

BEFORE THE
OFFICE OF ADMINISTRATIVE
HEARINGS STATE OF CALIFORNIA

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

ANTHONY SILVESTRI,
A Permanent Certificated Employee,

Moving Party,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT,

Responding Party.

OAH No. 2019021041
(Related Case No. 2019030290)

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

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter telephonically on March 22, 2019, from Oakland, California.

Sarah Sandford-Smith and Stephen R. Jaffe, Attorneys at Law, represented respondent and moving party Anthony Joseph Sylvestri.

Senior Deputy General Counsel Christine Lee represented the San Francisco Unified School District (District).

Procedural History

On January 28, 2019, a District representative served a statement of charges alleging cause to dismiss Anthony Sylvestri from employment with the District as a physical education teacher. The charges include immoral conduct. In reliance on this charge, the District has suspended respondent from employment without pay.

On February 26, 2019, Sylvestri timely filed a motion seeking immediate reversal of his suspension and reinstating his salary and benefits pending resolution of the charges against him.

Respondent argues that the District has not alleged an adequate basis to suspend him from employment without pay before resolution of these charges, because the allegations do not describe immoral conduct. Respondent also argues that the motion should be granted because the District did not make a documented finding that suspension without pay was necessary. The District opposes respondent's motion.

Statutory Authority

Education Code section 44939 permits the District to suspend immediately, without pay, a permanent employee who the District alleges to have committed "immoral conduct." (Ed. Code, § 44939, subd. (b).) The District may only take such action "if it deems that action necessary." (*Ibid.*) Administrative review of an order for immediate suspension is available, but such review "shall be limited to a determination as to whether the facts alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension under this section." (*Id.*, subd. (c)(1).)

Conclusions

Education Code section 44939, subdivision (b), does not require the District to make a written finding that it deemed the action necessary. The Board's unanimous January 22, 2019 Resolution adopting and approving a Resolution of Intent to Dismiss Sylvestri directs the superintendent to immediately suspend Sylvestri without pay pending the hearing and disposition of the charges. The resolution demonstrates the District's determination that suspension without pay was warranted and necessary.

The statement of charges has been considered in light of the parties' written and oral arguments. The District has alleged facts which, if true, would establish immoral conduct. These allegations are sufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b).

ORDER

The motion by respondent and moving party Anthony Sylvestri for immediate reversal of suspension and for reimbursement of pay and benefits during the period of suspension is denied.

DATED: March 25, 2019

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Jill Schlichtmann
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JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings