

**BEFORE THE SPECIAL TRUSTEE
OF THE
COMPTON COMMUNITY COLLEGE DISTRICT**

In the Matter of the Reduction or
Discontinuance of Particular Kinds of
Academic Services in the Compton
Community College District.

OAH No. L2007030258

PROPOSED DECISION

The hearing in the above-captioned matter was held on April 19, 2007, at Compton, California, before Humberto Flores, Administrative Law Judge, Office of Administrative Hearings.

Complainant was represented by Warren S. Kinsler and Aaron V. O'Donnell, from the law firm of Atkinson, Andelson, Loya, Ruud and Romo. Respondents were represented by Mr. Lawrence Rosenzweig, Attorney at Law.

Evidence was received, the case argued, and the matter submitted for decision on the hearing date.

The Administrative Law Judge makes the following factual findings, legal conclusions, and orders, as follows:

FACTUAL FINDINGS

1. Rachelle Sasser (complainant), filed the Accusation in the above-captioned matter in her official capacity as Acting Provost/CEO of the Compton Community College District (District) in her official capacity. After filing the Accusation, Ms. Sasser has since been appointed Acting Dean of Human Resources.

2. Respondents are academic employees of the Compton Community College District or may assert such status. Respondents are identified in Attachment 1 of this Proposed Decision, which is incorporated by reference.

3. (A) On or about June 30, 2006, Governor Arnold Schwarzenegger signed as urgency legislation, Assembly Bill 318 (AB 318) I order to address the District's loss of accreditation, to assure the ability of the students in the District to obtain their education from an accredited institution, and to continue to address the District's financial difficulties.

(B) Pursuant to AB 318, the legislature vested the Chancellor of the California Community Colleges with the authority to extend the suspension of the District's governing board. Education Code section 71093, subdivision (d), provides in part that "the Chancellor is authorized to assume and to delegate to the special trustee, those powers that he Chancellor determines are necessary for the management of the District . . . The Board of Trustees may not exercise any of the powers assumed by the Chancellor."

(C) Pursuant to Resolution 2006-01, the Board of Governors authorized the Chancellor to "delegate to the Special Trustee, all of the rights, duties and powers . . . of the Governing Board of the Compton Community College District." The Chancellor exercised his authority by issuing Executive Order 2006-01, wherein the Chancellor continued the suspension of the authority of the Board of Trustees, appointed a Special Trustee, and authorized him to assume the rights, duties and powers of the Board of Trustees of the District.

4. The loss of accreditation presents a severe burden for the students of the District in that other institutions of higher learning will not recognize coursework from an unaccredited community college. Further, students from must attend an accredited community college in order to participate in federal financial assistance programs.

5. Pursuant to AB 318, the Special Trustee on behalf of the District has entered into a Memorandum of Understanding with the El Camino Community College whereby the El Camino provides an accredited educational program at Compton Community College. Under the MOU, Compton Community College is an educational center of the El Camino Community College District.

6. Despite the loss of accreditation and the provision of academic services by El Camino, the District remains the employer of the academic employees providing educational services at Compton Community College (Ed. Code § 74293, subd. (a)(1).).

7. Employees of the District providing services pursuant to the MOU with the El Camino Community College District, must meet not only the minimum qualifications established by the Board of Governors of the California Community Colleges but also such other job-related qualifications for service that have been established by the El Camino Community College District (Ed. Code § 74293, subd. (a)(2).).

8. On February 27, 2007, the Special Trustee of the Compton Community College District adopted Resolution No. 06/07-022707C to reduce and/or discontinue particular kinds of academic services no later than the beginning of the 2007/2008 school year by a total of 37 Full-Time-Equivalent (FTE) positions as follows:

1. Discontinue Architecture and Computer Aided Drafting and Design (CADD) Instruction Services – 1.0 FTE
2. Reduce Auto Technology Instructional Services – 1.0 FTE

