

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

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

**DARRYL GIDEON, a Permanent Certificated Employee,
Moving Party**

and

COMPTON UNIFIED SCHOOL DISTRICT, Responding Party

OAH Case No. 2019100596

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

Wim van Rooyen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Sacramento, California on November 15, 2019, and November 22, 2019.

Carlos Perez, Attorney at Law, represented Darryl Gideon.

Barrett Green, Attorney at Law, represented Compton Unified School District (District).

Procedural Background

On September 9, 2019, the District's Senior Director of Human Resources, Dr. Kanika White, signed the Notice of Possible Dismissal/Immediate Suspension Without Pay, And Statement of Charges against Mr. Gideon, a permanent certificated employee, based on charges of including, but not limited to, immoral conduct and willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the District. (Ed. Code, §§ 44932, subd. (a) & 44939, subd. (b).) On September 18, 2019, following a meeting of the District's Board of Trustees, Dr. White signed a Notice of Intention to Dismiss and of Immediate Suspension Without Pay. Mr. Gideon timely filed a Request for Hearing.

On November 4, 2019, Dr. White signed an Amended Notice of Intention to Dismiss and of Immediate Suspension Without Pay. That amended notice informed Mr. Gideon that the District's Board of Trustees amended the September 9, 2019 Statement of Charges to add information regarding a plea Mr. Gideon entered in a criminal case in Los Angeles County Superior Court (LACSC) on October 21, 2019.

On October 15, 2019, Mr. Gideon filed a Motion for Immediate Reversal of Suspension (Motion) pursuant to Education Code section 44939, subdivision (c), on grounds that the Statement of Charges does not set forth a sufficient basis for immediate unpaid suspension. On November 5, 2019, the District filed its opposition along with a request to take judicial notice of the docket and entry of plea by Mr. Gideon in the above-mentioned criminal case in the LACSC. Finally, on November 15, 2019, Mr. Gideon filed a reply brief.

Discussion

Education Code section 44939 states, in relevant part, that a school district may immediately suspend a permanent employee of the school district 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 with violation of [Education Code] section 51530. . . ." (Ed. Code, § 44939, subd. (b).)

Under Education Code section 44939, subdivision (c)(1), an employee who has been placed on such suspension may file a motion for immediate reversal of suspension. "Review of a motion filed pursuant to this section 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.*)

Here, the District relies on two specific charges to support the immediate suspension without pay: (1) immoral conduct; and (2) willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the District.

IMMORAL CONDUCT

"Immoral conduct" is to be construed according to "its common and approved usage having regard for the context in which the legislature used" the term. (*Palo Verde Unified School District of Riverside County v. Hensey* (1970) 9 Cal.App.3d 967, 971.) In *Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811, the court held:

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.

Additionally, pursuant to Education Code section 44932, subdivision (a)(1), immoral conduct expressly includes “egregious misconduct,” which is defined as “immoral conduct that is the basis for an offense described in . . . Sections 11165.2 to 11165.6, inclusive, of the Penal Code.” Those sections of the Penal Code include willful harming of a child (§ 11165.3) and unlawful corporal punishment (§ 11165.4).

The original Statement of Charges alleges that, near the end of the 2018-19 school year, the District received a parent complaint, alleging that Mr. Gideon had hit a student (Kevin L.) with a stick. After the District reviewed the matter, it determined that Mr. Gideon had hit several students. In his Motion, Mr. Gideon argued that those allegations are vague and provide insufficient details regarding the circumstances of the incident(s), positing that Mr. Gideon could have acted out of necessity, in self-defense, or with an appropriate amount of force to respond to a disturbance. Although Mr. Gideon may certainly raise such matters at his dismissal hearing, the District is not required to anticipate and address each potential defense in the Statement of Charges.

The parties' written submissions and oral argument have been considered. The District alleged sufficient facts in the original Statement of Charges that, if true, would constitute a basis for immediate suspension based upon "immoral conduct" under Education Code section 44939, subdivisions (b) and (c). Accordingly, the Motion must be denied.

In light of that conclusion, it is unnecessary to consider Mr. Gideon's entry of a criminal plea, either as alleged in the amended Statement of Charges or as outlined in the criminal docket that is the subject of the District's request for judicial notice, to resolve the Motion. It is also unnecessary to consider whether any willful refusal to perform regular assignments without reasonable cause by Mr. Gideon alternatively supports a suspension without pay.

ORDER

The Motion for Immediate Reversal of Suspension is DENIED. The District's request for judicial notice is DENIED AS MOOT.

DATE: November 22, 2019

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Wim van Rooyen
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WIM VAN ROOYEN

Administrative Law Judge

Office of Administrative Hearings