

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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

OAH No. 2019050194

NELSON GUIRADO,

A Permanent Certificated Employee,

Employee,

LOS ANGELES UNIFIED SCHOOL  
DISTRICT,

School District.

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

Carlos R. Perez and Alejandra Gonzalez-Bedoy, Law Office of Carlos R Perez,  
represent Nelson Guirado.

Kelly Kim, Assistant General Counsel, represents Los Angeles Unified School  
District.

On or about March 1, 2019, the district served Mr. Guirado with a Statement of Charges alleging the following causes for dismissal: unprofessional conduct, unsatisfactory performance, evident unfitness for service, and persistent violation of or refusal to obey the rules governing his employment. The Statement of Charges also notified Mr. Guirado of the district's intent to immediately suspend him without pay based on willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing district.

On or about April 3, 2019, the district provided Mr. Guirado notice that it was immediately suspending him without pay and dismissing him from employment.

On May 3, 2019, Mr. Guirado filed a Motion for Immediate Reversal of Suspension with the Office of Administrative Hearings (OAH), pursuant to Education Code section 44939, subdivision (c)(1), alleging that the Statement of Charges does not set forth facts sufficient to support an allegation that he willfully refused to perform regular assignments, which is necessary in this case to sustain the suspension. OAH set the matter for oral

argument and established a briefing schedule. The district's opposition to the motion was timely received. On May 24, 2019, a telephonic conference was held, during which the parties were invited to present any additional oral arguments.


Education Code section 44939, subdivision (b), states that a school district, upon the filing of written charges, may immediately suspend a permanent employee of the school district who has been charged with among other things, willful refusal to perform regular assignments without reasonable cause.

Education Code section 44939, subdivision (c)(1), permits an employee who has been placed on suspension to file a motion for immediate reversal of suspension with OAH. "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." (Ed. Code, § 44939, subd. (c)(1).)

Based on a review of the Statement of Charges, and the arguments presented by both parties, it is determined that the district has alleged facts that, if true, are sufficient to constitute willful refusal to perform regular assignments without reasonable cause, which is a basis for immediate suspension under Education Code section 44939, subdivision (b).

GOOD CAUSE NOT HAVING BEEN ESTABLISHED, the Motion for Immediate Reversal of Suspension is DENIED.

DATED: May 28, 2019

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ADAM L. BERG  
Administrative Law Judge  
Office of Administrative Hearings