

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

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

**PATRICIA WALLACE,**

**A Permanent Certificated Employee,**

**Moving Party,**

**and**

**LOS ANGELES UNIFIED SCHOOL DISTRICT,**

**Responding Party.**

**OAH No. 2020030306**

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Los Angeles, California on March 27, 2020.

Joshua Adams, Esq., Gilbert & Sackman, represented moving party Patricia Wallace (Teacher).

Michael Voigt, Assistant General Counsel, represented responding party Los Angeles Unified School District (District).

On February 5, 2020, District notified Teacher of its intent to suspend her immediately without pay and thereafter dismiss her from her assignment as a special education teacher pursuant to Education Code<sup>1</sup> section 44932. Teacher moved for immediate reversal of the suspension pursuant to section 44939, subdivision (c)(1). In support of her motion, Teacher also filed a Request for Judicial Notice of a decision by an OAH administrative law judge on a motion for immediate reversal of suspension in another case, a copy of Assembly Bill No. 449, and the Assembly Floor Analysis for Assembly Bill No. 449. District filed an opposition to Teacher's motion as well as to Teacher's Request for Judicial Notice.

Counsel for both parties presented oral argument at the motion hearing. At hearing, the parties agreed that the Statement of Charges (Statement) filed in *In the Matter of the Accusation Against Patricia Wallace*, OAH No. 202030448, is the operative pleading for this proceeding.

Teacher's Request for Judicial Notice is denied. The prior decision concerns a different teacher and is therefore not relevant to this matter. Assembly Bill No. 449 has no bearing on the issues raised in this proceeding. (*San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 231 [only relevant evidence is admissible by judicial notice].)

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<sup>1</sup> Unless otherwise stated, all further statutory references are to the Education Code.

## **BACKGROUND**

During the relevant period, Teacher was employed as a special education teacher instructing middle school students. Pursuant to section 44939, subsection (b), District immediately suspended Teacher from her duties upon its filing of the Statement, charging Teacher with immoral conduct, including but not limited to, egregious conduct, in violation of sections 44932, subdivision (a)(1), and 44939; unprofessional conduct in violation of section 44932, subdivision (a)(2); unsatisfactory performance in violation of section 44932, subdivision (a)(5); evident unfitness for service in violation of section 44932, subdivision (a)(6); persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the governance of the public schools by the State Board of Education or by the governing board of the District in violation of section 44932, subdivision (a)(8); and willful refusal to perform regular assignments without reasonable cause, as prescribed by District's reasonable rules and regulations, in violation of section 44939.

In support of its charges, District alleges in the Statement Teacher engaged in the following misconduct between October 19, 2016, and March 15, 2019: failing to supervise her students appropriately; failing to provide her students with appropriate instruction, implement classroom procedures and routines to support student learning, and design purposeful instructional groups; using profane and inappropriate language toward and in the presence of her students, including calling them "cunts," "retarded," "idiots," "fat ass," "dumb ass," and other vulgar and derogatory terms; frequently yelling at her students; prohibiting her students from leaving their seats to get a facial tissue; making a student stand in the hall for almost an entire class period and then preventing him from getting to his next class; lacking lesson plans and standards for two of her class periods; failing to turn in lesson plans on at least eight occasions;

striking two students on the arm or hand and grabbing, pushing and poking other students when physically maneuvering them around the room; throwing her phone at a student; throwing a rubber stamp at a student; and engaging in retaliatory behavior against a student who had reported Teacher's misconduct. District further alleges Teacher willfully committed these acts in violation of District regulations, policies, and directives.

District contends that the foregoing alleged actions warrant Teacher's immediate suspension without pay because they constitute immoral conduct and a willful refusal to perform regular assignments without reasonable cause. Teacher contends District failed to plead sufficient facts to establish either immoral conduct or willful refusal. Teacher further contends the actions complained of reflect at most unprofessional conduct or unsatisfactory performance, neither of which warrant immediate suspension.

## **LEGAL STANDARDS**

A school district may immediately suspend without pay a permanent certificated employee 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 a violation of section 51530 (advocating communism with intent to indoctrinate). (Ed. Code, § 44939, subd. (b).) A suspended employee may file a motion for immediate reversal of the suspension with OAH. (Ed. Code, § 44939, subd. (c)(1).)

An administrative law judge's review of the suspended employee's motion is "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." (Ed. Code, § 44939, subd. (c)(1).) 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 (Blank).) Conclusory characterizations of conduct as intentional, willful, or fraudulent are "patently insufficient." (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.) Where reading the allegations reveals the existence of an affirmative defense, the complaining party must plead around the defense by alleging specific facts that would avoid the apparent defense. (*Blank, supra*, 39 Cal.3d at p. 318.)

## **DISCUSSION**

### **Immediate Suspension Based on Immoral Conduct**

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 wil[l]ful, 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 Ed. of San Francisco Unified School Dist. v. Weiland* (*Weiland*) (1960) 179 Cal.App.2d 808, 811, quoting *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740.)

According to *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 224 (*Morrison*), immoral conduct "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. [] In providing standards to guide school boards in placing restraints on conduct of teachers, the Legislature is concerned with the welfare of the school community. Its objective is the protection of students from corruption." In *School Dist. of Ft. Smith v. Maury* (1890) 53 Ark. 471, quoted in *Morrison*, the court cautioned, 'We do not mean to say that every act of immorality would be a breach of the contract to justify its termination, but it would be such whenever, from the character or notoriety of the act, it impaired the services of the teacher in properly instructing or advancing the pupils." (*Morrison, supra*, 1 Cal.3d at p. 224, fn. 14.)

A teacher calling a middle school student "cunt," "fat ass," "stupid," "retarded" or "dumbass" is a serious breach of and disrespect for the norms mediating a teacher's interaction with students entrusted in her care. (Statement, ¶¶ 9, 12, 68, 70, 76) Teacher's use of such epithets and insults is not only demeaning and insensitive, it also poses a risk of harm to her students' moral and mental welfare. (See *Palo Verde etc. Sch. Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 973 (*Hensey*) [deeming use of vulgar language in junior college classroom did not constitute immoral conduct while recognizing that use of same language in an elementary school classroom warrants "more careful" scrutiny].) Likewise, Teacher's conduct laughing at students who are struggling, calling a student a "snitch" for reporting Teacher's misconduct, and refusing to allow a child to use a restroom (Statement, ¶¶ 52, 79-81) are indicative of her hostile attitude to and flagrant disrespect for the school community.

Contrary to Teacher's claim, the absence of any allegations regarding criminal charges or prurient behavior is not dispositive of any determination of whether the facts as alleged in the Statement, if true, are sufficient to constitute a basis for

immediate suspension. (See *Hensey, supra*, 9 Cal.App.3d at p. 974 [finding that licking the wall in a vulgar manner constitutes immoral conduct].) What is important is the nature of Teacher's conduct towards her students and the effect of such conduct on her students and the educational community. Here, Teacher's conduct is demonstrative of an unacceptable contempt for and animus toward students' wellbeing. As noted in *Board of Education of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 552–554 (*Swan*):

A teacher . . . in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the children coming under . . . [the teacher's] care and protection. (Citation.) In this connection the following language used in *Johnson v. Taft School Dist.* [1937] 19 Cal.App.2d 405, at page 408[,] is pertinent: 'A board of education is entrusted with the conduct of the schools under its jurisdiction, their standards of education, and the moral, mental and physical welfare of the pupils during school hours. An important part of the education of any child is the instilling of a proper respect for authority and obedience to necessary discipline. Lessons are learned from example as well as from precept. . . .'"

In this matter, Teacher repeatedly directed derogatory and profane language toward her students and engaged in offensive conduct with the intent of embarrassing and shaming her students. This conduct is contrary to any lesson or societal norm the public expects a school district to impart to its students. Teacher's alleged acts are inherently "indicative of corruption, indecency, depravity, [or] dissoluteness" and

reflect Teacher's "moral indifference" to community standards. (See *Weiland, supra*, 179 Cal.App.2d at p. 811.) Accordingly, the pleaded facts in the Statement, if true, are sufficient to sustain Teacher's immediate suspension based on immoral conduct.

### **Immediate Suspension Based on Willful Misconduct**

"The wilful refusal of a teacher to obey the reasonable rules and regulations of the employing board of education is insubordination." (*Swan, supra*, 41 Cal.2d at p. 551 [teacher refused to report for teaching assignments when directed to do so]; see also *Wilbur v. Office of City Clerk of City of Los Angeles* (1956) 143 Cal.App.2d 636, 642 (*Wilbur*) [employee's refusal to perform specific assignment and work for assigned supervisor despite orders to do so demonstrated a "wil[l]ful refusal to obey the reasonable orders of an employer"].)) The term "willful" carries a volitional determination that excludes the notion of accidental or even negligent conduct. (*Coomes v. State Personnel Bd.* (1963) 215 Cal.App.2d 770, 775 (*Coomes*).) "Wil[l]ful disobedience connotes a specific violation of command or prohibition." (*Peters v. Mitchell* (1963) 222 Cal.App.2d 852, 862 [no finding of willful disobedience in the absence of a specific order].) Willfulness requires that "one intentionally fails or refuses to perform an act which is required to be done." (*Goodhew v. Industrial Acc. Commission* (1958) 157 Cal.App.2d 252, 257 [finding employer's unlawful refusal to pay employee taxes willful despite absence of an evil intent because employer intentionally did not pay its employees' taxes].)

District alleges that Teacher violated directives regarding supervision of her classroom, instructional assignments, discipline strategies, the use of appropriate language, treating students with respect, and maintaining professionalism. District further alleges that Teacher failed to comply with oral directives provided at various conferences with her school principal directing her to post an Agenda regarding daily



lesson objectives, submit complete weekly standards-based lesson plans, adhere to certain instructional procedures, and comply with District administrative directives.

However, Teacher's alleged repeated failure to comply with District's directives and instructions from her principal does not necessarily constitute a willful refusal to do so without reasonable cause. While Teacher's alleged continued failure to comply with District regulations and directives may be characterized as a persistent violation or reflect a refusal to comply under section 44932, subdivision (a)(8), her conduct cannot automatically be inferred as willful as required under section 44939, subdivision (b). The threshold for immediate suspension as set forth in section 44939, subdivision (b), is higher than the threshold for dismissal set forth in section 44932, subdivision (a)(8). Thus, a teacher cannot be immediately suspended for persistent violation of school regulations and laws or for the mere refusal to comply with those regulations and laws.

Teacher's failure to comply with District regulations could be attributable to negligence, inability to perform, or accident, not necessarily intentionality. The Statement, therefore, does not by itself provide enough facts to demonstrate a "volitional coloration" to Teacher's behavior consistent with a willful refusal to perform her regular assignments. (*Coomes, supra*, 215 Cal.App.2d at p. 775.) Accordingly, the pleaded facts in the Statement, if true, are not sufficient to sustain Teacher's immediate suspension based on a willful refusal to comply with her regular assignments without reasonable cause.

## **Disposition**

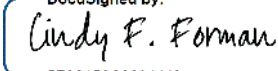
All arguments made by counsel in their briefs and at oral argument have been considered. The facts as alleged in the Statement, if true, are sufficient to support a

claim against Teacher for immoral conduct and therefore constitute a basis for immediate suspension without pay under section 44939, subdivision (c)(1).

## **ORDER**

The motion by Patricia Wallace for immediate reversal of her suspension without pay is denied.

DATE: April 10, 2020

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CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings