

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

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

JORGE ALMADA,

A Permanent Certificated Employee,

Moving Party,

and

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Responding Party.

OAH No. 2020060097

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

Carla L. Garrett, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Los Angeles, California on June 19, 2020.

Garrett McCoy, Attorney at Law, represented the moving party, Jorge Almada (Almada).

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

BACKGROUND

Respondent is a certificated, permanent employee of the District who is assigned as a secondary teacher at Avalon Continuation High School.

In its 50-page Statement of Charges, the District seeks to dismiss Almada from employment with the District for alleged immoral conduct and willful refusal to perform regular assignments without reasonable cause, among other charges.

On May 8, 2020, the District issued a notice of intention to dismiss Almada and placed him on an indefinite unpaid suspension, pending a hearing on the Statement of Charges before a Commission on Professional Competence (CPC). Thereafter, Almada submitted a timely request for hearing and a motion for immediate reversal of suspension.

Statement of Charges / District's Allegations and Contentions

The District contends that it has properly pleaded charges of immoral conduct and willful refusal to perform regular assignments without reasonable cause, pursuant

to Education Code section 44939,¹ thereby justifying his immediate suspension without pay.

The District contends that the allegations in the Statement of Charges establish Almada engaged in immoral conduct by creating a hostile and threatening classroom environment when he stated, in the presence of his students and of a Peer Assistance and Review (PAR) consulting support teacher, "I want to kill Mr. Bonneau!" Mr. Bonneau is the principal. District alleges Almada appeared upset and began sobbing, prompting the PAR consulting support teacher to report the incident to the principal. Almada was removed from the classroom and the District's school police responded to the school site and conducted a threat assessment. District contends that Almada's actions demonstrated his corrupt, indecent, depraved attitude toward the school's principal and his moral indifference to the opinions of respectable members of the community.

District also alleges Almada willfully refused to perform regular assignments without reasonable cause, despite oral and written assistance, guidance, and directives provided by District to help him perform these assignments. The District alleges in the Statement of Charges that Almada failed to do the following: (1) write lesson plans covering the entire instructional day, (2) submit weekly lesson plans to the school principal, (3) post daily agendas and standards, (4) follow school policies, (5) review students' work and provide grades, (6) provide challenging work, (7) adhere to the District's Employee Attendance Policy, (8) place students in subject-alike groups, (9) actively monitor and redirect students' behavior, (10) deliver teacher-directed lessons that follow a logical progression, (11) circulate the classroom to check for student

¹ Undersigned statutory references are to the Education Code.

understanding, (12) prepare instructional materials in advance of class periods, and (13) design and ask critical thinking questions.

The District asserts that Almada had assistance and repeated notices and opportunities to perform his assignments, each of which involved regular assignments of high school teachers. The District further notes that the assignments alleged were based on reasonable rules and regulations of the District. It contends that Respondent had knowledge of his regular assignments, and was provided with guidance and resources. Accordingly, the District asserts that Almada's failure to act constitutes a willful refusal in that it was voluntary and intentional, justifying his immediate suspension under section 44939.

Almada's Contentions

Almada asserts that the facts as alleged in the Statement of Charges, even if true, are insufficient to constitute a basis for immediate suspension without pay. Specifically, he contends the District has failed to allege sufficient facts constituting immoral conduct, particularly given the lack of contextual details as to the circumstances that preceded the utterance or the tone of Almada's voice when he made the statement. Almada contends that while his alleged statement may have been inappropriate or unprofessional, it was not immoral.

Also, in regard to allegations of Almada's purported deficiencies and failures in his teaching abilities and performance, Almada argues that the charges pertaining to teaching deficiencies amount to unsatisfactory performance or unprofessional conduct, at most, rather than willful refusal to perform regular assignments, and do not constitute a basis for unpaid suspension.

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, 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 advocating communism. (§ 44939, subd. (b).) A suspended employee may file a motion for immediate reversal of the suspension with the Office of Administrative Hearings. (§ 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.)

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 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.)

Although there are no cases interpreting the term “willful refusal to perform regular assignments without reasonable cause” under section 44939, case law from related settings reflects that the term “willful” “carries a volitional coloration which excludes the notion of accidental or even negligent conduct.” (*Coomes v. State Personnel Bd.* (1963) 215 Cal.App.2d 770, 775; see also *Peters v. Mitchell* (1963) 222 Cal.App.2d 852, 862 [“Wilful disobedience connotes a specific violation of command or prohibition.”].) Declining to obey an employer's directions, without reason, is sufficient to establish willful refusal. (See, e.g., *Wilbur v. Office of City Clerk of City of Los Angeles* (1956) 143 Cal.App.2d 636, 642 [observing an employee who “did not attribute his refusals to illness” and made “no showing before the hearing examiner of willingness to comply with the reasonable orders of his superiors,” demonstrated “wilful refusal to obey the reasonable orders of an employer”].)

Analysis

A comparison of sections 44932, subdivision (a), and 44939, subdivision (b), is illuminating. Pursuant to section 44932, subdivision (a)(2) and (a)(5), unprofessional conduct or unsatisfactory performance warrants discipline, but not unpaid suspension. More importantly, under 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).

This comparison indicates the cause of discipline for willful refusal to perform a regular assignment is more akin to the traditional labor charge of insubordination, i.e., an intentional, willful, volitional refusal to perform any part of a particular regular assignment. A charge of willful refusal to perform a regular assignment must be more

than unsatisfactory, unprofessional, or negligent, and more than even a persistent failure to perform a regular assignment.

In this case, the Statement of Charges does not allege sufficient facts to establish that Almada's alleged teaching deficiencies are the result of a willful, volitional refusal to perform his regular assignment, or that the alleged teaching deficiencies are more than unsatisfactory, unprofessional, negligent, or a persistent refusal to perform a regular assignment. Almada was teaching his class, but did so deficiently in the District's opinion, despite the fact that he was provided with guidance and resources. The well-pleaded facts indicate that when Almada taught his classes, administrators found fault with his performance.

The allegations, if true, may establish that Almada's teaching during the times in question was unsatisfactory and unprofessional. But the allegations are conclusory and devoid of the kind of factual content that would constitute a willful state of mind or volitional refusal to perform as directed. Similarly, the Statement of Charges does not contain sufficient facts to establish that Almada's exclamation regarding his principal constituted immoral conduct, especially given the absence of allegations setting forth the details of the facts and circumstances underlying the utterance.

Given the above factors, Almada is entitled to immediate reversal of his suspension.

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ORDER

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

DATE: June 22, 2020

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Carla L. Garrett
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CARLA L. GARRETT

Administrative Law Judge

Office of Administrative Hearings