

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

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

SUSAN KASZYCKI,

A Permanent Certificated Employee,

Moving Party,

and

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Responding Party.

OAH No. 2019091016

**ORDER GRANTING 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.

Richard J. Schwab, Attorney at Law, represented moving party Susan Kaszycki (Kaszycki or Respondent).

Lynn I. Ibara, Assistant General Counsel, represented responding party Los Angeles Unified School District (District).

BACKGROUND

Kaszycki is a certificated, permanent employee of the District, who was assigned as an elementary school teacher at Sunrise Elementary School.

In its Statement of Charges, the District seeks to dismiss Kaszycki from employment with the District based upon allegations that she willfully refused to perform regular assignments without reasonable cause (Ed. Code, § 44939).

On September 4, 2019, the District issued a Notice of Intent to Dismiss and Statement of Charges against Kaszycki, and placed her on an indefinite unpaid suspension, pending a hearing before the Commission on Professional Competence (CPC). Thereafter, Kaszycki submitted a timely request for hearing.

The District's Contentions

The District contends that its Statement of Charges contains sufficient facts showing that Kaszycki willfully refused to perform regular assignments without reasonable cause, pursuant to Education Code (Code) section 44939, thereby justifying her immediate suspension without pay.

The District asserts that the allegations in the Statement of Charges establish an on-going refusal by Kaszycki to perform regular assignments without reasonable

cause, despite oral and written assistance, guidance, and directives provided to help her perform these assignments. The allegations in the Statement of Charges involve Kaszycki's failure to: provide differentiated instruction for students in her classroom of different learning levels; have clear behavior expectations in place; monitor students; and re-direct students engaged in off-task behavior.

The District argues that Kaszycki had assistance and repeated notices and opportunities to perform her assignments, each of which involved regular assignments of elementary school teachers. The District further notes that the assignments alleged are not based on school laws of the State, or on regulations prescribed for the government of public schools, but on reasonable rules and regulations of the District. It contends that Respondent had knowledge of her regular assignment, and was provided with guidance and resources. Accordingly, the District asserts that Kaszycki's failure to act constitutes a willful refusal in that it was voluntary and intentional, justifying her immediate suspension under Code section 44939.

Kaszycki's Contentions

Kaszycki asserts that the facts as alleged in the Statement of Charges, even if accepted as true, are insufficient to constitute a basis for immediate suspension without pay under Code section 44939. She contends that the Statement of Charges alleges various purported deficiencies and failures in her teaching abilities and performance. Kaszycki argues that these charges involve unsatisfactory performance or unprofessional conduct, at most, rather than willful refusal to perform regular assignments. She asserts that allegations of unsatisfactory performance or unprofessional conduct do not constitute a basis for unpaid suspension under Code section 44939.

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 ["Willful 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”].)

Analysis

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, the Statement of Charges does not contain sufficient facts to establish that Kaszycki's alleged teaching deficiencies are the result of a willful, volitional refusal to perform her regular assignment. Kaszycki was teaching her class, but did so deficiently in the District's opinion, despite the fact that she was provided with guidance and resources. The well-pleaded facts indicate that when Kaszycki taught her classes, administrators found fault with her performance.

The allegations, if true, may establish that Kaszycki's teaching during the dates in question was unsatisfactory and unprofessional. But the allegations are devoid of the kind of factual content which, if true, would constitute a willful state of mind or volitional refusal to perform as directed. Therefore, Kaszycki is entitled to immediate reversal of her suspension.

ORDER

The motion for immediate reversal of suspension is granted. The District shall make Kaszycki whole for any lost wages, benefits, and compensation within 14 days after service of this order. (Ed. Code, § 44939, subd. (c)(5).)

DATE:

LAURIE R. PEARLMAN

Administrative Law Judge

Office of Administrative Hearings