

BEFORE THE
COUNTY SUPERINTENDENT OF SCHOOLS
SACRAMENTO COUNTY OFFICE OF EDUCATION
COUNTY OF SACRAMENTO, STATE OF CALIFORNIA

In the Matter of the Accusation (Reduction
In Force) Against:

LISA ALCALA
JAIME CALDERON
KEVIN ELKINGTON
JONATHON FREER
DONNA HANKINS
THOMAS JACKSON
PEDRO MARQUEZ
PATRICIA MILLINGS
EZIUCHE OKEMIRI
BRYAN TEAFATILLER

Respondents¹.

OAH No. 2009030967

PROPOSED DECISION

Administrative Law Judge Ann Elizabeth Sarli, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California, on April 17, 2009.

Michelle L. Cannon, Attorney at Law, of Kronick, Moskovitz, Tiedmann & Girard, represented the Sacramento County Office of Education (SCOE).

Maggie Geddes, Attorney at Law, represented respondents.

Evidence was received, the hearing was closed and the matter was submitted on April 17, 2009.

¹ The layoff noticed issued to Frederick Castillo was rescinded prior to the hearing. Jack Branson and Barbara Modlin were issued layoff notices and requested a hearing, but did not file notices of defense to the accusation and did not appear at the hearing.

FACTUAL FINDINGS

1. On March 27, 2009, David W. Gordon, Superintendent of Schools of Sacramento County, State of California, made and filed the Accusation in his official capacity.

2. On March 10, 2009, the Superintendent adopted Resolution No. 2009-C (Resolution). The Resolution was based on the Superintendent's determination that it was necessary to reduce or discontinue particular kinds of services (PKS) no later than the beginning of the 2009-2010 school year. Accordingly, he determined that the following PKS and corresponding number of full time equivalent (FTE) positions should be reduced or discontinued.

<u>Services</u>	<u>Number of FTE Positions</u>
Teacher, Juvenile Institutions	13.0 FTE
Resource Specialist	1.0 FTE
Counselor, Student Programs	.5 FTE
Teacher, County Community Schools	1.0 FTE
ROP Instructor, Industrial Trades	1.0 FTE
Principal	2.0 FTE
Total	18.5 FTE

3. The Superintendent's decision was based upon the proposals of the SCOE and the County Probation Department to close juvenile court schools at Sacramento County Boys Ranch and Warren Thorton Youth Center. As a result, certificated employees providing services in these two schools, Carson Creek Jr./Sr. High School and Esperanza Jr./Sr. High School, were affected. Additionally, ROP funding was reduced by 15.8 percent this year and is anticipated to be reduced by another 4 percent next year.

4. The services identified in the Resolution are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. The decision to reduce the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

5. It is necessary to decrease SCOE's services by 18.5 FTE, with reduction in a corresponding number of certificated employees of SCOE. The reduction or discontinuation of services is related to the welfare of the District and its pupils.

6. The Resolution set forth “competency criteria” designed to assist SCOE in determining whether affected employees could displace junior employees. The Resolution stated in pertinent part: “for purposes of potential displacement rights, competency shall mean, at a minimum, possession of a preliminary, clear, professional clear, lifetime or other full credential, and at least one semester actual teaching experience in the subject area in a comparable setting (juvenile institutions/community school, special education or outdoor education) within the last five years. Additionally, competency shall also require that the teacher is qualified to teach the subject area under NCLB.”

7. SCOE’S Chief Administrator for Human Resources, Effie Crush, and her staff, identified the teachers and certificated employees affected by the closure of the programs in the juvenile institutions. They took into account attrition and vacant positions. They identified the employees with the least seniority, reviewed their credentials and determined whether they had rights to displace (bump) junior SCOE employees, after taking into account the competency criteria. Ms. Crush identified the 15 teachers who were the least senior teachers with no right to displace junior teachers.

8. By letter dated March 12, 2009, the Superintendent provided written notice to respondents that it had been recommended that notice be given to them, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing year. The Resolution setting forth the reasons for the recommendation was attached to the notice.

9. Respondents made timely written requests for a hearing to determine if there is cause for not reemploying them for the ensuing school year. The Accusation was timely served on respondents and respondents timely filed a Notice of Defense. All pre-hearing jurisdictional requirements have been met.

10. With the exception of respondents Lisa Alcalá and Jonathon Freer, no respondent maintains that a junior employee is being retained to render any service which she/he is entitled to render by virtue of her/his seniority and qualifications. No employee junior to these respondents is being retained to perform services that she/he is certificated and competent to render.

Lisa Alcalá and Jonathon Freer

11. Ms. Alcalá has a seniority date of March 1, 2005. She holds a multiple subject credential and a CLAD certification. She currently teaches 1.0 FTE in a self-contained classroom at a County community school.² Mr. Freer has a seniority date of August 30, 2004. He holds a multiple subject credential and currently teaches 1.0 FTE in a self-contained classroom at Carson Creek, one of the juvenile court schools whose program is

² Ms. Alcalá was bumped out of her position by Barb Lambert, a senior teacher. Ms. Lambert had been bumped out of her position by a senior teacher at the Carson Creek Jr./Sr. High School.

going to be eliminated in July, 2009. Ms. Alcala and Mr. Freer maintain that they can bump into positions occupied by the following junior teachers who are assigned to teach outdoor conservation and environmental education (outdoor education) at Sly Park:

Ginger Schlavin is a permanent employee. She holds a multiple subject credential and a CLAD certification and has a seniority date of October 17, 2005.

Patrick McIntosh is a permanent employee. He holds a multiple subject credential and has a seniority date of October 2, 2006.

Todd Gillihan is a permanent employee. He holds a single subject credential in science/ geosciences and has a seniority date of November 16, 2007.

Steffani Lazier is in her first year of service as a probationary employee. She holds a multiple subject credential and has a seniority date of August 20, 2008.

12. SCOE maintains that Ms. Alcala and Mr. Freer are not “competent” to teach outdoor education because they do not meet the competency criteria set forth in the Resolution. At the outset, SCOE acknowledges that it does not require the current teachers in outdoor education to be qualified in NCLB, because there is no specific NCLB qualification for outdoor education. Therefore, this requirement of the competency criteria is inapplicable to outdoor education. Further, Ms. Alcala and Mr. Freer meet the competency requirement that they possess full credentials. There is no dispute that a multiple subject credential is appropriate to teach outdoor education. Thus, the only requirement of the competency criteria at issue is the requirement that senior teachers seeking to exercise displacement rights have “at least one semester actual teaching experience in the subject area in a comparable setting...”

The “subject area” of outdoor education is science and includes biology, life science, environmental education, natural resources, wildlife management and forestry. Ms. Alcala’s undergraduate degree, which she received in 1992, is in physical education with a major in exercise physiology. She is NCLB qualified in science and geography, as well as other subject areas. In order to obtain her degree she took at least five science courses including biology and life sciences, chemistry, organic and physical sciences, physics and kinesiology. She currently teaches Earth and life sciences and biology in a self contained classroom, to 9th to 12th graders. She has accompanied her students to outdoor education programs for a week each year for two years, six to seven years ago.

Mr. Freer is NCLB qualified in science. He received his bachelor's degree circa (circa love this word, means bout the time Moses came down from the mount?) 1981, with majors in science and recreational administration. He has taught recreation field biology and environmental biology. For the past five years he has taught multiple subjects, including science, at the Boy’s Ranch.

It is apparent that both Ms. Alcala and Mr. Freer meet the competency requirement, in that they have at least one semester in the last five years of actual teaching experience in the subject area (science). However, SCOE maintains that they must have this experience “in a comparable setting” to that which exists at Sly Park. Neither Ms. Alcala nor Mr. Freer have taught science outdoors in a camp setting. The Resolution requires that they have done so in order to exercise their seniority rights over junior employees teaching science in the Sly Park program.

The Sly Park program is an environmental science program for sixth-graders who attend for a week or less. It is a 24-hour operation. The teacher must travel with the students, camp with them and remain with them in all types of weather. The teacher must be able to teach the students on outdoor hikes up to six miles in length, and to teach and be available day and night during the program.

SCOE maintains that it is necessary to place only teachers with recent experience in outdoor education in the Sly Park program. However, the minimum qualifications for the position, as stated in the SCOE classification for “Outdoor, Conservation & Environmental Education Teacher” do not require that the incumbent have worked for a semester teaching outdoor education. Rather, that classification statement indicates “Consideration will be given to candidates with background in a regular classroom, outdoor education, and camp experience as well as coursework or experience” Nor did SCOE provide evidence that the four outdoor education teachers junior to Ms. Alcala and Mr. Freer met pre-employment requirements that they had taught in an outdoor setting for a semester in the five years prior to their application.

Both Ms. Alcott and Mr. Freer consent to teaching in the outdoor education program. Both have the requisite multiple subject credential and recent teaching experience in science. There is no argument or evidence that either individual is physically incapable of the demands of the outdoor education program. The mere fact that they have not taught science to students while camping outdoors, does not render them incompetent to do so.

While a governing board (or superintendent) has some latitude in determining what factors contribute to competency for provision of a particular service, those factors must be reasonable. There must be a rational relationship between the competency criteria and a particular service. Here, the relevant competency criteria specify that if a teacher has not taught students while camping outdoors in the last five years, that teacher is not competent to do so. There is no rational relationship between having taught outdoors and being able to teach outdoors. While SCOE may prefer to keep its junior science teachers in place in the Sly Park outdoor education program, it may not do so by declaring the more senior science teachers incompetent to teach the program. To do so would defeat the very clear intent of the Education Code,³ to prevent the termination of permanent employees while probationary

³ Education Code section 44955, subdivision (b), provides in pertinent part:

employees or employees with less seniority are retained to render services which the senior employee is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. Cause exists because of the reduction or discontinuation of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents, except Lisa Alcala and Jonathon Freer, that their services will not be required for the 2009-2010 school year, as set forth in the Factual Findings. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

3. Cause does not exist pursuant to Education Code section 44955, subdivision (c), to give notice to respondent Lisa Alcala that her services will not be required for the 2009-2010 school year, as set forth in the Factual Findings. Junior employees are being retained to render services which Lisa Alcala's seniority and qualifications entitle her to render.

4. Cause does not exist pursuant to Education Code section 44955, subdivision (c), to give notice to respondent Jonathon Freer that his services will not be required for the 2009-2010 school year, as set forth in the Factual Findings. Junior employees are being retained to render services which Jonathon Freer's seniority and qualifications entitle him to render.

"Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render."

Education Code section 44955, subdivision (c), provides in pertinent part:

"The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitled them to render."

ORDER

Notice shall be given to respondents, with the exception of Lisa Alcala and Jonathon Freer, that their services will not be required for the 2009-2010 school year because of the reduction or discontinuation of particular kinds of services.

The Accusations against Lisa Alcala and Jonathon Freer are dismissed.

Dated: April 23, 2009



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings