

BEFORE THE
GOVERNING BOARD OF THE
ALLENSWORTH ELEMENTARY SCHOOL DISTRICT
COUNTY OF TULARE
STATE OF CALIFORNIA

In the Matter of the Non-Reelection Of:

MOLLY CLOER,

Respondent.

OAH Case No. 2010040432

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 28, 2010, in Allensworth, California.

Kevin R. Dale, Attorney at Law, represented Roberto Cardenas (Cardenas), Superintendent of the Allensworth Elementary School District (District).

Molly Cloer (Respondent) represented herself with the assistance of her mother, Martha Wakefield.

The District has decided not to reemploy Respondent for the 2010-2011 school year. Respondent requested a hearing for a determination of whether cause exists for not reemploying her for the 2010-2011 school year.

Oral and documentary evidence was received at the hearing. The record was left open for the submission of written closing argument. On April 30, 2010, the District submitted a Post Hearing Brief, and Respondent submitted a Written Closing Argument, which documents have been marked as Exhibits 7 and B, respectively. Respondent submitted a further written closing on May 4, 2010, which document has been marked as Exhibit C. The matter was submitted for decision on May 4, 2010.

FACTUAL FINDINGS

1. Superintendent Cardenas filed the Accusation in his official capacity.
2. Respondent is a certificated employee of the District.

3. The District has an average daily attendance of less than 250 pupils, and, therefore, is subject to the procedures set forth in Education Code section 44948.5.¹

4. The District has one elementary school. Instruction is provided in Pre-School, and in Grades Kindergarten to Eighth, typically in multiple-grade classrooms. The District employs four certificated employees, including Respondent. Cardenas also acts as the Principal of the school.

5. Respondent commenced her employment in August 2007, and taught a Fifth and Sixth Grade combination class.

6. Cardenas conducted several informal classroom observations during the 2007-2008 school year. He observed insufficient student engagement and participation, as Respondent lectured and did not always check that the students understood the material. Cardenas also noticed that students were not well behaved. He provided suggestions for Respondent to engage the students, for Respondent to check for understanding, and for her to improve her classroom management.

7. On May 28, 2008, Cardenas prepared an "Evaluation of Teaching Performance" for the 2007-2008 school year, in which he rated Respondent's performance "Satisfactory." Cardenas concluded that Respondent needed improvement in the following areas of evaluation: facilitating a learning experience that promote[s] autonomy, interaction, and choice; creating a physical environment that engages all students; and promoting social development and group responsibility. He wrote the following comments: "Ms. Cloer needs to develop better classroom management skills. I understand that [it] is her first year, therefore we expect growth in this area for the second year." (Exhibit 4, at p. 2.)

8. a. During the 2008-2009 school year, Respondent again taught the Fifth/Sixth Grades combination class. Cardenas conducted additional informal classroom observations during the following school year. He did not see improvement in the areas in which deficiencies were previously noted. Classroom management continued to be a problem. Students left their seats without permission and argued with Respondent. Students still did not seem to be engaged in the lessons being imparted. In addition, Cardenas noticed that Respondent moved from one subject to another without an apparent plan. Cardenas reviewed Respondent's lesson plans, and concluded that her lesson plans were deficient, a fact that may have contributed to the lack of organization.

¹ All further references are to the Education Code.

b. After his observations during the early part of the 2008-2009 school year, Cardenas again provided suggestions and techniques to improve classroom management. He also told Respondent that it was not appropriate to argue with students. He suggested that she adhere to a schedule and a plan. However, Cardenas noticed the same shortcomings during observations in the latter part of the year.

9. Cardenas received several complaints from parents who believed that their children were being excessively detained after school. Cardenas brought the complaints to Respondent's attention, and again suggested classroom management control techniques to avoid having to resort to detentions. Respondent agreed to try to do better.

10. The Superintendent discussed the 2008-2009 year-end evaluation with Respondent on June 2, 2009. In addition to the three areas rated as "Needs Improvement" in the 2007-2008 evaluation, Cardenas added six other areas needing improvement. The written comment section at the end of the evaluation also contained more extensive criticism: "Ms[.] Cloer needs to develop better classroom management skills. You need to understand that I didn't see the growth in classroom management. This in turn, caused you to be less effective in your delivery of instruction. Furthermore, this creates a serious concern for me. I had expected that you would have a firm control of this concept in your second year. In your third year, you will need to demonstrate better instructional strategies. This will [sic] evaluation will be negative in nature." (Exhibit 5, at p. 2.) The overall evaluation rating was "Needs Improvement."

11. Cardenas concluded that he had cause to terminate Respondent's employment at the conclusion of the school year, but, in part because he had missed the March 15, 2009, deadline to issue the non-reemployment notice, he decided to give Respondent another opportunity to improve her performance. He, therefore, recommended Respondent's retention.

12. Respondent was on a leave of absence at the start of the following school year, and returned on February 17, 2010. Cardenas conducted two informal observations during the week of Respondent's return. He again noticed poor classroom management and control. Students were leaving their desks without permission. They were shouting out answers to questions without being called to do so. Respondent moved from a Language Arts lesson to a Math one without apparent transition. Cardenas also concluded that Respondent was unprepared because she told a student who had given the correct answer to a problem that it was the wrong answer, only to reverse herself after checking the answer in a book.

13. Cardenas discussed his observations with Respondent. She expressed frustration about the students not respecting female teachers and told Cardenas that she did not know what to do.

14. Respondent generally testified that she did not think the District had proven that her job performance was deficient, but did not directly contradict many of Cardenas' observations. She testified that her lesson plans were "perfectly fine," and that Cardenas had approved earlier lesson plans which followed the same format. Respondent also asserted that the District did not provide her with sufficient training and support. When in conflict, Cardenas' testimony has been credited. His testimony was supported by the contemporaneous evaluations, and was partially corroborated by Respondent's own testimony. Cardenas' testimony establishes Respondent's teaching deficiencies and the District's repeated efforts to work with Respondent to improve her performance, as set forth in factual finding numbers 6, 7, 8, 10, 12, and 13.

15. On March 2, 2010, Cardenas recommended to the Governing Board of the District (Governing Board) that Respondent not be reemployed by the District. On the same date, the Governing Board adopted Resolution number 3320-25, terminating Respondent's employment.

16. On March 3, 2010, Cardenas personally served on Respondent notice that he had recommended to the Governing Board her non-reemployment for the 2010-2011 school year. As the basis for his recommendation, Cardenas cited her poor performance during the 2008-2009 and 2009-2010 school years, and stated that his recommendation related solely to the welfare of the school and the pupils of the District. On March 9, 2010, Respondent requested a hearing for a determination of whether cause exists for not reemploying her for the 2010-2011 school year.

17. On April 6, 2010, the District served on Respondent the Accusation and all other required documents. On the same date, Respondent filed a Notice of Defense, seeking a determination of whether there is cause for not reemploying her for the 2010-2011 school year. The District issued a Notice of Hearing on April 16, 2010, and served it on Respondent.

18 All prehearing jurisdictional requirements have been met.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44948.5, by reason of factual finding numbers 1, 2, 3, 15, 16, 17, and 18.

2. Cause exists under section 44948.5 for the District not to reemploy Respondent for the 2010-2011 school year, which cause relates solely to the welfare of the District's schools and its pupils, by reason of factual finding numbers 1 through 18.

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ORDER

The Accusation is sustained and the District may notify Respondent that her services will not be needed during the 2010-2011 school year.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings