

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

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

MONICA AGUILAR, a Permanent Certificated Employee,

v.

RIVERSIDE UNIFIED SCHOOL DISTRICT

OAH No. 2022110231

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

(Ed. Code, § 44939, subd. (c)(4))

Administrative Law Judge Sarah Sandford-Smith, State of California, Office of Administrative Hearings, heard oral argument on this motion for immediate reversal of suspension (MIRS) on December 2, 2022, by videoconference.

Ilissa B. Gold, Attorney with Reich, Adell & Cvitan, represented Monica Aguilar, the moving party.

Jonathan Salt and Lisa Martin, Attorneys with Fagen, Friedman & Fulfroft, LLP, represented the Riverside Unified School District (District).

Prior to oral argument, the moving party submitted a Request for Judicial Notice of three items. The District opposed the request. The administrative law judge denied the request.

PROCEDURAL HISTORY

A statement of charges was filed and served against the moving party Monica Aguilar pursuant to Education Code section 44932, alleging six causes for dismissal: 1) unprofessional conduct; 2) dishonesty; 3) unsatisfactory performance; 4) evident unfitness for service; 5) persistent violation of or refusal to obey school laws; and 5) willful refusal to perform regular assignments without reasonable cause. The District placed her on immediate suspension without pay pursuant to Education Code section 44939, based upon the allegations of willful refusal to perform regular assignments without reasonable cause.

The moving party filed a timely motion for immediate reversal of her suspension without pay, pursuant to Education Code section 44939, subdivision (c)(1). She argues that the District has not alleged a sufficient basis to place her on immediate unpaid status because the allegations in the statement of charges do not establish that she engaged in willful refusal to perform regular assignments without reasonable cause.

DISCUSSION

Pursuant to Education Code section 44939, subdivision (c)(1), "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." Although well-pleaded facts must be accepted as true for purposes of this motion, the administrative law judge need not accept "contentions, deductions or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Education Code section 44939, subdivision (b), provides 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 School District, or with violation of [Education Code] section 51530."

The term "willful" contains a volitional aspect. (*Coomes v. State Personnel Bd.* (1963) 215 Cal.App.2d 770, 775.) A refusal must be "conscious, intentional and deliberate" to be willful. (*Goodhew v. Industrial Acc. Commission* (1958) 157 Cal.App.2d 252, 257.) Education Code section 44939, subdivision (b), also requires such willful refusal to be without good cause.

The allegations in the Statement of Charges indicate that Aguilar persistently failed to meet the District's expectations of her performance and persistently failed to comply with the District's directives for improvement. The allegations also indicate that Aguilar was dishonest in her communications with her supervisor, other District employees and parents. However, these charges do not support a basis for immediate suspension under Education Code section 44939, subdivision (b).

Where the pleadings allege a willful refusal to perform a regular assignment, the allegations are conclusory and do not contain the factual content which, if true, would constitute a willful state of mind or deliberate refusal to perform regular assignments

without good cause. Instead, the District asserts that Aguilar's willful state of mind can be inferred from her dishonesty and her failures to comply with the District's expectations and directives. Such inferences and conclusory allegations are not binding on the administrative law judge and need not be accepted.

The written submissions and oral argument of the parties have been considered. The facts alleged in the statement of charges may constitute grounds for discipline pursuant to Education Code section 44932, but do not reflect willful refusal.

ORDER

Good cause having been established, the motion for immediate reversal of suspension is GRANTED. The District's immediate suspension of Monica Aguilar is REVERSED. The District shall make her whole for any lost wages, benefits, and compensation within 14 days after service of this Order. (Ed. Code, § 44939, subd. (c)(5).)

DATE: 12/05/2022

Sarah Sandford-Smith

SARAH SANDFORD-SMITH

Administrative Law Judge

Office of Administrative Hearings