

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

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

**CHRISTINE BALSANO, a Permanent Certificated Employee,  
Moving Party**

**and**

**ROSEVILLE JOINT UNION HIGH SCHOOL DISTRICT,  
Responding Party**

**OAH Case No. 2019120878**

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

Administrative Law Judge (ALJ) Heather M. Rowan, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Sacramento, California on January 17, 2020.

Matthew Chevedden, Attorney at Law, represented Christine Balsano.

Carolyn Gemma, Attorney at Law, represented Roseville Joint Union High School District (District).

## **PROCEDURAL HISTORY**

On November 26, 2019, the District's Assistant Superintendent of Human Resources signed the Statement of Charges against Ms. Balsano, a permanent certificated employee, based on charges of including: immoral conduct and "persistent violation of or refusal to obey the school laws of that state or reasonable regulations . . . of the school district. . . ." (Ed. Code, §§ 44932, subd. (a), & 44939, subd. (b).) Based upon the foregoing charges, the District's governing board immediately suspended Ms. Balsano without pay pursuant to Education Code section 44939. Ms. Balsano timely filed a Demand for Hearing and Notice of Defense.

On December 23, 2019, Ms. Balsano 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. Balsano 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. Caselaw 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].)

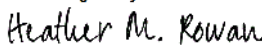
The Statement of Charges presents several allegations of Ms. Balsano’s failures as a teacher spanning at least two school years. Additionally, the Statement of Charges alleges numerous instances of deficient performance, including failure to support special education student A.L., passing along work to paraprofessionals, failure to adequately plan and implement lessons, allowing unauthorized students into the classroom, and engaging in unprofessional behavior.

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 Ms. Balsano whole for any lost wages, benefits, and compensation within 14 days after service of this Order. (Ed. Code, § 44939, subd. (c)(5).)

DATE: January 22, 2020

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HEATHER M. ROWAN

Administrative Law Judge

Office of Administrative Hearings