

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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

OAH No. 2018080320

YEN LA,

A Permanent Certificated Employee,

Moving party,

v.

FONTANA UNIFIED SCHOOL DISTRICT,

Responding party.

**AMENDED<sup>1</sup> ORDER GRANTING  
MOTION FOR IMMEDIATE  
REVERSAL OF SUSPENSION  
(Ed. Code, § 44939, subd. (c)(4))**

Administrative Law Judge (ALJ) Dena Coggins, Office of Administrative Hearings, State of California, heard this matter telephonically from Sacramento, California, on September 7, 2018.

Attorney Ann Hendrix represented Yen La.

Attorney Margaret Chidester represented Fontana Unified School District (School District).

PROCEDURAL HISTORY

On July 11, 2018, the Board of Education for the School District approved charges for dismissal against Mr. La based on causes that included, but were not limited to, willful refusal to perform regular assignments without reasonable cause under Education Code section 44939. On the same day, the Board of Education suspended Mr. La from his duties without pay. On July 12, 2018, the School District served Mr. La with the written Statement of Charges. On July 27, 2018, Mr. La requested a hearing to contest the suspension and dismissal charges.

On August 9, 2018, Mr. La filed a Motion for Immediate Reversal of Suspension (Motion) with OAH, pursuant to Education Code section 44939, subdivision (c)(1), alleging

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<sup>1</sup> This order has been amended to reflect the correct case number.

that the School District failed to state facts sufficient to support the ground of “willful refusal to perform regular assignments without reasonable cause.”<sup>2</sup>

## 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 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).

## ORDER

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

The School District shall make the employee whole for any lost wages, benefits, and compensation within 14 days after service of this Order. (Ed. Code, § 44939, subd. (c)(5).)

DATED: September 13, 2018

DocuSigned by:  
  
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DENA COGGINS  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>2</sup> Mr. La raised a *Skelly* argument under *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215, alleging that Mr. La was not afforded his rights under *Skelly*. As the instant hearing was being heard pursuant to Education Code section 44939, no finding was made as to this issue.