

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

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

REBECCA LYNN-YEE,

A Permanent Certificated Employee,

Moving Party,

and

SAN JOSE UNIFIED SCHOOL DISTRICT,

Responding Party.

OAH No. 2020120090

**ORDER GRANTING MOTION FOR REVERSAL OF IMMEDIATE
SUSPENSION (Ed. Code, § 44939, subd. (c)(4))**

Administrative Law Judge Regina Brown, Office of Administrative Hearings,
State of California, heard this matter telephonically, on December 18, 2020.

Joseph Cisneros, Attorney, represented the moving party Rebecca Lynn-Yee.

Ingrid A. Meyers, Attorney, represented the San Jose Unified School District (District).

PROCEDURAL HISTORY

On November 6, 2020, a statement of charges and recommendation for dismissal and immediate unpaid suspension was filed and served against Rebecca Lynn-Yee (the moving party), pursuant to Education Code section 44932, alleging six causes for dismissal: 1) immoral conduct; 2) unprofessional conduct; 3) dishonesty; 4) evident unfitness for service; 5) persistent violation of or refusal to obey school laws; and 6) willful refusal to perform regular assignments without reasonable cause. The District placed her on immediate suspension without pay pursuant to Education Code section 44939, based upon the allegations of immoral conduct and willful refusal to perform regular assignments without reasonable cause.

The moving party filed a timely motion for immediate reversal of her suspension without pay, pursuant to Education Code section 44939, subdivision (c)(1). She 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 engaged in immoral conduct or willful refusal to perform regular assignments without reasonable cause.

DISCUSSION

Education Code section 44939, subdivision (b), provides that a school district may immediately suspend a permanent employee 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 the parties have been considered. 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 immoral conduct or willful refusal to perform regular assignments without reasonable cause.

ORDER

Good cause having been established, the motion for immediate reversal of suspension is GRANTED. The District's immediate suspension of Rebecca Lynn-Yee is reversed and the District shall make her whole for any lost wages, benefits, and compensation within 14 days after service of this Order. (Ed. Code, § 44939, subd. (c)(5).)

Regina Brown

DATE: December 22, 2020

REGINA BROWN

Administrative Law Judge

Office of Administrative Hearing