

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

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

CARLOS MEDINA,

A Permanent Certificated Employee,

Moving Party,

and

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Responding Party.

OAH No. 2019100235

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

Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Los Angeles, California on October 25, 2019.

Alejandra Gonzalez-Bedoy, Attorney at Law, represented moving party Carlos Medina (Medina).

Kelly Kim, Assistant General Counsel II, represented responding party Los Angeles Unified School District (District).

BACKGROUND

Medina was a certificated, permanent employee of the District, assigned as a fourth grade elementary school teacher at Castelar Elementary School.

In its 61-page Statement of Charges, the District seeks to dismiss Medina from employment based upon allegations that he engaged in immoral conduct (Ed. Code, §§ 44932, subd. (a)(1), 44939); unprofessional conduct (Ed. Code, § 44932, subd. (a)(2)); dishonesty (Ed. Code, § 44932, subd. (a)(4)) unsatisfactory performance (Ed. Code, § 44932, subd. (a)(5)); evident unfitness for service (Ed. Code, § 44932, subd. (a)(6)); persistent violation of or refusal to obey school laws (Ed. Code, § 44932, subd. (a)(8)); and willful refusal to perform regular assignments without reasonable cause (Ed. Code, § 44939).

On September 3, 2019, during a closed session, the District's Board of Education immediately suspended Medina without pay, pending a hearing before the Commission on Professional Competence (CPC). The District provided Medina with notice and a Statement of Charges on September 4, 2019. Thereafter Medina submitted a timely request for hearing, pursuant to Education Code (Code) sections 44934, subdivision (a), and 44941.

The District's Contentions

The District contends that it has properly pleaded charges that contain factual allegations sufficient to support causes of immoral conduct, and willful refusal to perform regular assignments without reasonable cause, pursuant to Code section 44939.

The District alleges in the Statement of Charges that Medina committed immoral conduct by instituting various forms of corporal punishment and engaging in retaliatory behavior. Specifically, he prohibited students, including a disabled student, from eating breakfast in the classroom, as punishment for not finishing their school work; he interfered with an administrative investigation by lecturing his students to not be "tattletales,"; and he intimidated Cristina Solis, a Behavior Intervention Paraprofessional, by staring at her while lecturing the class to not be "tattletales."

The District also alleges in the Statement of Charges that Medina committed fraud by signing and submitting three separate Certifications of Absence stating that he had to attend to his daughter's illness on five separate days when Medina's daughter was present at her school on those specific five days.

In addition to the charges alleging immoral conduct, the Statement of Charges alleges that Medina willfully refused to perform his regular assignments in four broad categories. Specifically, the District alleges that Medina failed in: (1) preparing and executing an adequate lesson plan; (2) practicing effective classroom management; (3) communicating the objectives of the lesson; and (4) utilizing effective pedagogy.

The District further alleges in the Statement of Charges that Medina willfully refused to perform his regular assignments by refusing to follow directives from his

administrators. Specifically, the District alleges that Medina continued to use his personal cell phone and desktop computer for personal reasons during class times after being directed not to on three specific occasions. It also alleges that Medina failed to provide a safe and respectful environment in his class as directed on five separate occasions, in that he failed to monitor his students while on the bus and left his students unattended in the bus.

Medina's Contentions

Medina asserts that the facts as alleged in the Statement of Charges, even if true, are insufficient to constitute a basis for immediate suspension without pay. He first asserts that the allegations address absences, some isolated incidents in the 2018-2019 school year, and 13 days of deficient instruction from 2017 to 2019. Medina contends that these allegations do not establish willful refusal to perform regular assignments.

Medina asserts that the charges pertaining to teaching deficiencies amount to unsatisfactory performance or unprofessional conduct, at most, rather than willful refusal, and as such do not constitute a basis for unpaid suspension.

As for the immoral conduct charges, Medina argues that the District has failed to allege sufficient facts to support the charges and that therefore, the allegations do not constitute immoral conduct.

LEGAL STANDARDS

Applicable Law

A school district may immediately suspend a permanent certificated employee 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 advocating communism. (Ed. Code, § 44939, subd. (b).) A suspended employee may file a motion for immediate reversal of the suspension with the Office of Administrative Hearings. (Ed. Code, § 44939, subd. (c)(1).) An administrative law judge reviews the motion, and the review "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.*) Although well-pleaded facts must be accepted as true, the administrative law judge need not accept contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Although there are no cases interpreting the term "willful refusal to perform regular assignments without reasonable cause" under Code section 44939, case law from related 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 “wilful refusal to obey the reasonable orders of an employer”].)

Immoral conduct is conduct “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 as 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 Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811, quoting *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740.)

Analysis

WILLFUL REFUSAL

A comparison of Code sections 44932, subdivision (a), and 44939, subdivision (b), is illuminating. Pursuant to Code section 44932, subdivision (a)(2) and (a)(5), unprofessional conduct or unsatisfactory performance warrants discipline, but not unpaid suspension. More importantly, under Code section 44932, subdivision (a)(8), while a teacher's persistent violation of a school district's reasonable regulations is grounds for discipline, it is not an authorized basis for unpaid suspension. Rather, unpaid suspension is authorized only for a willful refusal to perform regular assignments pursuant to Code section 44939, subdivision (b).

This comparison indicates the cause of discipline for willful refusal to perform a regular assignment is more akin to the traditional labor charge of insubordination, i.e., an intentional, willful, volitional refusal to perform any part of a particular regular

assignment. A charge of willful refusal to perform a regular assignment must be more than unsatisfactory, unprofessional, negligent or even persistent failure to perform a regular assignment.

In this case, a review of the Statement of Charges pertaining to teaching deficiencies indicates that Medina's alleged misconduct is not the result of a willful, volitional refusal to perform his regular assignment. The well-pleaded facts indicate that when Medina taught his classes, administrators found fault with his performance. Stated another way, the pleadings indicate Medina was teaching his class, but did so deficiently in the District's opinion. The allegations also indicate Medina failed to comply with directives given to him.

The pleadings allege that Medina's teaching during the times in question was unsatisfactory and unprofessional, among other theories. But where the pleadings allege a willful refusal to perform a regular assignment, the allegations are vague, conclusory and devoid of the kind of factual content which, if true, would constitute a willful state of mind or volitional refusal to perform as directed. Vague and conclusory allegations are not binding on the ALJ and need not be accepted. Accordingly, the District has not properly pleaded charges that contain factual allegations sufficient to state a basis for an immediate unpaid suspension based upon willful refusal to perform regular assignments.

IMMORAL CONDUCT

The District has properly pleaded charges that contain factual allegations sufficient to support a charge of immoral conduct. The Statement of Charges contains allegations that Medina committed fraud by in connection with Certifications of Absence, instituted various forms of corporal punishment, and engaged in retaliatory

behavior, including prohibiting students from eating their breakfast and intimidating his students and a colleague. Such conduct is immoral, in that the conduct alleged is willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and constitutes an inconsiderate attitude toward good order and the public welfare.

Accordingly, Medina has failed to establish good cause to reverse the immediate suspension.

ORDER

The motion for immediate reversal of suspension is denied.

DATE: November 8, 2019

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Laurie R. Pearlman
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LAURIE R. PEARLMAN

Administrative Law Judge

Office of Administrative Hearings