

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

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

**WILLIAM WINKLER,**

**Moving Party,**

**A Permanent Certificated Employee, and**

**SAN LORENZO VALLEY UNIFIED SCHOOL DISTRICT,**

**Responding Party.**

**OAH No. 2022050748**

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

Laurie R. Pearlman, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on June 17, 2022.

Joseph Cisneros, Attorney at Law, represented moving party William Winkler (Respondent). Respondent was not present.

Brian D. Bock, Attorney at Law, represented responding party San Lorenzo Valley Unified School District (District).

## **Background**

Respondent is a certificated, permanent employee of the District. For 36 years, Respondent taught Physical Science to high school students at San Lorenzo Valley High School.

The District placed Respondent on paid administrative leave in March 2021 after eight unknown or anonymous individuals posted stories on an Instagram site, accusing Respondent of raping or sexually assaulting them. On April 22, 2022, the District served a Statement of Charges on Respondent. It appears that the District placed Respondent on unpaid leave on an unspecified date.

Respondent timely filed a request for hearing, contesting his termination. A termination hearing will be conducted before a Commission on Professional Competence.

Respondent timely filed a Motion for Immediate Reversal of Suspension (Motion). The District filed its opposition to the Motion, and Respondent filed a reply in support of the Motion. Oral argument was heard on June 17, 2022, and the matter was submitted on that date.

## **Statement of Charges**

The suspension and intent to terminate are premised on a long, unpaginated Statement of Charges, with 13 exhibits which are incorporated by reference. In the Statement of Charges, the District alleges that Respondent engaged in behavior constituting immoral conduct, unprofessional conduct, unsatisfactory performance,

and evident unfitness for service., under Education Code section 44932, subdivisions (a)(1), (2), (5) and (6). The District placed Respondent on immediate suspension without pay based upon the immoral conduct charges only.

### **PRE-2017 CONDUCT**

The pre-2017 allegations are contained in a section titled "Relevant Background." A portion of the allegations relate to alleged conduct by Respondent in 2011 and 2012. Since this conduct occurred more than four years ago, they cannot be grounds for dismissal. (See *Atwater vs. Elementary (Truitt)* (2004) 116, Cal.App.4th 844; Education Code § 44944, subd. (a).)

### **FAILURE TO EXERCISE GOOD JUDGMENT OR MAINTAIN PROFESSIONAL BOUNDARIES**

The operative allegations in the Statement of Charges are labeled as "Specific Acts and Omissions." Paragraphs 12 through 24 set forth multiple instances of alleged unprofessional conduct; unsatisfactory performance; and evident unfitness for service. As examples, in 2019, Respondent allegedly took a student's paper, crumpled it up, threw it across the room and then closed the student's computer in a forceful manner. In 2020, Respondent allegedly called a student a "terrorist" three times after the student blurted out answers without being called upon.

The District asserts that such allegations establish that Respondent failed to exercise good judgment in the performance of his duties as a teacher and failed to maintain appropriate professional boundaries with multiple students while acting within the scope of his employment.

## **IMMORAL CONDUCT ALLEGATIONS**

The immoral conduct allegations are set forth in paragraphs four through 11. Each is based on unsubstantiated and/or anonymous Instagram posts in March 2021, asserting that Respondent raped or sexually assaulted students on school premises on multiple occasions and engaged in other inappropriate sexual conduct.

The founders of the "santacruzsurvivorsspeak" Instagram page purport to be alumni of San Lorenzo Valley High School who encourage current or former students of that school to share their stories of sexual abuse and assault. According to the Statement of Charges, there were at least 55 Instagram posts describing alleged sexual abuse and assault, naming multiple District teachers, coaches, and administrators. Seven posts on this Instagram site contained accusations of rape and other serious sexual misconduct by Respondent on school premises, none of which had been reported to law enforcement or the District.

## **INVESTIGATION BY THE DISTRICT**

In March 2021, the District hired Susan Liberati, Ed.D., a licensed private investigator, to conduct an investigation. Her investigation report (Report), dated January 31, 2022, is attached to the Statement of Charges as Exhibit 10 and is specifically incorporated into the Statement of Charges. Dr. Liberati compiled and reviewed numerous documents and conducted 15 interviews.

Dr. Liberati unsuccessfully attempted to identify and interview the seven witnesses who posted stories on that Instagram site about Respondent. She sought to locate the alleged victims through witness interviews and by searching class rosters, social media, and comments made on Instagram. Dr. Liberati opined that the seven posts on Instagram about Respondent were suspicious due to several factors.

Dr. Liberati states:

"Given the violent nature of allegations, including sexual assault, it is hard to fathom a teacher raped four students, and none reported to the school and/or the police. Anonymous student #2 noted that she went to the police station and 'obviously looked bad with blood all over me. They just shrugged it off.' To date, none of the individual(s) who posted on Instagram has come forward. However, the media has published several articles regarding the investigation, and as a result, many other witnesses have contacted the District and been interviewed. In addition, subjectively, the style of the prose within some of the stories is questionable; some do not sound like an authentic account of a high school victim." (Ex. 10, p. 16.)

Dr. Liberati concludes:

The absence of interviews of any alleged victims combined with the inability of the students who created the [Instagram site] to provide names of the students who posted the stories about Respondent makes it nearly impossible to thoroughly investigate the allegations. This, coupled with the allegations' dubious nature, leads the investigator to conclude that it is more likely than not that Mr. Winkler did not conduct himself with students as alleged via the seven posts on Instagram. Therefore, this allegation is NOT SUSTAINED. (Ex. 10, p. 19.)

Similarly, Dr. Liberati did not find evidence that Respondent sexually harassed one staff member and students as alleged; therefore, she concluded that this allegation is not substantiated.

On the other hand, Dr. Liberati did find that the preponderance of evidence suggests that it is more likely than not that Respondent repeatedly violated Board Policy by acting unprofessionally in the classroom and was negligent in his responsibility to ensure all students have the opportunity to learn. Therefore, she concluded that this allegation was substantiated.

### **The District's Contentions**

The District asserts that it sufficiently pled charges of Respondent's immoral conduct, thus authorizing Respondent's immediate unpaid suspension under Education Code section 44939. Accordingly, the District contends that the Motion should be denied.

The District alleges the following "stories on the santacruz survivors speak Instagram page" constitute grounds for immediate suspension without pay:

- a. B.G. alleged that approximately two to three years ago, you entered the restroom with the female student and touched her buttocks, proceeded to take your pants off, and attempted to sexually assault her. B.G. further detailed that she was able to kick you twice and run away. She also alleged that in the classroom, your eyes would "linger from her eyes to the rest of her body", making her uncomfortable.

b. G.E. alleged that over one year ago, the incident began when you squeezed her breasts and had her sit on your lap while you groped her breasts, and she did her homework. She then alleged you proceeded to violently sexually assault in the classroom. She also states that you took pictures of her naked after the sexual assault.

G.E. gives very graphic disturbing details of the sexual assault.

c. A.M. alleged that you masturbated during class and that she witnessed female students inappropriately sitting on your lap. She also stated that you would "touch and tickle" the female students in your classroom in a manner that was "too friendly."

d. Anonymous Student # 1 alleged that around 2016 or 2017, you would often complain about your marital problems to her and would ask for hugs from her. She also alleged that the two of you eventually started "making out" which eventually led to the two of you "hooking up" when you would drive her home from school. Anonymous Student # 1 also claims she now has a history of drug abuse and failed relationships due to these events.

e. Anonymous Student #2 alleged that two years ago, you sexually assaulted and brutally attacked her in your classroom, took pictures on your cell phone during the

attack, and chased her as she ran away from you after taking your phone.

f. Anonymous Student #3 alleged that you touched her on the shoulder and lower back and called her "sweetheart."

g. Anonymous Student #4 alleged that one year ago, you groped her on three occasions and eventually sexually assaulted her after class, which resulted in her becoming pregnant.

(Statement of Charges, para. 8.)

In paragraph 9, the District states, "The fact that your name was connected seven or more times to violent sexual assault stories, is not a matter that can be overlooked."

The District acknowledges that Respondent's suspension is based on "stories" posted on Instagram, by unknown individuals who could not be found, which its own investigator determined were not sustained. Notably, the District does not actually allege that Respondent engaged in this reprehensible conduct. Rather, it alleges in the Statement of Charges that "stories" were posted on Instagram claiming that he did so. The District asserts that although its investigator was not able to locate anyone to substantiate these "stories," discovery may help it determine what actually occurred.

## **Respondent's Contentions**

Respondent asserts that the Statement of Charges does not contain allegations which are sufficient to plead a cause of action for immoral conduct justifying



Respondent's immediate suspension without pay pending adjudication of those charges. Respondent asserts that the remaining well-pled charges, if true, may support a claim of unsatisfactory performance or unprofessional conduct, but they do not support a claim of immoral conduct and are not grounds for suspension without pay.

Respondent therefore requests that the Administrative Law Judge issue an order to immediately reverse the District's unpaid suspension and make him whole for any lost wages, benefits, and compensation pursuant to Code section 44939, subdivision (c)(5).

## **LEGAL STANDARDS**

### **Applicable Law**

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; incompetency due to mental disability; willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district; or advocating communism. (Code, § 44939, subd. (b).)

A suspended employee may file a motion for immediate reversal of the suspension with the Office of Administrative Hearings. (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.)

## Analysis

### IMMORAL CONDUCT

For purposes of certificated employee discipline proceedings, the term “immoral conduct” means conduct that 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 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 public welfare. (*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811.) Courts have found immoral conduct by a teacher to include, among other things, sexual harassment or public sexual activity, drug use or possession, and theft.

The District has failed to allege sufficient facts to establish that Respondent engaged in immoral conduct. The inquiry to be made is 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, the administrative law judge need not accept contentions, deductions, or conclusions of fact or law.

The facts alleged are that “stories” of immoral conduct by Respondent were posted on Instagram by anonymous individuals and others who could not be located. These “stories” are simply unsubstantiated hearsay. Based on this hearsay, the District asks the administrative law judge to accept its contention that Respondent did, in fact, engage in these reprehensible acts of immoral conduct. For purposes of this motion, the administrative law judge must accept as true the allegation that these “stories”

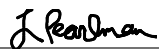
were, in fact, posted on Instagram. However, the administrative law judge is not required to accept the contention that if something is on the Internet, it must be true.

The Education Code sets forth very limited circumstances in which an employee may be placed on unpaid leave. These allegations are insufficient to constitute grounds to deprive a teacher of pay pending adjudication of those charges. The Statement of Charges does not set forth sufficient facts to demonstrate that Respondent engaged in immoral conduct.

## **ORDER**

The motion for immediate reversal of suspension is granted. The District shall make Respondent William Winkler whole for any lost wages, benefits, and compensation within 14 days after service of this order. (Code, § 44939, subd. (c)(5).)

DATE: 07/01/2022

  
Laurie Pearlman (Jul 1, 2022 11:25 PDT)

LAURIE R. PEARLMAN

Administrative Law Judge

Office of Administrative Hearing