

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

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

**HALI ROSEN, a Permanent Certificated Employee, Moving
Party**

and

MANTECA UNIFIED SCHOOL DISTRICT, Responding Party

OAH No. 2020020831

**ORDER GRANTING 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 March 20, 2020.

Andrea Price, Attorney at Law, represented Hali Rosen.

Roman J. Munoz, Attorney at Law, represented Manteca Unified School District (School District).

PROCEDURAL HISTORY

On January 20, 2020, the School District served Ms. Rosen with a written Statement of Charges based on allegations of immoral conduct, unprofessional conduct, 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 or by the governing board of the school district employing her, and evident unfitness for service.

Based upon the statement of charges, the School District governing board immediately suspended Ms. Rosen from her duties and gave her notice of the suspension. She was placed on suspension without pay under Education Code section 44939.

On February 21, 2020, Ms. Rosen filed a Motion for Immediate Reversal of Suspension with OAH, pursuant to Education Code section 44939, subdivision (c), alleging that the Statement of Charges does not set forth a sufficient basis for immediate suspension because: (1) the allegations, even if true, do not constitute immoral conduct as a matter of law; (2) violations of district policies by Ms. Rosen, even if true, do not constitute immoral conduct; and (3) the School District has not alleged Ms. Rosen's conduct constitutes willful refusal to perform regular assignments without reasonable cause.

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 employing 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 failed to allege facts, which, if true, are sufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b). More specifically, the facts as alleged in the Statement of Charges, if true, do not constitute immoral conduct as a matter of law. Additionally, the allegations in the Statement of Charges, when read as a whole, do not charge respondent with conduct constituting willful refusal to perform regular assignments without reasonable cause.

GOOD CAUSE HAVING BEEN ESTABLISHED, the Motion for Immediate Reversal of Suspension is GRANTED. The School District shall make Ms. Rosen whole for any lost wages, benefits, and compensation within 14 days after service of this Order. (Ed. Code, § 44939, subd. (c)(5).

DATE: March 26, 2020

DocuSigned by:

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DENA COGGINS

Administrative Law Judge

Office of Administrative Hearing