

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

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

LAURA TRACY,

A Permanent Certificated Employee, Moving Party,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT, Responding Party.

OAH No. 2023090348

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

Irina Tentser, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard oral argument on this matter on October 06, 2023.

Jason Wojciechowski and Sara Yufa, Attorneys, Bush Gottlieb, represented moving party Laura Tracy (Tracy).

Leslie Chi, Assistant General Counsel II, Office of General Counsel, represented Los Angeles Unified School District (District).

Procedural History

On August 23, 2023, the District served Tracy with a Statement of Charges, immediately suspending her without pay and providing her with notice of its intent to dismiss her as a permanent certificated teacher. (Ed. Code, § 44932.) (All further statutory references are to the Education Code, unless otherwise noted.) Tracy timely filed a Demand for Hearing and Notice of Defense. The hearing has not yet been scheduled.

On September 14, 2023, Tracy filed a Notice of Motion and Motion for Immediate Reversal of Suspension (Motion) to challenge her immediate suspension without pay. (§ 44939, subd. (c).) Tracy contends the Statement of Charges does not set forth a sufficient basis for immediate unpaid suspension. Specifically, Tracy asserts the allegations do not rise to the level of “immoral conduct” and “willful refusal to perform regular assignments without reasonable cause” and therefore do not justify an immediate unpaid suspension. (§ 44939, subd. (b).)

On September 26, 2023, the District filed an Opposition to the Motion. No Reply was filed by Tracy. Oral argument on the Motion was heard on October 6, 2023.

Based on the reasoning set forth below, the Motion is denied because the facts alleged in the Statement of Charges are sufficient to support a charge of immoral conduct. Tracy’s immediate unpaid suspension shall, therefore, remain in effect.

Motion for Immediate Reversal of Suspension

Section 44939, subdivision (b), allows a school district to immediately suspend a permanent employee without pay who has been charged with, among other things, immoral conduct and willful refusal to perform regular assignments without cause. An

employee who has been placed on such suspension may, however, file a motion for immediate reversal of suspension (MIRS). (§ 44939, subd. (c)(1).) In reviewing a MIRS, 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.*)

STATEMENT OF CHARGES

Tracy was assigned as a Social Studies teacher at Sylmar Charter High School. The District alleges multiple instances of conduct by Tracy between August and December 2019 and in 2021, 2022, and 2023 including, but not limited to: calling students "loser[s];" writing "nigga" on the classroom whiteboard; stating "[M]exican and Black people are dumber and the education system is 'messed up' in poor locations"; making comments and laughing about Mexicans working in the field; telling students that Mexicans are farmers; telling students to join the KKK, showing them the website, telling them they were old enough for it, and saying they should try to join the KKK from home; and telling students that men with big vocabularies turned her on. (Statement of Charges, ¶¶ 1-28.)

IMMORAL CONDUCT

"[T]he term 'immoral conduct' in section 44932, subdivision (a)(1), 'stretch[es] over so wide a range' of conduct that it 'embrace[s] an unlimited area of conduct.'" (*Crawford v. Commission on Professional Competence* (2020) 53 Cal.App.5th 327, 337, quoting *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 224-225.)

The term "immoral" has been defined generally as that 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 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 the public welfare.

(*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811, quoting *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740 and *Palo Verdes Unified School District of Riverside v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

Moreover, 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 regards to other callings."

(*San Diego Unified School Dist. V. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466, quoting *Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820, 824.) "Thus, 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.'" (*Crawford, supra*, 53 Cal.App.5th at p. 337, quoting *Morrison, supra*, 1 Cal.3d at p. 224.)

Analysis – Immoral Conduct

The allegations Tracy engaged in misconduct in her actions towards students could support a finding of immoral conduct if proven at hearing.

The parties' written submissions and oral argument have been considered. The District alleged sufficient facts in the Statement of Charges that, if true, would constitute a basis for immediate suspension based on immoral conduct, pursuant to section 44939, subdivision (b). The Motion is therefore denied on that basis.

WILLFUL REFUSAL TO PERFORM REGULAR ASSIGNMENTS WITHOUT REASONABLE CAUSE

A teacher may be discharged, but not immediately suspended without pay, for unprofessional conduct or unsatisfactory performance. (Ed. Code, § 44932, subd. (a)(2), (5).) The violation of a school district's reasonable regulations, even the repeated violations of those regulations, likewise subjects a teacher to discharge but not to unpaid suspension. (Ed. Code, § 44932, subd. (a)(8).) Immediate suspension is only warranted based on a "willful refusal to perform" which must be evident on the face of the pleadings.

Analysis – Willful Refusal to Perform Regular Assignments without Reasonable Cause

While well-pleaded facts must be accepted as true for purposes of this Motion, the ALJ is not required to accept "contentions, deductions or conclusion of fact and law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Here, the District argues that the ALJ should make conclusions from the facts pled in the Statement of Charges that Tracy's failure to follow regulations was willful. However, absent an evidentiary hearing, multiple plausible inferences could potentially explain those factual allegations. Accordingly, whether Tracy willfully followed regulations without reasonable cause cannot be determined solely on District's pleadings but requires evidence of the context in which the facts occurred. Therefore, the District has not met the

requirements for immediate suspension based on the allegations of “willful refusal to perform regular assignments without reasonable cause” pursuant to section 44939, subdivision (b).

ORDER

The Motion for Immediate Reversal of Suspension is denied. The immediate suspension without pay shall remain in effect.

DATE: 10/09/2023

Irina Tentser

IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings