

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

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

JULIE ANN THOMPSON, a Permanent Certificated Employee,

v.

TEMECULA VALLEY UNIFIED SCHOOL DISTRICT

OAH No. 2023060052

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

(Ed. Code, § 44939, subd. (c)(4))

Administrative Law Judge Michelle Dylan, State of California, Office of Administrative Hearings, heard this matter on June 23, 2023, by videoconference.

Attorneys Fern M. Steiner and Dyland Griffith represented Julie Thompson, the moving party.

Attorney Kimberly Smith represented the Temecula Valley Unified School District (District).

PROCEDURAL HISTORY

On March 23, 2023, the District filed a statement of charges against moving party Thompson pursuant to Education Code section 44932, alleging four causes for dismissal: 1) immoral conduct; 2) dishonesty; 3) evident unfitness for service; and 4) persistent violation of or refusal to obey school laws. The District placed her on immediate suspension without pay pursuant to Education Code section 44939, based upon charges of immoral conduct and willful refusal to perform regular assignments without reasonable cause.

The moving party filed a motion for immediate reversal of her suspension without pay, pursuant to Education Code section 44939, subdivision (c)(1). She argues that the District has not alleged a sufficient basis to place her on immediate unpaid status because the allegations in the statement of charges do not state sufficient facts to constitute immoral conduct or willful refusal.

DISCUSSION

Pursuant to Education Code 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." Although well-pleaded facts must be accepted as true for purposes of this motion, the administrative law judge need not accept "contentions, deductions or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Education Code section 44939, subdivision (b), provides 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 [Education Code] section 51530."

The term "willful" contains a volitional aspect. (*Coomes v. State Personnel Bd.* (1963) 215 Cal.App.2d 770, 775.) A refusal must be "conscious, intentional and deliberate" to be willful. (*Goodhew v. Industrial Acc. Commission* (1958) 157 Cal.App.2d 252, 257.) Education Code section 44939, subdivision (b), also requires such willful refusal to be without good cause.

The written submissions and oral argument of the parties have been considered. Based upon a review of the statement of charges, the District has failed to allege facts which, if true, are sufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b), on the grounds of willful refusal or immoral conduct. The facts alleged in the statement of charges may constitute grounds for discipline pursuant to Education Code section 44932, but as pled do not describe willful refusal, and without more context, do not necessarily reflect immoral conduct.

ORDER

Good cause having been established, the motion for immediate reversal of suspension is GRANTED. The District's immediate suspension of Julie Ann Thompson is REVERSED. The District shall make her whole for any lost wages, benefits, and

compensation within 14 days after service of this Order. (Ed. Code, § 44939, subd. (c)(5).).

DATE: 06/28/2023

Michelle Dylan

MICHELLE DYLAN

Administrative Law Judge

Office of Administrative Hearings