

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

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

JOESL SIAPNO, Moving Party,

A Permanent Certificated Employee,

and

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT,

Responding Party.

OAH No. 2023070148.1

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

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter telephonically on October 06, 2023. Clarissa M. Romero, Attorney at Law, Beeson, Tayer & Bodine, APC, represented Joesl Siapno (Siapno), the moving party. Kathryn E. Meola and Alex A. Lozada, Attorneys at Law, Atkinson, Andelson, Loya, Ruud & Romo, represented the West Contra Costa Unified School District (District), the responding party.

Pursuant to Education Code section 44939, subsection (b), the District immediately suspended Siapno from his duties upon its filing of a Statement of Charges containing allegations charging him with immoral conduct in violation of section 44932, subdivision (a)(1); unprofessional conduct in violation of section 44932, subdivision (a)(2); dishonesty in violation of section 44932, subdivision (a)(4); unsatisfactory performance in violation of section 44932, subdivision (a)(5); evident unfitness for service in violation of section 44932, subdivision (a)(6); and persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the governance of the public schools by the State Board of Education or by the governing board of the District in violation of section 44932, subdivision (a)(8).

Pursuant to section 44939, subdivision (c)(1), Siapno served and filed with the Office of Administrative Hearings a Motion for Immediate Reversal of Suspension. Pursuant to section 44939, subdivision (c)(2), the District filed an opposition, to which Siapno filed a reply.

Having considered the parties' written submissions and oral arguments, pursuant to section 44939, subdivision (4), the Administrative Law Judge issues the following Order granting the Motion for Immediate Reversal of Suspension.

Standard for Conducting Review of Section 44939 Motion for Immediate Reversal of Suspension

1. The governing board of a school district has the authority to suspend immediately a permanent employee without pay upon its filing of written charges for dismissal on grounds of immoral conduct, conviction of a felony or of any crime involving moral turpitude, incompetency due to mental disability, willful refusal to

perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations, or violation of section 51530, which imposes a prohibition against advocacy of communism with intent to indoctrinate. (§ 44939, subd. (b).) Reviewing the statutory scheme for tenured teacher dismissal, the California Supreme Court, in *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 207, 215-216, has affirmed if one of the grounds for dismissal pursuant to section 44932 is also one of those specified in section 44939, the school district may immediately suspend the employee without pay pending disposition of the dismissal proceeding.

2. Review of a motion for immediate reversal of suspension is "limited to a determination whether the facts as alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension under this section." (Ed. Code, § 44939, subd. (c)(1).)

3. Thus, review of a motion for immediate reversal of suspension is analogous to a demurrer, which tests the sufficiency of the allegations in a complaint. (*Pacifica Homeowners' Ass'n v. Wesley Palms Retirement Community* (1986) 178 Cal.App.3d 1147, 1151.) Facts properly pleaded are accepted as true, but contentions, deductions, or conclusions of fact or law should be disregarded. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Conclusory characterizations of conduct as intentional, willful, or fraudulent are "patently insufficient." (*Brousseau v. Jarrett* (1997) 73 Cal.App.3d 864, 872.) Where reading the allegations reveals the existence of an affirmative defense, the complaining party must plead around the defense by alleging specific facts that would avoid the apparent defense. (*Kirwan, supra*, 39 Cal.3d at 318.)

Facts Alleged in Statement of Charges

4. In sum, the Statement of Charges in this matter alleges, while employed by the District as a school nurse, Siapno sought and obtained employment at the San Miguel Joint Union School District (San Miguel) as a school nurse. The Statement of Charges alleges Siapno's simultaneous employment at the District and San Miguel amounts to activity or enterprise for compensation that is inconsistent or incompatible with his duties as a District employee, in violation of Government Code 1126, subdivision (a), and Board Policy 4136, a provision of the District's governing board's policy manual.

5. The Statement of Charges additionally alleges during a period of unpaid leave of absence from the District Siapno continued to receive paychecks totaling \$33,165, which he failed to report. The Statement of Charges alleges Siapno did not respond to District communications regarding his obligation to repay the overpayment.

6. The Statement of Charges further alleges at the end of Siapno's unpaid leave, he requested and was denied a remote work position. Siapno allegedly refused to comply with multiple directives to return to work in person.

7. The Statement of Charges further alleges Siapno failed to communicate with a parent of a District student assigned to his case load.

8. The Statement of Charges additionally alleges Siapno attempted to transact business with his registered nurse colleagues when he informed them he created a contracted nursing business and proposed they work for his company. The Statement of Charges alleges when his colleagues questioned his proposal,

Siapno subjected them to inappropriate and intimidating behavior. The Statement of Charges alleges Siapno "became agitated, passionate, and emotional." (Statement of Charges at p. 15.)

Immediate Suspension Based on Allegation of Immoral Conduct

9. In cases involving the dismissal of a school district's permanent employee, "immoral conduct" has been defined generally as "that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or a willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare." (*Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

10. In this matter, the central allegations of the Statement of Charges are that respondent engaged in incompatible activities, failed to respond to communication addressing an overpayment, failed to communicate with a parent, and attempted to transact business with colleagues. If true, these allegations, separately and in the aggregate, evince no hostility, meaning menacing or adversarial attitude; no corruption, meaning fraudulent conduct; no indecency, meaning obscene or indecorous behavior; no depravity, meaning perverted; or otherwise willful, flagrant, or shameless conduct showing moral indifference.

11. The pleaded facts in the Statement of Charges, if true, are insufficient to sustain Siapno's immediate suspension on the basis of immoral conduct.

Immediate Suspension Based on Allegation of Willful Refusal to Perform Regular Assignments Without Reasonable Cause

12. The willful refusal of a district's permanent employee to obey the reasonable rules and regulations of the employing board of education is insubordination. (*Swan, supra*, 41 Cal.2d at 552, citing *Harrison v. State Board of Education* (1946) 134 N.L.J. 502 and *State ex rel. Steele v. Board of Education of Fairfield* (1949) 252 Ala. 254.) The term "willful" carries a volitional determination that excludes the notion of accidental or even negligent conduct. (*Coomes v. State Personnel Board* (1963) 215 Cal.App.2d 770, 775.)

13. The Statement of Charges alleges no Remote Work Policy was approved for Siapno after his leave of absence expired on August 10, 2022. The Statement of Charges is interspersed with conclusory assertions characterizing respondent's alleged refusal to work in person as "steadfast" and "insubordinate." (See e.g., Statement Charges at pp. 13, 18.) Specific references to respondent's attitude or state of mind regarding District directives take the form of, for example, "you [meaning respondent] were insubordinate in that you refused to work in person despite multiple directives from your direct supervisor" and "you were continuing to defy my directive [that you report to work in person]." (Statement of Charges at pp.14, 18.)

14. A reading of the allegations in the Statement of Charges suggests affirmative defenses, including but are not limited to justification or excuse, may be available to Siapno. Siapno apparently requested but was denied personal necessity leave at times when directed to work in person. (Statement of Charges at p. 13.) The legitimacy of both the requested personal necessity leave and its refusal

is a contested matter. As previously discussed, the complaining party must plead around an affirmative defense by alleging specific facts that would avoid the apparent defense. (*Kirwan, supra*, 39 Cal.3d at 318.) As pleaded, the allegations in the Statement of Charges do not avoid the availability of such defenses to Siapno. Unestablished allegations impugning Siapno's credibility simply will not do.

15. The pleaded facts in the Statement of Charges, if true, are insufficient to sustain Siapno's immediate suspension on the basis of willful refusal to perform regular assignments.

16. Based on the foregoing, good cause exists to grant the Motion for Immediate Reversal of Suspension.

17. Pursuant to section 44939, subdivision (c)(5), the Order below shall become effective within five (5) days of service, and the District shall make Joel Siapno, a permanent certificated employee of the District, whole for any lost wages, benefits, and compensation within fourteen (14) days after service of the Order.

ORDER

The Motion for Immediate Reversal of Suspension in OAH case number 2023070148.1 is granted.

DATE: 10/23/2023

Jennifer Russell

JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings