

Oakland, Calif.
Tribune
(Cir. D. 167,309)
(Cir. Sat. 176,901)
(Cir. Sun. 196,410)

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OCT 8 1976

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Tribune photo by LONNIE WILSON

Emery High teacher Steve Dain was happy after court ruling, but was later suspended

Sex-Change Teacher

Wins Ruling, Suspended

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Steve Dain's battle to resume his teaching job at Emery High School after a sex-change operation has taken two new turns: he won reinstatement in a court ruling, then was suspended by the school district.

Armed with a court order reinstating him to his \$1,600-a-month job, the controversial teacher said late yesterday afternoon he would report for duty today to the principal of Emery High.

But shortly after midnight today he was served with a notice of suspension which said "You are NOT to report for work or otherwise appear on any school district property."

With the notice was a set of charges requesting Mr. Dain's dismissal. According to school superintendent Dr. Lewis Stommel, Mr. Dain is charged with two sections of the state education code, "immoral conduct" and "evident unfitness for service."

Dr. Stommel declined to elaborate on the charges, but said he had conferred with four out of the district's five school board members before making the move, which has their unanimous backing.

Mr. Dain had no comment on the charges moments after receiving them at his Fremont home this morning. He said he would consult with his attorney.

Yesterday afternoon, Presiding Superior Court Judge Robert K. Barber issued a writ directing the school district to assign Dain as a full-time employe and pay him two months' back salary.

The judge determined at a hearing that the district had taken a "novel way of seeking to avoid taking him back after he had presented a doctor's certificate of fitness for work following medical leave."

Until December Mr. Dain was known as Doris Richards, the high school's only girls' physical education teacher, and went through a sex-change operation at a Stanford clinic during a six-month medical absence.

On his return for the fall term the district rejected the physician's report and refused to assign him to duty, cutting him off the payroll. A replacement was hired.

Dr. Stommel refers to the teacher as "Miss" or "Ms." Dain. "There's no medical evidence he's anything but Miss or Ms. Any medical authorities we've checked with say this is a cosmetic change only," he said in a telephone interview.

Judge Barber learned from school attorney William Johnston that Mr. Dain was not fired or suspended and that he had not been given a hearing. Judge

Barber said cutting off Mr. Dain's pay would require either termination or suspension. The district followed that advice promptly in suspending him last night.

Mr. Dain said the suspension was not a complete surprise. "Now this gives me something I can deal with instead of holding me in limbo," he said.

Juanita Forester, president of the Emeryville chapter of the California Teachers' Association, called Judge Barber's ruling "fantastic, marvelous," yesterday afternoon.

The Association has supported Mr. Dain and provided his attorney. "This is 1976 and new things occur every day," she said of the sex change operation. "It is not against the law and it has nothing to do with his teaching ability."

According to Dr. Stommel, Mr. Dain has 30 days to respond to the charges and ask for a hearing.

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Mr. Dain holds a secondary teaching credential and has said he would ask for an assignment in "an appropriate teaching area" like math or science.