

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

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

**THOMAS CONNER, a Permanent Certificated Employee,**

**Moving Party**

**and**

**COLTON JOINT UNIFIED SCHOOL DISTRICT,**

**Responding Party**

**OAH Case No. 2022110644**

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

On December 16, 2022, Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Sacramento, California.

Carlos R. Perez, Attorney at Law, represented Thomas Conner (Mr. Conner).

Beverly A. Ozowara, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, represented Colton Joint Unified School District (District).

Argument was heard, the record closed, and the matter submitted for decision on December 16, 2022.

## **Procedural History**

Mr. Conner has been a high school guidance counselor with the District since 2004. On October 24, 2022, the District served Mr. Conner with a Notice of Intent to Immediately Suspend Without Pay and Dismiss (Notice). The Notice was based on a Statement of Charges, dated September 29, 2022, and alleged cause to dismiss based on unprofessional conduct (Ed. Code, § 44932, subd. (a)(2)<sup>1</sup>); unsatisfactory performance (*id.*, subd. (a)(5)); evident unfitness for service (*id.*, subd. (a)(6)); and persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district employing him (*id.*, subd. (a)(8)). Mr. Conner timely submitted a Request for Hearing.

The Notice also alleged cause to immediately suspend Mr. Conner without pay for willful failure to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district. (§ 44939, subd. (b).) On November 22, 2022, Mr. Conner filed a Notice of Motion and Motion for Immediate Reversal of Suspension (Motion) pursuant to section 44939,

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<sup>1</sup> All further statutory references are to the Education Code, unless otherwise specified.

subdivision (c), alleging that the Statement of Charges does not set forth a sufficient basis for immediate suspension because the allegations therein do not rise to the level of willful refusal to perform regular assignments without reasonable cause.

## **Motion for Immediate Reversal of Suspension**

Section 44939 states, in relevant part, that a school district may immediately suspend without pay 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 section 51530. . . ." (§ 44939, subd. (b).)

An employee who has been placed on such suspension may file a motion for immediate reversal of suspension. (§ 44939, subd. (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." (*Ibid.*)

## **Statement of Charges**

### **ESSENTIAL JOB FUNCTIONS**

Mr. Conner is presently assigned as a guidance counselor at Grand Terrace High School. His job functions require him to, among other things: (1) attain early identification of students having academic difficulty; (2) meet with students and parents to discuss interventions and program options; (3) counsel students in the areas of personal, academic, and career guidance; (4) ensure placement in appropriate

programs for special needs students; (5) assist site administrators with master class schedules and student class schedules; and (6) work cooperatively with District staff, support personnel, local school staff, and parents to coordinate effective learning, four-year school plans, and counseling techniques for students.

## **ALLEGATIONS OF MISCONDUCT**

The District alleges multiple instances of misconduct by Mr. Conner, occurring from August 2020 to August 2022. The allegations can generally be divided into two broad categories: failure to properly enroll students in appropriate coursework; and failure to follow directives from administrative staff and respond to questions from students and parents.

Examples of the first include Mr. Conner: (1) enrolling students in coursework that is inconsistent with their educational needs; (2) enrolling students in classes that they have already taken and passed; (3) transferring a student from one class to another without being asked to do so; (4) causing class sizes to exceed the maximum 36 student limit; (5) enrolling students in advanced courses when they have yet to take prerequisite courses; and (6) improperly removing students from classes that they need to complete to graduate. Examples of the second include Mr. Conner: (1) failing to respond to questions from students and parents within 48 hours as directed by administrative staff; (2) failing to respond to parent inquiries after being directed to do so by administrative staff; (3) ignoring a request for assistance from a teacher of a student who was potentially in crisis; and (4) failing to enroll students in coursework by deadlines imposed by administrative staff.

The District contends that immediate suspension without pay is warranted because Mr. Conner's behavior constitutes a willful refusal to perform his regular job duties without reasonable cause.

### **WILLFUL FAILURE TO PERFORM**

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.) A refusal needs to be "conscious, intentional and deliberate to be willful." (*Goodhew v. Industrial Acc. Commission* (1958) 157 Cal.App.2d 252, 257.) "Willful" is "voluntary and intentional, but not necessarily malicious." (Black's Law Dict. (9th ed. 2009) p. 1737, col. 2.) To immediately suspend Mr. Conner without pay for willful refusal, the District was required to satisfy the following elements: (1) Mr. Conner willfully refused to perform regular assignments; (2) the willful failure to perform was without reasonable cause; and (3) the District deemed it necessary to immediately suspend Mr. Connor without pay.

A comparison of sections 44932, subdivision (a), and 44939, subdivision (b), is instructive. Pursuant to section 44932, subdivisions (a)(2) and (a)(5), dismissal is provided for unprofessional conduct and unsatisfactory performance, respectively, but not unpaid suspension pending the hearing. More importantly, under section 44932, subdivision (a)(8), while an employee's persistent violation of a school district's reasonable regulations is grounds for discipline, it is also not an authorized basis for unpaid suspension. Rather, unpaid suspension is more narrowly authorized for a willful refusal to perform regular assignments pursuant to section 44939, subdivision (b).

This comparison indicates the cause for discipline for willful refusal to perform regular assignments is more akin to the traditional labor charge of insubordination,

i.e., an intentional, willful, volitional refusal to perform any part of a particular regular assignment. Thus, a charge of willful refusal to perform a regular assignment must be more than unsatisfactory, unprofessional, negligent, or even persistent failure to perform a regular assignment.

The parties' written submissions and oral arguments have been considered. The facts alleged by the District pertaining to Mr. Conner's failure to properly enroll students in appropriate coursework are voluminous, indicative of his unsatisfactory performance as a counselor, and may warrant his eventual dismissal if proven at hearing. Nonetheless, they may be attributable to mere negligence, and are therefore insufficient to establish a willful failure to perform. However, Mr. Conner's repeated failure to respond to multiple inquiries from parents and students, and his conscious and deliberate failure to perform his essential job duties despite multiple administrative directives to do so over a two-year period rise to the level of a willful failure to perform his regular job duties without reasonable cause.

In sum, the District alleged sufficient facts in the Statement of Charges that, if true, would constitute a willful refusal to perform regular job duties without reasonable cause. Thus, immediate suspension under section 44939, subdivision (b), is warranted, and the Motion must be denied.

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## **ORDER**

The Motion for Immediate Reversal of Suspension is DENIED.

DATE: December 22, 2022

*Matthew Block*

MATTHEW S. BLOCK

Administrative Law Judge

Office of Administrative Hearings