

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
LOS ANGELES UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Dismissal  
of:

CRUZ CERDA,  
A Permanent Certificated Employee,

Respondent.

OAH No. 2013051093

**ORDER**

On February 20, 2014, the undersigned Administrative Law Judge of the Office of Administrative Hearings (OAH) conducted a jurisdictional hearing and a hearing on an Order to Show Cause. Complainant Los Angeles Unified School District (District) was represented by Susan Hyman, Assistant General Counsel, Office of General Counsel. Respondent Cruz Cerda was not present or represented at the hearing.

Procedural Background

On or about April 26, 2013, the Statement of Charges was made and filed with the Board of Education (Board) of the District, seeking the suspension without pay and the dismissal of respondent, a permanent certificated employee, for unprofessional conduct, immoral conduct, evident unfitness for service, persistent violation of or refusal to obey school laws or regulations, under Education Code sections 44932 and 44939.<sup>1</sup> On May 21, 2013, respondent submitted a Request for Hearing to the District, acknowledging receipt of the Notice of Intention to Dismiss and Statement of Charges and requesting a hearing.

On May 23, 2013, the District filed the Statement of Charges with OAH with a request to set the matter for an administrative hearing. OAH scheduled a telephonic trial setting conference, which was later continued to July 12.

On June 17, 2013, the District filed the Accusation and Statement of Charges for the dismissal of respondent and respondent's Request for Hearing with OAH. On June 19, 2013, the District filed the parties' stipulation waiving the statutory time for commencement of the hearing. On July 1, 2013, respondent filed a Notice of Defense. On July 12, 2013, respondent's counsel filed a notice of representation.

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<sup>1</sup> All section references are to the Education Code, unless indicated otherwise.

On July 12, 2013, OAH conducted a telephonic trial setting conference. The hearing on the Accusation and Statement of Charges was set and scheduled for six days beginning on February 20, 2014. The District's and respondent's counsel appeared for the telephonic conference. The Trial Setting Order was served on both parties. On July 19, 2013, respondent's counsel filed a formal notice of representation and an Amended Notice of Defense. On July 23, 2013, the District served a Notice of Hearing and Notice to Appear at Hearing upon respondent's counsel and filed the notices with OAH. On September 13, 2013, respondent's counsel filed a notice with OAH and the District that she no longer represented respondent.

On November 21, 2013, the District filed a Notice of Resignation by Respondent Cruz Cerda and Request for Status Conference. The District also filed a Certificated Resignation/Retirement Form that was signed by respondent on August 21, 2013. The prehearing and mandatory settlement conferences previously scheduled for January 10, 2014, were cancelled.

On February 7, 2014, the Presiding Administrative Law Judge of OAH issued an Order to Show Cause re Dismissal and Notice of Jurisdictional Hearing and Hearing on Order to Show Cause (Order), which was served upon the parties. The Order noted that respondent had resigned from the District and had retired and the parties had not taken action to appoint panel members for the Commission on Professional Competence. However, on February 7, 2014, respondent had called OAH and stated he wanted to go forward with the hearing on the Accusation and Statement of Charges and provided his new address. Accordingly, under the Order, the parties were directed to each file a written statement indicating why this matter should or should not be dismissed for lack of jurisdiction.

On February 18, 2014, the District filed a Position Statement Re Order to Show Cause. Respondent did not file a written statement. At the February 20, 2014 jurisdictional hearing and hearing on the Order, the District appeared and was represented by its Assistant General Counsel. Respondent did not appear and was not represented at the hearing, but he had been served with the Order at his new address in West Hollywood and given information about the hearing on the Order when he called OAH.

### Discussion

At the hearing on the Order, the District contended that respondent's voluntary resignation and retirement in May 2013 caused him to cease being an employee and thus divested the Commission on Professional Competence of jurisdiction to hear his appeal of the dismissal charges filed against him. The District asked that the Accusation be dismissed.

Provisions of the Education Code set forth the procedures for the dismissal or suspension of a certificated employee of a school district. Section 44932, provides, in pertinent part, that no permanent employee shall be dismissed except for one or more of the eleven causes, which include immoral or unprofessional conduct and unsatisfactory performance, among other causes. Sections 44934 and 44939 set forth the two processes by which a governing board of a school district can initiate the dismissal and/or suspension of a

certificated employee and teacher: written charges duly signed and verified must be filed with the governing board or a written statement of charges must be formulated by the governing board.

Section 44944 provides, in pertinent part, that, in a dismissal or suspension proceeding initiated pursuant to section 44934, the hearing, if requested by the employee, must be commenced within 60 days from the date of the employee's demand for a hearing. The hearing must be initiated, conducted, and a decision made in accordance with Chapter 5 (commencing with section 11500) of the Government Code. However, section 44944 also provides that the hearing date must be established after consultation with the employee and the governing board, or their representative.

Section 44944, subdivision (b)(1), states that the hearing must be conducted by the Commission on Professional Competence (Commission). Under subdivision (a)(1), the Commission has all the power granted to an agency in Chapter 5 of the Government Code, except that parties have the right of discovery available to a party in a civil action. Under subdivision (c)(1), the decision of the Commission must contain a disposition that is solely one of the following: that the employee be dismissed; that the employee should be suspended for a specific period of time without pay; or that the employee should not be dismissed or suspended.

Section 44930, subdivision (a), further provides, in pertinent part, that governing boards of school districts shall accept the resignation of any employee and shall fix the time when the resignation takes effect, which shall not be later than the close of the school year during which the resignation has been received by the board. Section 44907 provides that the retirement of any employee of a school district under the provisions of any retirement law, except for employees retiring for disability under the Teachers' Retirement Law, shall automatically effect the dismissal of the employee from the employ of the school district at the end of the current school year.

Case law in this area provides some guidance. In *Zuniga v. Los Angeles County Civil Service Commission* (2006) 137 Cal.App.4th 1255, the court held that the county civil service commission lost jurisdiction in a case involving a county employee's appeal of a disciplinary suspension upon the employee's retirement. That commission's jurisdiction, as set forth in the county charter and the commission's rules, was limited to resolving disputes involving "employees." Once the appellant retired, he was no longer an employee and the commission had no jurisdiction to adjudicate the validity of his suspension.

In *County of Los Angeles Department of Health Services v. Civil Service Commission* (2009) 180 Cal.App.4th 391, the court held that the *Zuniga* case stands for the bright line proposition that, where an employee retires during the pendency of a civil service appeal, his or her future status as an employee by definition is no longer at issue. The court added that the civil service commission has authority to address only matters involving a member of the civil service, and a person who has retired is no longer a member of the civil service.

Here, respondent was served with the Notice of Intention and the Statement of Charges that was filed with the Board. Respondent was duly notified of the District's intention to suspend and dismiss him from his employment and filed a Request for Hearing. Subsequently, the District filed the Accusation and Statement of Charges with OAH and caused a hearing to be set on the Accusation and Statement of Charges. As such, jurisdiction was conferred on the Commission on Professional Competence under sections 44934, 44939, and 44944 to hear and adjudicate the proposed dismissal of respondent as a permanent certificated employee of the District.

After the initiation of the present disciplinary proceeding, respondent submitted a Certificated Resignation/Retirement Form to the District. He resigned as a certificated employee of the District on May 30, 2013, and retired on May 31, 2013. Under section 44930, subdivision (a), the District was required to accept respondent's resignation and his resignation became effective at the close of the 2012-2013 school year. Under section 44907, respondent's retirement automatically effected his dismissal from the District's employ at the end of the school year. The Administrative Law Judge takes official notice that the last day of the 2012-2013 school year for the District was June 30, 2013.

Accordingly, due to his submission of the Certificated Resignation/Retirement Form, respondent's resignation became effective and he was deemed dismissed and ceased being an employee of the District on June 30, 2013, under the provisions of sections 44930, subdivision (a), and 44907. Whereas, the Commission in a dismissal proceeding under sections 44934, 44939, and 44944 can decide only whether a certificated employee should be dismissed, suspended, or not be dismissed or suspended and whereas respondent is no longer a certificated employee of the District due to his resignation and retirement, jurisdiction no longer exists for the Commission under these same sections to hear and adjudicate the proposed disciplinary action in this matter. (See *Zuniga, supra*, 137 Cal.App.4th 1255; *County of Los Angeles Department of Health Services, supra*, 180 Cal.App.4th 391.)

#### ORDER

Jurisdiction does not exist in this matter under Education Code sections 44934, 44939, and 44944. The Accusation and Statement of Charges, OAH Case No. 2013051093, is hereby dismissed.

IT IS SO ORDERED this 21st day of February 2014.



Vincent Nafarrete  
Administrative Law Judge  
Office of Administrative Hearings