

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

JEFFREY MARTINEZ, a Permanent
Certificated Employee,

Moving Party,

v.

BANNING UNIFIED SCHOOL DISTRICT,

Responding Party.

OAH No. 2019020456

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

(Ed. Code, § 44939, subd. (c)(4))

Administrative Law Judge (ALJ) Ed Washington, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Sacramento, California, on March 8, 2019.

Carlos R. Perez, Attorney at Law, represented Jeffrey Martinez.

Michael E. Wolfsohn, Attorney at Law, represented Banning Unified School District (District).

PROCEDURAL HISTORY

On January 14, 2019, the District's Superintendent signed the Notice of Unsatisfactory Performance and/or Unprofessional Conduct, Recommendation of Disciplinary Action, Cause(s) for Discipline; Statement of Charges (Statement of Charges) against Mr. Martinez, a permanent certificated employee. The Statement of Charges recommended Mr. Martinez's dismissal, based on charges that included, but were not limited to, immoral conduct, pursuant to Education Code section 44932, subdivision (a)(1).

On January 17, 2019, the Board of Education for the District approved the charges for dismissal against Mr. Martinez. On that same date, the District gave notice to Mr. Martinez of the Board's decision and placed him on immediate suspension without pay pursuant to Education Code section 44939, subdivision (b).

On February 12, 2019, Mr. Martinez filed with OAH a Notice of Motion and Motion for Immediate Reversal of Suspension (Motion) pursuant to Education Code section 44939, subdivision (c)(1). The Motion contends that the Statement of Charges does not set forth a sufficient basis for immediate unpaid suspension because the allegations specified therein do not constitute immoral conduct. The District filed its opposition on February 25, 2019. Mr. Martinez filed his reply on February 26, 2019. Oral argument was heard on March 8, 2019.

DISCUSSION

Education Code section 44939 states, in pertinent part, that a school district may, if it deems that action necessary, 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).)

Education Code section 44939, subdivision (c)(1), provides, in pertinent part, that an employee who has been placed on suspension pursuant Education Code section 44939, subdivision (b), may move for immediate reversal of suspension and that the review of the motion shall be limited to a determination of whether the facts as alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension under that section.¹

The ALJ has considered the written submissions of the parties and oral argument. It is determined that the District alleged sufficient facts in the Statement of Charges that, if true, would constitute a basis for immediate suspension based upon “immoral conduct” pursuant to Education Code section 44939.

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¹ “...The grant or denial of the motion shall be without prejudice to consideration by the Commission on Professional Competence, based upon the full evidentiary record before it, of the validity of the grounds for dismissal. The ruling shall not be considered by the commission in determining the validity of the grounds for dismissal, and shall not have any bearing on the commission's determination regarding the grounds for dismissal.” (Ed. Code, § 44939, subd. (c)(4).)

ORDER

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

DATED: March 12, 2019

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Ed Washington
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ED WASHINGTON
Administrative Law Judge
Office of Administrative Hearings