

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

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

CYNTHIA WAGGONER WORMHOUDT, Moving Party

v.

MAMMOTH UNIFIED SCHOOL DISTRICT, Responding Party

OAH No. 2021090419

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

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard oral argument on this matter by telephone on October 21, 2021.

Carlos M. Coye and Daniel B. Rojas, Rothner Segall & Greenstone, represented moving party, Cynthia Waggoner Wormhoudt.

Matthew C. Vance and James B. Fernow, Fagen Friedman & Fulfrost LLP, represented responding party, Mammoth Unified School District (district).

The matter was submitted for decision on October 21, 2021.

Background

On June 24, 2021, the district's Superintendent signed a Notice of Intent to Immediately Suspend and Dismiss; Statement of Charges (Statement of Charges) seeking the immediate suspension without pay and dismissal of Ms. Wormhoudt, a permanent certificated employee. On July 1, 2021, the district served Ms. Wormhoudt with the Statement of Charges and notice that its governing board had approved her dismissal and immediate suspension. The Statement of Charges alleges the following causes for dismissal: immoral conduct, 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)(6) & (a)(8).)¹ The Statement of Charges also notified Ms. Wormhoudt of the district's intent to immediately suspend her, although no specific grounds under Section 44939 were specified. As such, only immoral conduct under Section 44932, subdivision (a), serves as a basis for immediate suspension under Section 44939.

On September 15, 2021, Ms. Wormhoudt filed a Motion for Immediate Reversal of Suspension (motion) with OAH, pursuant to Section 44939, subdivision (c)(1), alleging that the Statement of Charges does not set forth facts sufficient to support an allegation of immoral conduct, which is necessary in this case to sustain the suspension. The motion also contends that the district did not plead facts sufficient to show that the board deemed the suspension "necessary," as required under Section 44939, subdivision (b). The district filed an opposition to the motion on October 12, 2021. Ms. Wormhoudt filed a reply brief on October 19, 2021. On October 22, 2021, a

¹ All future statutory references are to the Education Code.

telephonic conference was held, during which the parties were invited to present any additional oral arguments.

Allegations in the Statement of Charges

The following is a summary of the relevant factual allegations cited in the Statement of Charges as evidence of immoral conduct:

The allegations in the Statement of Charges relate solely to Ms. Wormhoudt's conduct as a special day class teacher at Mammoth Elementary School (MES). Ms. Wormhoudt taught students who have various physical or mental disabilities, including disabilities that place her students' health at higher risk for serious disease such as COVID-19. Prior to the school reopening following the COVID-19 pandemic, district officials provided trainings to staff regarding protocols pertaining to COVID-19. This training included identifying symptoms of COVID-19 and protocols for reporting students to the site office when they exhibited symptoms. The district's student health coordinator provided staff with trainings and flowcharts about these items. On February 8, 2021, the Superintendent sent a message to all staff containing school reopening guidance. Staff were directed to report any student exhibiting COVID-19 symptoms to the site office. On March 1, 2021, the first day that MES re-opened for in-person instruction, the district's health coordinator met with Ms. Wormhoudt individually to provide COVID-19 training specific to her special day class.

On April 6, 2021, Ms. Wormhoudt failed to follow district protocols and public health laws when she failed to report students to the MES office who she knew to have COVID-19 symptoms of coughing and runny/congested nose. A classroom aide later reported these students to the office, and the students were isolated and sent home. One of the students had COVID-19, and contact tracing indicated that a MES staff

member most likely contracted COVID-19 from this student. Ms. Wormhoudt knew the student had COVID-19 symptoms, but she believed the student had a common cold so did not contact the office, despite having received training on the proper protocols. Six other students and six staff members were in close contact with the student for two full days in the classroom. At least one other student has Down Syndrome that made the student vulnerable to complications from COVID-19. The six students were required to quarantine and could not return to the classroom until April 20, 2021.

On April 7, 2021, Ms. Wormhoudt retaliated against the aide who reported the sick students by yelling at her in front of students and other staff without justification.

On April 8, 2021, Ms. Wormhoudt violated district policy and public health orders by failing to wear a mask inside her classroom while others were present. Ms. Wormhoudt also violated district policy by not implementing a daily health check of her students.

On April 20, 2021, Ms. Wormhoudt failed to immediately send two students who displayed COVID-19 symptoms to the office. Another staff member stepped in and reported the students, both of whom had Down Syndrome. The same day, Ms. Wormhoudt took a student's dirty face mask out of a trash can and made the student put on the mask. A classroom aide had previously thrown the mask in the trash because it was dirty, and then had given the student a clean mask.²

² The gravamen of the immoral conduct charge relates to Ms. Wormhoudt's disregard of COVID-19 precautions. However, the Statement of Charges also alleges two other incidents: On August 21, 2017, Ms. Wormhoudt injured an autistic student's finger after shutting the door on the student's finger in an attempt to get him to leave

The Parties' Arguments

Ms. Wormhoudt argues that the allegations of accidentally trapping a student's finger in the door, misjudging a student's need to use the bathroom, failing to comply with the district's COVID-19 protocols, retrieving a dirty mask from the trash, or having poor communication skills is not indicative of corruption, indecency, depravity, or dissoluteness required of immoral conduct. Instead, the alleged misconduct constitutes "well-intended, though perhaps clumsy, attempts" by Ms. Wormhoudt to "effectuate her most important job duty - supervising and educating students." She argues that the allegations, as pled, do not establish the volitional component required for a finding of immoral conduct.

The district contends that it pled sufficient facts that would support a reasonable inference that Ms. Wormhoudt engaged in immoral conduct. Specifically, the district contends that Ms. Wormhoudt willfully disregarded the district's directives by failing to report students who exhibited COVID-19 symptoms, thus placing other students (some of whom were medically susceptible for severe complications) and staff in danger of illness or death. This conduct is "hostile to the welfare of the general public and contrary to good morals."

Applicable Law

Section 44939, subdivision (b), authorizes the district to suspend an employee without pay pending the outcome of the hearing if the district charges immoral conduct. Subdivision (c)(1), allows the employee to file a motion for relief from the

the classroom, and in March 2021, a student wet himself after she refused his request to use the restroom.

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."

Evaluation

First, Ms. Wormhoudt argues that that the Statement of Charges does not directly allege or plead facts that would support a reasonable inference that she willfully or intentionally disregarded the district's COVID-19 directives, which serves as the underlying basis for the district's allegation of immoral conduct. A review of a motion to reverse immediate suspension is limited to whether the facts as alleged in the statement of charges, if true, are sufficient to constitute immoral conduct. The Statement of Charges alleges Ms. Wormhoudt received multiple instructions on protocols related to COVID-19, including an in-person meeting with the district's student health coordinator, because some of her special day students had medical conditions making them more vulnerable to COVID-19. A little more than a month later, Ms. Wormhoudt failed to notify her site office when she observed students with COVID-19 symptoms. A day later, it is alleged Ms. Wormhoudt again violated district policy and public health orders by failing to wear a mask inside of the classroom and conduct daily health checks. Approximately three weeks later, Ms. Wormhoudt again failed to follow district policy when she failed to report two other students who had COVID-19 symptoms. The same day, it is alleged she took a dirty face mask out of the trash and forced a student to wear it. The combination of these facts, if true, could establish that Ms. Wormhoudt's conduct in failing to follow the district's COVID-19 policies was willful, flagrant, or intentional such as to establish the volitional requirement of immoral conduct. Even if her actions could more fittingly be explained by negligence or mistake, so long as a factfinder could conclude that she knowingly

violated the policies, the volitional requirement for immoral conduct is sufficiently pled. The Statement of Charges is sufficiently pled to specify "instances of behavior and the acts or omissions constituting the charge" such that Ms. Wormhoudt was placed on sufficient notice such that she can prepare a defense. (§ 44934, subd. (c); *Wisuri v. Newark School Dist. of Alameda County* (1966) 247 Cal.App.2d 239, 242.) Ms. Wormhoudt cites no caselaw requiring the pleadings to establish that the *only* reasonable inference from the alleged facts is that her actions were willful or intentional, as opposed to negligent or unintentional.

Ms. Wormhoudt also argues that simply failing to abide by the district's directives cannot constitute immoral conduct. However, 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.*)

Accordingly, under the rationale of *Crawford*, because immoral conduct could "embrace an unlimited area of conduct," the fact that there are no reported cases upholding immoral conduct similar to the factual situation of this case, does not, as a matter of law, preclude the Commission on Professional Competence (CPC) from finding immoral conduct in this case. In this case, district policies that Ms. Wormhoudt failed to comply with were directly related to the health, safety, and general welfare of the district's students, including those who were more vulnerable to suffering complications. So long as the CPC could, after application of the *Morrison* factors, find that Ms. Wormhoudt's conduct "negatively affected the school community in a way that demonstrates she is "unfit to teach," her motion must be denied. The facts as alleged in the Statement of Issues are sufficient to establish that the CPC could reach such a finding. (§ 44939, subd. (c)(1).)

Finally, Ms. Wormhoudt argues that the district failed to plead facts showing that it deemed it necessary to place her on unpaid suspension. While Education Code section 44939, subdivision (a), authorizes a district to immediately suspend a teacher without pay, if "it deems that action necessary," a motion for immediate reversal of suspension is 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." (*Id.*, subd. (b).) Thus, any argument relating to the deficiency in the pleadings beyond whether the facts are sufficient to support a charge of immoral conduct are outside the scope of these proceedings.

ORDER

The motion for immediate reversal of suspension is denied.

DATE: October 26, 2021


Adam Berg (Oct 26, 2021 16:03 PDT)

ADAM L. BERG

Administrative Law Judge

Office of Administrative Hearings