

BEFORE THE
SUPERINTENDENT OF SCHOOLS
ALAMEDA COUNTY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANNIE GREEN

and

GWEN ESTES,

Respondents.

OAH No. N2004030622

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, State of California, Office of Administrative Hearings heard this matter on April 22, 2004, in Hayward, California.

Janna L. Lambert, Attorney at Law, represented the Alameda County Office of Education.

Dale L. Brodsky, Attorney at Law, represented Respondents Annie Green and Gwen Estes, who were present.

The record closed on April 22, 2004.

FACTUAL FINDINGS

1. Rick Minnis, Chief Human Resources Officer of the Alameda County Office of Education (ACOE), filed the Accusation in his official capacity.
2. Respondents are certificated employees of ACOE.
3. On March 8, 2004, Sheila Jordan, Alameda County Superintendent of Schools, adopted Resolution No. 01-03/04. The resolution provides that particular kinds of certificated services will be reduced and directs that notices be given to a corresponding number of certificated employees that their services will not be needed for the 2004-2005 school year.
4. On March 11, 2004, Respondents were personally served with written notice that their services would not be required for the 2004/2005 school year. The notices stated the reasons for the recommendation.

On March 16, 2004, Respondents signed Request for Hearing and Notice of Defense forms, which were delivered to ACOE.

5. ACOE is facing a projected budget shortfall in 2004/2005 of approximately \$1 million. Its total budget is approximately \$5 million.

Resolution 01-03/04 followed a study of ACOE's financial situation by Superintendent Jordan's executive cabinet. Mr. Minnis then prepared a recommendation for her consideration which provided the basis for the resolution.

6. Following consultations with the Alameda County Teacher's Association, ACOE decided to exempt special education teachers teaching in a position that required such credentials. Respondents do not contest this determination.

7. Both Respondents teach at the Hayward Community School (HCS), which serves a special population, ages 12 through 18, within Alameda County. Most of the students have been expelled from a school district. Many come with severe behavioral problems and are often working below the grade level expected for their ages. It is very challenging to work with such students, particularly given the limited resources available to Respondents. In addition, it can be difficult to obtain the services of a substitute teacher, given the nature of the students and the physical environment.

8. It was undisputed that both Respondents are excellent teachers, both experienced and well suited to work with challenging students. Annie Green has worked for ACOE for eighteen years. She was the instructional assistant at HCS for sixteen of these years. Ms. Green has been enrolled in the intern program at California State University at Hayward for two years, and expects to become fully credentialed. She has completed the CLADD and has studied Spanish. Prior to enrollment at Cal State Hayward, she attended numerous workshops, including an extensive course in peer mediation.

Gwen Estes came to teaching following careers that included work as a probation officer. She began as a substitute for ACOE in 1997 and was offered a contract in 2002. The current year is her second full year of teaching. In addition, she brings insight gained as a result of her position as President of the New Haven School District Board of Trustees.

The fact, however, that the teachers in line to be terminated are excellent does not give cause to invalidate the decision. The Superintendent does not propose to reduce or eliminate any course offerings or services below state mandated levels. The service reduction is therefore properly within the Superintendent's discretion.

9. Respondent Gwen Estes also contends that ACOE should be estopped from laying her off. Ms. Estes applied for and was accepted into an intern program at Cal State Hayward to begin in Fall of 2004. The program requires employment as a teacher. Ms. Estes argues that she relied upon representations by Mr. Minnis and Human Resources

Specialist Janet Hughes in January, 2004, to the effect that she would continue to be employed at ACOE.

The elements of estoppel are: 1) the party to be estopped must be apprised of the facts; 2) he or she must intend that his or her conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; 3) the other party must be ignorant of the true state of facts; and 4) he or she must rely upon the conduct to his or her injury.¹ The statements made by Mr. Minnis do not rise to the level necessary to warrant estoppel. This is because it was not shown that Mr. Minnis or any other ACOE representative knew about the probability of the termination of Ms. Estes when the statements were made. Respondent Gwen Estes' assertion of the defense of equitable estoppel therefore fails.

LEGAL CONCLUSIONS

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


2. Cause exists to reduce the number of certificated employees of the Alameda County Office of Education. The reduction or discontinuation of services is related solely to the welfare of the ACOE and its pupils within the meaning of Education Code sections 44949 and 44955. The services are "particular kinds of services" that may be reduced or discontinued within the meaning of Education Code section 44955. The Superintendent's decision was not arbitrary or capricious and was a proper exercise of her discretion. It was not demonstrated that the reduction will cause the failure to comply with state mandates.

3. No employee with less seniority than either Respondent is being retained to render a service which either Respondent is certificated and competent to render.

ORDER

Notices may be given to Respondents Annie Green and Gwen Estes that their services will not be required for the 2003-2004 school year.

DATED: April 27, 2004


MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

¹ (See *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462.)