

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of the Motion for Immediate Reversal of  
Suspension of:**

**LARRY CUNHA, a Permanent Certificated Employee,**

**Moving Party**

**and**

**ROSEVILLE JOINT UNION HIGH SCHOOL DISTRICT,  
Responding Party**

**OAH No. 2019090070**

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

Administrative Law Judge (ALJ) Dena Coggins, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Sacramento, California on September 20, 2019.

Matthew Chevedden, Attorney at Law, represented Larry Cunha.

Michelle Cannon and Carolyn Gemma, Attorneys at Law, represented Roseville Joint Union High School District (School District).

## **PROCEDURAL HISTORY**

On August 5, 2019, the School District served Mr. Cunha with a written Statement of Charges based on causes, including, but not limited to, immoral conduct.

Based upon the foregoing charge, the School District governing board immediately suspended Mr. Cunha from his duties and gave notice to him of the suspension. He was placed on suspension without pay under Education Code section 44939.

On September 4, 2019, Mr. Cunha filed a Motion for Immediate Reversal of Suspension 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 because: (1) even if the allegations in the Statement of Charges were true, they do not constitute immoral conduct; and (2) the School District has not alleged Mr. Cunha willfully refused to perform regular assignment without reasonable cause, as prescribed by reasonable rules and regulations of the School District.

## **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 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.

DATE: September 27, 2019

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DENA COGGINS

Administrative Law Judge

Office of Administrative Hearings