

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

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

DAMON HORN, Moving Party

v.

HAYWARD UNIFIED SCHOOL DISTRICT, Responding Party

OAH No. 2023110715

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

Adam L. Berg, Presiding Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard oral argument on this matter by Zoom telephone/videoconference on December 22, 2023.

Peter Orth, Attorney at Law, represented moving party, Damon Horn.

Marleen L. Sacks, Attorney at Law, represented Hayward Unified School District.

The matter was submitted for decision on December 22, 2023.

On November 3, 2023, the district's Assistant Superintendent served Mr. Horn with a "Notice of Intent to Dismiss; Placement on Immediate Unpaid Suspension

Pending Outcome of Disciplinary Proceeding; and Statement of Charges” (Statement of Charges) seeking the immediate suspension without pay and dismissal of Mr. Horn, a permanent certificated employee. The statement of charges alleges the following causes for dismissal: immoral conduct; dishonesty, evident unfitness for service; and persistent violation of or refusal to obey state school laws or regulations prescribed by the district’s governing board. (Ed. Code, §§ 44932, subd. (a)(1), (a)(4), (a)(6) & (a)(8).)¹ The district also alleges cause to immediately suspend Mr. Horn without pay for immoral conduct. (§ 44939, subd. (b).)

On November 22, 2023, Mr. Horn filed a Motion for Immediate Reversal of Suspension with OAH, pursuant to Section 44939, subdivision (c)(1), alleging that the Statement of Charges does not set forth facts sufficient to support the allegations of immoral conduct required to impose an immediate suspension. The district filed an opposition to the motion on November 29, 2023; Mr. Horn filed a reply brief on December 19, 2023. On December 22, 2023, the parties presented additional oral arguments.

Section 44939, subdivision (b), authorizes the district to suspend an employee without pay pending the outcome of the hearing based on immoral conduct. Subdivision (c)(1), allows the employee to file a motion for relief from the suspension and requires review of this motion to 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.”

¹ All future statutory references are to the Education Code.

There is broad discretion in determining what constitutes immoral conduct in the context of teacher disciplinary matters. (*California Teachers Association v. State of California* (1999) 20 Cal.4th 327.) Immoral conduct has been defined by the courts as follows:

[T]hat which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as wilful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Palo Verde etc. School Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 972, citing *Bd. of Education of San Francisco Unified School Dist. v. Weiland*, 179 Cal. App 2d 808, 811.)

Immoral conduct alone cannot serve as a basis to terminate a teacher unless the conduct indicates the teacher is also unfit to teach. (*Palo Verde, supra*, at p. 972.) The definition of immoral or unprofessional conduct must be considered in conjunction with the unique position of public school teachers, upon whom are imposed “responsibilities and limitations on freedom of action which do not exist in regard to other callings.” (*Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820, 824.)

In *Crawford v. Comm. on Professional Competence* (2020) 53 Cal.App.5th 339, 337, the court rejected Ms. Crawford’s contention that there are three fixed categories of conduct that constitute “immoral conduct” as a matter of law. Instead, the court

held the term "immoral conduct" in Section 44932, "stretch[es] over so wide a range" of conduct that it "embrace[s] an unlimited area of conduct." (*Ibid.*, citing *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 224-225.) Citing *Morrison, supra*, at p. 224, the court added, the term must be "'considered in the context in which the Legislature considered it, as conduct which is hostile to the welfare of the general public . . . more specifically in this case, *conduct which is hostile to the welfare of the school community.*'" [citations] (*Crawford*, at p. 337 [italics in original].) "A teacher's conduct is therefore "immoral" under section 44932, subdivision (a)(1), when it negatively affects the school community in a way that demonstrates the teacher is 'unfit to teach.'" (*Ibid.* [footnote omitted].) The court then addressed Ms. Crawford's argument that the term should be given a colloquial interpretation that includes only conduct that would be deemed "immoral" in an everyday sense, such as criminal activity and using profanity or racial epithets. (*Id.* at p. 338.) The court wrote,

We disagree. Immoral conduct "stretch[es] over so wide a range that [it] embrace[s] an unlimited area of conduct."
([*Morrison, supra*, at pp. 224-225].) Thus, "the proper criteria is fitness to teach" because the term "immoral conduct" is "so broad and vague" that it is "constitutionally infirm."
([citation].) (*Ibid.*)

The parties' written submissions and oral arguments having been considered, the district alleged sufficient facts in the Statement of Charges that, if true, could constitute immoral conduct and support immediate suspension under section 44939, subdivision (b).

The motion for immediate reversal of suspension is DENIED.

DATE: December 28, 2023

A handwritten signature in black ink, appearing to read 'Adam L. Berg', is positioned above a blue horizontal line.

ADAM L. BERG

Presiding Administrative Law Judge
Office of Administrative Hearings