3. Reduce Child Development Instructional Program Services (including 7.0 FTE unassigned faculty) – 9.0 FTE
4. Reduce Dance Instructional Services – 1.0 FTE
5. Discontinue Digital Art/Digital Photography Instructional Services – 1.0 FTE
6. Discontinue Disabled Student Program and Services Specialist – 37 FTE
7. Reduce Learning Resource Center Services - .2634 FTE
8. Discontinue Educational Development Services - .3666 FTE
9. Discontinue Electronics Instructional Program Services – 1.0 FTE
10. Reduce English Instruction – 1.0 FTE
11. Discontinue Film and Video Instructional Services Program – 1.0 FTE
12. Reduce History Instructional Services (including .6 FTE unassigned faculty) 1.0 FTE
13. Reduce Ethnic Studies Instructional Services (including 2.0 FTE unassigned faculty) – 2.0 FTE
14. Reduce Mathematics Instructional Services (including 1.0 FTE unassigned faculty) – 4.0 FTE
15. Reduce Nutrition and Foods Instructional Services – 1.0 FTE
16. Reduce Physics and Astronomy Instructional Services (including 1.0 FTE unassigned facility) – 1.0 FTE
17. Reduce Political Science Instructional Services (including 1.0 FTE unassigned faculty) – 2.0 FTE
18. Reduce Welcome Center Services – 2.5 FTE
19. Reduce Professional Education Service - .5 FTE
20. Reduce Spanish Instructional Services (including 1. FTE unassigned faculty) – 1.0 FTE

21. Reduce Speech Instructional Services (including 1.0 FTE unassigned faculty) – 1.0 FTE
22. Reduce Music Instructional Services (including 1.0 FTE unassigned faculty) – 1.0 FTE
23. Reduce English as a Second Language Instructional Services (including 2.0 FTE unassigned faculty) – 2.0 FTE
24. Reduce Business Instructional Services - .5 FTE
25. Reduce Computer Information Systems Instructional Services - .5 FTE

The Special Trustee further determined that it shall be necessary by reason of said reductions or discontinuances to decrease the number of academic employees at the close of the present school year by a corresponding number of full-time equivalent positions, and directed the undersigned to proceed accordingly by notifying the appropriate employees to implement the Special Trustee's determination.

4. On or about March 3, 2006, Superintendent Moore gave the Board written notice of her recommendation that each of the employees be notified that their services were not going to be required for the 2006-2007 school year. The reason for the recommendation was that there would be a reduction or discontinuance of a particular kind of service.

5. On or about April 26, 2006, the District made a Resolution to Reduce or Discontinue Particular Types of Services. That Resolution was ostensibly a Board resolution, although only one Board member took action on the matter. However, Thomas Henry, the Trustee appointed by the Chancellor, approved the action. By the Resolution, some 73 types of services were to be discontinued. These included every type of course, from Allied Health and Anatomy to Welding and Women's Studies. Further, all services provided by the educational administrators were to be discontinued as well. The reasons stated for the termination of services included loss of state and federal funding, the loss of the College's accreditation, and impending closure of the District.

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6. Superintendent Moore gave written notice to each of the employees that she had made her recommendation to the Board, as required by section 87743 of the Education Code.¹ This notice also informed the employees that they had the right to request a hearing so as to determine if cause existed not to reemploy the employee receiving the notices.

¹ All statutory citations are to the California Education Code unless otherwise noted.

7. One hundred and forty seven employees requested a hearing, and the Accusation was served upon them. One hundred forty five persons filed a notice of defense. It should be noted that in some instances a person filed a notice of defense when that person had not filed a request for hearing; in other instances persons who had requested a hearing did not file a notice of defense; it is inferred that all employees were served with the Accusation.

8. The District is reducing particular kinds of services in that it is eliminating all educational services for the 2006-2007 school year. This reduction in particular kinds of services is being taken because the College has lost its accreditation and is in financial distress. The District has appealed from the decision whereby its accreditation removed, but there can be no certainty of the outcome of that proceeding, which may not be resolved until the end of June, 2006. Prudence requires the District to take the action to lay off employees given the loss of accreditation and financial problems facing the District.

9. Respondents point to pending legislation that may help to revive the College. That legislation, AB 318, would allow the College to "partner" with another community college which is fully accredited. In this situation the College would become an "educational center" under the aegis of the partnering institution. The District would be authorized by law to assign current employees, or to re-employ former personnel, to provide educational services or supports to students. However, under the proposed bill, the District would have no obligation to assign or re-employ its former administrative or supervisory personnel. The partner district would have the primary right to direct activities under any partner contract.

10. The bill in question, Assembly Bill 318, has not been adopted by the Legislature nor approved by the Governor as of the date of the hearing in this matter. Nor had the ALJ received any notice from the parties that Assembly Bill 318 had been adopted as of the date when this proposed decision issued. It would be speculative to find that the bill will be enacted into law.

11. In all the circumstances, it must be found that particular kinds of services are being eliminated, to the extent of all services, and that the District may proceed to reduce its teaching force and other positions as a result. The cause for not reemploying the employees and respondents herein relates solely to the welfare of the district and the students.

12. The District's decision to discontinue services or to reduce them is not arbitrary or capricious, and was a proper exercise of discretion, given all of the facts and circumstances of the case.

13. No seniority list was generated in this case, in that the decision not to reemploy staff is a decision to eliminate all positions. In light of the intent to terminate all staff, no tenured employee is being terminated while any probationary employee, or employee with less seniority is retained.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter pursuant to sections 87740 and 87743, based on Factual Findings 1 through 8.

2. Cause exists to terminate all employees of the District, due to a reduction in services, pursuant to sections 87740 and 87743, based on Factual Findings 1 through 13. In this process, no probationary employees will be retained in favor of tenured employees, and no junior employees will be retained in favor of those with more seniority.

3. (A) Respondents object that the Board has not acted and will not act, and that Board action is a statutory requirement set forth in section 87740. They go on to assert that the Trustee is the person taking the steps normally required of the Board under sections 87740 and 87743, a violation of the statutory scheme laid out for the reduction in force in the community colleges.

(B) Section 71093 is more than a statute of general application; it specifically wrested control of the District from the Board and placed it in the hands of the Chancellor and the Board of Governors of the California Community Colleges. Section 71093, subdivision (c), specifically authorized the appointment of a special trustee to manage the District, and the Chancellor was authorized to delegate all of the powers held by the Board to the special trustee, and to thereby fully divest the Board of its authority.

(C) As set forth in Factual Findings 3(A) and (B), the law has divested the Board of its authority, and that authority has been vested in the Trustee. It can not be maintained that in light of the Chancellor's Executive Order number 2005-01 that the Board any longer has authority to act in these manners. Likewise, for purposes of statutory construction, in the case of the District, all references in sections 87740 and 87743 must be read so as to effectively substitute the term "special trustee" for "governing board." As a matter of law, at this time the Trustee effectively is the Board, and he may proceed to take the steps to lay off credentialed and educational personnel.

4. (A) Respondent Fisher asserts that the notices given to the Respondents, including Ms. Fisher, did not specify what services are going to be eliminated, and that the notice is therefore defective.

(B) However, the cases interpreting the statutes have made clear that such specificity is not necessary; it is enough that the notice states that there is going to be a reduction in services. (See *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831, 841.) Therefore, the objection to the sufficiency of the notices must be overruled, and motion to dismiss must be denied.

5. The District may lay off all of its certificated and academic educational employees.

ORDER

1. The Accusation is sustained as against all 253 employees listed on Exhibit 1 hereto. The District may notify the employees that their services will not be needed in the 2006-2007 school year due to the discontinuance of services.

June 12, 2006

Chancellor of the California Community Colleges, Marshall E. Drummond, issued Executive Order number 2005-01 (Executive Order). By the Executive Order, the Chancellor suspended the authority of the District's Board of Trustees (Board), and the Chancellor appointed a Special Trustee (Trustee), who was authorized to assume the rights, duties, and powers of the Board, "to the full extent necessary" to govern the Compton Community College. (Ex. 16, p. 3, ¶ 4.) The Trustee was further authorized to use the Board as an advisory body, at the Trustee's sole discretion, and the Board was deprived of the authority to call meetings without the Trustee's approval.

(B) The stated purpose of the Executive Order was to establish the fiscal integrity of the District and its college. The Executive Order was authorized by Education Code section 71093, a statute enacted as urgency legislation and made effective in July 2004. In enacting the statute the legislature found and declared that the District "has failed to maintain fiscal integrity and warrants a conclusion that the district is unable to manage its own recovery." (Stats. 2004, Ch. 139, §1, subd.(a).) The legislature further declared that section 71093 must become effective immediately so as to preserve the fiscal integrity of the District, which was deemed "in immediate jeopardy." (Id., at § 5.)