

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

BRENDA EVANS,

A Permanent Certificated Employee,

Employee,

v.

OXNARD SCHOOL DISTRICT,

School District.

OAH No. 2018070451

**ORDER DENYING MOTION FOR
IMMEDIATE REVERSAL OF
SUSPENSION
(Ed. Code, § 44939, subd. (c))**

Administrative Law Judge Debra D. Nye-Perkins, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from San Diego, California, on August 3, 2018.

Brett B. McMurdo, Attorney at Law, Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez, represented Brenda Evans.

April Navarro, Attorney at Law, represented Oxnard School District.

PROCEDURAL HISTORY

In May 2018, the district served Ms. Evans with a written Statement of Charges, charging her with unprofessional conduct, dishonesty, unsatisfactory performance, evident unfitness for service, and 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 respondent's alleged conduct between October 2017 and March 2018.

Based upon the foregoing charges, the district governing board immediately suspended Ms. Evans from her duties and gave notice to her of the suspension.

On July 11, 2018, Ms. Evans filed a Motion for Immediate Reversal of Suspension with OAH, under Education Code section 44939, subdivision (c), arguing that the Statement of Charges does not set forth facts sufficient to support an allegation that Ms. Evans acted willfully to refuse to perform, which is necessary in this case to sustain the suspension. OAH set the matter for oral argument and established a briefing schedule. On August 3, 2018, the parties orally argued their positions.

DISCUSSION

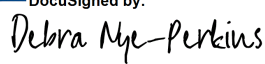
Ms. Evans asserts that the allegations do not establish that she willfully refused to perform regular assignments. The district asserts grounds exist for the immediate suspension. Education Code section 44939, subdivision (b), permits a school district to immediately suspend a permanent employee of the 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 employing school district, or with violation of [Education Code] Section 51530.”

Education Code section 44939, subdivision (c)(1), provides that the employee may file a motion for immediate reversal of suspension. OAH’s “[r]eview 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 on a review of the Statement of Charges, the district has alleged facts which, if true, are sufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b).

GOOD CAUSE NOT HAVING BEEN ESTABLISHED, the Motion for Immediate Reversal of Suspension is DENIED.

DATED: August 8, 2018

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DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings