

BEFORE THE
SUPERINTENDENT OF SCHOOLS
GLENN COUNTY OFFICE OF EDUCATION
STATE OF CALIFORNIA

In the Matter of the Non-Reemployment of:

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE GLENN COUNTY
OFFICE OF EDUCATION,

Respondents.

OAH No. 2009030636

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on May 8, 2009, in Willows, California.

Janna L. Lambert, Attorney at Law, appeared on behalf of the Glenn County Superintendent of Schools.

A. Eugene Huguenin, Jr., Attorney at Law, appeared on behalf of respondents Rod Boone, Philip Dunning, Rebecca Hanson, Annette Jefferson, Lisa Michael, Lisa Morgan and John Tade. Respondents Casey Johnson and Tim Street appeared on their own behalf.

The case was submitted for decision on May 8, 2009.

FACTUAL FINDINGS

1. Arturo Barrera is the County Superintendent of the Glenn County Office of Education (COE). Mr. Barrera made and filed the Accusation in his official capacity.

2. Respondents are permanent or probationary certificated employees of the COE. On or after March 9, 2009, the District served on respondents a written notice that it had been recommended that notice be given to them pursuant to Education Code sections 44949 and 44955 that their services in teaching positions would be reduced or would not be required for the 2009-2010 school year. The written notice set forth the reasons for the recommendation and noted that the District's Board of Trustees had passed a resolution reducing the certificated staff by 8.07 full-time equivalent (FTE) positions. Respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

3. The County Superintendent made and filed an Accusation against each respondent. The Accusation with required accompanying documents and blank Notice of Defense were personally served on each respondent on March 26, 2009. Respondents each timely filed a Notice of Defense to the Accusation. All pre-hearing jurisdictional requirements were satisfied. The COE complied with all service requirements under the Administrative Procedure Act.

4. By letter dated March 6, 2009, Merrilee Johnson, the COE Assistant Superintendent of Human Resources and Administrative Services, gave the County Superintendent written notice of her recommendation that notice be given to respondents holding 8.07 FTE positions that their services would not be required for the ensuing school year. The letter stated the reasons for the recommendation.

5. On March 9, 2009, the County Superintendent determined that it was necessary to decrease programs and services and thus it was necessary to reduce teaching and other certificated services affecting employment of 8.07 FTE positions. The County Superintendent adopted a resolution providing for the reduction or elimination of the following particular kinds of services:

<u>Services</u>	<u>FTE</u>
a. William Finch Charter School Teaching Services	7.57
b. William Finch Charter School Principal Services	0.50
Total Full-Time Equivalent Reduction	8.07

The total number of positions to be reduced or discontinued under this resolution is 8.07 FTE certificated positions. The Board has determined that the services of a corresponding number of certificated employees shall be terminated at the close of the current 2008-2009 school year.

6. The William Finch Charter School is currently operating at a deficit, and the above-described service reductions are occasioned solely by the possible non-continuation of this school. The Glenn County Board of Education has yet to reach final determination on a renewal petition for William Finch Charter School. Until such determination is made, it is impossible to know what will happen for the 2009-2010 school year, and thus these proceedings.

Certificated employees at William Finch Charter School provide students within the region served by COE with independent study and home schooling education support. Teachers provide classroom instruction in subjects including mathematics, German, art and sciences. They also coach the school's academic decathlon team. Teachers visit students in their homes every two weeks to provide curriculum support to parents home schooling their

children. Graduates from the William Finch Charter School program receive a high school diploma.

7. The County Superintendent adopted a second resolution (Resolution No. 4) on March 9, 2009, regarding skipping criteria. Criteria 2(a) and (b) are pertinent to this case and are set out below:

(a) Certificated personnel who possess a credential authorizing service in a specialized area (such as special education) who are presently assigned within the scope of that credential for this year and will be so assigned in the 2009-2010 school year;

(b) Certificated personnel who have actual and recent experience (within 3 years) in teaching the particular skill or domain within a broad subject area and the skill/domain is a service being retained by the County Office of Education;

8. The COE maintains a Certificated Seniority List which contains employees' seniority dates (hire date), department, assignment, and credentials. All certificated employees were provided access to this list and asked to correct their seniority date and any information related to their credentials.¹ The COE used the seniority list to develop a proposed layoff list of the least senior employees assigned in the various services being reduced.

9. In determining the teachers to be laid off, the COE skipped nine teachers on the seniority list assigned to the student services department. Eight of these nine teachers hold special education credentials. These eight teachers were skipped pursuant to COE skipping criteria 2(a). Respondents do not hold special education credentials and the skipping of these eight teachers was not raised as an issue.

10. The COE skipped two teachers under COE skipping criteria 2(b). They include:

- a. Mary Davis. Ms. Davis has a COE seniority date of December 1, 2007, and holds a multiple subject credential, as well as a CLAD. She works within the Curriculum Department and is assigned special education responsibilities relating to Response to Intervention (RTI). She is in a .50 FTE temporary position.
- b. Heather Alexander. Ms. Alexander has a COE seniority date of August 22, 2005. She holds a Designated Subjects Vocational

¹ There was a single correction. Joanne Chapman's COE "Prob. Date" date was changed from January 29, 1977, to January 29, 1987. This was a typographical error and the correction had no impact on these proceedings.

Education credential. She works within the student services department and is assigned transition specialist responsibilities.

11. COE Assistant Superintendent Merrilee Johnson explained the bumping and skipping rationale for these layoff proceedings. Fifteen certificated employees were initially served with notices. Of these, six consented to reassignment to either the court school program or the opportunity program, leaving the nine respondents in this case. Respondents contend that they should be allowed to bump into the positions held by junior teachers Mary Davis and Heather Alexander.

12. Mary Davis works in the COE's RTI program. RTI is a method of academic intervention designed to provide early, effective assistance to children who are having difficulty learning. RTI was designed to function as a data-based process of diagnosing learning disabilities. It attempts to identify needs of students within the general education program for early intervention, in order to prevent them from getting to a point where they require special education. Because RTI is based upon increasingly intensive research-based instructional interventions, it is necessary that personnel providing RTI services have special training and experience to do so. RTI services are directed to students within COE's opportunity and court school programs. Services are also directed at providing RTI training to general education teachers, including instruction in assessment, interpretation of data, and modification of instruction for students likely to benefit from such intervention.

Mary Davis has attended California Department of Education sponsored RTI training. This was specialized training provided through a professional arm of special education staff development. Ms. Davis is now qualified to utilize RTI as a specialized approach to remediation for special education. She is also qualified to provide RTI training to other COE teachers.

COE has demonstrated a specific need for certificated personnel to provide RTI services. COE employees providing RTI services must have special training and experience to do so. None of respondents has received comparable training, and none has any direct experience providing RTI services.

13. Heather Alexander uses her vocational education credential to provide transition services for special education students. She works exclusively with students with special needs, seeing that they receive specialized training, technical instruction and workplace training that will enhance their career opportunities when they complete the program. The program is funded by the California Department of Education, and the Department of Rehabilitation on a cost-reimbursement contract. Ms. Alexander attended a two-week (80 hours) summer institute training program for this position. Each year Ms. Alexander also attends two state and regional training programs, Employment Development Department training, and a labor market research program. She works within the student services department serving COE special education students.

14. COE has demonstrated that for both the RTI and transition services program, it has a specific need for certificated personnel providing these services to have special training and experience. Both Mary Davis and Heather Alexander have the requisite training and experience necessary to provide these services.

15. Respondents do not hold special education or vocational education credentials, and have not received RTI or transition training. However, they believe they are able to perform RTI and transition services. Rod Boone, for example, teaches grades 7 through 8 at Hamilton High School, an opportunity school site. He is being bumped by Elaine Pimental, who is a teacher at William Finch Charter School. He would like to bump into the positions held by Ms. Davis or Ms. Alexander. Mr. Boone believes that opportunity school teachers, because they are in an alternative education program, engage in work comparable to transition and RTI services. He noted that he has used Edusoft, a data-driven instruction program, and he has done mentoring at different sites. He believes this is similar to RTI. However, he concedes that he has not performed transition services related to special education. He believes the process is the same as work he has done for other students in his program. Respondents' contentions in this regard are not persuasive. Ms. Davis and Ms. Alexander work with special education students, a very different student population necessitating special training and experience that respondents, including Mr. Boone, do not possess.

16. Respondent Lisa Michael works at William Finch Charter School in a .71 FTE position. Her COE seniority date is March 24, 1995. She holds a single subject credential (Home Economics), and a multiple subject credential with ELD and SDAIE. Her credentials qualify her to work in a COE opportunity school, and she is willing to accept a non-traditional assignment. COE did not assign Ms. Michael to positions currently held by junior certificated employees because she works less than full time.

A COE has both the discretion and special competence to define a position as full time. Accordingly, a junior full time employee cannot be bumped by a part time employee, notwithstanding the fact that the part time employee is more senior. (*Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334.) The court observed that "when a part-time employee is laid off he or she is not entitled to a *full-time* position which subsequently opens up." (*Id.* at p. 341; *Murray v. Sonoma County Office of Education* (1989) 208 Cal.App.3d 456; *King v. Berkeley Unified School Dist.* (1979) 89 Cal.App.3d 1016.) The court determined that if an employee with seniority cannot compel a school district to split a full-time position held by an employee with less seniority in the case of reinstatement, there was no reason why a school district should be compelled to split a position in the event of a layoff. (*Hildebrandt v. St. Helena Unified School District, supra*, 172 Cal.App.4th at p. 346.) That is the situation here and COE properly refused to allow Ms. Michael to bump into a full time teaching position.

17. Respondents contend that Renee Castro-Thompson, a teacher at William Finch Charter School, should not be allowed to bump into a junior position at the opportunity school, currently filled by respondent Tim Street. Ms. Castro-Thompson's COE seniority

date is November 3, 1997. She is senior to Mr. Street. Ms. Castro-Thompson holds a single subject credential (Foreign Language – German) that qualifies her to teach at an opportunity school under Education Code section 44865.² Respondents note that if Ms. Castro-Thompson is assigned to the opportunity school she needs to be compliant with No Child Left Behind (NCLB) program standards. They understood that teachers in alternative education settings needed to be NCLB compliant.

Ms. Castro-Thompson is not NCLB compliant. Ms. Johnson acknowledges that teachers in alternative education settings need to be on an NCLB plan, and that COE has until June 30, 2010, to be NCLB compliant. However, whenever it is anticipated that a particular teacher will be retiring, this is a consideration that may be factored into any plan to become NCLB compliant. Ms. Johnson did so in the case of Ms. Castro-Thompson. She expects that Ms. Johnson will be retired by June 30, 2010. It was therefore not unreasonable for COE to determine that Ms. Castro-Thompson is certificated and competent to bump into a junior teacher position at the opportunity school.

18. Except as provided by statute, no permanent or probationary certificated employee with less seniority is being retained to render a service which respondents are certificated and competent to render. As between employees who first rendered paid service to the COE on the same date, the order of termination will be based solely on the needs of the District and the students thereof. The COE was not required to apply tie-break criteria as part of the layoff process.

19. The reduction or discontinuation of the particular kinds of services set forth in the resolution are related to the welfare of the COE and the students thereof within the meaning of Education Code sections 44949 and 44955. The decision to reduce or discontinue these services is neither arbitrary nor capricious, but rather a proper exercise of discretion of the County Superintendent.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. The notice sent to each respondent indicated the statutory basis for the reduction of services and, therefore, was sufficiently detailed to provide him or her due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The

² Education Code section 44865 provides as follows: “A valid teaching credential issued by the State Board or the Commission on Teacher Credentialing, based on a bachelor’s degree, student teaching, and special fitness to perform, shall be deemed qualifying for assignment as a teacher in the following assignments, provided that the assignment of a teacher to a position for which qualifications are prescribed by this section shall be made only with the consent of the teacher: [¶]...[¶] (g) Opportunity schools. ...”

description of services to be reduced, both in the resolution and in the notice, adequately described particular kinds of services. (*Zalac v. Governing Board of Ferndale Unified School District* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

2. The services identified in the resolution are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The County Superintendent's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of his discretion.

3. Cause exists to reduce the number of certificated employees of the COE due to the reduction and discontinuation of particular kinds of services. Cause for reduction or discontinuation of services relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

4. As set forth in the Factual Findings, the District applied skipping and bumping rules with consistency and care. It allowed skipping only after demonstrating that the skipped teachers could teach a specific course or course of study in which they had special training and experience, and which others with more seniority did not possess. (Ed. Code, § 44955, subd. (d)(1).)

5. This matter was originally set for hearing on April 7, 2009. On April 3, 2009, an Order Granting Continuance was issued. Under Education Code section 44949, subdivision (e), if a continuance is granted "the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance."

In this case, a continuance to May 8, 2009, was granted, and the parties agreed that any final proposed decision would be delivered to the Glenn County Superintendent by June 5, 2009. At hearing, all respondents confirmed these extended deadlines, and expressly waived their right to receive notice of any termination services by the May 15, 2009 statutory deadline under Education Code section 44955, subdivision (c).

ORDER

Notice shall be given to respondents occupying up to 8.07 FTE that their services will not be required for the 2009-2010 school year because of the reduction or discontinuation of particular kinds of services.

DATED: May 13, 2009

JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings