

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

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

DAVID CARTER,

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

and

**MILPITAS UNIFIED SCHOOL DISTRICT,
Responding Party.**

OAH No. 2020040444

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

(Ed. Code, § 44939, subd. (c)(4))

Administrative Law Judge Michael C. Starkey, State of California, Office of
Administrative Hearings, heard this matter telephonically on May 1, 2020.

Christopher E. Schumb, Attorney at Law, Law Offices of Christopher Schumb, and Steven Clark, Attorney at Law, Law Offices of Steven Clark, represented moving party David Carter (Carter).

John R. Yeh, Attorney at Law, Burke, Williams & Sorensen, LLP, represented responding party Milpitas Unified School District (District).

Procedural History

On April 3, 2020, the District filed and served a statement of charges against moving party Carter, alleging multiple causes for dismissal, including immoral conduct, pursuant to Education Code section 44932, subdivision (a)(1). The District placed Carter on immediate suspension without pay pending hearing, pursuant to Education Code section 44939, based upon the charge of immoral conduct.

On April 13, 2020, Carter timely filed a motion for immediate reversal of his suspension without pay pursuant to Education Code section 44939, subdivision (c), arguing that the District has not alleged a sufficient basis to put him on immediate unpaid status because the allegations in the statement of charges do not state sufficient facts to constitute immoral conduct. In his motion, Carter requests an order reversing his suspension without pay.

Discussion

Education Code section 44939, subdivision (b), provides, 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 Section 51530”

Education Code section 44939, subdivision (c)(1), authorizes the permanent employee to seek review of the order of suspension by motion to the Office of Administrative Hearings. This section limits the review of a motion to immediately reverse a suspension 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 Administrative Law Judge has considered the written submissions of the parties and their oral argument. Based upon a review of the 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), on the grounds of immoral conduct.

ORDER

The motion for immediate reversal of the suspension of David Carter by Milpitas Unified School District is denied.

DATE: May 5, 2020

DocuSigned by:
Michael C. Starkey
28451CFC37284CA...

MICHAEL C. STARKEY

Administrative Law Judge

Office of Administrative Hearing