

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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

CAROL ARKENBERG,  
A Permanent Certificated Employee,

Moving Party and Respondent.

OAH No. 2019110451  
(Related Case No. 2019110510)

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

(Ed. Code, § 44939, subd. (c)(4))

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter telephonically on December 13, 2019, from San Diego, California.

Tamra M. Smith, Attorney at Law, represented Carol Arkenberg, respondent and moving party.

M. Cristina Cruz, Assistant General Counsel, represented the Los Angeles Unified School District (District).

PROCEDURAL HISTORY

On October 14, 2019, a District representative served respondent and moving party with the Amended Statement of Charges alleging cause exists to dismiss her from employment with the District as a science teacher. The charges include immoral conduct and persistent refusal to perform regular assignments without reasonable cause. In reliance on these charges, the District has suspended respondent from employment without pay.

On November 13, 2019, respondent timely filed a motion seeking immediate reversal of her suspension and reinstating her salary and benefits pending resolution of the charges against her. Respondent argues that the charges, even if true, do not constitute immoral conduct or persistent willful refusal to perform regular assignments without reasonable cause. At most, the allegations amount to unsatisfactory performance and unprofessional conduct. The District argues that the allegations of immoral conduct and willful refusal are adequately pled in the Amended Statement of Charges to warrant respondent's suspension from employment without pay under Education Code section 44939.

## APPLICABLE STATUTES

Education Code section 44939 permits the District to suspend immediately, without pay, a permanent employee who the District alleges committed “immoral conduct” or willful refusal to perform assignments without good cause as prescribed by reasonable rules and regulations of the employing school district. (Ed. Code, § 44939, subd. (b).) Administrative review of an order for immediate suspension is “limited to a determination whether the facts alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension under this section.” (*Ibid.*, subd. (c)(1).)


## CONCLUSION

The parties’ submissions and arguments have been fully considered. The District has alleged facts which, if true, would establish that moving party/respondent engaged in immoral conduct. These allegations, as pled, are sufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b).

## ORDER

The motion by respondent and moving party Carol Arkenberg for immediate reversal of suspension and for reimbursement of pay and benefits during the period of suspension is denied.

DATED: December 16, 2019

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ABRAHAM M. LEVY  
Administrative Law Judge  
Office of Administrative Hearings