

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

GREGORY SALCIDO,

A Permanent Certificated Employee,

Moving Party,

and,

EL RANCHO UNIFIED SCHOOL
DISTRICT,

Responding Party.

OAH No. 2018040912

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

Administrative Law Judge Debra D. Nye-Perkins, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from San Diego, California, on May 11, 2018.

Carlos R. Perez, Attorney at Law, represented Gregory Salcido.

Erika Anderson, Attorney at Law, Garcia Hernandez Sawhney, LLP, represented El Rancho Unified School District.

PROCEDURAL HISTORY

In March 2018, the district served Mr. Salcido with a written Statement of Charges, charging him with immoral conduct including egregious misconduct, dishonesty, evident unfitness for service, and 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 or by the governing board of the school district employing him, within the meaning of Education Code section 44932, subdivisions (a)(1), (4), (6), and (8), and section 44939. The charges are based upon respondent's alleged conduct from April 2014 to February 2018 for failure to comply with multiple directives from the school regarding respectful treatment of

students, to refrain from utilizing calisthenics as punishment, to refrain from removing students from his classroom without a referral, among others, as well as engaging in misconduct including, attacking students with ambitions to join the military and using derogatory and degrading language to describe members of the military and their families; threatening students who wear clothing with military logos in his class; questioning and belittling the religious beliefs of students; using racist and derogatory language to describe students including using nicknames such as “Philippines,” “Pearl Harbor,” “fat Jesus” and “bitch”; repeatedly swearing at students and calling students “fucking pig” and telling students to “shut the fuck up” and “get the fuck out,” directly telling a student “fuck you” and telling a student “shut up you’re so full of shit that’s why your eyes are brown”; making students do squats, push-ups or jumping jacks if they are late for class; encouraging students to commit suicide after the recent suicide of an El Rancho High School student by informing the students it is okay to kill yourself because it is your body; telling the students that if they have a GPA under 2.0, they might as well jump off a building because their life is pretty much over; encouraging his students to defy authority of school administrators and the District by refusing to allow drug sniffing dogs in his classroom and advising students not to surrender their phone or property if they get in trouble; using his classroom computer to engage in personal business on behalf of the City of Pico Rivera during his duty time; and being dishonest to an investigator for the District during an interview.

Based upon the foregoing charges, the district governing board immediately suspended Mr. Salcido from his duties and gave notice to him of the suspension.

On April 18, 2018, Mr. Salcido filed a Motion for Immediate Reversal of Suspension with OAH, under Education Code section 44939, subdivision (c)(1), arguing that the Statement of Charges does not set forth facts sufficient to support an allegation that Mr. Salcido engaged in immoral conduct. Mr. Salcido argues that the facts alleged, even if true, are not sufficient to establish immoral conduct, which is necessary in this case to sustain the suspension. OAH set the matter for oral argument and established a briefing schedule. On May 11, 2018, the parties orally argued their positions.

DISCUSSION

Mr. Salcido asserts that the allegations, even if true, do not constitute immoral conduct within the meaning of Education Code section 44939. 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.”

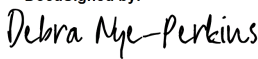
Education Code section 44939, subdivision (c)(1), provides that the employee may file a motion for immediate reversal of suspension. OAH’s “[r]eview of a motion filed

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 written submissions of the parties and oral argument have been considered. 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.

DATED: May 15, 2018.

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DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings