

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

JENNIFER GARCIA,
A Permanent Certificated Employee,

Moving Party.

OAH No. 2019110611

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

(Ed. Code, § 44939, subd. (c))

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter telephonically on December 13, 2019, from San Diego, California.

Hannah Weinstein, Attorneys at Law, Rothner Segall Greenstone, represented moving party Jennifer Garcia.

Matthew C. Vance, Attorney at Law, Fagen Friedman & Fulfroost, LLP represented the (District).

PROCEDURAL HISTORY

The District served moving party with a Statement of Charges on October 4, 2019, and placed her on unpaid suspension pending the outcome of its action to dismiss her. The basis for the suspension under Education Code section 44939 is immoral conduct.

On November 15, 2019, moving party timely filed a motion seeking immediate reversal of her suspension and reinstating her salary and benefits pending resolution of the charges against her.

Moving party argues that her conduct of posing with a noose she and other first grade teachers found in a box of items, placing it in the teacher's lounge, and sharing photos of teachers with the noose was meant as an effort at grim humor they wanted to share with other teachers. The conduct had no racial aspect. The District's September 6, 2019, investigation report attached to the Statement of Charges confirms that moving party did not have a racial animus in her conduct. The District argues that the allegation of immoral conduct is adequately pled in the Statement of Charges to warrant respondent's suspension from employment without pay under Education Code section 44939.

APPLICABLE STATUTES

Education Code section 44939 permits the District to suspend immediately, without pay, a permanent employee who the District alleges committed “immoral conduct”. (Ed. Code, § 44939, subd. (b).) Administrative review of an order for immediate suspension is “limited to a determination whether the facts alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension under this section.” (*Ibid.*, subd. (c)(1).)


CONCLUSION

The parties’ submissions and arguments have been fully considered. The District has not alleged facts which, if true, would establish that moving party engaged in immoral conduct. These allegations, as pled, are insufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b).

ORDER

The motion by moving party Jennifer Garcia for immediate reversal of suspension and for reimbursement of pay and benefits during the period of suspension is granted. Pursuant to Education Code section 44939, subdivision (c)(5), this order shall become effective within five days of service, and the District shall make respondent whole for any lost wages, benefits, and compensation within 14 days after service of the order.

DATED: December 17, 2019

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ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings