

CLIENT NEWS BRIEF

California Court of Appeal Upholds Certificated Dismissal for School Counselor's Facebook Comments

On August 11, 2020, California's Fourth District Court of Appeal upheld the dismissal of Patricia Crawford (Crawford), a certificated guidance counselor for the Jurupa Unified School District (District), on the grounds that her comments on a colleague's Facebook post concerning students were immoral and demonstrated she was unfit for service. *Crawford v. Commission on Professional Competence* (August 11, 2020, E071770) __ Cal.App.5th __) sheds much-needed light on a school district's ability to terminate a permanent certificated employee for their social media posts.

Background

In February of 2017, the nationwide protest "A Day Without Immigrants" resulted in nearly a quarter of students at Rubidoux High School (RHS) being absent due to their participation in the boycott. One Rubidoux teacher made a public Facebook post about the protest that day. Crawford responded by commenting on that post multiple times that evening. Many of her comments disparaged students. For example, she commented: "Cafeteria was much cleaner after lunch, lunch, itself, went quicker, less traffic on the roads, and no discipline issues today. More, please." Many people, including students, viewed the comments as offensive, because some of what Crawford posted could be viewed as insinuating that immigrant and Latino students, comprising over 90% of the school's population, were unwelcome. The Facebook post "went viral," garnering nationwide media attention. This resulted in school disruptions ranging from student walk-outs to inquiries from media outlets.

Crawford was ultimately dismissed by the District for "immoral conduct" and her "evident unfitness for service" under Education Code section 44932. She appealed the District's decision to the Commission on Professional Competence (CPC), which upheld her dismissal, as did the trial court. Crawford then appealed the matter to the California Court of Appeal. The court upheld her termination, finding her comments qualified as immoral conduct and rendered her unfit to teach.

In arriving at its decision, the court rejected Crawford's claim that immoral conduct was confined to three fixed categories of conduct and that her conduct did not fall within any. The court noted:

[T]he term "immoral conduct" in section 44932, subdivision (a)(1) "stretch[es] over so wide a range" of conduct that it "embrace[s] an unlimited area of conduct." (citations omitted.) Thus, 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.*" (Emphasis in original.)

Finding the conduct immoral, the Court next evaluated the conduct according to the so-called "*Morrison* factors," to determine whether Crawford's conduct rendered her unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230.) The *Morrison* factors are: (1) Adverse effect of conduct on

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students or teachers; (2) Proximity or remoteness in time of the conduct; (3) Type of teaching credential held by the perpetrating party; (4) Extenuating or aggravating circumstances surrounding the conduct; (5) Praiseworthiness or blameworthiness of motives resulting in the conduct; (6) Likelihood of reoccurrence of questionable conduct; and (7) Extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of teachers.

Finding the *Morrison* factors supported the lower court's finding that Crawford was unfit to teach, the Court of Appeal upheld her termination.

Takeaways

While the court's holding provides clarity on the ability of a school employer to dismiss a certificated employee for certain types of employee speech on social media, the contours of what speech may be regulated or not remains nuanced. To be sure, the holding in this case does not mean that school districts can dismiss permanent employees for anything they say or do online. The Court of Appeal articulated that Crawford was dismissed because of "the adverse effect her comments had on her professional reputation, her ability to counsel students effectively, and her relationships with RHS generally." In other words, it was the negative impact of Crawford's online conduct that justified her dismissal.

Employees must be cognizant of their online presence, even during off-duty hours. Discipline cases involving employee speech must be reviewed on a case-by-case basis. Whether or not an employee exercised protected Free Speech rights is a fact-specific inquiry. Therefore, if a school employer desires to discipline an employee for their online conduct, it is recommended that they seek legal advice prior to taking action as there may be Free Speech implications.

If you have any questions regarding *Crawford*, or about labor and employment issues generally, please contact one of the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).