

BEFORE THE
GOVERNING BOARD OF THE
LOLETA UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LAUREL STOKES,

Respondent.

OAH No. 2009040023

PROPOSED DECISION

On April 21, 2009, in Eureka, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Stephen L. Hartsell, General Counsel, North Coast Schools Legal Consortium, 901 Myrtle Avenue, Eureka, California 95501, represented Louis Hoiland, Superintendent, Loleta Union School District.

Paul Hagen, Attorney at Law, of Bragg, Perlman, Russ, Stunich & Eads, LLP, 1036 Fifth Street, Suite E, Eureka, California 95501, represented Respondent Laurel Stokes.

On April 21, 2009, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. On April 15, 2009, in his official capacity, Louis Hoiland, Superintendent for the Loleta Union School District, made and filed the Accusation regarding Respondent Laurel Stokes (Respondent).
2. Respondent is a certificated employee of the Loleta Union School District, who contests the proposed teacher layoff action. Respondent has permanent (tenured) status with the District.
3. On March 6, 2009, the Superintendent presented the District's Board of Trustees with a recommendation that the District give notice that particular kinds of services (PKS), then offered through the District, be reduced or eliminated by the District for the ensuing school year (2009-2010).

4. On March 10, 2009, the District's Governing Board adopted a resolution, which bore no number, that affirmed the Superintendent's recommendation that certain particular kinds of services be reduced or discontinued. The resolution recites that, pursuant to Education Code sections 44949 and 44955, it has become necessary for the District to reduce or to eliminate, no later than by the end of the 2008-2009 school year, particular kinds of services in the form of 1.1 full time equivalent (FTE) certificated positions as follows:

0.5 FTE	SDC (Special Day Class) teacher position;
0.6 FTE	Music teacher position.

Procedural Irregularities

5. On April 16, 2009, personnel of the District signed a proof of service form asserting that the District personnel on March 13, 2009, purportedly had sent Respondent, by way of "certified mail—return receipt requested," copies of the Board PKS resolution and particularized notice that affected Respondent regarding the effect of the proposed layoff. The proof of service reflected Respondent's address in Fortuna, California. But at the hearing, the Superintendent did not offer the duly signed U.S. Postal Service return receipt that would have indicated delivery of the envelope that bore the notice.

Respondent under oath at the hearing of this matter expressed that she never received at her residence the envelope that supposedly contained the March 13, 2009, notice.

6. When Respondent learned that the proposed layoff action may have affected her, Respondent went to the District's office, on March 17, 2009, where she first received the notice of the layoff action and she signed a Request for Hearing form. (Respondent had been prompted to go to the District's administrative office because other teachers had asked her about the notice, "so other teachers knew" about the proposed layoff before Respondent had been given notice of the layoff.)

By signing the Request for Hearing form Respondent timely requested in writing a hearing to determine whether or not cause exists for not reemploying her for the ensuing school year to provide the kind of service she had been hired to render to students of the District.

7. After the Superintendent signed the Accusation, dated April 15, 2009, he caused that pleading, along with the Statement to Respondent and the Notice of Hearing to be delivered on April 16, 2009, to Respondent's residence. The subject documents were placed under a front doormat because no one was at the house to accept personal service. On April 17, 2009, Respondent discovered under the doormat the envelope that contained the Notice of Hearing and Accusation. On that day (April 17, 2009), Respondent signed the Notice of Defense form and delivered the document to the District's administrative office.

8. Between the date of Respondent's actual receipt of the Accusation and Notice of Hearing and the date on which Respondent filed the Notice of Defense form, four days had elapsed. (Arguably, if one counts the time between the date that District personnel placed the envelop, which bore the Accusation and Notice of Hearing, under the doormat at Respondent's home and the filing of the Notice of Defense form and the actual hearing date, five days had passed.)

9. The date of delivery to Respondent of the Notice of Hearing and Accusation, whether on April 16, or April 17, 2009, was a date of service of the jurisdictional documents that was procedurally flawed.

10. The District's failure to assure the timely service of the notice of the pending layoff action, and the timely service of the Notice of Hearing upon Respondent, did prejudice the procedural due process rights of Respondent to receive a full and fair administrative hearing.

The Superintendent's argument that the errors committed by the District were nonsubstantive procedural errors is without merit. The untimely served Notice of Hearing had informed Respondent that she was entitled "to issuance of subpoenas to compel the attendance of witness and production of books, documents, or other things by applying to the Office of Administrative Hearings" to procure duly executed subpoena forms. But with only four days or five days between receipt of the Notice of Hearing and the date for the hearing, Respondent could not have secured a subpoena in order to compel a witness to attend the proceeding or to require the District to produce documents.

11. The Superintendent has no record that he personally presented Respondent with a copy of the Notice of Hearing and the Accusation when supposedly on an unknown date while Respondent stood in a classroom of a District school the Superintendent observed Respondent copy the documents. The Superintendent offered no evidence to refute Respondent's credible assertion that before April 17, 2009, she never received into her possession the Notice of Hearing and the Accusation.

12. District's Superintendent did not timely serve upon Respondent the Accusation, dated April 15, 2009, and the Notice of Hearing.

13. Accordingly all pre-hearing jurisdictional requirements were not properly met by the District with regard to the execution of the layoff action against Respondent. Respondent established that the Superintendent committed procedural error in the execution of the layoff action that adversely affects her employment position with the District.

Substantive Issues

Compelling Evidence by Respondent

14. Respondent offered testimony under oath at the hearing of this matter. By her demeanor while testifying, by her attitude towards the proceedings, and by the consistency in providing a compelling account of her experience, skill and acknowledge of the services she renders to District students as well as her recent dealings with the procedural aspects of the proposed layoff action against her, Respondent demonstrated that she was a credible¹ and forthright witness at the hearing.

15. Respondent has a first day of paid service to the District as November 1, 2001. Over the entire eight years of her provision of service to the District, she has been a “Resource Specialist,” who provides services to District students in Special Education settings. In recent years, Respondent has pursued other educational endeavors so as to gain an additional credential that results in her being a “Reading Specialist” in the District’s employment. (The District’s Seniority List further shows Respondent to possess a credential as an “Education Specialist.”)

Respondent occupies a full (1.0) FTE for the current school year. She teaches in the specialized area of “core support,” so that she does not have “set classes” but rather she has a “set of number of students” who turn to her for teaching services. For the 2008-2009 school year, Respondent has divided her full-time position as 0.55 FTE in special education as resource specialist and 0.45 FTE as a reading specialist.²

The proposed reduction or elimination of services will result in Respondent being “bumped” from 0.50 FTE of the 0.55 FTE resource specialist (special education) position that she currently occupies. Respondent notes that the remaining 0.05 FTE resource specialist position translates to about 17 minutes each day performing functions in the Special Education services of the District. Respondent compellingly offers that the 0.05 FTE position, which she is proposed to hold next year, means that about 17 minutes each day she is to offer services to six students with disabilities with the reading disorder of dyslexia under the special education portion of her duty assignment.

16. As part of a Special Education teacher’s functions and duties in providing services to students with learning disabilities is the service of contributing to preparation of an IEP (Individualized Education Plan) assessment as prescribed under federal law known as IDEA (Individuals with Disabilities Act). Due to her specialized training in the implementing

¹ California Government Code section 11425.50, subdivision (b), third sentence.

² As Reading Specialist, Respondent exhibits computer competency in the use of the Waterford Early Reading Program. She determines individualized reading goals for students in accordance with the Waterford Reading Assessment Program.

techniques for enhanced student learning under the Davis Dyslexia Correction Program, Respondent prepares IEP assessments for District students. (Respondent received a \$7,500 grant from a corporate sponsor to attend training in the Davis Dyslexia program as offered in San Francisco about three years ago.) She is the only credentialed employee in the District who possesses training in the subject Dyslexia Correction Program. And, Respondent compellingly relayed her experience with two students, who were afflicted with learning disorders, who expressed their respective thoughts of suicide because of their impairments but were dissuaded from doing harm to himself or herself after Respondent taught them with the Davis Dyslexia Correction Program.

During the 2007-2008 school year, Respondent was assigned to provide Special Education services to between 12 and 18 students. She notes that there are six students, assigned to her, who have the Davis Dyslexia Correction Program as part of their respective IEP assessments.

17. The Superintendent failed to refute Respondent's representations that the District does not now have a credentialed employee who has the experience and training to offer the Davis Dyslexia course to District students who have the particular learning disability.

18. The Superintendent was not persuasive with his forecast that of the six Special Education students with Dyslexia reading impairments that four of those students may not be with the District. The forecast was unreliable, because the Superintendent's speculation of a reduced number of students was countered with his opposing theory that the District may very well have more students with the learning disability so that the District may be forced to hire another special education teacher.

Acts by the District's Superintendent

19. The Superintendent appeared at the hearing of this matter. But some of the evidence offered by him was not persuasive.

The Superintendent was credible when he noted that the prospective elimination of particular kinds of services for the 2009-2010 school years directly results from a prospective shortfall in money for the District's budget. In order to partially aid the District in crafting a budget for the ensuing school year, the Superintendent decided that certain certificated positions be eliminated due to diminished funds for District operations. Also the layoff action is due to a revised method in delivering services in the area of Special Day Class teacher in the special education discipline.

But the Superintendent was not reasonable in the exercise of discretion in executing the procedures associated with layoffs required by the subject resolution with regard to the bumping of Respondent by the teacher who provides services as the Special Day Class teacher.

20. The only mandated service offered by Respondent, which is proposed for reduction, falls within the scope of Special Education, which both the federal government and California state government require or mandate. The Superintendent did not persuasively demonstrate that sufficient teaching resources will be available within the District to meet the state requirements for the ensuing year for that service.

Both Respondent and Ms. Patricia Raleigh provide services through the District to students who are included in Special Education programs. While Respondent is the Special Resources teacher and a reading specialist, Ms. Raleigh holds a full-time position as Special Day Class teacher. The Board's resolution seeks to reduce Ms. Raleigh's Special Day Class teacher position by a 0.5 FTE.

The Superintendent represents that Ms. Raleigh, who has a first date of paid service to the District of August 28, 1995, is contemplated as exercising bumping rights in light of the PKS layoff process. She holds credentials that are summarized on the District's Seniority List as: "Learning Handicapped" teacher; "Reading Specialist" teacher, "Single Subject-Social Science," and "Single Subject-Physical Education." Under the Board's resolution, and the Superintendent's execution of the same, Ms. Raleigh would bump into 0.5 FTE of the resource specialist teacher position now held by Respondent. Accordingly, under the proposed layoff action Respondent would be left with 0.05 FTE of the Special Education (Resource Specialist) teacher position.

But the Superintendent did not produce copies of the credentials held by Ms. Raleigh. And because of the procedural defect in failing to timely serve the Notice of Hearing, Respondent was unable to issue a subpoena either for the District's records or to compel Ms. Raleigh to undergo a cross-examination-type inquiry about her competency to perform that range of services that Respondent has shown she has secured experience, training and skill to render.

21. Because of the procedural defect in failing to provide timely service of notices in this matter, Respondent was unable to test the Superintendent regarding objective analysis used to consider whether the District will have the ability to provide the services to students for which Respondent is the only credentialed teacher who has been specially taught in the area that she has worked for about eight years.

Ultimate Findings

22. Although the decision of the District's Superintendent to eliminate or discontinue a total of 0.5 FTE position as specified in the resolution, was no shown to be either arbitrary or capricious, the Superintendent's execution of the Board's determination to initiate Respondent's layoff cannot be viewed as proper exercise of the discretion bestowed by law upon the District in light of the improper service on Respondent of various notices.

23. The District's proposed elimination or discontinuation of a substantial portion of the full-time equivalent position held by Respondent for the ensuing school year, cannot be found to relate to the welfare of the District and its overall student population.

24. The Superintendent did not lawfully direct the notification to Respondent of the elimination of the certificated position held by Respondent.

LEGAL CONCLUSIONS

1. Education Code sections 44949 and 44955 prescribe the jurisdictional requirements for a proceeding that pertains to adjudication of a challenge to a school district's proposed reduction or elimination of particular kinds of service that results in the layoff of an individual certificated employee. The facts in this matter indicate that jurisdiction to proceed has not been attained.

Government Code section 11509, which pertains to a Notice of Hearing in an administrative adjudication proceeding, specifies, in pertinent part: "The agency shall deliver or mail a notice of hearing to all parties *at least 10 days prior to the hearing*. The hearing shall not be prior to the expiration of the time within which the respondent is entitled to file a notice of defense." (Emphasis added.) And Government Code section 11506, which pertains to a Notice of Defense, sets out, in important part: "Within 15 days after service of the accusation the respondent may file with the agency a notice of defense. . . ." Because Respondent was given only four days (or five days) between her receipt of the Notice of Hearing and the date of the actual hearing, the requirement of the law was not met.

The Superintendent points to Education Code section 44949, subdivision (c)(3), that provides, "[n]onsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors." But the Superintendent's evidence and argument are without merit. First, the District's errors were not "nonsubstantive procedural errors," as the requirement that an individual confronted with proposed adverse governmental action is entitled to a reasonable allotment of time to prepare a defense as an essential due process mandate. Second, the District's errors were prejudicial to Respondent. Respondent could not benefit from the rights afforded under Government Code section 11509. Because of the shortness of time, her right to present "relevant evidence" was impaired. No subpoena could be issued to her to compel the appearance of the teacher who was "bumping" into the position held by Respondent or to require that other employee, or the District, to produce a record to demonstrate the other employee's experience, credential and skill to provide service in the area in which Respondent has served over a course of eight years. Nor could Respondent issue upon the District a subpoena for the production of books, documents and other things to show that it had properly exercised its discretion regarding assessing the competency of the senior teacher who sought to bump into Respondent's position. In essence, Respondent had no ability to test or explore whether the proposed action by the District, and as executed by the Superintendent, was arbitrary, capricious or fraudulent.

2. Respondent offered arguments and presented evidence that suggest the District's action is improper. Respondent presented evidence that her layoff from a substantial portion of her work as a credentialed employee relative her bumping is contrary to law and unnecessary.

3. Further to the foregoing, Education Code section 44949, subdivision (a), sets out, in part: "Until the employee has requested a hearing . . . or waived . . . her right to a hearing, the notice and the reasons therefor *shall be confidential and shall not be divulged by any person*, except as may be necessary in the performance of duties." (Emphasis added.) At the hearing of this matter, Respondent credibly asserted that she never received in the mail, or by personal service, before Monday, March 16, 2009, (March 15 was a Sunday), the notice of the effect of the PKS so as to cause her layoff as to 0.50 FTE of the Resource Specialist position that she now holds. Other teachers, who had heard about her layoff, told Respondent of the proposed action, which prompted her to seek information from the District's office. She went to the District's administrative office to make an inquiry about the layoff action where she was given a copy of the layoff action and she signed the Request for Hearing form. Accordingly, a further procedural error was visited upon Respondent to her embarrassment, distress and frustration.

4. Pursuant to Education Code sections 44949 and 44955, cause does not exist to give Respondent notice of the discontinuation of full-time equivalent position in the particular kinds of services rendered by Respondent, by reason of the matters set out in the Factual Findings above.

5. The discontinuation of the subject particular kinds of service provided by Respondent does not relate solely to the welfare of the District and its students within the meaning of Education Code sections 44949 and 44955, by reason of the matters in the Factual Findings above.

ORDER

1. The Accusation served on Respondent Laurel Stokes is dismissed.
2. Final notice may not be given to Respondent Laurel Stokes that her services will not be required for the 2009-2010 school year because of the reduction or discontinuance of the particular kinds of services by the Loleta Union School District.

DATED: May 7, 2009

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings
State of California