ruling that a plaintiff alleging discrimination must plead "enough facts to state a claim for relief that is plausible on its face." It must only provide allegations describing a reasonable inference of discriminatory motivation, or intent.

The District argues that immoral conduct has been sufficiently plead in the SOC. The actions alleged offend community notions of fair play in both academics and sports. The SOC alleges facts which would establish that Respondent engaged in

willful, flagrant and shameless conduct showing moral indifference to the opinions of respectable members of the community. Additionally, in *Board of Education v. Weiland* (1960) 179 Cal. App. 2d 808, 809, the seminal case that defines immoral conduct in a teacher dismissal case, the court drew a parallel from the definition of "moral turpitude" to state that immoral conduct in the teacher dismissal process could be synonymous with "dishonesty." Stripped to its essence, the SOC alleges that Respondent was dishonest. Respondent's argument that the District should be required to plead and prove "fraud" is not well-taken. There is no cause for dismissal for "fraud" under the Education Code; rather, there is cause for "immoral conduct."

Respondent's argument that her actions (changing a student's class schedule and grades without the knowledge of administrators or the student's teachers) may have been based on mistake or miscommunication are not persuasive. The charges allege that the grade changes violated numerous District policies. As a veteran counselor with the District, Respondent is imputed to have knowledge of District policies regarding changing a student's grades or class schedule.

## **LEGAL STANDARDS**

A school district may immediately suspend a permanent certificated employee 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 advocating communism. (Ed. Code, § 44939, subd. (b).) 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.)

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* at 811, quoting *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740 and *Palo Verde Unified School District of Riverside v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

The conduct alleged is immoral conduct as it is willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community and constitutes an inconsiderate attitude toward good order and the public welfare.

Accordingly, Howard failed to establish good cause to reverse the immediate suspension.

## ORDER

The motion for immediate reversal of suspension is denied.

DATE: February 10, 2020

DocuSigned by:  
*Laurie Pearlman*  
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LAURIE R. PEARLMAN

Administrative Law Judge

Office of Administrative Hearings