

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

MICHELLE AGIUS, a Permanent
Certificated Employee,

Moving Party,

v.

KING CITY UNION SCHOOL DISTRICT,

Responding Party.

OAH No. 2019100282

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

(Ed. Code, § 44939, subd. (c)(4))

Administrative Law Judge Karen Reichmann, Office of Administrative Hearings, State of California, heard this matter telephonically from Oakland, California, on November 1, 2019.

Christopher Schumb, Attorney at Law, represented Michelle Agius.

Gabriela D. Flowers and Erin M. Hamor, Attorneys at Law, Lozano Smith, represented the King City Union School District (District).

PROCEDURAL HISTORY

A statement of charges was filed and served against Michelle Agius, pursuant to Education Code section 44932, alleging five causes for dismissal: 1) immoral conduct; 2) unprofessional conduct; 3) dishonesty; 4) unsatisfactory performance; 5) evident unfitness for service; and 6) 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 her. The District placed Agius on immediate suspension without pay under Education Code section 44939, based upon the allegations of immoral conduct.

Agius filed a timely motion for immediate reversal of her suspension without pay, pursuant to Education Code section 44939, subdivision (c)(1). She argues that the District

has not alleged a sufficient basis to place her on immediate unpaid status because the allegations in the statement of charges do not establish that she engaged in immoral conduct.

DISCUSSION

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

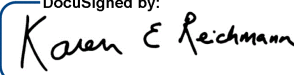
Pursuant to Education Code section 44939, subdivision (c)(1), “review of a motion filed pursuant to this section shall be limited to a determination as to whether the facts as alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension under this section.”

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. The facts alleged in the statement of charges may constitute grounds for discipline pursuant to Education Code section 44932, but do not describe immoral conduct.

ORDER

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

DATED: November 12, 2019 _____

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KAREN REICHMANN
Administrative Law Judge
Office of Administrative Hearings