

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

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

**MARTIN REID, A Permanent Certificated Employee, Moving
Party**

and

SHASTA UNION HIGH SCHOOL DISTRICT, Responding Party

OAH No. 2022030452

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

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically on April 8, 2022.

Matthew Chevedden, Attorney at Law, Langenkamp, Curtis, Price, Lindstrom & Chevedden, L.L.P., represented Martin Reid.

Dylon C. Marques, Attorney at Law, represented Shasta Union High School District (hereinafter "district").

PROCEDURAL HISTORY

On February 14, 2022, the district signed a written Statement of Charges against Mr. Reid, charging him with immoral conduct, dishonesty, evident unfitness for service, persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him, and willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district based upon Mr. Reid's alleged failure to abide by an August 11, 2021, order of the California Department of Public Health (CDPH), as well as district requirements that he be fully vaccinated against COVID-19 or in the alternative submit to weekly COVID-19 testing.

Based upon the foregoing charges, the district governing board immediately suspended Mr. Reid from his duties pursuant to Education Code section 44939 and gave notice to him of the suspension.

On March 14, 2022, Mr. Reid filed a Motion for Immediate Reversal of Suspension with OAH, under Education Code section 44939, subdivision (c), arguing that the Statement of Charges does not set forth facts sufficient to support an allegation that Mr. Reid engaged in immoral conduct or willful refusal to perform regular assignments without reasonable cause as prescribed by reasonable rules and regulations of the employing school district, which is necessary in this case to sustain the suspension. OAH set the matter for oral argument and established a briefing schedule. On April 8, 2022, the parties orally argued their positions.

DISCUSSION

Mr. Reid asserts that the allegations, assuming them to be true, do not establish that he engaged in immoral conduct, and do not establish that he willfully refused to perform regular assignments without reasonable cause, particularly because Mr. Reid offered on October 22, 2021, one week after the deadline to submit to district provided testing, to undergo "spit testing," (also known as PCR testing) which is not testing provided by the district through its directives, but which is allowed by the August 11, 2021, CDPH order. The district asserts grounds exist for the immediate suspension because the allegations set forth that Mr. Reid failed to abide by the testing requirements set by district directives based upon the August 11, 2021, CDPH order.

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 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."

The ALJ has considered the written submissions of the parties and oral argument. Based on a review of the Statement of Charges, the district has alleged facts which, if true, are sufficient to constitute a basis for immediate suspension under Education Code section 44939, subdivision (b).

GOOD CAUSE NOT HAVING BEEN ESTABLISHED, the Motion for Immediate Reversal of Suspension is DENIED.

DATE: April 8, 2022

Debra D. Nye-Perkins

DEBRA D. NYE-PERKINS

Administrative Law Judge

Office of Administrative Hearings