

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

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

LEE SVOBODA, a Permanent Certificated Employee,

Moving Party,

and

CONEJO VALLEY UNIFIED SCHOOL DISTRICT,

Responding Party.

OAH No. 2024040038

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

Cindy F. Forman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on April 10, 2024.

Daniel J. Kolodziej, Esq., represented moving party Lee Svoboda (Teacher).

Ellen C. Wu, Esq., represented responding party Conejo Valley Unified School District (District).

On February 8, 2024, the District served Teacher with a Notice of Intention to Dismiss and Immediate Suspension Without Pay (Notice) along with a Statement of Charges. The Notice informed Teacher of his immediate suspension without pay, effective February 8, 2024, pursuant to Education Code (Code) section 44939. On March 8, 2024, Teacher served a Request for Hearing and Notice of Defense and also moved for immediate reversal of the suspension under Code section 44939, subdivision (c)(1).

Counsel for both parties presented oral arguments at the motion hearing. The parties did not dispute that the Statement of Charges, attached as Exhibit 1 to Teacher's Motion, is the operative pleading for this proceeding.

Motion for Immediate Reversal of Suspension

A school district may immediately suspend without pay a permanent certificated employee charged with immoral conduct. (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 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." (Ed. Code, § 44939, subd. (c)(1).)

Although the administrative law judge must accept well-pleaded facts in the statement of charges 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.)

Statement of Charges

During the relevant period, Teacher was employed by the District as an art teacher at Conejo Valley High School. The Statement of Charges alleges Teacher engaged in immoral conduct in violation of Code sections 44932, subdivision (a)(1), and 44939, persistently violated or refused to obey school laws and regulations in violation of Code section 44932, subdivision (a)(8), and his unfitness to teach is evident under Code section 44932, subdivision (a)(6).

In support of its charge of immoral conduct, District makes at least 30 factual allegations about Teacher's conduct starting in the 2019 to 2020 school year through the 2022 to 2023 school year. Teacher's alleged immoral conduct falls within four categories. The first category involves charges Teacher made inappropriate, derogatory, immoral, unprofessional and/or improper actions and statements including referring to several students as "Jew #1" and "Jew #2"; telling a student "Yo, I have a pair for your mom," or words to that effect, while pointing at his "privates"; licking a cookie in a "weird" way while looking at students; talking to students about setting up an "Only Cats" app, which appeared to refer to the "Only Fans" website, a platform allowing users to share sexually explicit content; regularly using profanity in class in the presence of students, including "fuck" and "bitch," tolerating his students' use of profanity, and playing music in class with profanity, including use of the "n" word; holding a flower and saying it smelled like marijuana, then passing it to his students to smell, and after one student said smelling the flower gave her a headache, calling her a "pussy" or words to that effect; referring to a District wellness counselor as a "bitch" or words to that effect; referring to the Principal of Alternative Education

as “annoying,” a “bitch,” and having “a stick up his ass” or words to that effect; speaking negatively about students from other classes; making fun of another teacher, saying the teacher “clutches” and “walks with a stick up his ass” or words to that effect, and demonstrating in front of the class how the teacher walked; ranking black students by the darkness of their skin; describing an individual of the LGBTQ+ community as a “fruitcake” or words to that effect; teasing a student about “pooping his pants” or words to that effect; telling a student to “check your bitch ass attitude” or words to that effect; and on March 11, 2020, sending an unspecified payment via Venmo to a student including a note stating “From Penis man” or words to that effect. (Statement of Charges, ¶ 2.)

The second category involves Teacher’s promotion and tolerance of sexually explicit images. Specifically, the District alleges in May 2023, student M.F. told Teacher the name of his motorcycle was “Smallz.” In response, Teacher said “Does that bike have a small wiener too, guy?” or words to that effect. Teacher then gave his class an assignment to design a logo including the word “Smallz” and an image of a penis, which the students completed. On May 31, 2023, Teacher texted M.F. with pictures the students prepared. Additionally, Teacher permitted students to prepare and display artwork in his classroom and on the classroom’s online platform depicting sexually explicit and pornographic images, gang symbols, the Playboy logo, images of weapons or depicting violence, and profane and defamatory language. (Statement of Charges, ¶ 3.)

