

BEFORE THE
MENDOCINO COUNTY SUPERINTENDENT OF SCHOOLS
MENDOCINO COUNTY, STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JONNA WEIDAW AND FORREST CORD,

Respondents.

OAH No. 2012040032

PROPOSED DECISION

This matter was heard before Diane Schneider, Administrative Law Judge, State of California, Office of Administrative Hearings, in Ukiah, California, on April 25, 2012.

Margaret M. Merchat, Attorney at Law, School and College Legal Services, Santa Rosa, California, represented the Mendocino County Office of Education.

Matthew J. Gauger, Attorney at Law, Weinberg, Roger and Rosenfeld, Sacramento, California, represented respondents Jonna Weidaw, who was present, and Forrest Cord, who was not present.

FACTUAL FINDINGS

1. Paul Tichinin, made and filed the Accusations in his official capacity as Mendocino County Superintendent of Schools (Superintendent Tichinin).
2. On March 12, 2012, Superintendent Tichinin adopted a Resolution, which sets forth his determination that it will be necessary to reduce or discontinue particular kinds of services (PKS) for the 2012-2013 school year. (The Resolution is set forth in Attachment A.) The Resolution authorized the elimination of 9.6 certificated full-time equivalent (FTE) positions; 8.2 of the FTE positions are Alternative Education teaching positions.
3. All notices were timely and properly served. All notices and other jurisdictional requirements contained in Education Code sections 44949 and 44955 have been provided or satisfied.
4. On March 12, 2012, Superintendent Tichinin adopted a Resolution of the Mendocino County Superintendent of Schools Identifying Needed Credentials and Certificates to be Skipped in a Certificated Layoff Process (Skipping Resolution). (The Skipping Resolution is set forth in Attachment B.) The Skipping Resolution provides, in pertinent part:

WHEREAS, it is the desire of the Mendocino County Superintendent of Schools to establish objective criteria to make effective, fair and equitable employment decisions; and

WHEREAS, for the 2012-2013 school year, the Mendocino County Superintendent of Schools intends to assign credentialed personnel within the scope of the identified credentials/areas of authorization to positions requiring such credentials/certificates to meet the needs of students and the Mendocino County Office of Education; and

WHEREAS, it is the desire of the Mendocino County Superintendent of Schools to skip over in a layoff process during the 2011-2012 school year those employees holding the identified credentials and/or certificates; and

WHEREAS, the following credentials and/or certificates authorize instruction to English Learner students as needed by the Mendocino County Office of Education: BCLAD, CLAD, SDAIE or LDS; and

THEREFORE, be it resolved that certificated employees possessing those credentials and/or certificates listed above no later than March 14, 2012, which credentials and/or certificates are valid through the 2012-2013 school year, will be skipped over in a certificated layoff process.

5. Only one teacher employed in Alternative Education failed to possess a certificate or a credential to teach English Learner students. He received a layoff notice. In order to further implement the reduction in teachers in Alternative Education, Superintendent Tichinin issued layoff notices to those teachers with the least amount of seniority. The remainder of the teachers in Alternative Education who received layoff notices possessed authorization to teach English Learner students.

6. Jonna Weidaw testified at the hearing. She holds a position in Alternative Education. Ms. Weidaw possesses a valid CLAD certificate, which will expire in 2016. Her CLAD certificate authorizes her to teach English language learners.

7. Ms. Weidaw does not contest the validity of the skipping criteria. She asserts that the language contained in the Skipping Resolution mandates Superintendent Tichinin to skip all employees who are authorized to teach English Learner students.

8. This contention is without merit. The Resolution to reduce or discontinue particular kinds of services for the 2012-2013 school year authorizes Superintendent

Tichinin to reduce 8.20 FTE Alternative Education teaching positions. The Skipping Resolution pertains to the order in which employees will be laid off, and not the authority of the Superintendent Tichinin to layoff employees in the first instance. To find otherwise would impermissibly abrogate Superintendent Tichinin's authority under Education Code section 44955, subdivision (b), to reduce particular kinds of services.

9. The reduction or discontinuation of services is related to the welfare of the pupils.

10. Any contentions raised by respondents and not discussed above are found to be without merit and are hereby rejected.

11. No junior employee is being retained to render a service that any of the respondents are certificated and competent to perform.

LEGAL CONCLUSIONS

1. The services identified in Attachment A are particular kinds of services that may be reduced or discontinued under Education Code section 44955. The County Superintendent's decision to reduce or discontinue the identified services complied with the guidelines set forth in Education Code section 44955. The decision was neither arbitrary nor capricious, and was a proper exercise of the superintendent's discretion.

2. Cause exists because of the reduction or elimination of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents Jonna Weidaw and Forrest Cord that their services will not be required for the 2012-2013 school year. The cause relates to the welfare of the schools and the pupils thereof within the meaning of section 44949.

ORDER

Notice may be given to respondents Jonna Weidaw and Forrest Cord that their services will not be required for the 2012-2013 school year because of the reduction or discontinuation of particular kinds of services.

Dated: _____

DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings