

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

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

CHRIS HOLVERSON, Moving Party

A Permanent Certificated Employee,

and

COMPTON UNIFIED SCHOOL DISTRICT,

Respondent Party

OAH No. 2021060493

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

Nana Chin, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on July 9, 2021, in Los Angeles, California.

Daniel J. Kolodziej, Attorney at Law, represented moving party Chris Holverson (Holverson).

Michelle M. Holmes, Attorney at Law, represented responding party Compton Unified School District (District).

Background

Holverson is a permanent certificated employee of the District assigned to Frank L. Walton Middle School as physical education (PE) teacher.

On May 5, 2021, the District's Executive Director of Human Resources served Holverson with a Notice of Recommendation of Dismissal/Immediate Suspension Without Pay, and Statement of Charges (Statement of Charges), advising Holverson of her determination to recommend to the District's Board of Trustees (Board) that he be dismissed as a District employee and suspended immediately without pay.

The Statement of Charges alleged multiple incidents between 2017 and 2020, which the District asserted constituted immoral conduct (Ed. Code, § 44932, subd. (a)(1)); unprofessional conduct (Ed. Code, § 44932, subd. (a)(2)); unsatisfactory performance (Ed. Code, § 44932, subd. (a)(5)); evident unfitness for service (Ed. Code, § 44932, subd. (a)(6)); persistent violation or refusal to obey school laws or reasonable regulations (Ed. Code, § 44932, subd. (a)(8)).

On May 12, 2021, Holverson was advised that the Board took action to immediately suspend him without pay based his "willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the District" and provided him with notice of its intention to dismiss him "for the reasons set forth in the [Statement of Charges]." (Exh. 2.)

Holverson requested a hearing on the dismissal and also filed a Notice of Motion and Motion for Immediate Reversal of Suspension (Motion) to challenge his

immediate suspension without pay. The District filed an Opposition to the Motion (Opposition) on June 30, 2021. Holverson filed a Reply to the Opposition on July 6, 2021.

Oral arguments on the Motion were heard on July 9, 2021.

Applicable Law

Education Code section 44939 provides the governing board of a school district the authority 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 School District, or with violation of [Education Code] section 51530.” (Ed. Code, § 44939, subd. (b).) An employee who has been placed on such suspension, however, may file a motion with OAH for immediate reversal of suspension. (Ed. Code, § 44939, subd. (c)(1).) Review of a motion is 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.*)

Evaluation

Though parties presented oral and written argument at hearing on whether the incidents described in the Statement of Charges could be characterized as “immoral conduct,” that issue will not be addressed in the present Order. As set forth in the District’s May 12, 2021 notice to Holverson, the Board’s immediate suspension was solely based on Holverson’s willful refusal to perform regular assignments without reasonable cause.

Although there are no cases interpreting the term "willful refusal to perform regular assignments without reasonable cause" under Education Code section 44939, case law involving the alleged misconduct of public employees in other settings reflects that 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; see also *Peters v. Mitchell* (1963) 222 Cal.App.2d 852, 862 ["Wilful disobedience connotes a specific violation of command or prohibition."].) Declining to obey an employer's directions, without reason, is sufficient to establish willful refusal. (See, e.g., *Wilbur v. Office of City Clerk of City of Los Angeles* (1956) 143 Cal.App.2d 636, 642 [observing an employee who "did not attribute his refusals to illness" and made "no showing before the hearing examiner of willingness to comply with the reasonable orders of his superiors," demonstrated "willful refusal to obey the reasonable orders of an employer"].)

If proven at hearing, Holverson's alleged misconduct, which included his repeated failure to submit lesson plans and incorporate agreed upon learning activities into his lessons, failure to attend training, and subsequent insubordinate remarks and conduct towards the school administration when those issues were raised, could support a finding that Holverson willfully refused to perform regular assignments without reasonable cause.

As the District alleged sufficient facts in the Statement of Charges that, if true, would constitute a basis for immediate suspension under Education section 44939, subdivision (b), the Motion is denied.

ORDER

The Motion for Immediate Reversal of Suspension is denied.

DATE: 07/20/2021


Nana Chin (Jul 20, 2021 16:59 PDT)

NANA CHIN

Administrative Law Judge

Office of Administrative Hearings