

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

IRIS HURTADO, a Permanent Certificated
Employee,

Moving Party,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT,

Responding Party.

OAH No. 2018090798

Related to OAH No. 2018100316

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

(Ed. Code, § 44939, subd. (c)(4))

Administrative Law Judge Diane Schneider, Office of Administrative Hearings, State of California, heard this matter telephonically from Oakland, California, on October 19, 2018.

Christopher E. Schumb, Attorney at Law, represented respondent Iris Hurtado.

Ingrid A. Meyers, Attorney at Law, Dannis Woliver Kelly, represented San Jose Unified School District (District).

PROCEDURAL HISTORY

A statement of charges, served on respondent Iris Hurtado on August 27, 2018, alleges causes for dismissal including, but not limited to, immoral conduct and willful refusal to perform regular assignments without reasonable cause under Education Code section 44939. The District placed respondent on immediate suspension without pay under Education Code section 44939.

On September 19, 2018, respondent timely filed a motion with the Office of Administrative Hearings for immediate reversal of her suspension without pay pursuant to Education Code section 44939, subdivision (c)(1), arguing that the District has not alleged a sufficient basis to put her on immediate unpaid status because the allegations in the accusation do not rise to the level of immoral conduct or willful refusal to perform

assignments without reasonable cause. Respondent also requests that the District reimburse her for all accrued and unpaid pay and benefits.

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 School District, or with violation of [Education Code] section 51530.” (Ed. Code, § 44939, subd. (b).)

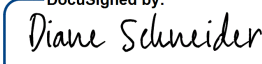
Under Education Code section 44939, subdivision (c)(1), “review of a motion filed pursuant to this section shall be limited to a determination as to whether the facts as alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension under this section.”

The written submissions of the parties and oral argument have been fully 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), for immoral conduct. The District has, however, alleged facts which, if true, are sufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b), for willful refusal to perform regular assignments without reasonable cause.

ORDER

Respondent’s motion for immediate reversal of suspension and her request for reinstatement to paid status are DENIED, based upon the sufficiency of the charges pertaining to respondent’s alleged “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.” The District’s immediate suspension of respondent Iris Hurtado is upheld.

DATED: October 19, 2018

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DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings