

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

JOSHUA CAMPBELL,
a Permanent Certificated Employee,

Moving Party,

and,

NUVIEW UNION SCHOOL DISTRICT,

Responding Party.

OAH No. 2018010974

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

(Ed. Code, § 44939, subd. (c)(1))

Administrative Law Judge Susan J. Boyle, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from San Diego, California, on February 23, 2018.

Jon Vanderpool, of Smith Steiner, Vanderpool, & Wax, APC, represented Joshua Campbell.

Dean Adams, of Adams Silva & McNally LLP, represented Nuvview Union School District.

PROCEDURAL HISTORY

On November 28, 2017, the district provided Mr. Campbell with a draft Notice of Immediate Suspension Without Pay; Recommendation for Dismissal from Employment Within the District; and Statement of Charges (Notice and Statement). On December 19, 2017, the district's Board of Education approved the Notice and Statement, and Mr. Campbell was suspended and placed on unpaid leave status. The Notice and Statement alleged three grounds as cause for dismissal: Education Code section 44932, subdivision (a)(1) (immoral conduct); subdivision (a)(6) (evident unfitness for service); and subdivision (a)(8) (persistent violation of or refusal to obey state laws or district regulations).

The Notice and Statement were based upon the content of a lecture/discussion Mr. Campbell led in a high school government class. The district alleged the lecture/discussion

contained “racially motivated language,” “categorized entire races of people,” “did not meet any educational standard and was entirely unrelated to the curriculum,” and resulted in a high level of discontent and anger within the high school and local community.

On January 25, 2018, Mr. Campbell filed a motion for immediate reversal of suspension. OAH set the matter for oral argument and established a briefing schedule. On February 23, 2018, the parties orally argued their positions. Having read the pleadings and considered the oral argument, the following order is issued.

DISCUSSION

Mr. Campbell asserts that, in this case, only the district’s allegations of immoral conduct can support an immediate suspension without pay pending a full evidentiary hearing. He argued that the facts alleged in the Notice and Statement, even if, for purposes of his motion, are presumed to be true, do not rise to the level of immoral conduct as defined by statutory and case law.

The district asserts grounds exist for the immediate suspension. Education Code section 44939, subdivision (b), permits a school district to 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 [Education Code] Section 51530.”

Education Code section 44939, subdivision (c)(1), provides that the suspended employee may file a motion for immediate reversal of suspension. OAH’s “[r]eview 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.”

Having considered the pleadings, written submissions of the parties, and oral argument, the district failed to allege facts which, if true, are sufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b).

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ORDER

Good cause having been established, the Motion is GRANTED. The district's immediate suspension of Mr. Campbell is REVERSED. The district shall immediately return Mr. Campbell to paid status. The district shall make Mr. Campbell whole for any lost wages, benefits, and compensation within 14 days after service of this Order. (Ed. Code, § 44939, subd. (c)(5).)

DATED: February 27, 2018

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Susan J. Boyle
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SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings