

**BEFORE THE
COMMISSION ON PROFESSIONAL COMEPTENCE
FOR THE SONOMA VALLEY UNIFIED SCHOOL DISTRICT**

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

GARY GISSELL

OAH No. 2020020458

**ORDER DENYING RESPONDENT'S MOTION FOR IMMEDIATE
REVERSAL OF SUSPENSION**

Administrative Law Judge (ALJ) Kimberly J. Belvedere, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on March 13, 2020.

Sarah Sandford-Smith, Attorney at Law, Beeson, Tayor & Bodine, APC, represented respondent Gary Gissell.

Roman Muñoz, Attorney at Law, Dannis, Wolliver, Kelly, APC, represented the Sonoma Valley Unified School District (District).

On January 7, 2020, the Board of Trustees for the District approved a resolution affirming a Statement of Charges against respondent and placing respondent on immediate unpaid suspension, effective January 13, 2020. The suspension is based on: immoral conduct; 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 or her; and evident unfitness for service, in violation of Education Code sections 44932, subdivisions (a)(1), (a)(6), and (a)(8), and 44939.

Respondent timely filed a Motion for Immediate Reversal of Suspension (motion) with OAH, pursuant to Education Code section 44939, subdivision (c)(1). The District opposed the motion. The parties each filed pleadings in support of their position, which were read and considered, along with points raised in oral argument.

Education Code section 44939, subdivision (b), provides that a school district may immediately suspend a permanent certificated employee who has been charged with immoral conduct and willful refusal to perform regular assignments without reasonable cause. Education Code section 44939, subdivision (c)(1), allows a suspended employee to file a motion for review of the suspension, and review of that 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." Although well-pleaded facts must be accepted as true for purposes of this motion, the ALJ need not accept "contentions, deductions or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

FACTS ALLEGED IN STATEMENT OF CHARGES

The allegations in the Statement of Charges are based on the following: In February 2019, while respondent was working at Sonoma Valley High School, another teacher, Bernadette Weissmann, filed a "complaint" against respondent. Following an independent investigation, it was determined that respondent "subjected Ms.

Weissmann to unwanted physical contact and threats of unwanted physical contact with the intention of physically intimidating and/or threatening her while on school grounds." Respondent's conduct included verbal abuse, moving into her line of travel, forcing her into walls and door jambs, and attempting to hit Ms. Weissmann with the door to the staff room. Respondent transferred out of the school.

The Statement of Charges further states: On August 16, 2019, respondent sent an e-mail to his former coworkers at Sonoma Valley High School that "harassed and defamed" Ms. Weissmann, as follows: 1) respondent wrote that he asked the District to either move or fire Ms. Weissmann because of her harassment towards him; 2) the district refused to do what respondent wanted so he requested a transfer to his current assignment at another school; 3) the district still has the problem but he has "washed his hands" of it; and 4) it would not be right for him to be angry at someone with "such a condition" so he was back to his "happy self" now. The District alleged that the fourth point respondent made in his e-mail constituted an improper statement implying that Ms. Weissmann suffers from a mental or physical condition and such a statement is intended to defame Ms. Weissmann in the eyes of other staff members. Because of those statements, the District alleged that the independent investigator hired to investigate respondent's e-mail concluded that respondent's e-mail defaming Ms. Weissmann violated the District's retaliation policies.

Finally, the district alleged a December 6, 2018, incident involving a student where the student claimed to have been bullied, harassed, and intimidated, but did not specify how the student was bullied, harassed and intimidated.

DISCUSSION

To support the allegations for “persistent refusal to obey” in violation of Education Code section 44932, subdivision (a)(8), the Statement of Charges contains only a paragraph incorporating the conduct specified above. The Statement of Charges then lists various board policy sections respondent is alleged to have violated by engaging in that conduct.

Under Education Code section 44932, subdivision (a)(8), while a teacher’s persistent violation of a school district’s reasonable regulations is grounds for discipline, it is not an authorized basis for unpaid suspension. Rather, unpaid suspension is authorized only for a *willful* refusal to perform regular assignments pursuant to section 44939, subdivision (b). The facts, on their face when taken as true, do not establish that respondent *willfully* refused to perform regular assignments without reasonable cause. Indeed, the term “willful” is not even mentioned anywhere in the Statement of Charges. Accordingly, the motion would be granted if the violation of Education Code section 44932, subdivision (a)(8), were the only charge at issue.

However, there is also the other charge of immoral conduct, under Education Code section 44932, subdivision (a)(1). 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,

indecent, 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.)

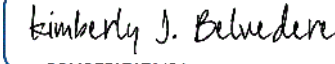
Although the District did not plead sufficient facts to establish immoral conduct with respect to August 26, 2019, e-mail and December 6, 2019, incident involving a student, the District did plead sufficient facts with respect to the alleged unwanted physical contact and threats of unwanted physical contact towards Ms. Weissman "with the intention of physically intimidating and/or threatening her while on school grounds." The District further specified how that conduct occurred by pleading that respondent's conduct included "verbal abuse, moving into her line of travel, forcing her into walls and door jambs, and attempting to hit Ms. Weismann with the door to the staff room." These facts plead in the Statement of Charges, when taken as true, establish immoral conduct and provide a basis for denial of respondent's motion.

Respondent finally argued in his motion that he was not afforded due process rights pursuant to *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 prior to being placed on unpaid leave. Respondent urged that the undersigned find that respondent should have been afforded his *Skelly* rights and grant the motion on that basis. Respondent's request to address this contention is denied. A motion for immediate reversal of suspension is limited to the issues specified in Education Code section 44939. Thus, there is no jurisdiction to make the requested finding.

ORDER

Good cause not having been established, respondent's motion for immediate reversal of suspension is denied.

DATE: March 18, 2020

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KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings