

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

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

**EDWARD CARTER (EN 767793), A Permanent Certificated
Employee,**

Moving Party

and

LOS ANGELES UNIFIED SCHOOL DISTRICT, Responding Party

OAH No. 2019060321

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

Thomas Heller, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter telephonically from Los Angeles, California on July 5, 2019.

Tamra M. Smith, Esq., Equality Law LLP, represented moving party Edward Carter (Carter).

M. Cristina Cruz, Assistant General Counsel, represented responding party Los Angeles Unified School District (District).

BACKGROUND

On April 5, 2019, an Assistant Chief Human Resources Officer for the District filed a Statement of Charges requesting that the District's Board of Education (Board) give notice to Carter of its intention to immediately suspend him without pay and thereafter dismiss him from employment. The Board gave the notice to Carter, who demanded a hearing on the dismissal and moved for immediate reversal of the suspension under Education Code section 44939, subdivision (c)(1). The District filed an opposition to the motion to which Carter replied, and counsel for both parties presented oral argument at the motion hearing.

Carter asserts that the facts as alleged in the Statement of Charges, even if true, are insufficient to constitute a basis for immediate suspension without pay. The Statement of Charges describes two incidents of alleged misconduct nearly three years apart that occurred while Carter was working as a physical education teacher for the District. In the first incident on or about October 20, 2015, Carter allegedly violated District policy by video recording two seventh-grade students without permission when the students failed to hand him two basketballs during a physical education class. Carter also allegedly used "inappropriate physical force including pushing, pulling, and punching" one of the students after the student threw a ball at him, and told students in the class that they "'are not going to be something in life,' or words to that effect." (Statement of Charges, p. 3.) The Statement of Charges alleges Carter's conduct violated directives given to him in 2005 not to put hands on students, always treat students with respect, and never publicly humiliate any student.

In the second incident on or about October 5, 2018, Carter allegedly directed four ninth-grade students to do "bear crawls" on a hot blacktop during a physical education class, despite the students' complaints that their hands were burning and in pain. Carter also allegedly told the students to put Vaseline on their hands and keep going, and failed to send the students to the school nurse. The Statement of Charges alleges Carter's conduct failed to comply with District policies and administrative directives previously given to him to always take students seriously if they have any health complaints, always treat students with respect, and practice respectful treatment toward all staff and students.

The District asserts that these factual allegations are sufficient to support Carter's immediate suspension without pay for "immoral conduct" and "willful refusal to perform regular assignments without reasonable cause" under Education Code section 44939. Carter asserts that the allegations at most amount to unprofessional conduct, unsatisfactory performance, negligence, and/or poor judgment, none of which are authorized bases for immediate suspension under Education Code section 44939.

LEGAL STANDARDS

The governing board of a school district may immediately suspend a permanent certificated employee 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 advocating communism. (Ed. Code, § 44939, subd. (b).) A suspended employee may serve and file with the Office of Administrative Hearings a motion for immediate

reversal of suspension. (Ed. Code, § 44939, subd. (c)(1).) An administrative law judge reviews the motion, and the review "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.*) Although material facts properly pleaded must be accepted as true, the administrative law judge need not accept contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Immoral conduct is conduct "'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.'" (*Board of Education of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811, quoting *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740.)

Although there are no cases interpreting the term "willful refusal to perform regular assignments without reasonable cause" under Education Code section 44939, case law from related settings reflects that the term "willful" "carries a volitional coloration which excludes the notion of accidental or even negligent conduct." (*Coomes v. State Personnel Bd.* (1963) 215 Cal.App.2d 770, 775; see also *Peters v. Mitchell* (1963) 222 Cal.App.2d 852, 862 ["Wilful disobedience connotes a specific violation of command or prohibition."].) Declining to obey an employer's directions, without reason, is sufficient to establish willful refusal. (See, e.g., *Wilbur v. Office of City Clerk of City of Los Angeles* (1956) 143 Cal.App.2d 636, 642 [observing an employee who "did not attribute his refusals to illness" and made "no showing before the

hearing examiner of willingness to comply with the reasonable orders of his superiors," demonstrated "wilful refusal to obey the reasonable orders of an employer"[1].)

DISCUSSION

Accepting all material facts properly pleaded as true, the Statement of Charges does not allege facts sufficient to constitute a basis for immediate suspension under section 44939. The facts alleged about the two incidents are sparse and not necessarily indicative of immoral conduct or willful refusal to perform regular assignments without reasonable cause. As to the first incident in October 2015, the facts as alleged reflect an improper and unprofessional reaction to student defiance and aggression, but determining whether that reaction was immoral requires a fuller description of the incident than what the Statement of Charges supplies. Furthermore, Carter's continued employment with the District for years after the incident calls into question the seriousness of the incident and whether it justifies Carter's immediate suspension now. As to the second incident in October 2018, the facts as alleged reflect at least negligence and poor judgment, but not necessarily intentional or reckless harm to students that could amount to immoral conduct. As to both incidents, the pleaded facts are also too limited to determine whether Carter's behavior had a "volitional coloration" consistent with a willful refusal to perform regular assignments without reasonable cause. (*Coomes v. State Personnel Bd.*, *supra*, 215 Cal.App.2d at p. 775.) Therefore, Carter is entitled to immediate reversal of his suspension.

ORDER

The motion for immediate reversal of suspension is granted. The District shall make Carter whole for any lost wages, benefits, and compensation within 14 days after service of this order. (Ed. Code, § 44939, subd. (c)(5).)

DATE: July 19, 2019

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Thomas Heller
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THOMAS HELLER

Administrative Law Judge

Office of Administrative Hearings