The third category involves Teacher requesting food and favors from his students. The Statement of Charges alleges Teacher told at least one student he would receive five credits if he brought Teacher food and further alleges other students sent money to Teacher via Venmo with notes stating, “5 credits,” “98%” or “100%” or words

to that effect. Teacher is also alleged to have asked several students for benefits from their jobs and specifically requested a student to get him discounted tires for his vehicle. After the student provided Teacher with the tires, the student texted Teacher telling him he was owed "5 credits and one penis painting." The student also told Teacher when picking up the tires he was to tell the "faggot at the front" that Teacher was the student's uncle. Teacher did not address the student's offensive slur or the deceit of pretending to be his uncle. Teacher then texted the student to come over because his "Aunt Jenny wants to make her famous sausage cream pie . . . extra thick this time!!" to which the student responded, "Oh that's awesome not too thick now." (Statement of Charges, ¶ 4.)

The fourth category involves Teacher's references to marijuana in the classroom. The Statement of Charges alleges during the 2022 to 2023 school year, Teacher repeatedly talked about marijuana during class with his students. Specifically, he told his class, that "he smokes marijuana every day" or words to that effect, and on at least one occasion told a student he "can get them weed" or words to that effect. Students also smoked marijuana in Teacher's side room during the 2020 to 2021 school year without Teacher preventing such conduct from happening. (Statement of Charges, ¶ 5.)

The District contends the foregoing conduct warrants Teacher's immediate dismissal without pay. Teacher contends the District failed to plead sufficient facts to support a charge for immoral conduct. Teacher also acknowledges his conduct might have been inappropriate but asserts the conduct was not immoral because he was never arrested or jailed for the alleged conduct, never caused serious or lasting trauma or discomfort to any student, and never intended to do harm or seek personal gratification from his conduct. Additionally, Teacher contends the District's claims of immoral conduct are conclusory and the District failed to provide any context of the

alleged incidents to give the appearance of having satisfied the requisite pleading standard.

Immoral Conduct

Immoral conduct has been defined as 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.) Because of the breadth of its definition, 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.'" (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 224, citation omitted.) Additionally, when assessing immoral conduct, "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'" must be taken into account. (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466.)

Analysis

Certain of the allegations of Teacher's misconduct in his actions towards students, if true, are sufficient to sustain Teacher's immediate suspension based on immoral conduct. Specifically, calling several students Jew #1 and Jew #2; ranking

black students by the color of their skin; mocking the physical attributes of another teacher in front of the class; seeking favors and discounts from students while cultivating at least a belief that providing such items would improve students' grades; making a sexual joke about a student's mother; and discussing Teacher's daily use of marijuana with students and his ability to access marijuana for his students are offensive, indecent, and depraved acts that show flagrant or shameless indifference to community standards and/or are hostile to the students in Teacher's classroom. (Statement of Charges, ¶¶ 2, subds. (a), (b), (j), (k); 4, subds. (a)–(g); 5, subd. (a).)

Contrary to Teacher's contention, the absence of any allegations in the Statement of Charges that Teacher's conduct was criminal or caused actual physical harm is not dispositive of any determination of whether the facts as alleged in the Statement of Charges, if true, are sufficient to constitute a basis for immediate suspension. (*Palo Verde etc. Sch. Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 974 [finding that licking a classroom wall in a vulgar manner constitutes immoral conduct].) Nor are Teacher's claims that the alleged conduct was unintentional or simply a product of bad judgment persuasive. Immoral conduct and bad judgment are not mutually exclusive, and immoral conduct as defined by *Weiland* does not require ill intent.

While some of the facts pleaded in the Statement of Charges may not by themselves be enough to support an immoral conduct charge, certain of the pleaded facts, as noted above, if true, are sufficient to support the charge. These factual allegations therefore constitute a basis for immediate suspension without pay under Code section 44939, subdivision (c)(1). Accordingly, the Motion for Immediate Reversal of Suspension is denied.

ORDER

The motion by Lee Svoboda for immediate reversal of his suspension without pay is denied.

DATE: 04/24/2024

A handwritten signature in black ink, appearing to read 'Cindy F. Forman', with a stylized, flowing script.

CINDY F. FORMAN

Administrative Law Judge

Office of Administrative Hearings