

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Motion for Immediate
Reversal of Suspension Filed by:

NICOLE WASHINGTON, a Permanent
Certificated Employee,

Moving Party,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

Responding Party.

OAH No. 2018040632

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

(Ed. Code, § 44939, subd. (c)(4))

Administrative Law Judge Karen Reichmann, Office of Administrative Hearings,
State of California, heard this matter telephonically from Oakland, California, on May 7,
2018.

Rosty G. Gore, Attorney at Law, Trygstad, Schwab & Trygstad, represented
respondent Nicole Washington.

No appearance was made on behalf of the Los Angeles Unified School District
(District).

PROCEDURAL HISTORY

A statement of charges was filed and served against respondent Nicole Washington,
pursuant to Education Code section 44932, alleging seven causes for dismissal: 1) evident
unfitness for service; 2) unsatisfactory performance; 3) unprofessional conduct; 4) immoral
conduct; 5) dishonesty; 6) willful refusal to perform regular assignments without reasonable
cause, as prescribed by reasonable rules and regulations of the employing district (willful
refusal); and 7) 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. The

District placed respondent on immediate suspension without pay under Education Code section 44939.

On April 12, 2018, respondent filed a timely motion for immediate reversal of her suspension without pay, pursuant to Education Code section 44939, subdivision (c)(1). Respondent argues that the District has not alleged a sufficient basis to place her on immediate unpaid status because the allegations in the statement of charges do not establish cause for immediate suspension pursuant to Education Code section 44939, subdivision (b). Respondent requests immediate reinstatement.

DISCUSSION

Education Code section 44939, subdivision (b), provides that a school district may 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.” The statement of charges alleges two causes for discipline that fall within this provision: immoral conduct and willful refusal.

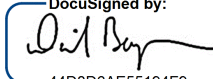
Pursuant to Education Code section 44939, subdivision (c)(1), “review of a motion filed pursuant to this section shall be limited to a determination as to whether the facts as alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension under this section.”

The written submissions and oral argument of respondent have been considered. No opposition to the motion was filed by the District. Based upon a review of the statement of charges, the District has failed to allege facts which, if true, are sufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b), on the grounds of immoral conduct or willful refusal. The facts alleged in the statement of charges may constitute grounds for discipline pursuant to Education Code section 44932, but do not describe immoral conduct or a willful refusal on the part of respondent to perform her duties in accordance with reasonable rules and regulations.

ORDER

Good cause having been established, respondent's motion for immediate reversal of suspension and request for immediate reinstatement is GRANTED. The District's immediate suspension of respondent Nicole Washington is REVERSED. The District shall immediately return respondent to paid status. The District shall make respondent whole for any lost wages, benefits, and compensation within 14 days after service of this Order. (Ed. Code, § 44939, subd. (c)(5).)

DATED: May 8, 2018

DocuSigned by:

44D8D6AE55194F9... for _____
KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings