

BEFORE THE
GOVERNING BOARD OF THE
SOUTHERN HUMBOLDT UNIFIED SCHOOL DISTRICT

In the Matter of the Accusation Against:

PATRICIA RADENBAUGH;

and

PAUL SCHMOLLINGER,

Respondents.

OAH No. 2012030970

CORRECTED PROPOSED DECISION

Administrative Law Judge Dianna L. Albini, State of California, Office of Administrative Hearings, heard this matter on April 19, 2012, in Eureka, California.

Stephen L. Hartsell, General Counsel, North Coast Schools Legal Consortium, represented the Southern Humboldt Unified School District (District).

Donald A. Selke, Jr., Attorney at Law, represented respondent Patricia Radenbaugh, who was present.

Respondent Paul Schmollinger was present and represented himself.

The matter was submitted for decision on April 19, 2012.

FACTUAL FINDINGS

Procedural and jurisdictional issues

1. At hearing the District amended the Accusation as to respondent Patricia Radenbaugh by withdrawing 0.20 full-time equivalent (F.T.E.) of the 0.85 (F.T.E.) school nurse. Consequently, the District will eliminate the equivalent of 0.65 F.T.E. school nurse.

2. On March 8, 2012, the Board of Trustees of the Southern Humboldt Unified School District (District) adopted Resolution No. 12-1112, in which the Board resolved to reduce or discontinue the following particular kinds of services at the end of the 2011-2012 school year as follows:

Eliminate the equivalent of 0.20 (F.T.E.) Landscape Art.
 Eliminate the equivalent of 0.20 (F.T.E.) Multimedia (ROP).
 Eliminate the equivalent of 0.40 (F.T.E.) Art.
 Eliminate the equivalent of 0.20 (F.T.E.) Ceramics.
 Eliminate the equivalent of 0.20 (F.T.E.) Applied Math (ROP).
 Eliminate the equivalent of 0.20 (F.T.E.) Business Algebra (ROP).
 Eliminate the equivalent of 0.20 (F.T.E.) CTE Rotation.
 Eliminate the equivalent of 0.20 (F.T.E.) Accounting (ROP).
 Eliminate the equivalent of 0.20 (F.T.E.) Entrepreneurship (ROP).
 Eliminate the equivalent of 0.20 (F.T.E.) Madd Jazz.
 Eliminate the equivalent of 0.20 (F.T.E.) Band.
 Eliminate the equivalent of 0.20 (F.T.E.) Band/Choir.
 Eliminate the equivalent of 0.20 (F.T.E.) Drama.
 Eliminate the equivalent of 0.20 (F.T.E.) Broadcast Journalism (ROP).
 Eliminate the equivalent of 0.65 (F.T.E.) School Nurse.
 Eliminate the equivalent of 1.00 (F.T.E.) Elementary (Redway)
 Eliminate the equivalent of 1.00 (F.T.E.) Elementary (Agnes Johnson).
 Eliminate the equivalent of 1.00 (F.T.E.) Elementary (Ettersburg).
 Eliminate the equivalent of 0.50 (F.T.E.) Elementary (Casterlin).

The resolution directed the District's superintendent, or his designee, to initiate procedures to not reemploy the equivalent of 7.35¹ full-time equivalent certificated employees of this district pursuant to Education Code sections 44949 and 44955.

3. On March 9, 2012, District Superintendent Jim Stewart sent notices to nine certificated employees of his recommendation that their services would be reduced or discontinued for the 2012-2013 school year. Two of those employees requested a hearing to determine if cause exists not to re-employ them. Respondent Patricia Radenbaugh filed a notice of defense. However, Respondent Paul Schmollinger did not file a notice of defense. At hearing, the District stipulated to jurisdiction and stipulated that respondent Paul Schmollinger could present his case at hearing. Two employees Patricia Radenbaugh and Paul Schmollinger are the remaining respondents in this proceeding.

4. The parties stipulated that the District has complied with all procedural requirements of Education Code section 44949 and 44955.

5. The Board's decision to reduce 7.35 F.T.E. positions is based on a combination of declining enrollment, an elimination of transportation funds during the second half of the fiscal year, that have since been restored, and an anticipated loss of revenue from the State of California for the 2012-2013 school year.

¹ The 7.35 F.T.E. was reduced at hearing to 7.05 F.T.E., to reflect the withdrawal of 0.20 F.T.E.'s from Patricia Radenbaugh.

6. Respondent Paul Schmollinger holds a 0.80 F.T.E. high school teaching position. On the District's seniority list his credential is listed as "Single Subject – Music". Respondent is a permanent teacher. There is no issue as to respondent's right to bump other teachers and consequently, the tie breaking criteria is not applicable.

7. No certificated employee junior in seniority to respondent Schmollinger is being retained by the District to perform services that respondents are certificated and competent to render.

8. The reduction or discontinuation of particular kinds of services is related to the welfare of the schools and the pupils thereof.

Jim Stewart

9. Jim Stewart was present and testified at hearing. Stewart is the District Superintendent for the Southern Humboldt Unified School District. In addition to being the District Superintendent, Stewart is also the Principal for Casterlin Elementary School (kindergarten through eighth grade), Principal of Southern Fork Junior/Senior High School, and superintendent for four other elementary schools, and the director of transportation. Stewart made his recommendations to the Board to reduce or discontinue particular kinds of services. Stewart is aware that the District is responsible for providing mandated services and believes that the District will be able to provide the mandated services after the reduction of 7.05 F.T.E. while maintaining a 0.2 F.T.E. school nurse.

Paul Schmollinger

10. Respondent Schmollinger testified at hearing that in his school, student enrollment has diminished over the past year. Currently Respondent Schmollinger teaches performing arts at South Fork High School. Respondent's subjects include drama, intermediate and advanced ensemble, band and an eighth grade, year long class, (half of the year instructing on instruments, and the remaining half of the year, on vocal skills). Respondent Schmollinger is not aware of any junior certificated District employee who was retained by the District. Respondent did not present any evidence at hearing that support any bumping rights. Respondent Schmollinger is unaware of any authority or evidence that would require the District to maintain his position.

Patricia Radenbaugh

11. Respondent Patricia Radenbaugh, R.N., holds a 0.85 full-time equivalent school nurse position. Radenbaugh has a seniority date of August 26, 2005. She is the only school nurse employed by the District. Under the resolution, respondent Radenbaugh's 0.85 school nurse position would be reduced to 0.20.

12. The District is providing nursing services through respondent Radenbaugh as well as by contracting for nursing services with the Humboldt County Office of Education. Stewart acknowledged the District's obligation to provide all mandated school nurse services for its students. Stewart believes the mandated school nurse services can be accomplished by utilizing respondent Radenbaugh's 0.20 F.T.E. school nurse services in combination with the nursing services available through the Humboldt County Office of Education. The District believes that not all services provided by respondent Radenbaugh are services mandated to be provided by a school nurse. For the school year 2012-2013, the District will provide nursing services through Radenbaugh and by contracting with the Humboldt County Office of Education. Stewart also has determined that the district will be able to provide all required vision, hearing, and required screening. (Ed. Code, §§ 49452, 49452.5.) In the event that the District cannot provide sufficient nursing services, the District will increase respondent Radenbaugh's position.

13. Radenbaugh contends that the District will not be able to provide all mandated nursing services for 2012-2013 school year. Radenbaugh contends that she is already stretched to the limit in covering the District's schools, and Radenbaugh feels compromised in the services that she is providing to students. She believes that the needs of the District's students compel the continuance of her nursing services. Radenbaugh presented evidence at hearing that she is the only qualified registered nurse in the District who can administer insulin injections. She currently provides daily services throughout the day to three diabetic students.

14. The evidence establishes that many of the nursing services currently being offered by the District to its students are not mandated services. It was not established that mandated services are being reduced below the level required by law by reason of the 0.65 F.T.E. reduction in school nursing services. With respect to the screening services, it is not required that they be provided by a certificated school nurse. Finally, a particular kind of service of an employee may be eliminated even if the service continues to be performed or provided by the district in a different manner. (See e.g., *Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 812; accord *Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571, 1586-1587; *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 639-640.)

15. No certificated employee junior in seniority to respondent Radenbaugh is being retained by the district to perform services that respondents are certificated and competent to render.

16. The reduction or discontinuation of particular kinds of services is related to the welfare of the schools and the pupils thereof.

LEGAL CONCLUSIONS

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

2. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to respondent Paul Schmollinger that his services will not be required for the 2012-2013 school year. The cause relates solely to the welfare of the schools and its pupils within the meaning of Education Code section 44949.

3. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to respondent Patricia Radenbaugh that her services will be reduced for the 2012-2013 school year to 0.20 F.T.E. The cause relates solely to the welfare of the schools and its pupils within the meaning of Education Code section 44949.

ORDER

1. Notice may be given to respondent Paul Schmollinger that his service will not be required for the 2012-2013 school year because of the reduction of particular kinds of services.

2. Notice may be given to respondent Patricia Radenbaugh that her 0.85 F.T.E. service will be reduced to 0.20 F.T.E. for the 2012-2013 school year because of the reduction of particular kinds of services.

DATED: _____

DIANNA L. ALBINI
Administrative Law Judge
Office of Administrative Hearings