

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

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

**JERRED LAWSON, Moving Party**

**v.**

**BUTTE COUNTY OFFICE OF EDUCATION, Responding Party**

**OAH No. 2021120054**

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

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard oral argument on this matter by telephone on December 17, 2021.

Lesley Beth Curtis, Attorney at Law, Langenkamp, Curtis & Rice, LLP, represented moving party, Jerred Lawson.

Christian M. Keiner, Attorney at Law, Dennis Woliver Kelley, represented responding party, Butte County Office of Education (BCOE).

The matter was submitted for decision on December 17, 2021.

## **Background**

On October 27, 2021, BCOE's Associate Superintendent signed a Statement of Charges for Dismissal and for Immediate Unpaid Suspension (Statement of Charges) seeking the immediate suspension without pay and dismissal of Mr. Lawson, a permanent certificated employee. On October 29, 2021, BCOE served Mr. Lawson with the Statement of Charges and notice that as of November 1, 2021, he was suspended without pay. The Statement of Charges alleges the following causes for dismissal: immoral conduct, evident unfitness for service, and persistent violation of or refusal to obey state school laws or regulations prescribed by the State Board of Education and/or BCOE. (Ed. Code, § 44932, subd. (a)(1), (a)(6) & (a)(8).)<sup>1</sup> The Statement of Charges also notified Mr. Lawson of BCOE's intent to immediately suspend him under Section 44939, citing immoral conduct and willful refusal to take required action necessary to perform regular assignments without reasonable cause.

On November 24, 2021, Mr. Lawson filed a Motion for Immediate Reversal of Suspension (motion) with OAH, pursuant to Section 44939, subdivision (c)(1). BCOE filed an opposition to the motion on December 7, 2021. Mr. Lawson filed a reply brief on December 14, 2021. On December 17, 2021, a telephonic conference was held, during which the parties were invited to present any additional oral arguments.

## **Allegations in the Statement of Charges**

The following is a summary of the relevant factual allegations cited in the Statement of Charges as evidence of immoral conduct and "willful refusal to perform

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<sup>1</sup> All future statutory references are to the Education Code.

regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district" (willful refusal):

On August 11, 2021, the California Department of Public Health (CDPH) issued a Public Health Order mandating that by October 15, 2021, all school employees must be fully vaccinated against COVID-19 or undergo weekly testing.

On September 4, 2021, after BCOE issued directives to its employees implementing the CDPH public health order, Mr. Lawson violated BCOE's Acceptable Use Policy by sending an email to all BCOE employees in which he stated he would not vaccinate or weekly test.

By email dated October 13, 2021, BCOE directed Mr. Lawson to test on his weekly testing day, October 19, 2021, at his assigned school site. The email set forth the options available to its employees to be vaccinated, submit to weekly testing, or resign. The same day, Mr. Lawson responded by email requesting to be placed on administrative leave and that he "will not be coerced into complying with your changing and shifting demands." Mr. Lawson did not appear for his first weekly testing on October 19, 2021.

By letter dated October 20, 2021, BCOE again directed Mr. Lawson to attend his second opportunity to weekly test, on October 26, 2021. The letter stated that failure to appear and test would result in unpaid leave and charges for dismissal. Mr. Lawson did not appear for his weekly test on October 26, 2021, nor did he provide proof of vaccination to BCOE.

## **The Parties' Arguments**

Mr. Lawson argues that BCOE failed to provide him with a pre-deprivation hearing, also known as a *Skelly* hearing prior to his unpaid suspension; the allegations regarding his failure to test do not meet the standard for immoral conduct; BCOE has not alleged facts to show willful refusal because he believes the CDPH public health order is not a reasonable regulation; and the email to BCOE employees is protected speech under the First Amendment of the United States Constitution and does not meet the criteria for immoral conduct.

BCOE argues there are sufficient facts to establish willful refusal and immoral conduct based on Mr. Lawson's repeated refusal to obtain vaccination or submit to weekly testing, which was mandated by the CDPH public health order, and there is no statutory requirement that Mr. Lawson have been provided a *Skelly* hearing prior to his unpaid suspension.

## **Applicable Law**

Section 44939, subdivision (b), authorizes BCOE to suspend an employee without pay pending the outcome of the hearing if BCOE charges immoral conduct or willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district. Subdivision (c)(1), allows the employee to file a motion for relief from the suspension and requires review of this motion to 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."

## Evaluation

A review of a motion to reverse immediate suspension is limited to whether the facts as alleged in the statement of charges, if true, are sufficient to constitute immoral conduct or willful refusal. The Statement of Charges alleges BCOE twice directed Mr. Lawson to submit to COVID-19 testing in lieu of his decision not to obtain the COVID-19 vaccine. Mr. Lawson failed to appear for testing on both dates, and in email communications with BCOE indicated he would not test. These facts are the very essence of insubordination and serve as a basis for a finding of willful refusal. While respondent might believe the CDPH order and BCOE directives to be unreasonable, the reasonableness of BCOE's directive is a determination to be made following an evidentiary hearing. For the purposes of these proceedings, a state-mandated public health requirement, implemented by BCOE, requiring weekly testing for COVID-19 in lieu of vaccination is a reasonable regulation, regardless of Mr. Lawson's opinion to the contrary. Accordingly, BCOE has alleged sufficient facts to constitute willful refusal under Section 44939, subdivision (b).

As cause exists to deny Mr. Lawson's motion based on a finding of willful refusal, the issue of whether there are sufficient facts to establish immoral conduct is moot.

Finally, as to the issue of whether BCOE deprived Mr. Lawson of a pre-deprivation hearing, a motion for immediate reversal of suspension is 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." (*Id.*, subd. (b).) Thus, any argument relating to procedural defects of the suspension are outside the scope of these proceedings.

## ORDER

The motion for immediate reversal of suspension is denied.

DATE: December 21, 2021

  
Adam Berg (Dec 21, 2021 09:06 PST)

ADAM L. BERG

Administrative Law Judge

Office of Administrative Hearings