

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

LOURDES PRIETO, a Permanent
Certificated Employee,

Moving Party,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

Responding Party.

OAH No. 2019030319

Related to OAH No. 2019020481

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

(Ed. Code, § 44939, subd. (c)(4))

Administrative Law Judge (ALJ) Danette C. Brown, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Sacramento, California, on April 5, 2019.

Attorney Arthur Four, with the law firm Reich, Adell, and Cvitan, represented Lourdes Prieto.

Attorney M. Cristina Cruz, with the Office of the General Counsel, Los Angeles Unified School District (District), represented the District.

PROCEDURAL HISTORY

On or about February 5, 2019, the Governing Board of the District (Governing Board) approved the Statement of Charges and Recommendation for Dismissal and Immediate Unpaid Suspension of Ms. Prieto, based on causes including, but not limited to: (1) unprofessional conduct; (2) unsatisfactory performance; (3) 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 of Education or by the governing board of the school district employing her; and (4) willful refusal to perform regular assignments without reasonable cause, as prescribed by the reasonable rules and regulations of the employing district. (Ed. Code, §§ 44932, subd. (a)(2), (5) & (8); 44939, subd. (b).) On February 6,

2019, the Governing Board gave notice to Ms. Prieto of its decision and placed her on immediate suspension without pay pursuant to Education Code section 44939. Thereafter, the Governing Board received Ms. Prieto's demand for a hearing.

On March 8, 2019, Ms. Prieto filed a Motion for Immediate Reversal of Suspension (Motion), pursuant to Education Code section 44939, subdivision (c)(1), contending 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.

DISCUSSION

Education Code¹ 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 School District, or with violation of section 51530." (§ 44939, subd. (b).)

Under section 44939, subdivision (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."

Willful Refusal to Perform Regular Assignments

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 Ms. Prieto without pay for willful refusal, the District was required to satisfy the following elements: (1) Ms. Prieto willfully refused to perform regular assignments; (2) the willful refusal to perform was without reasonable cause, as prescribed by the reasonable rules and regulations of the employing school district; and (3) the District deemed it necessary to immediately suspend Ms. Prieto without pay.

A comparison of sections 44932, subdivision (a), and 44939, subdivision (b), is illuminating. Pursuant to section 44932, subdivision (a)(5) and (a)(2), dismissal is provided for unsatisfactory performance or unprofessional conduct, respectively, but not unpaid suspension pending the hearing. More importantly, under section 44932, subdivision (a)(8),

¹ All statutory references are to the Education Code, unless otherwise stated.

while a teacher'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, for the purposes for this case where no immoral conduct is alleged, unpaid suspension is authorized only 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 a regular assignment 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.

In this case, a review of the charges, individually, and in their totality, indicates respondent's alleged misconduct is not the result of a willful, volitional, refusal to perform her regular assignment. The well-pleaded facts indicate that when respondent taught her classes, administrators found fault with her performance. Stated another way, the pleadings indicate respondent was teaching her required classes, but did so deficiently in the District administrator's opinion.

The allegations also indicate respondent failed to improve after receiving multiple conferences and perhaps, persistently, but not always, failed to comply with directives given to her. The pleadings allege in some detail that respondent's teaching during the times observed was unsatisfactory, unprofessional and/or even violated District rules and regulations, among other theories. But where the pleadings allege a willful refusal to perform a regular assignment, the allegations are vague, conclusory and devoid of the kind of factual content which, if true, would constitute a willful state of mind or volitional refusal to perform as directed. As discussed above, the vague and conclusory allegations are not binding on the ALJ and need not be accepted.

Conclusion

The written submissions of the parties and oral argument have been considered. Based upon a review of the Statement of Charges, the District has not alleged 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 is GRANTED. Pursuant to Education Code section 44939, subdivision (c)(5), this order shall become effective within

five days of service, and the District shall make the employee whole for any lost wages, benefits, and compensation within 14 days after service of the Order.

IT IS SO ORDERED.

DATED: April 19, 2019

DocuSigned by:
Danette C. Brown
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DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings