

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

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

ANN VASQUEZ, Respondent

OAH No. 2019090762

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

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

Brett B. McMurdo, Attorney at Law, of the law firm Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez, represented the respondent Ann Vasquez.

Daniel McElhinney, Attorney at Law, of the law firm Dannis Woliver Kelley, represented the Orcutt Union School District (District).

Procedural Background

On August 14, 2019, the District's Assistant Superintendent of Human Resources signed the Statement of Charges and Recommendation for Dismissal and Request for Immediate Unpaid Suspension against Ms. Vasquez, 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).) Ms. Vasquez timely filed a Demand for Hearing and Notice of Defense.

On September 19, 2019, Ms. Vasquez 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, Ms. Vasquez argues that intoxication while on duty does not amount to immoral conduct and that the well-pleaded facts in the Statement of Charges do not otherwise amount to willful refusal to perform regular assignments without reasonable cause. The District filed its opposition on October 8, 2019.

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).)¹

¹ In her Motion, Ms. Vasquez argues that the Statement of Charges does not allege a violation of section 44939, subdivision (b), and therefore her immediate

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.*)

"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.

unpaid suspension was improper. However, section 44932 lists the exclusive grounds for dismissal or suspension of a permanent certificated employee. Section 44939 authorizes placing such an employee on immediate unpaid suspension if certain causes are alleged, but does not serve as an independent ground for discipline. Accordingly, Ms. Vasquez's argument is rejected.

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 Ms. Vasquez was intoxicated when she reported to her third grade classroom and began teaching. She then left the classroom, leaving the students with an un-credentialed assistant, and subsequently informed the school she was under the influence of alcohol and needed to go home. On a separate occasion, Ms. Vasquez reported to her classroom and began teaching. After returning from lunch, other staff observed Ms. Vasquez exhibit signs of intoxication. When confronted, Ms. Vasquez twice denied she had been drinking before she admitted to consuming alcohol in the school parking lot before school and during the lunch break. Subsequently, Ms. Vasquez’s blood alcohol content was measured at 0.19 percent and 0.177 percent, respectively.

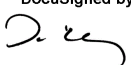
Ms. Vasquez argued that being intoxicated at work is not immoral conduct, that she has a history of alcoholism, and that she sought treatment immediately following her suspension. However, Ms. Vasquez’s history and rehabilitative efforts are not alleged in the pleading, and therefore, cannot be considered in determining whether the facts as alleged in the Statement of Charges constitute a basis for immediate suspension under Education Code section 44939.

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 upon "immoral conduct" under Education Code section 44939, subdivisions (b) and (c). Accordingly, the motion must be denied.

ORDER

GOOD CAUSE HAVING NOT BEEN ESTABLISHED, the Motion for Immediate Reversal of Suspension is DENIED.

DATE: October 31, 2019

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TIFFANY L. KING

Administrative Law Judge

Office of Administrative Hearings