

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

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

KELLI STEITZ, Moving Party,

And

ROSEVILLE CITY SCHOOL DISTRICT, Responding Party

OAH No. 2024010572

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

Kimberly J. Belvedere, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard oral argument in this matter by videoconference on February 16, 2024.

Matthew Chevedden, Langkamp, Curtis, Price, Lindstrom & Chevedden LLP, represented Kelli Steitz, Moving Party.

Jaspreet Lochab-Dogra, Lozano Smith, represented the Roseville City School District, Responding Party.

On December 12, 2023, the district provided Steitz with a "Notice of Intent to Dismiss and Statement of Charges; Placement on Unpaid Suspension Pending Outcome of Disciplinary Proceedings, Statement of Charges" (Statement of Charges), and accompanying exhibits. On December 14, 2023, the district's governing board voted in closed session to officially issue the Statement of Charges and place Steitz on immediate suspension. On January 4, 2024, the district served Steitz with a copy of the Statement of Charges and placed her on unpaid suspension pending the outcome of a formal dismissal hearing. The service of the Statement of Charges and placement of Steitz on unpaid leave on January 4, 2024, triggered Steitz's ability to file a Motion for Immediate Reversal of Suspension (MIRS) pursuant to Section 44939, subdivision (c)(1), which she did, on January 19, 2024. At the time of the filing of the MIRS, the Statement of Charges was therefore the operative pleading.

On February 5, 2024, the district filed a "Notice of Intent to Dismiss and Placement on Immediate Unpaid Suspension Pending Outcome of Disciplinary Proceedings; and Amended Statement of Charges" (Amended Statement of Charges), signed by Meghan Baichtal, the Assistant Superintendent of Personnel Services. Steitz contends, among other things, that the original Statement of Charges should be the one considered for purposes of the MIRS and not the Amended Statement of Charges, and that Statement of Charges does not meet the basic pleading requirements of Section 44934. The district contends "it would be improper for the ALJ, under Education Code section 44939, to even entertain [Steitz's] argument" concerning the district's compliance with section 44934, as review of a MIRS is limited only 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"

Section 44939, in its entirety, provides:

(a) This section applies only to dismissal or suspension proceedings initiated pursuant to Section 44934.

(b) Upon the filing of written charges, duly signed and verified by the person filing them with the governing board of a school district, or upon a written statement of charges formulated by the governing board of a school district, charging a permanent employee of the school district 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, the governing board of the school district may, if it deems that action necessary, immediately suspend the employee from his or her duties and give notice to him or her of his or her suspension, and that 30 days after service of the notice of dismissal, he or she will be dismissed, unless he or she demands a hearing.

(c)(1) An employee who has been placed on suspension pursuant to this section may serve and file with the Office of Administrative Hearings a motion for immediate reversal of suspension. 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 motion shall include a memorandum of points and authorities setting forth law and argument supporting the employee's contention that the statement of charges does not set forth a sufficient basis for immediate suspension.

(2) The motion shall be served upon the governing board of the school district and filed with the Office of Administrative Hearings within 30 days after service upon the employee of the initial pleading in the matter. The governing board of the school district has the right to serve and file a written response to the motion before or at the time of hearing.

(3) The hearing on the motion for immediate reversal of suspension shall be held no later than 30 days after the motion is filed with the Office of Administrative Hearings.

(4) The administrative law judge shall, no later than 15 days after the hearing, issue an order denying or granting the motion. The order shall be in writing, and a copy of the order shall be served by the Office of Administrative Hearings upon the parties. 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.

(5) An order granting a motion for immediate reversal of suspension shall become effective within five days of service of the order. The school district shall make the employee whole for any lost wages, benefits, and compensation within 14 days after service of an order granting the motion.

(6) A motion made pursuant to this section shall be the exclusive means of obtaining interlocutory review of suspension pending dismissal. The grant or denial of the motion is not subject to interlocutory judicial review.

(d) A motion for immediate reversal of suspension pursuant to this section does not affect the authority of a governing board of a school district to determine the physical placement and assignment of an employee who is suspended or placed on administrative leave during the review of the motion or while dismissal charges are pending.

As such, review of a MIRS is limited to a determination of whether the facts alleged in the operative pleading are sufficient to constitute a basis for immediate suspension, and not whether the pre-hearing procedural requirements to initiate disciplinary proceedings were followed. The operative pleading is the Amended Statement of Charges, which superseded the Statement of Charges upon its filing with

OAH. Further, although the Amended Statement of Charges was filed after Steitz filed the MIRS, Steitz's Reply to the district's Opposition in response to the MIRS was filed after the Amended Statement of Charges, therefore affording her an opportunity to set forth an argument regarding whether the allegations in the Amended Statement of Charges are sufficient to constitute a basis for immediate suspension. In other words, Steitz had a meaningful opportunity to address whether the factual allegations set forth in the Amended Statement of Charges, if true, constitute a basis for immediate suspension under Section 44939.

It is determined that the district failed to allege facts which, if true, constitute immoral conduct (Section 44932, subdivision (a)(1), Amended Statement of Charges at ¶¶ 1-16.) However, the district did allege sufficient facts to constitute willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district (Section 44939, subdivision (b), Amended Statement of Charges at ¶¶ 1-13, 31, 32.) As such, the district alleged sufficient facts to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b).

This conclusion is based on the MIRS and its attachments, district's opposition and its attachments, and Steitz's Reply to the district's opposition. All arguments, written and oral, were considered. All objections by Steitz to the district's opposition and exhibits are overruled.

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ORDER

The motion for immediate reversal of the suspension of Kelli Steitz is denied.

DATE: February 20, 2024

Handwritten signature of Kimberly J. Belvedere in black ink.

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings