

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

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

**CARLOS SANTIBANEZ, a Permanent Certificated Employee,
Moving Party**

and

LOS ANGELES UNIFIED SCHOOL DISTRICT, Responding Party

OAH Case No. 2019090668

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

Administrative Law Judge (ALJ) Tiffany King, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Sacramento, California on October 18, 2019.

Shirley Lee, Attorney at Law, represented Carlos Santibanez.

Susan Hyman, Assistant General Counsel, represented Los Angeles Unified School District (District).

PROCEDURAL HISTORY

On May 17, 2019, the District's Assistant Chief Human Resources Officer signed the Statement of Charges against Mr. Santibanez, 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).) Based upon the foregoing charges, the District's governing board immediately suspended Mr. Santibanez without pay pursuant to Education Code section 44939. Mr. Santibanez timely filed a Demand for Hearing and Notice of Defense.

On September 18, 2019, Mr. Santibanez filed a Notice of Motion and 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. Specifically, Mr. Santibanez argues that the well-pleaded allegations demonstrate conduct that was unprofessional or unsatisfactory, at most but did not rise to the level of immoral conduct and/or willful refusal to perform regular assignments without reasonable cause justifying an immediate unpaid suspension.

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).) "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." (Ed. Code, § 44939, subd. (c).)

"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.

Although not defined by the statute, "willful refusal" connotes an intentional failure to perform a certain act. Case law has held that declining an employer's lawful directions, without reason, is sufficient to establish "willful refusal." (See, e.g., *Wilbur v. Office of City Clerk* (1956) 143 Cal.App.2d 636, 642 [employee who did not attribute his refusals to illness and made no showing of willingness to comply with the reasonable orders of his superiors demonstrated "willful refusal to obey the reasonable

orders of an employer”]; *Flowers v. State Personnel Board*, 174 Cal.App.3d 753, 760 [employee’s repeated refusal to undergo a medical examination or sobriety test, as directed by his employer, supported a charge of insubordination].)

The Statement of Charges alleges that Mr. Santibanez injured a student’s hand when he attempted to take away the student’s cell phone, and includes varying accounts as to how the injury occurred. Additionally, the Statement of Charges alleges numerous instances of deficient performance, including failure to submit lesson plans on some occasions, deliver appropriate lessons, monitor students and correct their behavior, and ask higher-level depth of knowledge questions.

The ALJ has considered the written submissions of the parties and oral argument. Based upon a review of the Statement of Charges, the School District failed to allege facts, which, if true, are sufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b).

ORDER

Good cause having been established, the Motion for Immediate Reversal of Suspension is GRANTED. The School District shall make Mr. Santibanez whole for any lost wages, benefits, and compensation within 14 days after service of this Order. (Ed. Code, § 44939, subd. (c)(5).)

DATE: November 1, 2019

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TIFFANY L. KING
Administrative Law Judge
Office of Administrative Hearings