

BEFORE THE
OFFICE OF THE SAN MATEO COUNTY SUPERINTENDENT OF SCHOOLS
COUNTY OF SAN MATEO
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANGELA HONODEL,
A certificated employee,

Respondent.

OAH No. 2009030806

PROPOSED DECISION

Ruth S. Astle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 10, 2009, at the San Mateo County Office of Education, Redwood City, California.

Adam J. Fiss, Attorney at Law, represented the San Mateo County Office of Education.

Christopher Schumb, Attorney at Law, represented respondent.

The matter was submitted on April 10, 2009.

SUMMARY OF PROPOSED DECISION

The Superintendent of the San Mateo County Office of Education (COE) determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency or dedication of the individuals whose services are proposed to be reduced or eliminated.

COE staff carried out the Superintendent's decision by using a selection process involving review of credentials and seniority, "bumping," and breaking ties among

employees with the same first dates of paid service. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. San Mateo County Office of Education (COE) operates, among other programs, a Hearing Impaired program and an Integrated Hearing Impaired teaching program.

2. Jean Holbrook is the County Superintendent of Schools. She made the accusation in her official capacity.

3. On or before March 15, 2009, the COE personally served on respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education Code sections 44949 and 44955 that her services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that the Board had passed a Resolution reducing the certificated staff by 24.7 FTE positions.

Notice was served by certified mail, return receipt requested. Respondent timely requested in writing a hearing to determine if there is cause for not reemploying her for the ensuing school year.

4. The Superintendent made and filed the Accusation against respondent, who requested a hearing. The Accusation with required accompanying documents and a blank Notice of Defense were timely served on respondent.

5. A Notice of Defense was timely filed by respondent.

6. Respondent, Angela Honodel is a permanent certificated employee of the COE.

7. The parties stipulated to jurisdiction in the matter.

8. Resolution No. 09-06, adopted on March 4, 2009, proposed a layoff of 24.7 Full-Time Equivalent (FTE) certificated employees. Specifically, the Resolution provided for the reduction or elimination of the attached particular kinds of services. The relevant reduction was: Teacher: Hearing Impaired – 0.6 FTE and Teacher, Integrated Hearing Impaired – 0.4 FTE.

9. Subsequent to adoption of the Board's Resolution, the COE identified vacancies in school year 2009-10 due to retirements, release of temporary teachers, and

resignations. In consideration of such attrition the COE rescinded three Reduction In Force notices¹.

10. Board Resolution 09-05, adopted on March 4, 2009, established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It was stipulated that this resolution was irrelevant in this matter.

11. The District maintains a Seniority List which contains employees' seniority dates (first date of paid service), advanced degrees, credentials, and authorizations. Credential and authorization data are obtained from the records of the County Office of Education, at which certificated employees must register such documents. No actual assignments and/or locations are contained in the Seniority List.

12. The COE used the Seniority List to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. However, the list did not show that two other teachers are assigned to teach in the Hearing Impaired (HI) and Hard of Hearing (HH) programs². Constance Sfarzo is listed as assigned to "OI".³ Nicole Tonelli is listed as assigned to "Speech".⁴

13. It appears⁵ that Constance Sfarzo is presently assigned to teach HH and HI students and that she is not properly credentialed to have that assignment.⁶ The COE knows

¹ Notices against Shelly Caress-Mouton, Tania Magana, and Jack Doyle were rescinded. The remaining certificated employees subject to layoff notices are: Rita Giannini, Christina DeLeon, Marilou Diwa, Angela Honodel, Steve Menicucci, and Semanda Munnell. Angela Honodel is the only teacher involved in this decision.

² Sfarzo, a full-time teacher and Tonelli, a part-time teacher, apparently are presently assigned HI and HH students.

³ Ms. Sfarzo appears to only have four OI students and 12 or 13 students in the HH and HI program.

⁴ Ms. Tonelli appears to have four HH students. It appears that she is only authorized by her credential to teach children in which the primary disability is "speech and language impairment."

⁵ The attorney for the COE argued that there was a failure of proof. While the evidence was not sufficient to make a finding of fact (respondent presented a print out from Early Childhood Education showing assignments in the program), it was sufficient to shift the burden of proof to the COE. The COE attempted to get further clarification, but because of the vacation/spring break, the COE representative was unable to secure the necessary information. However, the COE does have access to that information and either Ms. Sfarzo is properly credentialed and properly assigned or she is not. The COE must make that determination and notify respondent of the result of the inquiry into Ms. Sfarzo's status.

⁶ Ms. Sfarzo has an Early Childhood Special Education Certificate (Learning Handicapped), a Specialist Instruction Credential in Special Education (Severely Handicapped), a Certificate of Completion for Staff Development (ELD/SDAIE 1st 45 Hours + 9 Years Experience), and a Standard Elementary Teaching Credential (Psychology). The Administrator's Assignment Manual covering the Special Education Credentials of Ms. Sfarzo states that "Credential Holders who are authorized to serve children with disabilities must possess a credential that authorizes teaching the primary disability of the pupils within the special education class as determined by the program placement recommendation contained within the Individualized Education Program." Ms. Sfarzo can be as-

or should know how Ms. Sfarzo is assigned and the COE knows or should know what her credentials allow her to teach. The same is true for Ms. Tonelli. If either Ms. Sfarzo or Ms. Tonelli is assigned to HH and HI students without the proper credential, they must be reassigned. If either Ms. Sfarzo or Ms. Tonelli or both are reassigned because they are not credentialed to teach HH and HI students, then the reduction of services is accomplished by this reassignment. As a result, respondent cannot be subject to a lay-off notice. In this case, the COE is attempting to retain a teacher or teachers who are senior to respondent, but not competent to teach in respondent's assignment. No Reduction in Force notice was served on Ms. Sfarzo or Ms. Tonelli.

14. If Ms. Sfarzo (or Ms. Tonelli) is not presently assigned to teach HH and HI students, then respondent is the least senior teacher teaching in the HH and HI program and can be given a lay-off notice. If Ms. Sfarzo or Ms. Tonelli is certificated to teach HH and HI students, then respondent is the least senior teacher teaching in the HH and HI program and can be given a lay-off notice. But if Ms. Sfarzo or Ms. Tonelli is assigned to teach HH and HI students and they are not credentialed to do so, respondent cannot be given a lay-off notice.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The services identified in COE Resolution 09-06 are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The COE's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

Cause for the reduction or discontinuation of services relates solely to the welfare of the COE's programs and pupils within the meaning of Education Code section 44949.

A COE may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Cause exists to reduce the number of certificated employees of the COE due to the reduction and discontinuation of particular kinds of services. The COE failed to

signed to those students that have as their primary disability Specific Learning Disability or Mental Retardation (Mild/Moderate), Mental Retardation (Moderate/Severe), (Serious) Emotional Disturbance, Multiple Disabilities, and Autism. She cannot be assigned to students who have as their primary disability Deafness or Hearing Impairment.

definitively identify the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

4. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render. However, a senior certificated employee may be scheduled to be retained to perform services that she is not competent and credentialed to render and that respondent is competent and credentialed to render.

5. Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

ORDER

1. Notice may be given to employees occupying 24.7 full-time equivalent certificated positions that their services will not be required for the 2009-2010 School Year because of the reduction and discontinuance of particular kinds of services.

2. Notice shall be given in inverse order of seniority.

3. However, the COE cannot retain senior teachers to teach in a position for which they are not qualified, competent and credentialed to teach and lay off a junior teacher who is qualified, competent and credentialed to teach in that position.

Dated: _____

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings