

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
JURUPA UNIFIED SCHOOL DISTRICT

In the Matter of the Proceeding to Dismiss:

PATRICIA CRAWFORD,

Respondent.

OAH No. 2017051349

DECISION

This matter came on regularly for hearing before the Commission on Professional Competence in Jurupa Valley, California on October 3, 4, and 5, 2017. The Commission was comprised of the following members: Administrative Law Judge (ALJ) Mary Agnes Matyszewski, Erika Bennett and Van Parker.

Kerrie McNally, of Adams, Silva, & McNally, represented the Jurupa Unified School District.

Lawrence B. Trygstad and Richard Schwab, of Trygstad, Schwab & Trygstad, represented respondent Patricia Crawford, who was present throughout the hearing.

On October 20, 2017, the Commission met to deliberate and the matter was submitted.

CASE SUMMARY

Ms. Crawford was employed as a high school guidance coordinator. In 2014 and 2017, Ms. Crawford posted messages on Facebook that the district alleged demonstrated she engaged in immoral conduct and was unfit to serve. Ms. Crawford's posts, particularly her posts following the February 2017 "Day without Immigrants" protest, constituted immoral conduct and demonstrated she was unfit to serve. After considering all of the evidence presented, the Commission concluded that the allegations warranted her dismissal from the district.

FACTUAL FINDINGS

Jurisdictional Matters

1. Ms. Crawford was employed by the Jurupa Unified School District as a guidance coordinator. At all relevant times Ms. Crawford was a guidance coordinator at Rubidoux High School (RHS).

2. On February 16, 2017, Ms. Crawford made Facebook posts on a fellow teacher's Facebook page.¹

3. On February 17, 2017, the district placed Ms. Crawford on paid administrative leave pending the outcome of its investigation.

4. On May 1, 2017, the district served Ms. Crawford with a draft Notice of Intent to Dismiss advising her of the district's intent to dismiss her from employment. The notice also informed her of her right to a *Skelly* hearing, and set a date for that proceeding.²

5. On May 11, 2017, Trent Hansen, the district's Assistant Superintendent of Planning and Development, who served as the *Skelly* officer, sent Ms. Crawford a letter informing her that "after carefully reviewing" the charges, her responses and a letter of support, he determined that there was "a reasonable basis to sustain the recommendation that you be terminated and immediately suspended from your employment with the District." On that same date, Tamara Elzig, the district's Deputy Superintendent, Personnel Services, advised Ms. Crawford that the *Skelly* officer's recommendation was to suspend and terminate Ms. Crawford's employment and that Ms. Elzig would be making that recommendation to the governing board.

6. On May 15, 2017, the district's governing board met to decide whether to issue the Notice of Intent to Dismiss and Immediately Suspend without Pay; and Statement of Charges against Ms. Crawford. The governing board voted 4-1 to adopt the Notice of

¹ As noted below, in this proceeding, the district also alleged Ms. Crawford sent improper emails on February 16, 2017, and made a 2014 Facebook post. In her closing argument, the district's counsel argued that the 2014 Facebook post was alleged to demonstrate that Ms. Crawford had a "propensity to post on Facebook."

² In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that in order to satisfy due process, an agency considering disciplinary action against a public employee must accord the employee certain "preremoval safeguards," including "notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." The Supreme Court's directive gave rise to an administrative procedure known as a *Skelly* hearing, in which an employee has the opportunity to respond to the charges upon which the proposed discipline is based.

Intent to Dismiss and Immediately Suspend without Pay; and Statement of Charges, placed Ms. Crawford on unpaid suspension effective May 16, 2017, and authorized the superintendent or his designee to serve a copy of the charges on Ms. Crawford.

7. On May 15, 2017, Ms. Elzig signed the Notice of Intent to Dismiss and Immediately Suspend without Pay; and Statement of Charges in her official capacity. The notice sought to immediately dismiss Ms. Crawford from employment with the district on the grounds of immoral conduct (Education Code section 44932, subdivision (a)(1)) and evident unfitness for service (Education Code section 44932, subdivision (a)(6)).

8. On June 30, 2017, ALJ Carmen Scruggs denied Ms. Crawford's Motion for Immediate Reversal of Suspension. Ms. Crawford remains on unpaid suspension.

9. Ms. Crawford timely appealed the dismissal action, denying that grounds for her dismissal from employment existed, and this hearing ensued.

Motions in Limine

10. The parties filed several motions in limine, objections and oppositions thereto. Tentative rulings were issued, and the parties were allowed to orally argue their positions at the start of trial, after which final rulings were issued.

Ms. Crawford's Education and Employment History

11. Ms. Crawford was raised in a military home; her father was an Air Force pilot. She graduated high school at age 16 and wanted to join the military, but was too young. When she turned 18, she joined the Army where she served as a teletype repairman from 1975 to 1978 when she was honorably discharged. She returned to school and received a Bachelor of Arts Degree in Spanish, French, German, and Russian from Emporia State University in Emporia, Kansas. After graduation, she was commissioned as an Army officer, serving as a military intelligence officer. On one tour of duty, she was stationed in Honduras as part of the tri-national army support during "the civil war." While stationed there, she performed volunteer work on medical missions.

After being honorably discharged, she entered the seminary in Oregon where she received a Master's of Divinity Degree. She married a fellow student whom she met in the seminary and after graduation she served for three years as a minister. After becoming pregnant with her first child, she began substitute teaching in 1993, first working on an emergency credential and then obtaining a clear secondary English credential. She has her pupil personnel services (PPS) credential and a Master's Degree in Educational Counseling. She taught in four other school districts before coming to the Jurupa Valley district in 2006. She began working at RHS in 2009.

Board Policies

12. The district introduced several board policies, but those addressed the correct usage of district equipment. None of the policies set forth procedures or restrictions regarding the use of private e-mail or Facebook accounts.

Ms. Crawford's 2014 Facebook Post

13. On November 7, 2014, Ms. Crawford was attending an RHS football game in a supervisory role as part of her employment duties. While at the game, she posted the following message on Facebook: "I can't wait for this game to be over. I can't bring myself to root for them tonight."

Four individuals replied to her post. One person liked it, another posted: "What's up?" and another posted: "I was wondering if they were going to be allowed to play still. That answered my question." A fourth person posted: "There's *[sic]* still a lot of good kids on this team" to which Ms. Crawford replied: "I know that there are, [fourth person's name]."

RHS Assistant Principal Todd Moerer sent RHS Principal Jose Araux, Ed.D., an e-mail attaching Ms. Crawford's post and the responses to it. Mr. Moerer wrote: "FYI- this is a Facebook post that Pat Crawford posted on Friday night at the game. Don't know if it should be addressed or not, just thought you may want to know where her attitude is. (Not surprising) *[sic]*" Dr. Araux emailed the following reply to Mr. Moerer: "I will double check with Tammy. She is exercising her Constitutional Freedom of Speech, however, doing this instead of supervising. I don't know if this time is considered working time for GC's.³" At this hearing, Dr. Araux admitted that he took no action against Ms. Crawford because of this post, nor did he talk to her about it.

Ms. Crawford's testimony regarding this post is summarized as follows: Members of the RHS football team were involved in an incident where they encouraged two special education students to engage in a sexual act that the football players videotaped; she was "shocked" the football game was allowed to go forward because of the behavior of a few players; she was never disciplined about this post; she did not know her Facebook post was a problem or that her assistant principal and principal had exchanged an email about it until this case; had she been told not to post on Facebook, she would have followed that direction because she is a "rules person."

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³ Guidance Coordinator.

Ms. Crawford's February 16, 2017, Email and Facebook Posts

14. On February 16, 2017, several hundred⁴ RHS students participated in the nationwide “Day without Immigrants” protest.⁵ The protest was designed to demonstrate the contributions immigrants make to our country and the impact their absence would cause. RHS experienced an abnormally high absence rate that day; approximately 22 percent of students were absent.

15. On the afternoon of February 16, 2017, an RHS teacher, Robin Reed Riggle, sent Ms. Crawford an e-mail about the high number of absences she was observing in her classroom and asked if other staff had reported “this kind of absenteeism today.” In reply, Ms. Crawford emailed: “The PROFESSIONAL staff members and SERIOUS students are here today, boycott be darned.” Ms. Riggle responded: “Absolutely! I had seen it on the news and was just wondering what kind of impact it would have. Lots of ADA⁶ money! Have a wonderful afternoon, Pat.” To which Ms. Crawford replied, “You, too, Robin.”

16. Later that afternoon, Geoffrey Greer, at the time an RHS teacher, posted the following message on his Facebook page:

Well. A day without immigrants. Perhaps the missing workers in all the various industries out there had the intended impact and sent the desired message. I don't know. As for the public school system, having my class size reduced by 50% all day long only served to SUPPORT Trump's initiatives and prove how much better things might be without all this overcrowding.

That's what you get when you jump on some sort of bandwagon cause as an excuse to be lazy and/or get drunk. Best school day ever.

In response to Mr. Greer's post, four other RHS teachers and Ms. Crawford posted messages on Mr. Greer's Facebook page. Ms. Crawford was the last of the district's employees to respond. Ms. Crawford posted the following messages:

Cafeteria was much cleaner after lunch, lunch, itself, went quicker, less traffic on the roads, and no discipline issues today. More, please.

⁴ 357 students were absent on February 16, 2017; 286 of whom had unexcused absences.

⁵ According to the testimony from district witnesses, 91 percent of the student body at RHS is Hispanic and many of the students' parents are immigrants.

⁶ Average Daily Attendance.

Several people posted messages after Ms. Crawford's message criticizing the "teachers" for their posts. In response to those messages, an individual named C ■ C ■ made the following post:

Let's not just focus on the teachers here, a counselor, who I looked up to made a remark. Very very disappointing.

In response to that post, Ms. Crawford posted the following on Mr. Greer's page:

Disappointing is to think that some of my students still don't get it about education. Staff members who are sympathetic to the cause were at school today. The kids who care were there. The professional staff members were there. What I saw today was more proof, just like last year, that boycotts, especially of education, aren't the answer. It just keeps the ones who need it the most as useful fools.

A few minutes later, another student, named J ■, posted: "[The first line was illegible because the copy introduced at hearing was cut off] . . . understand, you don't understand what it feels like to have counselors that belittle what you want to be. That when you're trying to aim high, they tell you that you can't." In reply, Ms. Crawford posted: "J ■, any counselor who chops you off at the knees like that shouldn't be a counselor. That's why today upset me so much. I want my students to go out there and stand proud. Education is one way to do that." In response to Ms. Crawford's post to J ■, an individual named Andrew Avila posted: "Patricia Crawford, in your previous statement above you said 'more please!', meaning you want more of your students to not keep coming to class like today. Why contradict yourself now?"

Ms. Crawford's final post before she logged off Facebook on February 16, 2017, was:

And I'm the great-granddaughter of immigrants. I care. But this isn't the way to go about effecting change. My post was meant to be snarky. Get over yourselves.

Ms. Crawford's testimony regarding her 2017 Facebook posts is summarized as follows: she "did not understand how Facebook accounts worked"; she "had no idea" that Mr. Greer's Facebook account was public; she thought the posts were simply other district employees "sharing their observations regarding the day" to which she was adding her observations; had she known it was public she would never have posted on it; in her first post she was only stating facts; she meant there were fewer students on campus so the cafeteria was cleaner (describing the trash/seagull issues at lunch); there was less traffic on the roads making her daily 90 mile commute shorter, and it was "a joy" to have a day with no discipline; her "Disappointing" post was intended to respond to the post by the student, C ■ C ■, to let C ■ know that she cared about students; the idea that her words were "misconstrued" or that they hurt others upsets her; she does not know if the word "fools" was

a typo, she may have meant to type “tools”; she realized after reading subsequent posts that nothing she could post would clarify her statements or make a difference so she stopped and “got off Facebook” at approximately 6:00 p.m.; she immediately began receiving IMs⁷ but did not open them because the parts of the messages she could read were “pretty disgusting” in that they called her a “f**king racist,” “Nazi,” the “C” word, and posted: “I hope you die”; these statements scared her; she described the “traumatic to say the least” effects her posts have had on her.

Ms. Crawford’s February 17, 2017, Email to Mr. Araux

17. On February 17, 2017, at 5:39 a.m., Ms. Crawford sent the following e-mail to Mr. Araux and Ms. Elzig, with a copy to Paul Jensen:

Last night, on Facebook, I responded to a colleague’s post with an observation, as did a few other teachers. Former students became very angry, which caught me by surprise. I responded to one of the former student’s hatefulness, trying to defend myself, and ended the post with “get over yourselves,” as in understand that my original post was a joke. I believe that part of the comment has been reposted and taken out of context. I then started receiving threatening IMs. I deleted my Facebook account.

Since after the election, I can no longer eat lunch in the staff lounge because of the ongoing anti-Caucasian conversations. The environment has become very uncomfortable at RHS. Even so, I have not let the environment affect how I deal with my students. I am a professional, and I care deeply about ALL of my students.

Because of the comments taken out of context, and the threats that I received via IM, I don’t feel safe going to work today.

If I’m being put on Administrative leave, please let me know. I am not part of NEA-J, and will be getting my own lawyer.

The Commission found this email to be disingenuous, self-serving, and an attempt by Ms. Crawford to falsely make it appear as though RHS was a hostile work environment. The Commission also found this email to be an additional example of Ms. Crawford’s failure to appreciate the magnitude of her actions and to take responsibility for them.

⁷ Ms. Crawford testified that IMs are Instant Messages on Facebook and are ways that people on Facebook who are not your Facebook friends can contact you.

RHS Student Body and Campus Reaction

18. Some of the replies to the district employees' Facebook posts called on the students to take action and some advocated violence. The next morning on campus, two of the classrooms of teachers who had posted on Facebook were vandalized. Photographs of the swear words and statements spray-painted on the walls outside of those two teachers' classrooms were introduced at hearing.

19. Mr. Araux and Ms. Elzig testified about the student protest at school the morning after the Facebook posts which culminated in a walkout at lunch. Hundreds of students left campus and marched through the community. Ms. Elzig described the anger she observed, how the students stormed the flagpole, attempted to raise a Mexican flag, and how they stormed the school fences, shaking and climbing them, leading her to open the gates so that students were not harmed. Ms. Elzig described the concern she felt watching the students march through the streets, attempt to march onto the local highway, and how law enforcement attempted to contain the students to protect them from injury.

20. Mr. Araux and Ms. Elzig described the many efforts the district made following these Facebook posts to address the issues raised by the posts and to help RHS and the community heal. Ms. Crawford's argument that community sentiment waned because only a handful of people came to meet with Mr. Araux after being invited to do so was not persuasive and paled in comparison to the enormous amount of emails sent.

21. Three teachers at RHS testified about the impact the Facebook posts had on them, their classroom instruction, RHS, the district, and the community. The three teachers expressed how upset the posts made them and the backlash they received from students and the community. One teacher explained how he was contacted by a student asking if he agreed with the comments. That teacher also believed that Ms. Crawford's post gave "tacit approval" to Mr. Greer's "lazy/drunken" post. Another teacher became extremely emotional while testifying, explaining how upsetting it was for her students to question her values and distrust her. A third teacher testified about the loss in instructional time because of the time spent discussing the posts with students. The testimony from these three teachers established the extremely negative impact that Ms. Crawford's Facebook posts had on the school and the community.

22. Daniel Brooks, the district's Director of Personnel, described how he was tasked with speaking with parents and community members about the Facebook posts. He described how upset the parents and community members were, that they felt the Facebook posts were discriminatory, and how they demanded that the district take action. Mr. Brooks's testimony established the large negative impact Ms. Crawford's posts caused.

23. Three current students and one former student testified about the negative impact Ms. Crawford's posts had on them. They explained how the posts demonstrated that she could not be a role model, the negative view the posts had of Hispanics and immigrants, and how upset they were with the negative way that Ms. Crawford viewed the students who

stayed home from school in support of the Day without Immigrants. They did not or would not want her as their school counselor and they had lost trust in her.

Community Reaction

24. In response to the district's employees' Facebook posts, the district received what can only be described as a "hailstorm response." The district received hundreds of e-mails and letters, several telephone calls, and multiple visits, from parents, students, former parents and former students, community members, individuals and press organizations, both local and from across the nation, the majority of which were critical of the Facebook posts and demanded the district take action. While there were some letters of support, the overwhelming response was critical of the district for allowing these employees to be on staff and condemned the employees for their Facebook posts.

25. Testimony was received from the district's witnesses regarding the community outrage expressed at the board meeting about the posts. The board meeting was broadcast by several news organizations, including ones from across the country, and video excerpts of a few of the public presentations at the board meeting were played during this hearing. Again, overwhelmingly, the reaction to the posts was negative.

26. Several media accounts of the Facebook posts were received. These demonstrated that notoriety of the Facebook posts both in the district and across the country.⁸

27. Ms. Crawford's argument that the responses to the Facebook posts were not about Ms. Crawford because those responses referenced "teachers" and not "counselor" was not persuasive. It was clear that Ms. Crawford's posts were included as a cause for the backlash the district received. In fact, interestingly enough, Ms. Crawford's counsel referred to her as a "teacher" in his closing argument, lending further support to the Commission's finding that references to "teacher" in the emails included Ms. Crawford.

28. Gale Hammons, the district's Communications and Public Relations contractor, testified about her monitoring of social media sites and the extreme negative public reaction to the 2017 Facebook posts. In addition to Facebook, the messages "went viral" on several social media accounts and were reposted numerous times.

Ms. Crawford's Character Witnesses' Testimony

29. Ms. Crawford called no current RHS employees to testify on her behalf. Victoria Kelley, a former teacher in the district, testified in support of Ms. Crawford.

⁸ Pursuant to the ruling on the motions in limine, Official Notice of the existence of news accounts was taken, but the content of them was subject to hearsay objections. The existence of the articles was considered to evaluate factors outlined in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 and to establish the notoriety of the conduct as discussed in *Board of Education v. Jack M.* (1977) 10 Cal.3d 691.

However, as was established during her cross-examination, when Ms. Kelley was a district employee, she repeatedly lied about being sick when she was actually out partying and posting her exploits on Facebook. Ms. Kelley testified falsely at this hearing when she denied ever being disciplined for her conduct. The district introduced the letter of reprimand it issued to Ms. Kelley regarding her dishonesty, identifying the numerous dates that she lied about her absences. Accordingly, Ms. Kelley's testimony was afforded no weight.

30. James Bosenberg is a handyman who does work for Ms. Crawford and knows her from church. Although he testified that she has always been respectful towards him, because he relies on her as a source of income, his testimony was not persuasive.

31. Samuel Mills owns the cleaning company that provides maid service in Ms. Crawford's home. He, too, testified that she has always been respectful but, as with Mr. Bosenberg, he relies on Ms. Crawford as a source of income, making his testimony unpersuasive.

Additional Testimony Offered by Ms. Crawford

32. In addition to the testimony summarized above, Ms. Crawford also described the work she has performed for students at RHS. Her testimony regarding her work with students seemed little more than her rotely checking off boxes; she failed to demonstrate that she formed any real connection with the students or that she cared for their well-being. Moreover, her testimony failed to establish that she had any insight into the damage her Facebook posts caused the students and the community. What was clear is that she was concerned for her own welfare given the backlash she received, but she never once throughout this hearing demonstrated any appreciation for the injury her words caused others. Her testimony about being sorry seemed insincere and contrived. It was also disconcerting that Ms. Crawford testified that she reinstated her Facebook account not long after these posts, further demonstrating her lack of any understanding of her actions.

Ms. Crawford's Letters of Reference and Evaluations

33. Ms. Crawford introduced several letters of reference, explaining that she gathered them when looking to apply for other positions. Although the letters were very complimentary, they were insufficient to overcome the grave concerns raised by Ms. Crawford's emails, Facebook posts and testimony.

34. Ms. Crawford introduced her evaluations, demonstrating that she received overall ratings of meets or exceeds expectations. As with her letters of reference, while these demonstrated she received successful reviews, they were simply not enough to overcome the concerns raised by her e-mails, Facebook posts or her testimony.

LEGAL CONCLUSIONS

Applicable Code Sections

1. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44934 and 44944.)
2. Education Code section 44932 provides the grounds for dismissing a permanent employee. Subdivision (a)(1) authorizes dismissal for immoral conduct. Subdivision (a)(6) authorizes dismissal for evident unfitness for service.
3. Education Code section 44944 establishes the right to a hearing, the process for selecting the three-member Commission on Professional Competence, and the Commissions' authority regarding its final decision.
4. Education Code section 44938 outlines the procedures the governing board must follow before acting on any charges brought against a permanent employee.

Burden and Standard of Proof

5. The "burden of proof" means the obligation of a party, to convince the trier of fact that the existence of a fact sought to be proved is more probable than its nonexistence. (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1128.)
6. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) A preponderance of the evidence means that the evidence on one side of an issue outweighs, preponderates over, and is more than, the evidence on the other side of the issue, not necessarily in number of witnesses or quantity, but in the convincing effect the evidence has on those to whom it is addressed. In other words, the term refers to evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Immoral Conduct

7. The term "immoral" has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. The term "immoral conduct" has been defined to include conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, 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. "Immoral conduct" is not confined to sexual matters. It includes an inconsiderate attitude toward good order and the public welfare. It is sometimes synonymous with "dishonesty" or a high degree of unfairness. (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179

Cal.App.2d 808, 811, noting that no other California cases had previously defined the term “immoral conduct.”)

8. “Immoral conduct” is conduct hostile to the welfare of the general public and is not confined to sexual matters. (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466.)

9. Immoral conduct cannot be considered in the abstract. It 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, conduct which is hostile to the welfare of the school community. In providing standards to guide school boards in placing restraints on conduct of teachers, the Legislature is concerned with the welfare of the school community. Its objective is the protection of students from corruption. This is a proper exercise of the power of a state to abridge personal liberty and to protect larger interests. But reasonableness must be the governing criterion. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 224.) The phrase “immoral conduct” within the meaning of the Education Code denotes immoral or unprofessional conduct or moral turpitude of the teacher that renders the teacher unfit to teach. (*Ibid.* at p. 225.)

10. There are certain professions which impose upon persons attached to them responsibilities and limitations on freedom of action which do not exist in regard to other callings. Public officials such as judges, policemen and schoolteachers fall into such a category. (*Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820, 824.)

11. “As between a teacher and his student, ‘(a)n important part of the education . . . is the instilling of a proper respect for authority and obedience to necessary discipline. Lessons are learned from example as well as from precept.’ (Citation.) ‘A teacher . . . in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the [students] coming under [his] care and protection. . . . The teaching by example as well as precept, of obedience to properly constituted authority and discipline necessary to a well ordered society, is an important part of education.’” (*Watson v. State Bd. of Education* (1971) 22 Cal.App.3d 559, 565.)

12. “The calling of an educator is so intimate, its duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous that they are incapable of enumeration in any legislative enactment. The educator’s ability to inspire children and to govern them, his power as an educator, and the character for which he stands are matters of major concern in an educator’s selection and retention. . . . An educator in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the students coming under his care and protection. (Citation.)” (*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1463-64.)

13. The governing board of a district is entrusted with the conduct of the schools under its jurisdiction, their standards of education, and the moral, mental, and physical

welfare of the pupils during school hours. An important part of the education of any child is the instilling of a proper respect for authority and obedience to necessary discipline. Lessons are learned from example as well as from precept. “Book learning” is only a phase of the important lessons a child should learn in a school. (*Palo Verde Unified School District of Riverside County v. Hensey* (1970) 9 Cal.App.3d 967, 970–71.)

14. Rejecting statutory terms, such as “immorality,” “unprofessional conduct,” or “moral turpitude” as overly broad to use as grounds for discipline of public school teachers, the *Morrison* court created a seven-part test to assess whether a misbehaving teacher is fit to teach. (*Broney v. California Com. on Teacher Credentialing* (2010), 184 Cal.App.4th 462, 466.) “Because terms such as ‘immoral,’ ‘unprofessional,’ or ‘involving moral turpitude’ are too broad and amorphous to be used as a basis for the termination of a professional license, it must be shown the conduct in question indicates an unfitness to engage in the profession.” (*Id.* at pp. 473–74.)

15. Since the term “immoral conduct” is vague and broad, whether the conduct demonstrates an unfitness to teach must be measured against seven criteria set forth in *Morrison*. (*Governing Board of ABC Unified School District v. Haar* (1994) 28 Cal.App.4th 369, 383.)

Evident Unfitness for Service

16. The applicable standard or determinative test in teacher dismissal cases is whether the person is fit to teach. “Fitness to teach” is a question of ultimate fact. (*Board of Education v. Commission on Professional Competence* (1980) 102 Cal.App.3d 555, 560–561.)

17. “Evident” is defined as “clear to the vision and understanding.” “Unfit” is defined as “not fit; not adapted to a purpose, unsuitable; incapable; incompetent; and physically or mentally unsound” and “unsuitable, incompetent and not adapted for a particular use or service.” (*Palo Verde Unified School District of Riverside County v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

18. In *Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, the court noted the two parallel, yet contradictory, lines of cases regarding “unfit for service.” One line of cases equated that term with “unprofessional conduct” and the other line of cases distinguished the two definitions. In deciding that the latter line of cases was the correct way to evaluate “unfit to serve,” and complied with the rules of statutory construction. The *Woodland* court concluded that “unprofessional conduct” and “evident unfitness for service” do not mean precisely the same thing. Although conduct constituting “evident unfitness for service” will often constitute “unprofessional conduct,” the converse is not always true. Evident unfitness for service requires that unfitness for service be attributable to defect in temperament, which is not necessary for a finding of unprofessional conduct. Nevertheless, lower courts may not disregard the criteria for unfitness set out in *Morrison* where that court concluded that

“unprofessional conduct” meant conduct showing a teacher was unfit to teach. These criteria must be analyzed to determine, as a threshold matter, whether the conduct indicates unfitness for service. If it does, the next step is to determine whether the “unfitness” is “evident”; i.e., whether the offensive conduct is caused by a defect in temperament. (*Id.* at pp.1442-1445.) A finding of “unfit to serve” can be made if the evidence, taken in the aggregate, shows that retaining the employee would pose a significant danger of psychological harm to students and fellow teachers. (*Id.* at p.1456.)

19. An employee can be dismissed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher. The inquiry is whether any adverse inferences can be drawn from the teacher’s conduct as to his teaching ability, or as to the possibility that publicity surrounding the past conduct may in and of itself substantially impair his function as a teacher. (*Morrison, supra*, at p. 235.)

20. To establish a teacher is unfit to teach, *Morrison* requires a nexus between government employment and alleged employee misconduct stemming from the principle that “[n]o person can be denied government employment because of factors unconnected with the responsibilities of that employment.” (*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1463.)

21. “Unlike ‘unprofessional conduct,’ ‘evident unfitness for service’ connotes a fixed character trait, presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectation of the employing school district.” (*San Diego Unified School District v. Commission on Professional Competence* (2013) 214 Cal.App.4th 1120, 1142-43.)

22. An employee’s actions on a given day may suggest a lack of judgment and discretion, or may be an isolated act precipitated by an unusual accumulation of pressure and stress. An absence of any other incidents in the employee’s teaching career suggestive of lack of judgment or discretion can further distinguish the aberrant character of the act at issue. In such a case, a fact finder could reasonably conclude that the isolated incident of poor judgment was outweighed by years of demonstrated teaching competence, and that on balance the employee possessed the qualities of character necessary for teaching fitness. (*Board of Education v. Jack M.* (1977) 19 Cal. 3d 691, 696-701.)

23. In determining whether the teacher’s conduct indicated unfitness to teach, such matters as (1) the likelihood that the conduct may have adversely affected students or fellow teachers, (2) the degree of such adversity anticipated, (3) the proximity or remoteness in time of the conduct, (4) the extenuating or aggravating circumstances, if any, surrounding the conduct, (5) the likelihood of the recurrence of the questioned conduct, and (6) the notoriety and publicity accorded the teacher’s conduct may be considered. (*Jack M., supra*, at p.702, footnote 5.)

24. The nexus between an employee's conduct and his fitness to teach is established when the conduct is detrimental to the mission and functions of the employer. Factors to consider are whether the acts demonstrate a serious lapse in good judgment, the teacher failed to recognize the seriousness of his misconduct, the teacher attempted to shift blame to parents and students who might access his posting, his principal had lost confidence in his ability to serve as a role model based upon the posting, or, most noteworthy, the teacher's testimony that he did not think his postings would have any impact on his ability to teach his students if any of them had viewed his post and that he did not view his posting as immoral. The conduct itself, together with the teacher's failure to accept responsibility or recognize the seriousness of it, given his position as a teacher and role model, demonstrates evident unfitness to teach. (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1465-66.)

25. One act does not alone demonstrate the unfitness of the teacher, but is simply one of the factors to be considered. (*Board of Education v. Commission on Professional Competence* (1980) 102 Cal. App.3d 555, 561-62.)

26. There must be a nexus between the teacher's conduct and his usefulness to the school district and only when so construed can grounds to dismiss for immoral conduct or unfitness to serve be constitutionally applied. (*Board of Trustees v. Judge* (1975) 50 Cal. App. 3d 920, 929.)

Morrison Factors

27. In *Morrison, supra*, the Supreme Court suggested seven factors to consider when evaluating whether the school employee should be dismissed: (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the teacher; (4) the existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; and (7) the extent that the discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.

28. The *Morrison* factors may be applied to the charges in the aggregate. When a camel's back is broken, the trier of fact need not weigh each straw in its load to see which one could have done the deed. A trier of fact is entitled to consider the totality of the offensive conduct. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1456-1457.)

29. Only the pertinent *Morrison* factors need to be analyzed. (*Broney v. California Com. on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 476.)

Other Discipline Considerations

30. An administrator's loss of confidence in the educator and doubt regarding the educator's ability to serve as a role model for students are factors that may be considered. (*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1460.)

31. The notoriety and publicity accorded a teacher's conduct may properly be considered. (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 701, fn. 5.) If the teacher's conduct is sufficiently notorious that the students know or are likely to learn of it, and if the teacher continues to model his past conduct, the Commission may infer that the teacher's conduct may result in student emulation, but such an inference is disputable. (*Id.*, at p. 699 and fn. 4.)

32. Where it can reasonably be inferred that the salient facts at issue reached the attention of many persons in the community, it may also be inferred that the educator's conduct attained a degree of timely notoriety among persons - students, teachers, parents, and others - interested in the high school. (*Comings v. State Bd. of Education* (1972) 23 Cal.App.3d 94, 105-6.)

33. An educator may be dismissed if the conduct has gained sufficient notoriety so as to impair his or her on-campus relationships. (*Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820, 826; *Watson v. State Bd. of Educ.* (1971) 22 Cal.App.3d 559, 562.)

34. The Commission is vested with discretion not to dismiss an employee even if grounds for discipline exist. (*Fontana Unified School District v. Burman* (1988) 45 Cal.3d 209.)

Evaluation

35. Ms. Crawford's 2017 Facebook posts negatively impacted students, the school, the district and the community. Her comments were discriminatory and her "get over yourselves" comment demonstrated her utter lack of understanding or appreciation for the magnitude of her actions. At this hearing she failed to demonstrate any insight for what she had done, take any real ownership for her actions, or exhibit any empathy for the students or community she harmed. In short, her presentation was underwhelming.

Her testimony that she thought Mr. Greer's Facebook page included only district employees was not credible and was belied by the facts. Three messages posted before Ms. Crawford posted her first message were from individuals who were not employed by the district. Ms. Crawford, by her own admission knew C ■ C ■ was a student when she responded to that post; and, at a minimum, she had a Facebook account from 2014 to 2017, a span of three years, so to think she did not know the public nature of Facebook was absurd, as was her testimony that her first post was merely a recitation of facts. Her repeated claim that her words were "misconstrued" demonstrated her failure, even today, to appreciate the

effects that her posts had and to accept responsibility for her actions. Moreover, her claim that she did not realize her words would be “misconstrued” was disingenuous; how she could not know her posts were improper was astounding. Her claim was all the more baffling given her level of education, international relief work, her extensive career as a counselor, and her employment in the district at a school site where more than 90 percent of the student body is Hispanic. In addition, if one were to adopt respondent’s counsel’s argument that “any reasonable person would agree” that Mr. Greer’s initial post “would incite” the community reaction that occurred, it is even more confounding that Ms. Crawford, presumably a reasonable person, failed to perceive that her post on Mr. Greer’s Facebook page would be viewed negatively as well. Ms. Crawford’s claim that her first post was merely a “recitation of the facts,” was not credible and was refuted by the evidence. Her “more please” comment showed her disdain for the students who participated on the boycott. Ms. Crawford’s attitude and lack of insight makes it likely she will engage in this behavior again. These conclusions were reached after applying the *Morrison* factors.

Cause Exists to Dismiss Ms. Crawford

36. Cause exists to dismiss Ms. Crawford pursuant to Education Code section 44932, subdivision (a)(1), because the evidence established that Ms. Crawford engaged in immoral conduct.

37. Cause exists to dismiss Ms. Crawford pursuant to Education Code section 44932, subdivision (a)(6), because the evidence established that Ms. Crawford was evidently unfit for service.

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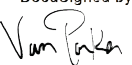
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ORDER


Ms. Crawford's appeal of her dismissal from employment with the Jurupa Unified School District is denied. The district's request to dismiss Ms. Crawford is granted. Ms. Crawford shall be dismissed from the district.

DATED: November 13, 2017

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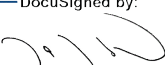
VAN PARKER
Commission Member

DATED: November 13, 2017

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ERIKA BENNETT
Commission Member

DATED: November 13, 2017

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MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings