

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

RAQUEL PUENTE,
A Permanent Certificated Employee,

Employee,

NORWALK LA MIRADA UNIFIED
SCHOOL DISTRICT,

School District.

OAH No. 2018010354

**ORDER GRANTING EMPLOYEE'S
MOTION FOR IMMEDIATE
REVERSAL OF SUSPENSION
(Ed. Code, § 44939, subd. (c)(4))**

Administrative Law Judge (ALJ) Carla L. Garrett, Office of Administrative Hearings, State of California, heard this matter telephonically from Los Angeles, California, on January 26, 2018.

Daniel B. Rojas, Attorney at Law, represented Raquel Puente (Employee).

Margaret A. Chidester, Attorney at Law, represented Norwalk La Mirada Unified School District (District).

On December 12, 2017, School District served the Employee with a written Statement of Charges, charging Employee with various types of misconduct including willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the School District, based upon the following allegations: Employee endangered students by tolerating near uncontrolled chaos in her classroom, among other things, and by leaving young children without adult supervision. Additionally, the School District alleges Employee deprived her students of the benefits of meaningful instruction due to her performance issues, notwithstanding repeated classroom observations, coaching, and assistance from her principal and others.

Based upon the foregoing charges, the School District governing board immediately suspended Employee from her duties and gave notice to her of the suspension.

On January 11, 2018, Employee filed a Motion for Immediate Reversal of Suspension (Motion) with OAH, pursuant to Education Code section 44939, subdivision (c)(1), alleging

that the Statement of Charges does not set forth a sufficient basis for immediate suspension based upon the following facts. Specifically, Employee asserts the allegations contained in the Statement of Charges concern deficient performance issues over the course of two academic years, and fails to allege that Employee engaged in any intentionally insubordinate conduct. Instead, Employee asserts that the Statement of Charges contains a litany of distinct and disparate allegations describing instances in which Employee purportedly failed to meet the School District's performance expectations.

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 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." (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 School District failed to allege facts which, if true, are sufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b).

GOOD CAUSE HAVING BEEN ESTABLISHED, the Motion for Immediate Reversal of Suspension is GRANTED.

The School 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).)

DATED: January 29, 2018

DocuSigned by:
Carla L. Garrett
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CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings