

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

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

STEVE ANDRADE,  
a Permanent Certificated Employee,

Moving Party,

v.

OAK VIEW UNION ELEMENTARY  
SCHOOL DISTRICT,

Responding Party.

OAH No. 2019060529

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

(Ed. Code, § 44939, subd. (c)(1))

Administrative Law Judge Debra D. Nye-Perkins, Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from San Diego, California, on July 19, 2019.

Ernest H. Tuttle, IV, Attorney at Law, Gibson & Tuttle Law, represented Steve Andrade.

Bryan G. Martin, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, represented Oak View Union Elementary School District.

PROCEDURAL HISTORY

On April 15, 2019, the district served Mr. Andrade with a statement of charges alleging several grounds as cause for his dismissal: Education Code section 44932, subdivision (a)(5) (unsatisfactory performance); subdivision (a)(6) (evident unfitness for service); and persistent violation of or refusal to obey state laws or district regulations (subdivision (a)(8)); and Education Code section 44939 (willful failure to perform assignments). The alleged grounds for dismissal were based upon Mr. Andrade's alleged conduct between April 2015 and March 2019. The district also suspended Mr. Andrade without pay pending a hearing before a Commission on Professional Competence.

On June 12, 2019, Mr. Andrade filed a motion for immediate reversal of suspension. OAH set the matter for oral argument and established a briefing schedule. On July 19, 2019, the parties orally argued their positions. Having read the pleadings and considered the oral argument, the following order is issued.

## DISCUSSION

Mr. Andrade asserts that the allegations, assuming them to be true, do not establish that he willfully refused to perform regular assignments, which is necessary in this case to sustain the suspension. 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.”

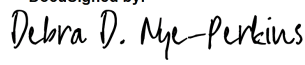
Education Code section 44939, subdivision (c)(1), provides that the employee may file a motion for immediate reversal of suspension. OAH’s “[r]eview of a motion filed pursuant to this section shall be limited to a determination as to whether the facts as alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension under this section.”

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).

## ORDER

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

DATED: July 22, 2019

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