

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

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

**EMILIO SOLTERO, A Permanent Certificated Employee,  
Moving Party,**

**and**

**TWIN RIVERS UNIFIED SCHOOL DISTRICT,**

**Responding Party.**

**OAH No. 2020120089**

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

Administrative Law Judge Regina Brown, Office of Administrative Hearings,  
State of California, heard this matter telephonically, on December 18, 2020.

Andrea Price, Attorney, represented the moving party Emilio Soltero.

R. Peter Rittling, Attorney, represented the Twin Rivers Unified School District  
(District).

## **PROCEDURAL HISTORY**

On November 2, 2020, a statement of charges and recommendation for dismissal and immediate unpaid suspension was filed and served against Emilio Soltero (moving party), pursuant to Education Code section 44932, alleging five causes for dismissal: 1) immoral conduct; 2) dishonesty; 3) unprofessional conduct; 4) evident unfitness for service; and 5) persistent violation of or refusal to obey school laws. The District placed him on immediate suspension without pay pursuant to Education Code section 44939, based upon the allegation of immoral conduct.

The moving party filed a timely motion for immediate reversal of his suspension without pay, pursuant to Education Code section 44939, subdivision (c)(1). He argues that the District has not alleged a sufficient basis to place him on immediate unpaid status because the allegations in the statement of charges do not establish that he engaged in immoral conduct.

## **DISCUSSION**

Education Code section 44939, subdivision (b), provides that a school district may immediately suspend a permanent employee 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 School District, or with violation of [Education Code] section 51530."

Pursuant to Education Code section 44939, subdivision (c)(1), "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 written submissions and oral argument of the parties have been considered. Based upon a review of the statement of charges, the District has failed to allege 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**

Good cause having been established, the motion for immediate reversal of suspension is GRANTED. The District's immediate suspension of Emilio Soltero is reversed and the District shall make him whole for any lost wages, benefits, and compensation within 14 days after service of this Order. (Ed. Code, § 44939, subd. (c)(5).)

*Regina Brown*

DATE: December 22, 2020

REGINA BROWN

Administrative Law Judge

Office of Administrative Hearing