

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

JUNNIE VERCELES,

A Permanent Certificated Employee,

Moving Party,

and,

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

Responding Party.

OAH No. 2018040627

**ORDER DENYING MOTION FOR
IMMEDIATE REVERSAL OF
SUSPENSION
(Ed. Code, § 44939, subd. (c))**

Administrative Law Judge Debra D. Nye-Perkins, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from San Diego, California, on May 11, 2018.

Daniel J. Kolodziej, Attorney at Law, Trygstad, Schwab & Trygstad, represented Junnie Verceles.

Michael Voigt, Office of the General Counsel, represented Los Angeles Unified School District.

PROCEDURAL HISTORY

In February or March of 2018, the district served Mr. Verceles with a written Statement of Charges, charging him with immoral conduct including egregious misconduct, immoral conduct, unprofessional conduct, unsatisfactory performance, evident unfitness for service, 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, and willful refusal to perform regular assignments without reasonable cause as prescribed by reasonable rules and regulations of the employing district, within the meaning of Education Code section 44932, subdivisions

(a)(1), (2), (5), (6), and (8), and section 44939. The charges are based upon respondent's alleged conduct from August 12, 2014, to December 1, 2015, for failure to comply with multiple directives from the school to not touch students unless he is protecting a student or staff member for safety reasons, to not put his hands on students, to not pull or grab students by their backpacks or clothing, to not throw objects in the classroom, and not to scream at students or use demeaning or derogatory language with students, as well as engaging in misconduct by grabbing an eighth grade student by his shirt, pushing him against the wall and pushing him out of the class while saying the words "get the fuck out" or words to that effect, and throwing the boy's backpack out of the classroom. The Statement of Charges also alleged that Mr. Verceles allowed another eighth grade student to leave the classroom without a referral resulting in the student sitting in a stairwell, and that Mr. Verceles used the following language with students: told the class to "shut up," referred to the class as "stupid," referred to the class as "dumb," said "fuck," and referred to an eighth grade student as "a fucking idiot" or words to that effect.

Based upon the foregoing charges, the district governing board immediately suspended Mr. Verceles from his duties and gave notice to him of the suspension.

On April 11, 2018, Mr. Verceles filed a Motion for Immediate Reversal of Suspension with OAH, under Education Code section 44939, subdivision (c)(1), arguing that the Statement of Charges does not set forth facts sufficient to support an allegation that Mr. Verceles engaged in immoral conduct or willful refusal to perform regular assignments. Mr. Verceles argues that the facts alleged, even if true, are not sufficient to establish immoral conduct, or willful refusal to perform regular assignments without reasonable cause, which is necessary in this case to sustain the suspension. OAH set the matter for oral argument and established a briefing schedule. On May 11, 2018, the parties orally argued their positions.

DISCUSSION

Mr. Verceles asserts that the allegations, even if true, do not constitute immoral conduct within the meaning of Education Code section 44939, and that the Statement of Charges do not allege conduct constituting willful refusal to perform regular assignments without reasonable cause. The district asserts grounds exist for the immediate suspension. Education Code section 44939, subdivision (b), permits a school district to 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."


Education Code section 44939, subdivision (c)(1), provides that the employee may file a motion for immediate reversal of suspension. OAH's "[r]eview 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.”

The written submissions of the parties and oral argument have been considered. Based on a review of the Statement of Charges, the district has alleged facts which, if true, are sufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b).

GOOD CAUSE NOT HAVING BEEN ESTABLISHED, the Motion for Immediate Reversal of Suspension is DENIED.

DATED: May 15, 2018

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DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings