

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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

MARGARITA FLORES, a Permanent  
Certificated Employee,

Moving Party,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT,

Responding Party.

OAH No. 2018040630

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

(Ed. Code, § 44939, subd. (c)(4))

Administrative Law Judge Karen Reichmann, Office of Administrative Hearings,  
State of California, heard this matter telephonically from Oakland, California, on May 7,  
2018.

Rosty G. Gore, Attorney at Law, Trygstad, Schwab & Trygstad, represented  
respondent Margarita Flores.

No appearance was made on behalf of the Los Angeles Unified School District  
(District).

PROCEDURAL HISTORY

A statement of charges was filed and served against respondent Margarita Flores,  
pursuant to Education Code section 44932, alleging five causes for dismissal:  
1) unprofessional conduct; 2) evident unfitness for service; 3) unsatisfactory performance;  
4) willful refusal to perform regular assignments without reasonable cause, as prescribed by  
reasonable rules and regulations of the employing district (willful refusal); and 5) 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. The District placed respondent on

immediate suspension without pay under Education Code section 44939, based upon the allegations of willful refusal.

On April 12, 2018, respondent filed a timely motion for immediate reversal of her suspension without pay, pursuant to Education Code section 44939, subdivision (c)(1). Respondent argues that the District has not alleged a sufficient basis to place her on immediate unpaid status because the allegations in the statement of charges do not establish that she willfully refused to perform regular assignments as prescribed by reasonable rules and regulations of the District. Respondent requests immediate reinstatement.

## DISCUSSION

Education Code section 44939, subdivision (b), provides 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.”

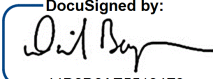
Pursuant to Education Code section 44939, subdivision (c)(1), “review of a motion filed pursuant to this section shall be limited to a determination as to whether the facts as alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension under this section.”

The written submissions and oral argument of respondent have been considered. No opposition to the motion was filed by the District. Based upon a review of the statement of charges, the District has failed to allege facts which, if true, are sufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b), on the grounds of willful refusal. The facts alleged in the statement of charges may constitute grounds for discipline pursuant to Education Code section 44932, but do not describe a willful refusal on the part of respondent to perform her duties in accordance with reasonable rules and regulations.

## ORDER

Good cause having been established, respondent's motion for immediate reversal of suspension and request for immediate reinstatement is GRANTED. The District's immediate suspension of respondent Margarita Flores is REVERSED. The District shall immediately return respondent to paid status. The District shall make respondent whole for any lost wages, benefits, and compensation within 14 days after service of this Order. (Ed. Code, § 44939, subd. (c)(5).)

DATED: May 8, 2018

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KAREN REICHMANN  
Administrative Law Judge  
Office of Administrative Hearings