

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

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

TAT YAN, Moving Party

v.

NATOMAS UNIFIED SCHOOL DISTRICT, Responding Party

OAH No. 2024050627

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

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard oral argument on this matter by Zoom videoconference on June 7, 2024.

Matthew Chevedden, Attorney at Law, Langenkamp, Curtis, Price, Lindstrom, & Chevedden, L.L.P., represented Tat Yan, the moving party.

Roman J. Muñoz, Attorney at Law, Lozano Smith, represented the Natomas Unified School District.

The matter was submitted for decision on June 7, 2024.

On or about April 17, 2024, the district's Assistant Superintendent of Human Resources signed a Statement of Charges seeking the immediate suspension without pay and dismissal of Mr. Yan, a permanent certificated employee. The statement of charges alleges the following causes for dismissal: immoral conduct; evident unfitness for service; dishonesty; and persistent violation of or refusal to obey state school laws or regulations prescribed by the district's governing board. (Ed. Code, §§ 44939 and 44932, subd. (a)(1), (a)(4), (a)(6) & (a)(8).)¹ The district also alleges cause to immediately suspend Mr. Yan without pay based on the immoral conduct allegations. (§§ 44934 and 44939.)

On May 16, 2024, Mr. Yan filed his Motion for Immediate Reversal of Suspension with OAH, pursuant to Section 44932, subdivision (c)(1). Mr. Yan makes multiple arguments that his alleged behavior set forth in the Statement of Charges does not constitute immoral conduct, including giving a gift to Student A, viewing a TikTok video of Student A and commenting on it, discussing his life outside of school with Student A, comments to Student A about his feelings, and touching Student A's tattoo. Mr. Yan further argues that the allegations regarding his behavior do not constitute grooming as alleged or arise to immoral conduct.

The district filed an opposition to the motion on May 28, 2024, arguing it has sufficiently pled allegations, that if true, support suspension without pay for immoral conduct because Mr. Yan's behavior as alleged constitutes immoral conduct. Specifically, the district argues that Mr. Yan's behavior constitutes immoral conduct, including: communicating with Student A about non-school and personal matters

¹ All further statutory references are to the Education Code.

while alone with her and such that other students were concerned for Student A; gifting Student A jewelry while he was alone with Student A; discussing his marital relationship and status with Student A; viewing Student A's TikTok profile and commenting that he liked the dancing; touching and tracing Student A's tattoo on Student A's arm making her uncomfortable; admitting that he did not know where the relationship between himself and Student A would have gone if the district had not intervened; admitting to fighting his feelings for Student A and being concerned with the direction of the relationship; shaving his head to make himself look ugly to Student A; and admitting that he shouldn't have feelings for Student A but those feelings developed and boundaries were crossed. The district further argued that immoral conduct is broadly defined and taken altogether, the alleged conduct of Mr. Yan constitutes immoral conduct.

On June 4, 2024, Mr. Yan filed a reply brief arguing that the district's allegations do not meet the definition of sexual grooming it relies upon, and the district is intending to punish Mr. Yan for future potential harm rather than his actual conduct. Specifically, Mr. Yan asserts that sexual grooming requires two parts, namely (1) befriending to gain trust, and (2) enabling them to get the child to acquiesce to abusive activity. Mr. Yan argues that while the district has alleged the first portion of the definition, it has failed to allege the second portion because it failed to identify any abusive activity has occurred and if the child has acquiesced to it. Instead, the district has only alleged "possible future harm."

Section 44939, subdivision (b), authorizes the district to suspend an employee without pay pending the outcome of the hearing based on immoral conduct. Subdivision (c)(1), allows the employee to file a motion for relief from the suspension and requires review of this motion to 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."

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.)

Immoral conduct alone cannot serve as a basis to terminate a teacher unless the conduct indicates the teacher is also unfit to teach. (*Palo Verde, supra*, at p. 972.) 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." (*Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820, 824.)

In *Crawford v. Comm. on Professional Competence* (2020) 53 Cal.App.5th 339, 337, the court rejected Ms. Crawford's contention that there are three fixed categories of conduct that constitute "immoral conduct" as a matter of law. Instead, the court held the term "immoral conduct" in Section 44932, "stretch[es] over so wide a range" of conduct that it "embrace[s] an unlimited area of conduct." (*Ibid.*, citing *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 224-225.) Citing *Morrison, supra*, at p. 224, the court added, 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.*'" [citations] (*Crawford*, at p. 337 [italics in original].) "A teacher's conduct is therefore "immoral" under section 44932, subdivision (a)(1), when it negatively affects the school community in a way that demonstrates the teacher is 'unfit to teach.'" (*Ibid.* [footnote omitted].) The court then addressed Ms. Crawford's argument that the term should be given a colloquial interpretation that includes only conduct that would be deemed "immoral" in an everyday sense, such as criminal activity and using profanity or racial epithets. (*Id.* at p. 338.) The court wrote,

We disagree. Immoral conduct "stretch[es] over so wide a range that [it] embrace[s] an unlimited area of conduct."
([*Morrison, supra*, at pp. 224-225].) Thus, "the proper criteria is fitness to teach" because the term "immoral conduct" is "so broad and vague" that it is "constitutionally infirm."
([citation].)

(*Ibid.*)

The parties' written submissions and oral arguments having been considered, the district alleged sufficient facts in the Statement of Charges that, if true, could

constitute immoral conduct and support immediate suspension under section 44939, subdivision (b).

The motion for immediate reversal of suspension is DENIED.

DATE: June 10, 2024

Debra D. Nye-Perkins

DEBRA D. NYE-PERKINS

Administrative Law Judge

Office of Administrative Hearings