

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

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

**ZOE TARARACHE, a Permanent Certificated Employee,
Moving Party,**

and

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Responding Party.

OAH No. 2020070604

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

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard oral argument on a Motion for Immediate Reversal of Suspension (MIRS), filed by Zoe Tararache (Employee or Moving Party) in this matter on August 14, 2020, by telephonic conference.

Joshua Adams, Attorney at Law, represented the Moving Party.

Lynn I. Ibara, Associate General Counsel I, Office of General Counsel, represented responding party, the Los Angeles Unified School District (District).

On June 22, 2020, District served Employee with a written Statement of Charges, charging Employee with immoral conduct, unprofessional conduct, unsatisfactory performance, evident unfitness for service, persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing her, and willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing district, based upon Employee's alleged conduct between January 2018 and May 2019.

The District governing board immediately suspended Employee from her duties and gave her notice of the suspension.

On July 22, 2020, Employee filed a Motion for Immediate Reversal of Suspension (Motion) with OAH, under Education Code section 44939, subdivision (c)(1), arguing that the Statement of Charges does not allege facts sufficient to support a charge that Employee acted immorally, or a charge that she willfully refused to perform regular assignments without reasonable cause.

A school district may immediately suspend a permanent certificated employee who has been charged with immoral conduct or with willful refusal to perform regular assignments without reasonable cause. (Ed. Code, § 44939, subd. (b).) A teacher may be discharged, but not immediately suspended without pay, for unprofessional conduct or unsatisfactory performance (Ed. Code, § 44932, subd. (a)(2), (5)), or for

persistent violation of a school district's reasonable regulations (Ed. Code, § 44932, subd. (a)(8)).

A suspended employee may file a motion for review of the suspension; review of that motion "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." (Ed. Code, § 44939, subd. (c)(1).)

Complainant claims to have suspended Employee solely based on Employee's willful refusal to perform her job duties without reasonable cause. Complainant does not claim to have suspended Employee based on immoral acts. "[T]he District did not allege immoral conduct under Ed. Code section 44939 (b), making any discussion of immorality for MIRS irrelevant. [¶] . . . [¶] Even if [Employee's] disrespectful treatment towards students doesn't rise to the level of immoral conduct for purposes of Ed. Code section 44939 (b), her conduct did constitute a willful refusal to perform a regular assignment without reasonable cause" in that it "violated the District's governing Board Resolution regarding the Respectful Treatment of All Persons, compliance with which is alleged to be one of [Employee's] regular assignments." (District's Opposition to MIRS, p. 6.) Allying in the Statement of Charges that the District issued directives to Employee to comply with the Resolution seven times between February and December 2018, the District argues that her repeated violations of the Resolution "expressed her willful intent not to do so." (*Ibid.*) "It strains credulity that [Employee] was accidentally or negligently harsh, rude, and demeaning towards her students." (*Ibid.*)

Similarly, the District argues that the Statement of Charges alleges Employee received guidance and directives on nine occasions but continued to fail to comply with them. Employee "was not doing what she was supposed to do and she refused to

make changes to her performance. [¶] . . . [¶] [Employee's] refusal to perform regular assignments was not merely persistent or accidental or negligent; it became willful." (District's Opposition to MIRS, p. 4.)

Based on a review of the Statement of Charges, the parties' briefs, and argument of counsel, District does not allege facts sufficient to support a finding, based solely on the pleadings, that Employee engaged in immoral conduct or willfully refused to perform regular assignments without reasonable cause.

District urges the ALJ to make certain deductions and conclusions from the facts pled in the Statement of Charges. Without an evidentiary hearing in this particular matter, however, various deductions and conclusions, all equally plausible in the absence of evidence, could explain those factual allegations. Whether, for example, in any given instance, Employee (a) willfully refused to perform regular assignments without reasonable cause, (b) had reasonable cause and was justified in her actions, or (c) was incompetent and incapable of performing, cannot be determined based on District's pleadings alone. The question of Employee's willfulness depends not only on establishing the District's alleged facts, but on evidence of the context in which those facts occurred. Absent that context, District's Statement of Charges requires too many unwarranted deductions and conclusions in order to attribute to Employee a willful refusal. District has not met the requirements for immediate suspension under Education Code section 44939, subdivisions (b) and (c)(1).

Although well-pleaded facts must be accepted as true for purposes of this Motion, the ALJ need not accept "contentions, deductions or conclusions of fact or law." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Thus, for example, the District's allegations that Employee told Assistant Principal Segura on December 6, 2018, that she would not observe a colleague teaching, that Segura was repeating something the

principal had told Employee earlier, that the conference memos issue to Employee were absurd, and that Segura should be "afraid of God" for what he was doing, are well-pleaded facts. (Statement of Charges, ¶ 69). The allegations in the same paragraph, however, that these facts show Employee was "signaling her disdain for assistance and guidance, and her refusal to perform regular assignments, but providing no reasonable cause for her refusal," (*ibid.*), are mere contentions, deductions, and conclusions, and must be established in the course of an evidentiary hearing.

Good cause having been established, the Motion for Immediate Reversal of Suspension is **granted**.

This Order shall become effective within five days of service, and the District shall make the employee whole for any lost wages, benefits, and compensation within 14 days after service of this Order. (Ed. Code, § 44939, subd. (c)(5).)

It is so ordered.

DATE: August 31, 2020

DocuSigned by:
Howard W. Cohen
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HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings