

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

DANNY MARTINEZ, a Permanent
Certificated Employee,

Moving Party,

v.

GROSSMONT UNION HIGH SCHOOL
DISTRICT,

Responding Party.

OAH No. 2018060579

Related to OAH No. 2015051109

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

(Ed. Code, § 44939, subd. (c)(4))

Administrative Law Judge (ALJ) Danette C. Brown, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Sacramento, California, on July 13, 2018.

Attorney Jon Y. Vanderpool, with Smith Steiner Vanderpool, APC, represented Danny Martinez.

Attorney Ellen C. Wu, with Dannis Woliver Kelley, represented Grossmont Union High School District (District).

PROCEDURAL HISTORY

On May 15, 2018, the Governing Board of the District (Governing Board) approved the Statement of Charges and Recommendation for Dismissal and Immediate Unpaid Suspension of Mr. Martinez, based on causes including, but not limited to, immoral conduct under Education Code section 44939. On May 16, 2018, the Governing Board gave notice to Mr. Martinez of its decision and placed him on immediate suspension without pay pursuant to Education Code section 44939. On or about May 17, 2018, the Governing Board received Mr. Martinez's demand for a hearing.

On June 13, 2018, Mr. Martinez filed a Motion for Immediate Reversal of Suspension (Motion), pursuant to Education Code section 44939, subdivision (c)(1), contending that the

Statement of Charges does not set forth a sufficient basis for immediate suspension because the allegations therein do not rise to the level of immoral conduct.

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).)

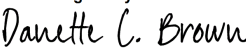
Under Education Code section 44939, subdivision (c)(1), “review of a motion filed pursuant to this section shall be limited to a determination as to whether the facts as alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension under this section.”

The ALJ has considered the written submissions of the parties and oral argument. Based upon a review of the Statement of Charges, the District has alleged facts which, if true, are sufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b).

ORDER

GOOD CAUSE NOT HAVING BEEN ESTABLISHED, the Motion is DENIED.

DATED: July 23, 2018

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DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings