

BEFORE THE GOVERNING BOARD OF THE
ATWATER ELEMENTARY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Employment Status of:

PATRICIA STROMING,

Respondent.

OAH No. 2008030568

PROPOSED DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Atwater, California, on April 24, 2008.

David A. Soldani, Attorney at Law,¹ represented the complainant, Melinda Hennes, Superintendent, Atwater Elementary School District.

Ernest Tuttle, III, Attorney at Law,² represented the respondent, Patricia Stroming.

The matter was submitted on April 24, 2008.

FACTUAL FINDINGS

PREHEARING AND JURISDICTIONAL REQUIREMENTS

1. Respondent, Patricia Stroming, is a certificated district employee. She teaches nutrition and wellness. She also teaches study skills.

2. Not later than March 15, 2008, in accordance with Education Code sections 44949 and 44955,³ the superintendent of the school district caused the governing board of the district and respondent to be notified in writing that it was recommended that respondent be notified that the district would not require her services for the ensuing school year. The

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³ All references to the Code are to the Education Code unless otherwise specified.

notice stated the reasons for the recommendation. The recommendation was not related to respondent's competency.

3. A notice was delivered to respondent, either by personal delivery or by depositing the notice in the United States mail, registered, postage prepaid, and addressed to respondent's last known address.

4. The notice advised respondent of the following: She had a right to a hearing. In order to obtain a hearing, she had to deliver a request for a hearing in writing to the person sending the notice. The request had to be delivered by March 21, 2008, which was not less than seven days after the notice of termination was served. And the failure to request a hearing would constitute a waiver of the right to a hearing.

5. Respondent timely filed a written request for a hearing to determine whether there was cause for not reemploying her for the ensuing year. An accusation was timely served on respondent. Respondent was given notice that, if she was going to request a hearing, she was required to file a notice of defense within five days after being served with the accusation. Respondent filed a timely notice of defense. All prehearing jurisdictional requirements were met.

6. The governing board resolved to reduce or discontinue particular kinds of services. Within the meaning of Code section 44955, the services are "particular kinds of services" that can be reduced or discontinued. The recommendation to reduce or discontinue these services was not arbitrary or capricious but constituted a proper exercise of discretion.

7. The governing board resolved to discontinue one full time equivalent nutrition and wellness teacher.

8. The governing board determined that, because particular kinds of services are to be reduced or discontinued, it is necessary to decrease the number of permanent employees in the district.

*RESPONDENT'S CONTENTION THAT THE DISTRICT MAY NOT TERMINATE HER WHILE RETAINING A
TEACHER WITH LESS SENIORITY TO TEACH STUDY SKILLS*

9. The district has failed the national indicator for language arts and mathematics. As part of an improvement program, the district agreed to provide "intervention" classes for students who have low scores in core subjects. The intervention classes are commonly referred to as "study skills" classes. Teachers can teach study skills without any particular credential or competency. The teacher assists students with whatever subjects the students need help. The teacher communicates with the regular subject-matter teachers regarding the students and whatever transpires in the study skills class.

10. Also as part of the district's improvement program, the district agreed to change language arts and mathematics classes to double-period classes.

11. There are seven periods in a day. Thus, language arts and mathematics teachers have three classes a day – each lasting two periods. Some of them, in order to fill out their full-time positions, teach one period of study skills.

12. This year the district has 11 study skills classes. Because there is not a large demand for nutrition and wellness classes, respondent teaches three sessions of study skills. An industrial technology teacher also teaches three sessions of study skills because there is not a large demand for industrial technology classes. The remaining five study skills classes are taught by language arts or mathematics teachers.

13. The district intends to have 11 study skills classes again next year.

14. There was no evidence as to whether the industrial technology teacher has less seniority than respondent has. All of the language arts and mathematics teachers who teach study skills have less seniority than respondent has.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Code sections 44949 and 44955. All notice and jurisdictional requirements contained in those sections were satisfied.

2. By reason of the matters set forth in Findings 1, 9, and 12, it is determined that respondent is certificated and competent to teach study skills.

3. Education Code section 44955, subdivision (b), prohibits the district from terminating respondent's services while retaining an employee with less seniority to render a service that respondent is certificated and competent to render. The district may not terminate respondent while retaining people with less seniority to teach study skills.

4. If there will be at least seven periods of study skills that are not to be taught by people who have more seniority than respondent has, she has a right to be retained full time. If there will be between one and six periods of study skills that are not to be taught by people who have more seniority than respondent has, she has a right to be retained part time.

ORDER

The district shall not terminate the services of Patricia Stroming while any other employee with less seniority is retained to teach study skills.

Dated: April 30, 2008

A handwritten signature in cursive script, reading "Robert Walker", written over a horizontal line.

ROBERT WALKER

Administrative Law Judge

Office of Administrative Hearings