

BEFORE THE
GOVERNING BOARD OF THE
SOUTHERN HUMBOLDT UNIFIED SCHOOL DISTRICT
HUMBOLDT COUNTY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MICHAEL CARROLL,

Respondent.

OAH No. N2004030807

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on April 29, 2004, in Eureka, California.

Stephen L. Hartsell, Associate General Counsel, School and College Legal Services of California, represented the Southern Humboldt Unified School District.

Anne M. Randolph, Esq., represented Michael Carroll, who was also present.

The case was submitted for decision on April 29, 2004.¹

FACTUAL FINDINGS

1. Clifton Anderson is the Superintendent for the Southern Humboldt Unified School District (District). He made and filed the Accusation in his official capacity as such public officer, and not otherwise.

2. Michael Carroll (respondent) has been employed by the District as certificated employee.

3. On March 15, 2004, the Superintendent gave the Board of Trustees of the District (Governing Board) written notice, pursuant to Education Code sections 44949 and 44955, of his recommendation that notice be given to respondent by the Governing Board that his services would not be required for the ensuing 2004-2005 school year. Such letter stated the reasons for such recommendation.

¹ By letter dated April 30, 2004, the parties also submitted documentation confirming that Carol Van Sant possesses a Clear Resource Specialist Certificate of Competence authorizing her service as a Resource Specialist. This was marked and received into evidence as Exhibit 23.

4. Respondent duly requested in writing a hearing to determine if there is cause for not reemploying him for the ensuing school year.² An accusation was served on respondent and on April 7, 2004, he filed a Notice of Defense. All pre-hearing jurisdictional requirements were satisfied.

5. On March 11, 2004, the Governing Board adopted a resolution (Resolution No. 9-0304) reflecting its determination that it was necessary to reduce or eliminate certain particular kinds of services. The resolution provided that the following particular kinds of certificated services would be reduced/eliminated for the 2004-2005 school year:

1.0	FTE	Certificated Administrator
1.0	FTE	South Fork Junior-Senior HS Counselor/District Psychologist
.8	FTE	Counselor Osprey Learning Center
.8	FTE	School Nurse
1.0	FTE	Title 1 Teacher Osprey Learning Center
.2	FTE	Independent Study Teacher
1.0	FTE	Southern Humboldt Community Day Teacher
3.0	FTE	Elementary Teachers
1.0	FTE	South Fork Junior-Senior HS Dean
1.0	FTE	South Fork Junior-Senior HS English Teacher
1.0	FTE	South Fork Junior-Senior HS Social Science Teacher
1.0	FTE	South Fork Junior-Senior HS Mathematics Teacher
.25	FTE	South Fork Junior-Senior HS Auto/Metals Teacher
.25	FTE	South Fork Junior-Senior HS Drama Teacher
.25	FTE	South Fork Junior-Senior HS Woodshop Teacher
.25	FTE	Elementary Music Teacher
.50	FTE	South Fork Junior-Senior HS Driver Ed/Geography Teacher
.25	FTE	South Fork Junior-Senior HS Computer Literacy Teacher

The proposed reductions total 14.55 full-time equivalent positions for the ensuing 2004-2005 school year. The services set forth above are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955.

6. The proposed reductions were prompted by anticipated budget shortfalls for the 2004-2005 school year. The Governing Board has amended its Resolution to restore positions for Elementary Teacher (1.0 FTE), South Fork Junior-Senior High School Auto/Metals Teacher (.25 FTE), South Fork Junior-Senior High School Woodshop Teacher (.25 FTE) and an Elementary Music Teacher (.25 FTE). The revised proposed reductions total 12.8 full-time equivalent positions for the ensuing 2004-2005 school year.

² Additional teachers submitted requests for hearings but their individual cases were resolved prior to hearing. These teachers include Natalia Boettcher, Jonathan Borah, Richard Givins, Susan Ivey, Laura Lameris, Nancy Lewis, William Richards, Paul Schmollinger, Eric Shafer and Robert Standish.

7. Respondent holds a professional clear multiple subject teaching credential (K-12) with a supplementary authorization in business. He also has a professional clear specialist instruction credential in special education, the authorized field being learning handicapped. His date of first paid service with the District is December 4, 1996. He is currently assigned full time to the alternative education center at the Osprey Learning Center. There are approximately 100 students at the Center and respondent works with up to 25 of them on an independent study basis. He provides them instruction in all subjects. Although the District's independent study program will continue next year it is anticipated that there will be fewer such students based on District projections using cohort enrollment numbers.

Respondent is impacted by the Governing Board's decision to eliminate .20 FTE Independent Study Teacher. He is further impacted by another teacher, Eric Shafer, bumping into his position. Eric Shafer's date of first paid service with the District is August 24, 1994, making him senior to respondent. He was noticed as a result of the Governing Board's decision to eliminate 2.0 FTE Elementary Teachers. Eric Shafer is certificated and competent to bump into the remainder (.8 FTE) of respondent's Independent Study position. Respondent also has bumping rights. Respondent is senior to Jennifer Kubik. Her date of first paid service with the District is August 19, 1998. Respondent is certificated and competent to bump into her .33 FTE elementary teacher position. The net result of the above is that respondent faces a reduction of .67 FTE from his current full time position as an Independent Study Teacher.

8. Respondent believes that he is also entitled to bump into a position held by Brice Gummersall. Gummersall's date of first paid service with the District is August 21, 1997. He holds a professional clear specialist instruction credential in special education, the authorized field being learning handicapped. He also holds a clear resource specialist certificate of competence, something not held by respondent. Brice Gummersall is completing his seventh year with the District and he has worked as a resource specialist teacher the entire time.³ Respondent notes that over the 2001-2002 school year he provided comparable resource specialist services (.25 FTE) for the District.

³ The Administrator's Assignment Manual provides that resource specialists provide instruction and services for students whose individualized education program has them assigned to a regular classroom for a majority of a school day. Such services include:

- (1) Provide instruction and services for pupils whose needs have been identified in an individualized education program developed by the individualized education program team and who are assigned to regular classroom teachers for a majority of a school day.
- (2) Provide information and assistance to individuals with exceptional needs and to their parents.
- (3) Provide consultation, resource information, and material regarding individuals with exceptional needs to their parents and to regular staff members.
- (4) Coordinate special education services with the regular school programs for each individual with exceptional needs enrolled in the resource specialist program.
- (5) Monitor pupil progress on a regular basis, participate in the review and revision of individualized education programs, as appropriate, and refer pupils who do not demonstrate appropriate progress to the individualized education program team.
- (6) Emphasize, at the secondary school level, academic achievement, career and vocational development, and preparation for adult life.

The District acknowledges that respondent was assigned at one time to provide resource specialist instruction. However, he was not properly certified to do so and this was an oversight by the District. Resource specialist duties are not limited to teaching. For example, they must also monitor pupil progress on a regular basis, participate in the review and revision of individualized education programs as appropriate, and refer pupils who do not demonstrate appropriate progress to the individualized education program team.

Paula Wyant-Kelso is the District's Special Education Director. She oversees implementation of individualized education programs for all special education students. She notes that children are assigned a single resource specialist who knows comprehensively what that child's disability and individualized educational program requires. It is not practical for one specialist to provide instruction to a child and another to provide services. She believes that respondent's credentials not sufficient to authorize him to provide such services. Respondent was assigned to provide resource specialist instruction during the 2001-2002 school year when additional teachers were needed to reduce caseloads. Circumstances are different now and District caseloads have been reduced by 60 students and the program is staffed appropriately. When respondent was assigned to do this work in 2001-2002 the District was required to obtain an emergency permit for him to do so from the Commission on Teacher Credentialing. The District failed to do so and acknowledges this oversight.

9. It was established that respondent is not properly certificated to perform the services and duties required of a resource specialist with the District.

10. It was also established that the reduction or discontinuation of particular kinds of services is related to the welfare of the schools and the students thereof within the meaning of Education Code sections 44949 and 44955. The decision to reduce or discontinue these services was neither arbitrary nor capricious, but rather a proper exercise of discretion of the Governing Board.

10. Except as provided by statute, no permanent or probationary certificated employee with less seniority is being retained to render a service which respondent is certificated, competent and legally entitled to render.

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.

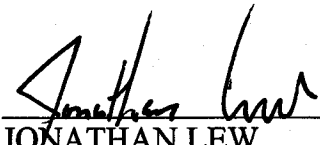
2. Cause exists to reduce the number of certificated employees of the Southern Humboldt Unified School District due to the reduction and discontinuation of particular kinds of services. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

3. Respondent is not entitled to bump into the position held by Brice Gummersall by reason of the matters set forth in Findings 8 and 9.

ORDER

Notice shall be given to Michael Carroll that his services will be reduced by .67 FTE. Notice shall be given to remaining teachers before May 15, 2004, that their services will not be required for the 2004-2005 school year because of the reduction or discontinuation of particular kinds of services.

DATED: May 4, 2004



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings