

BEFORE THE
GOVERNING BOARD OF THE
LAKE TAHOE UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter of the Reduction of Particular
Kinds of Services affecting:

JOANN ALLISTER, MARIA LUQUIN,
MELISSA BERRY,

Respondents.

OAH No. N2006030436

PROPOSED DECISION

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 14, 2006, in Lake Tahoe, California.

Allen R. Vinson, Attorney at Law, represented the Lake Tahoe Unified School District (District).

Leslie Beth Curtis, Attorney at Law, represented respondents.¹

The matter was submitted and the record closed on April 30, 2004.

FACTUAL FINDINGS

1. James R. Tarwater, Ph.D. is the Superintendent of the District. Beth Delacour is Director of Human Resources, for the District. Their actions and the actions of the Governing Board of the District (Governing Board) were taken in their official capacities.

2. Before March 15, 2006, the District served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education Code sections 44949 and 44955, that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that the

¹ Although Attorney Curtis is attorney of record for Joanne Allister, Joanne Allister represented herself in the hearing in respect to her seniority date should be earlier than that assigned by the District. Maria Luquin was represented by Attorney Curtis, but Ms. Luquin did not present an argument or defense. The District has agreed to retain Ms. Luquin to teach 1 class (.167 FTE). The District withdrew the Accusation against Melissa Berry on April 7, 2006. Ms. Berry appeared at the hearing, but did not present evidence.

Board had passed a Resolution reducing or discontinuing particular kinds of services (PKS) which reduced the certificated staff by 18.182 full-time equivalent (FTE) certificated positions. 53 certificated employees were given notice that their services would be reduced or eliminated in the 2006-2007 school year.

Respondents timely requested in writing a hearing to determine if there is cause for not re-employing them for the ensuing school year.

3. The Superintendent made and filed Accusations against each of the employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense were timely served on those employees.

4. Respondents timely filed Notices of Defense to the Accusation.²

5. Respondents in this proceeding are permanent certificated employees of the District.

6. On March 10, 2006, at a regular meeting of the Governing Board, the Governing Board was given notice of the Superintendent's recommendations that certificated employees holding 18.182 FTE positions be given notice that their services would not be required for the next school year and stating the reasons for that recommendation.

7. On March 10, 2006, the Governing Board adopted Resolution No. 2005/2006-21, providing for the reduction or elimination of particular kinds of services totaling 18.182 FTE in instruction.

8. The Governing Board determined that the average daily attendance in all schools of the District for the first six months in which school was in session for the 2005-2006 school year declined below that of the corresponding period of the first six months of the 2004-2005 school year. Thus, the Governing Board resolved to reduce and eliminate teaching services affecting employment of 18.182 FTE certificated positions. The Governing Board's resolution to eliminate and reduce teaching services was made solely for the welfare of students.

9. Supervisor Tarwater, Human Resources Director Beth Delacour and other District employees were responsible for implementation of the technical aspects of the layoff. The District maintains a Certificated Seniority List which contains employees' seniority dates (first date of paid service), status (tenured, probationary or temporary) and credentials and authorizations. Status, credential and authorization data were obtained from the District's records.

² The District named 39 employees in the Accusation. Most of the Accusations were ultimately withdrawn. Of those whose Accusations were not withdrawn, Greg Kuntz (1FTE) and Cynthia Pastore Walker (1FTE) did not present a defense or appear for the hearing.

10. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. In determining who would be laid off for each kind of affected service, the District counted the number of reductions not covered by known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other employees. The District then looked at employee competence for certain positions as opposed to other positions.

11. The District considered all known attrition, leaves of absence, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

12. Joann Allister holds a Professional Clear Single Subject Credential with an authorization in Physical Education. She currently teaches health and physical education. The District determined that her seniority date is March 12, 2003, the first date of paid service in probationary status. Ms. Allister asserts that her first date of paid service is August 28, 2000, and thus she should be entitled to "bump" another physical education teacher, Rhonda Riggs, whose seniority date is September 11, 2000.

13. The District cites California Code of Civil Procedure, section 338, for the proposition that Ms. Allister should have raised the issue of her seniority date within three years of the date of hire, and is barred from challenging the seniority date now. The District's argument is not persuasive. California Code of Civil Procedure, section 338, does not govern this proceeding, but sets statutes of limitations for the commencements of civil actions. The California Education Code does not impose a time limitation by which a certificated employee is required to challenge a seniority date assigned by the District.

14. The District argues that Ms. Allister is barred by the doctrine of laches from challenging her seniority date in this hearing. Specifically, the District asserts that it posted and distributed seniority lists identifying the March 12, 2003 seniority date. Further, the District sent Ms. Allister a letter on January 23, 2006, setting forth her seniority date and advising her that they were "checking the seniority date of all certificated personnel to verify our seniority list." Ms. Allister was present during settlement negotiations with the District and did not raise the issue of her seniority date. During settlement negotiations, the District acted in reliance upon the March 12, 2003, seniority date and withdrew the Accusation against Rhonda Riggs.

15. Although Ms. Allister did not personally raise the issue of her seniority date with the District during settlement negotiations, there was a meeting between human resources and the president of the union to discuss the seniority date. Ms. Allister advised her union representative that she had a disagreement with the seniority date and was told the union would handle it. It appears Ms. Allister took issue with her seniority date when she was advised in January 2006 of the date the District was relying on. She sought assistance

from her union, filed a request for hearing when served with notice of lay off and filed a notice of defense when served with an Accusation. None of these documents require the respondent to set forth with particularity the defenses asserted. The Education Code does not require that a certificated employee challenge an assigned seniority date at any particular time during the reduction in force process. Ms. Allister properly raised the issue at hearing.

16. On the date of her employment with the District, Ms. Allister did not hold a teaching credential. The District issued her a temporary county certificate and backdated it to September 1, 2000. Ms. Allister applied for an emergency single subject credential/permit, which was granted on November 7, 2000, and which was valid for one year. During the 2000-2001 school year, Ms. Allister served as a physical education teacher in the middle school. She was rehired the following year to work in the high school, continuing to work on the emergency permit. The emergency permit expired on November 1, 2001, and Ms. Allister continued teaching the term without an emergency permit. She was laid off in the spring of 2002, because she had no emergency permit. She worked as a substitute teacher during that semester. She was hired again as a temporary teacher for the fall semester of 2002 and laid off in the spring of 2003. She taught as a substitute in the spring of 2003. She obtained a single subject professional clear credential in physical education from the California Commission on Teacher Credentialing on January 23, 2003. There had been some problems in the processing of her application for a credential, which caused delay in issuance. Her first day of paid service as a probationary I employee was March 12, 2003.³

17. Ms. Allister claims she was hired as a probationary teacher on August 28, 2000, and her seniority begins on that date. She claims she was told she was hired as a probationary employee, even though the contracts she signed stated she was temporary. Ms. Allister contends there is evidence that she was not initially hired as a temporary teacher. She points to the following evidence: when hired, she was not replacing an absent teacher but filling an empty position; the "temporary" box on a District payroll form is not checked; and on at least one occasion a District teacher with only an emergency permit was assigned a seniority date on a date when that teacher held only an emergency permit.

18. Although Ms. Allister's first date of paid service is August 28, 2000, the evidence established that she was hired as a temporary employee at that time. The contract she signed with the District states in its title that it is a "Limited Contract For Temporary Certificated Employees." The contract states that the Governing Board agreed to employ Ms. Allister to a full-time position of temporary teacher, pursuant to Education Code section 44954. The contract identifies her position as a temporary certificated employee. The Board renewed the Limited Contract for Temporary Certificated Employee for Ms. Allister on October 28, 2003, for .4 FTE temporary teacher. The contract was renewed for .6 FTE on November 19, 2003 and .8 December 10, 2003.

³ Ms. Allister began employment with a .2 FTE and was increased to a .2, .4, .6, .8 and then full time position. In 2004-2005 she was hired to teach health.

The evidence further establishes that Ms. Allister was employed as a temporary teacher between August 2000 and March 2003, with breaks in temporary employment in the spring semesters of 2002 and 2003. She held no teaching credential until March of 2003. Until March of 2003, she taught either under an emergency credential, under an expired emergency credential or as an uncredentialed substitute teacher. Thus, the District at no time treated her as a probationary employee and she had no expectations of, and, in fact, was not given continuing employment.

Ms. Allister's argument that the District had a practice of establishing seniority dates as the first date of service with an emergency credential was not persuasive. She introduced in evidence documents showing that in January of 2002, the District agreed with the State Teacher's Employment Association to establish a 1999 seniority date for a teacher who taught on an emergency credential and who apparently did not possess a Professional Clear Single Subject Credential until March of 2002. One instance does not establish a practice, nor is the District bound to enter similar agreements with all emergency credential holders, regardless of the individual circumstances of their employment and credentialing.

LEGAL CONCLUSIONS AND DISCUSSION

1. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met.

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction." The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Governing Board's decision to reduce particular kinds of services was a proper exercise of its discretion.

3. The services identified in Board Resolution No. 2005/2006-21, are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious and was a proper exercise of its discretion. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

4. A District may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to

deal with the pupils involved." *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.

5. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831. The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. *Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.

6. No certificated employees with seniority dates junior to Maria Loquin and Joanne Allister are being retained to teach classes for which Ms. Loquin and Ms. Allister are certificated and competent to teach.


7. Cause exists under Education Code sections 44949 and 44955 to provide notice to respondent Maria Loquin that .833 of the 1 FTE service she provides will not be required in the ensuing school year. Cause exists under Education Code sections 44949 and 44955 to provide notice to respondent Joanne Allister that 1 FTE service she provides will not be required in the ensuing school year. Such cause relates solely to the welfare of the District and the pupils thereof.

ORDER

Notice shall be given to employee Maria Luquin that .833 FTE of her services will not be required for the 2006-2007 school year, because of the reduction and discontinuance of particular kinds of services.

Notice shall be given to Joann Allister that 1.00 FTE of her services will not be required for the 2006-2007 school year, because of the reduction and discontinuance of particular kinds of services.

DATED: May 4, 2006



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings