

BEFORE THE
GOVERNING BOARD OF THE
SANTA CLARA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANGELA WEST-GIBSON,

Respondent.

OAH No. 2009040126

PROPOSED DECISION

Administrative Law Judge Diane Schneider, Office of Administrative Hearings, State of California, heard this matter on April 23, 2009, at the Santa Clara Unified School District, Santa Clara, California.

Richard M. Noack, Attorney at Law, represented the School District.

Respondent Angela West-Gibson appeared and represented herself.

The matter was submitted on April 23, 2009.

SUMMARY

The Governing Board of the Santa Clara Unified School District determined to reduce particular kinds of services provided by Adult Education Program Supervisors for budgetary reasons. The decision to reduce such services was not related to the competency or dedication of the individuals whose services the Board seeks to reduce or eliminate.

District staff carried out the Board's decision in a two-step process. First, the District determined which Adult Education Program Supervisors it wished to release from service.¹ The District determined not to retain respondent as an Adult Education Program Supervisor. Next, the District reviewed respondent's credential and seniority to determine if she could "bump" a classroom teacher. The District determined that respondent had no seniority rights

¹ Adult Education Program Supervisors serve at will, and, upon proper notice, may be released from service without cause. (*Hentschke v. Sink* (1973) 34 Cal.App.3d 19, 23; *Barton v. Governing Board* (1976) 60 Cal.App.3d 476, 479; Ed. Code, § 44951.)

to “bump” another teacher. As set forth below, the District’s process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. The Santa Clara Unified School District (District) operates the Santa Clara Adult School.
2. Steve Stavis is the Superintendent of the District. He made and filed the accusation in his official capacity as Superintendent of the District.
3. Respondent Angela West-Gibson is a certificated employee of the District.
4. On March 12, 2009, the District’s Governing Board adopted Board Resolution No. 09-09, reducing or discontinuing particular kinds of services as a result of budget cuts announced by the Governor of the State of California. The reduction in services was designed to meet the needs of the District and its students.
5. The Board Resolution reduced or eliminated the following particular kinds of services: Adult Education Program Supervisors by 13.0 FTE, and Adult Education Teachers by 2.0 FTE.² A copy of the resolution is attached hereto as Appendix A and is incorporated herein by reference.
6. The resolution directed the Superintendent to send appropriate notices to all employees whose positions would be affected by the action.
7. On or before March 15, 2009, the Superintendent provided written notice to respondent and other certificated employees of the recommendation that their services would not be required for the 2009-2010 school year. The preliminary layoff notices set forth the reason for the recommendation, and included a copy of the Board Resolution.
8. Respondent filed a timely request for a hearing to determine if there is cause for not reemploying her for the ensuing school year.³
9. An accusation was served on respondent. Respondent filed a timely notice of defense. All prehearing jurisdictional requirements have been met.
10. Respondent has been a certificated employee of the Santa Clara Adult School (Adult School) since October 1984.

² Full-time equivalent positions.

³ Respondent was the only certificated employee affected by the Board’s action who requested a hearing.

District's Determination to Release Respondent as Administrator

11. Respondent is employed in an administrative position as an Adult Education Program Supervisor. She has held this position since 1996. Prior to 1996, she worked as an instructional aide and a program specialist. Respondent has a Program Supervisor credential and an Adult Education credential with a specialization in parent education. Respondent supervises the Even Start Family Literacy Program and the Community-Based English Tutoring Program. Her duties include developing curriculum, writing grants, and managing budgets, as well as supervising teachers, aides and students. It is undisputed that respondent has brought a tremendous amount of commitment, skill and diligence to her work.

12. Respondent objects to the Board's decision to release her from her administrative position as Adult Education Program Supervisor. She contends that the Board's decision not to rehire her was based upon "nebulous" and "inconsistent" criteria. While respondent is understandably upset at losing her job at the Adult School, particularly after 24 years of hard work, her contention is unsupported by the law. As an administrator, respondent serves at the pleasure of the Board. As such, she may be released from her position at the Board's discretion, upon proper notice.⁴ (*Hentschke v. Sink* (1973) 34 Cal.App.3d 19, 23; *Barton v. Governing Board* (1976) 60 Cal.App.3d 476, 479; Ed. Code, § 44951.)

District's Calculation of Respondent's Seniority

13. After the Board determined not to retain respondent in an administrative capacity, the District calculated respondent's seniority to determine if she was in a position to transfer to a classroom assignment with her Adult Education credential by "bumping" another certificated employee with less seniority than respondent. Respondent's period of employment in her administrative position was not included by the District in calculating her seniority pursuant to Education Code section 44956.5, which provides that "the period of employment in [an] administrative position shall not be included in determining seniority for purposes of Sections 44955 and 44956."⁵

14. The District determined that respondent had attained permanent employee status as a classroom teacher, pursuant to Education Code section 44897, which provides, in pertinent part, that a "person employed in an administrative or supervisory position requiring certification qualifications upon completing a probationary period . . . shall . . . become a permanent employee as a classroom teacher." The District calculated respondent's seniority as a permanent classroom teacher to determine if she was entitled to "bump" another less senior teacher with the same credential as respondent. The District determined that respondent was not entitled to any seniority as a classroom teacher because she never

⁴ Respondent was given proper notice by March 15 of the Board's intention to release her from her position, as required by Education Code section 44951.

held a classroom teaching assignment at the Adult School, and she was not entitled to any seniority for her work as an administrator. Consequently, the District determined that no teacher with the same credential and less seniority as a classroom teacher than respondent was being retained to provide services. The District's determination was correct.

15. The District did not retain any certificated employee junior in seniority to respondent to perform services that respondent is certificated and competent to perform.

16. All contentions made by respondent and not specifically addressed above are found to be without merit and are rejected.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to respondent that her services will not be required for the 2009-2010 school year. The cause relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notice may be given to respondent that her services will not be required for the 2009-2010 school year because of the reduction or discontinuation of particular kinds of services.

DATED: _____

DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings