

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

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

**ALYSSA SCHWOERKE, A Permanent Certificated Employee,
Moving Party,**

and

SANTA BARBARA UNIFIED SCHOOL DISTRICT,

Responding Party.

OAH No. 2023061043

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

Administrative Law Judge (ALJ) Timothy J. Aspinwall, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Sacramento, California, on July 7, 2023.

Justin M. Crane, Attorney at Law, represented Alyssa Schwoerke (Employee).

Austin S. Payne, Attorney at Law, represented Santa Barbara Unified School District (District).

PROCEDURAL HISTORY

On May 15, 2023, District served Employee with a Notice of Intent to Dismiss and a written Statement of Charges, charging Employee with unprofessional conduct; evident unfitness for service; persistent violation or refusal to obey school laws of the state or reasonable regulations; and alcoholism or other drug abuse that makes Employee unfit to instruct or associate with children. The Statement of Charges recommends that Employee's employment with the District be terminated based on the charges and facts set forth therein.

The Statement of charges further recommends that employee be suspended without pay pursuant to Education Code section 44939 because:

... [Employee's] repeated violation of the District's policies by reporting to work on multiple occasions with noticeable signs of intoxication, especially after being issued a 45-day notice of unprofessional conduct warning her about such conduct, demonstrates a "willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district." Such willful refusal justifies immediate suspension without pay under Cal. Educ. Code § 44939.

On June 8, 2023, Employee filed a Motion for Immediate Reversal of Suspension (Motion) with OAH, pursuant to Education Code section 44939, subdivision (c), alleging the Statement of Charges does not set forth a sufficient basis for immediate suspension because:

... the District fails to state facts sufficient to support the ground of "willful refusal to perform regular assignments without reasonable cause." The Statement of Charges merely concludes as such without providing any facts that show a willful refusal

DISCUSSION

Education Code section 44939 states, in relevant part, that a school district may immediately suspend a permanent employee of the school district who has been charged "... with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the School District" (Ed. Code, § 44939, subd. (b).)

Under Education Code section 44939, subdivision (c)(1), "review of a motion filed pursuant to this section 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."

The ALJ has considered the written submissions of the parties and oral argument. Based upon a review of the Statement of Charges, the District did not allege facts which, if true, are sufficient to establish that Employee engaged in a "willful refusal to perform regular assignments" or any other conduct that would constitute a basis for immediate suspension under Education Code section 44939, subdivision (b). Employee also advanced due process arguments that do not fall squarely within the jurisdiction conferred by Education Code section 44939, subdivision (c)(1), and for that reason were not considered.

GOOD CAUSE HAVING BEEN ESTABLISHED, the Motion for Immediate Reversal of Suspension is GRANTED. The District shall immediately return Employee to paid status. The District shall make Employee whole for any lost wages, benefits, and compensation within 14 days after service of this Order. (Ed. Code, § 44939, subd. (c)(5).)

DATE: July 10, 2023

Timothy Aspinwall

TIMOTHY J. ASPINWALL

Administrative Law Judge

Office of Administrative Hearings