

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

MARIO CORONA,

A Permanent Certificated Employee,

Moving Party,

and,

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

Responding Party.

OAH No. 2018040628

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

Administrative Law Judge Debra D. Nye-Perkins, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from San Diego, California, on May 11, 2018.

Dexter Rappleye, Attorney at Law, Bush Gottlieb, represented Mario Corona.

Michael Voigt, Office of the General Counsel, represented Los Angeles Unified School District.

PROCEDURAL HISTORY

In March 2018, the district served Mr. Corona with a written Statement of Charges, charging him with immoral conduct, unprofessional conduct, evident unfitness for service, 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 him, and willful refusal to perform regular assignments without reasonable cause as prescribed by reasonable rules and regulations of the employing district, within the meaning of Education Code section 44932, subdivisions (a)(2), (6), and (8), and section 44939. The charges are based upon respondent's alleged

conduct from August 15, 2016, to January 18, 2017, and during the 2015 – 2016 school year, for failure to comply with multiple directives from the school regarding respectful treatment of students, the sexual harassment policy, and the code of conduct with students, among others, as well as engaging in misconduct with female students by making inappropriate comments of a sexual nature to certain female students, inappropriately touching female students, and being alone in his classroom with female students despite multiple directives not to do so.

Based upon the foregoing charges, the district governing board immediately suspended Mr. Corona from his duties and gave notice to him of the suspension.

On April 13, 2018, Mr. Corona filed a Motion for Immediate Reversal of Suspension with OAH, under Education Code section 44939, subdivision (c)(1), arguing that the Statement of Charges does not set forth facts sufficient to support an allegation that Mr. Corona engaged in immoral conduct or willful refusal to perform regular assignments. Mr. Corona argues that the facts alleged, even if true, are not sufficient to establish immoral conduct, or willful refusal to perform regular assignments without reasonable cause, which is necessary in this case to sustain the suspension. OAH set the matter for oral argument and established a briefing schedule. On May 11, 2018, the parties orally argued their positions.

DISCUSSION


Mr. Corona asserts that the allegations, even if true, do not constitute immoral conduct within the meaning of Education Code section 44939, and that the Statement of Charges does not allege conduct constituting willful refusal to perform regular assignments without reasonable cause. The district asserts grounds exist for the immediate suspension. Education Code section 44939, subdivision (b), permits a school district to 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.”

Education Code section 44939, subdivision (c)(1), provides that the employee may file a motion for immediate reversal of suspension. OAH’s “[r]eview 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 of the parties and oral argument have been considered. Based on a review of the Statement of Charges, the district has alleged facts which, if true, are sufficient to constitute 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 15, 2018

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DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings