

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

ROBIN PIZZA,
a Permanent Certificated Employee,

Moving Party,

v.

CONTRA COSTA COUNTY OFFICE
OF EDUCATION,

Responding Party.

OAH No. 2018120333

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

(Ed. Code, § 44939, subd. (c)(4))

Administrative Law Judge (ALJ) Tiffany L. King, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Sacramento, California, on January 4, 2019.

Craig R. Meredith, Attorney at Law, represented Robin Pizza. Sally J. Dutcher, Attorney at Law, represented the Contra Costa County Office of Education (County).

Procedural Background

On November 30, 2018, the County's Assistant Superintendent of Human Resources signed the Statement of Charges and Recommendation for Dismissal and Request for Immediate Unpaid Suspension against Robin Pizza, a permanent certificated employee, based on charges of: 1) unprofessional conduct; 2) unsatisfactory performance; 3) evident unfitness for service; 4) persistent violation of, or refusal to obey the County's policies and regulations, and other rules governing her employment; and 5) willful refusal to perform her regular assignment without reasonable cause. (Ed. Code, §§ 44932, subds. (a)(2), (5), (6), and (8); 44939, subd. (b).) On December 4, 2018, Ms. Pizza filed her Demand for Hearing and Notice of Defense.

On December 7, 2018, Ms. Pizza filed a Notice of Motion and Motion for Immediate Reversal of Suspension pursuant to Education Code section 44939, subdivision (c)(1), contending that the Statement of Charges does not set forth a sufficient basis for immediate

unpaid suspension because the allegations therein do not rise to the level of willful refusal to perform regular assignments without reasonable cause. Specifically, Ms. Pizza argues the well-pleaded facts in the Statement of Charges amount to alleged unsatisfactory performance or unprofessional conduct, but do not include allegations that her conduct was intentional or willful in nature. The County filed its opposition on December 2, 2018. Oral argument was heard on January 4, 2019.

DISCUSSION

Education Code 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 “... 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. . . .” (Ed. Code, § 44939, subd. (b).)

Under Education Code section 44939, subdivision (c)(1), an employee who has been placed on such suspension may file a motion for immediate reversal of suspension. “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.*)¹

Although not defined by the statute, “willful refusal” connotes an intentional failure to perform a certain act. Case law has held that declining an employer’s lawful directions, without reason, is sufficient to establish “willful refusal.” (See, e.g., *Wilbur v. Office of City Clerk* (1956) 143 Cal.App.2d 636, 642 [employee who did not attribute his refusals to illness and made no showing of willingness to comply with the reasonable orders of his superiors demonstrated “willful refusal to obey the reasonable orders of an employer”]; *Flowers v. State Personnel Board*, 174 Cal.App.3d 753, 760 [employee’s repeated refusal to undergo a medical examination or sobriety test, as directed by his employer, supported a charge of insubordination].)

The Statement of Charges alleges that Ms. Pizza repeatedly failed to attend mandatory meetings, to complete reports and service logs, to complete assessments in a timely manner, and to secure student files, despite repeated directives and warnings by her employer. The County argues that, if these facts are accepted as true and viewed as a whole, they are sufficient to support a finding that Ms. Pizza willfully refused to perform her regular assignment. Ms. Pizza countered that her failure to accomplish these tasks may be related to

¹ “...The grant or denial of the motion shall be without prejudice to consideration by the Commission on Professional Competence, based upon the full evidentiary record before it, of the validity of the grounds for dismissal. The ruling shall not be considered by the commission in determining the validity of the grounds for dismissal, and shall not have any bearing on the commission's determination regarding the grounds for dismissal.” (Ed. Code, § 44939, subd. (c)(4).)

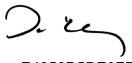
issues with organization, time management, and recordkeeping, rather than an intentional refusal to perform. However, those facts are not alleged in the pleading, and therefore, cannot be considered in determining whether the facts as alleged in the Statement of Charges constitute a basis for immediate suspension under Education Code section 44939.

The ALJ has considered the written submissions of the parties and oral argument. It is determined that the County alleged sufficient facts in the Statement of Charges that, if true, would constitute a basis for immediate suspension based upon “willful refusal to perform her regular assignment without reasonable cause” under Education Code section 44939, subdivisions (b) and (c).

ORDER

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

DATED: January 18, 2019

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TIFFANY L. KING
Administrative Law Judge
Office of Administrative Hearings