

BEFORE THE
GOVERNING BOARD
PLUMAS UNIFIED SCHOOL DISTRICT
PLUMAS COUNTY
STATE OF CALIFORNIA

In the Matter of the Proposed Dismissal of:

WILLIAM CULLINGFORD

Respondent.

OAH No. N2006010297

PROPOSED DECISION

On February 15, 2006, in Quincy, California, Leonard L. Scott, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Michelle L. Cannon, Attorney at Law, represented the complainant.

Donald A. Selke, Jr., Attorney at Law, represented respondent William Cullingford.

Evidence was received, the record was closed and the matter was submitted.

FACTUAL FINDINGS

1. In late August of 2005, the Plumas Unified School District (School District) hired respondent as a full-time, certificated, probationary employee to teach mathematics and science at Quincy High School.

2. The School District, acting pursuant to the authority granted by Education Code section 44948.2, has elected to proceed with probationary teacher discipline pursuant to the provisions of Section 44948.3. In addition, the School District has written criteria for evaluating the performance of teachers, as required by Section 44660, et seq.

3. In a letter dated December 16, 2005, Bruce Williams (Williams), School District Assistant Superintendent, notified respondent that he was being placed on paid administrative leave from his position, effective Tuesday, January 3, 2006, and continuing until further notice or until respondent's employment was terminated.

4. On December 21, 2005, pursuant to Education Code section 44948.3, Michael H. Chelotti, School District Superintendent (Chelotti), personally served on respondent written notice that he was recommending that respondent be dismissed from his employment as a full-time, certificated, probationary teacher at Quincy High School for unsatisfactory performance. Chelotti gave respondent written notice that, if he wished to appeal, he had 15 days from receipt of the written notice to file a written request for hearing. With the written notice, Chelotti served on respondent a copy of the performance evaluation of respondent, a copy of Education Code section 44948.3, and a blank Request for Hearing form.

5. On or about December 21, 2005, Attorney Selke, acting for respondent, filed a written Request for Hearing with the School District. The request was filed pursuant to Education Code section 44948.3.

6. Respondent was hired at the beginning of the 2005-2006 school year and is a first year probationary teacher. Before the start of the school year, the School District provided a one-day general orientation to all new teachers in the district. Respondent attended the orientation. The orientation included training regarding teaching and disciplinary techniques. Although respondent was new to the School District, he had approximately nine years teaching experience elsewhere.

7. Peter Gallagher (Gallagher), the principal at Quincy High School, supervises and administers the high school, and supervises and evaluates the teachers at the high school. His duties include observing and evaluating new teachers at least twice each school year. Before evaluating respondent the first time, Gallagher went over with, and explained the evaluation process to, respondent. During each evaluation, Gallagher fills out an observation form and, afterward, provides a copy to the teacher and reviews it with the teacher.

8. On September 8, 2005, Gallagher performed his first observation of respondent teaching a class, an 8th grade science class, and wrote down his observations. He observed the whole class period. The class started without respondent providing an introduction to what he would teach that day. Nor did respondent write a daily plan on the board so the students would know what to expect that day. Respondent failed to monitor the class to see if the students were attentive, about half of them were, and used little in the way of motivational techniques to involve the students in the lesson. Gallagher was concerned about respondent's apparent failure to have a teaching strategy. After the class, Gallagher provided a copy of his observations to respondent, and discussed his concerns with respondent, including the need for an introduction at the start of the class period.

9. On September 20, 2005, Gallagher again observed respondent teaching a class and wrote down his observations. Respondent started the class without providing an introduction to inform the students of what they would cover or to connect what they had covered the previous day to the new material or to future material. Respondent started out by writing some notes on the blackboard, but failed to tell the students what to do with the notes. Two boys talked during the whole class without respondent even attempting to stop them, or quiet them, and end their disruption of class. During the class, respondent did not use students to pass out or collect papers. When respondent asked questions, students did not raise their hands and wait to be called upon, they just blurted out answers. Respondent failed to control the class, which concerned Gallagher. Gallagher gave a copy of his written observations to respondent.

10. On September 27, 2005, Gallagher and Shepard K. Porter (Porter), School District curriculum director, observed respondent teaching a class. It was Gallagher's third observation of respondent teaching and Porter's first.

Gallagher observed respondent during the whole class period. Respondent started the class without providing an introduction to what he would teach that day, instead he just started writing equations on the board. As respondent wrote, he provided little explanation and had little interaction with the students. Respondent failed to explain what sort of problems the equations could be used to solve. The students just watched, and some copied the equations. Without allowing the students to ask any questions and without advance warning, respondent passed out worksheets for the students to complete using the equations. As the students started work on the worksheets, there was noise and talking among some of the students, not necessarily about the problems. Respondent did not even attempt to stop the talking and noise. During this class, respondent failed to properly control the students, failed to provide a procedure regarding how the students should work independently, and failed to allow them to ask questions as they worked independently. Gallagher wrote down his observations and gave a copy to respondent.

Porter observed respondent teaching during the whole class period. Some of the students were engaged in the class, but others were not paying attention and were having conversations among themselves. Porter wrote down his observations and respondent received a copy.

11. In late September or early October, Gallagher attempted to arrange for another teacher, who previously taught the classes being taught by respondent, to mentor respondent. He met and discussed the mentoring with respondent and with the other teacher, but the mentoring did not occur because of various problems encountered by respondent and by the other teacher, including respondent becoming ill.

12. On November 15, 2005, assistant superintendent Williams observed respondent teaching a class. Respondent failed to make a good connection between an interesting demonstration and the lesson to be learned that day. The way respondent proceeded was more presentation than teaching. Respondent failed to control the class and there was a lot of loud talking out of turn, and constant talking throughout the class period. Although there was a rule against eating in class, one student ate sunflower seeds during the whole class. Respondent's failure to control those talking in class allowed them to continue, and to disturb those who were trying to learn. Although respondent asked some students to behave, when they did not comply, respondent failed to use the tools available to him to enforce discipline and failed to make them behave. Respondent's failure to control his class, and to stop disturbances in class, interfered with the learning process. Williams wrote down his observations and a copy was provided to respondent.

13. On November 17, 2005, Porter observed respondent teaching a class for the second time. Respondent again failed to control the students. During class, some of the students were talking, others were flipping through books or doing paperwork for other classes. Porter wrote down his observations and respondent received a copy.

14. On November 21, 2005, Gallagher observed respondent teaching a class for a forth time. The students did not have assigned seats and respondent did not have a seating chart. The boys sat on one side of the room and the girls on the other. Respondent only spoke to three or four students by name, and simply pointed at the others. Again there were problems with respondent's teaching, and with his lack of management and control of the class. Many of the students were talking and were not paying attention during class. There was so much talking that it interfered with effective learning, yet, respondent failed to attempt to control the students and to stop the talking. In addition, many students were not following along as respondent went over answers to a worksheet, and the class was so disorganized that many of the students did not know what to do. Gallagher gave a copy of his observations to respondent and they discussed the concerns.

15. On November 29, 2005, Gallagher filled out a Certificated Teacher Evaluation Form (Evaluation) regarding respondent's teaching performance. In the Evaluation, he cited his classroom observations of respondent on September 8 and 20, 2005, but, in rating respondent's performance, Gallagher considered all of his observations of respondent and those of curriculum director Porter and assistant superintendent Williams. Respondent's overall rating was unsatisfactory.

16. Respondent has a Bachelor of Science degree in biochemistry from the University of London and a Bachelor of Arts degree in music from the San Francisco Conservancy of Music. He completed a mid-career change program in mathematics and science at Mills College. He has California teaching credentials in mathematics and physical science, with supplementary credentials in music.

Respondent previously taught at Haywood High School and, for the Sierra Plumas Unified School District, at Pliocene Ridge High School. When Pliocene Ridge High School closed, he was offered a teaching position in Loyalton, but took this position at Quincy High School instead.

At Quincy High School, respondent taught 8th grade mathematics, algebra I to grades 9 to 12, and earth science to grades 9 to 12.

On November 30, 2005, respondent met with Gallagher prior to going on sick leave. The sick leave started on December 1, 2005 and was initially scheduled to end on December 16, 2005. At the meeting, respondent provided Gallagher with lesson plans for the class days he would be absent. During the meeting, Gallagher showed the written Evaluation to respondent and they discussed it.

In a note dated December 13, 2005, respondent's doctor extended his sick leave and released him to return to work on January 3, 2006. Respondent gave a copy to the school district.

On or about December 14, while respondent was out on sick leave, he met with Williams and on December 16, 2005, Williams informed respondent that he was being placed on paid administrative leave and was removed from the classroom, and provided him with a copy of the written notice. Williams also showed him a copy of the letter dated December 21, 2005, recommending that respondent be terminated. Respondent said that this was the first notice he received that the School District was considering terminating him.

Respondent complained that at the start of the school year Gallagher said that he would be evaluating respondent, and did not warn respondent that others might also observe respondent's classes. This complaint was poorly founded because there is no legal prohibition against a school principal enlisting other administrators to assist in observing a teacher's performance, and, as a practical matter, it is a good way to secure a variety of viewpoints.

Respondent said that in about mid-October Gallagher suggested that another teacher assist respondent in improving his performance. Respondent spoke with the proposed mentor teacher soon after, but that teacher wanted to check on the administrative requirements before starting. Respondent and that teacher met again in November to set up the mentoring, and were ready to start when respondent went out on sick leave.

Respondent blamed his problems in various classes upon: the physical characteristics of his classroom, the late arrival of text books for one class, the shortage of text books for another class, and the late arrival of workbooks for another class. He complained that the

classroom was just a plain, ordinary classroom, rather than one designed for teaching science, and it had poor ventilation. He said the earth science text books did not arrive until the second week of school. He said he coped with the shortage of algebra I text books by copying the text book. He complained that not only did the workbooks for earth science arrive four to six weeks after the start of the semester, but he received too few of them.

Respondent also complained that his algebra I class was an alternate pathways class for students who had more difficulties or had failed or had recently transferred in or who needed extra help, which meant he had more students with behavior problems. He said he had a few behavior problem students in each class, and spoke with some parents on the telephone about the problems. In addition, respondent said he referred about 10 students to the vice principal for disciplinary problems.

Respondent blamed his failure to refer more students on a statement the vice principal allegedly made during the orientation. Respondent said that the vice principal told them that too many students had been referred for discipline during the previous school year. However, even if the vice principal did make this statement, it did not excuse respondent from taking reasonable measures to establish and maintain control in his classes, measures available to respondent and which did not require referring a student to the vice principal.

Respondent failed to even attempt to stop the misbehavior during classes, such as the talking, eating and moving around, and the misbehavior interfered with the learning process. Respondent failed to properly control his students during class and is responsible for his failure.

17. Respondent's failure to properly control his students during class allowed disruptions that interfered with the learning process and harmed those students who were trying to learn. The disruptions stymied or interfered with respondent's efforts to teach and students' efforts to learn.

Respondent's failures to provide introductions to the material and explanations of the objectives of the material made it more difficult for the students to learn and to connect the material with prior and subsequent related material.

LEGAL CONCLUSIONS

1. Education Code section 44932 is entitled Grounds for dismissal of permanent employee; Suspension of permanent or probationary employee for unprofessional conduct, and provides, in relevant part:

- (a) No permanent employee shall be dismissed except for one or more of the following causes:

...

(4) Unsatisfactory performance.

2. Education Code section 44938 is entitled Unprofessional conduct or unsatisfactory performance; Notice, and provides, in relevant part:

...

- (b) The governing board of any school district shall not act upon any charges of unsatisfactory performance unless it acts in accordance with the provisions of paragraph (1) or (2):

(1) At least 90 calendar days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

(2) The governing board may act during the time period composed of the last one-fourth of the schooldays it has scheduled for purposes of computing apportionments in any fiscal year if, prior to the beginning of that time period, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

(c) "Unsatisfactory performance" as used in this section means, and refers only to, the unsatisfactory performance particularly specified as a cause for dismissal in Section 44932 and does not include any other cause for dismissal specified in Section 44932.

...

3. Education Code section 44948.2 is entitled Dismissal of probationary certificated employees, and provides:

Notwithstanding subdivision (a) of Section 44948 and subdivision (c) of Section 44948.3, the governing board of any school district having an average daily attendance of less than 250 may elect to dismiss probationary employees during the school year pursuant to the provisions of Section 44948.3. Once a district has made an election pursuant to this section, it shall only dismiss probationary certificated employees during the school year pursuant to this section.

4. Education Code section 44948.3 is entitled Dismissal of probationary employees, and provides:

(a) First and second year probationary employees may be dismissed during the school year for unsatisfactory performance determined pursuant to Article 11 (commencing with Section 44660) of Chapter 3, or for cause pursuant to Section 44932. Any dismissal pursuant to this section shall be in accordance with all of the following procedures:

(1) The superintendent of the school district or the superintendent's designee shall give 30 days' prior written notice of dismissal, not later than March 15 in the case of second year probationary employees. The notice shall include a statement of the reasons for the dismissal and notice of the opportunity to appeal. In the event of a dismissal for unsatisfactory performance, a copy of the evaluation conducted pursuant to Section 44664 shall accompany the written notice.

(2) The employee shall have 15 days from receipt of the notice of dismissal to submit to the governing board a written request for a hearing. The governing board may establish procedures for the appointment of an administrative law judge to conduct the hearing and submit a recommended decision to the board. The failure of an employee to request a hearing within 15 days from receipt of a dismissal notice shall constitute a waiver of the right to a hearing.

(b) The governing board, pursuant to this section, may suspend a probationary employee for a specified period of time without pay as an alternative to dismissal.

(c) This section applies only to probationary employees whose probationary period commenced during the 1983-84 fiscal year or any fiscal year thereafter,

and does not apply to probationary employees in a school district having an average daily attendance of less than 250 pupils.

5. Education Code section 44660 is entitled Legislative intent; Establishment of uniform system, and provides:

It is the intent of the Legislature that governing boards establish a uniform system of evaluation and assessment of the performance of all certificated personnel within each school district of the state, including schools conducted or maintained by county superintendents of education. The system shall involve the development and adoption by each school district of objective evaluation and assessment guidelines which may, at the discretion of the governing board, be uniform throughout the district or, for compelling reasons, be individually developed for territories or schools within the district, provided that all certificated personnel of the district shall be subject to a system of evaluation and assessment adopted pursuant to this article.

This article does not apply to certificated personnel who are employed on an hourly basis in adult education classes.

6. Education Code section 44662 is entitled Evaluation and assessment guidelines, and provides in relevant part:

(a) The governing board of each school district shall establish standards of expected pupil achievement at each grade level in each area of study.

(b) The governing board of each school district shall evaluate and assess certificated employee performance as it reasonably relates to:

(1) The progress of pupils toward the standards established pursuant to subdivision (a) and, if applicable, the state adopted academic content standards as measured by state adopted criterion referenced assessments.

(2) The instructional techniques and strategies used by the employee.

(3) The employee's adherence to curricular objectives.

(4) The establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities.

7. Education Code section 44663 is entitled Employee's copy of evaluation and written reaction; Discussion of evaluation, and provides in relevant part:

(a) Evaluation and assessment made pursuant to this article shall be reduced to writing and a copy thereof shall be transmitted to the certificated employee not later than 30 days before the last schoolday scheduled on the school calendar adopted by the governing board for the school year in which the evaluation takes place. The certificated employee shall have the right to initiate a written reaction or response to the evaluation. This response shall become a permanent attachment to the employee's personnel file. Before the last schoolday scheduled on the school calendar adopted by the governing board for the school year, a meeting shall be held between the certificated employee and the evaluator to discuss the evaluation.

8. Education Code section 44664 is entitled Frequency of evaluation and assessment; Areas of improvement; Unsatisfactory performance; Persons excluded, and provides, in relevant part:

(a) Evaluation and assessment of the performance of each certificated employee shall be made on a continuing basis as follows:

(1) At least once each school year for probationary personnel.

...

(b) The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If an employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the employing authority shall notify the employee in writing of that fact and describe the unsatisfactory performance. The employing authority shall thereafter confer with the employee making specific recommendations as to areas of improvement in the employee's performance and endeavor to assist the employee in his or her performance. If any permanent certificated employee has received an unsatisfactory evaluation, the employing authority shall annually evaluate the employee until the employee achieves a positive evaluation or is separated from the district.

(c) Any evaluation performed pursuant to this article which contains an unsatisfactory rating of an employee's performance in the area of teaching methods or instruction may include the requirement that the certificated employee shall, as determined necessary by the employing authority, participate in a program designed to improve appropriate areas of the employee's performance and to further pupil achievement and the instructional

objectives of the employing authority. If a district participates in the Peer Assistance and Review Program for Teachers established pursuant to Article 4.5 (commencing with Section 44500), any certificated employee who receives an unsatisfactory rating on an evaluation performed pursuant to this section shall participate in the Peer Assistance and Review Program for Teachers.

9. Respondent, citing Education Code section 44938, subdivision (b)(1), argues that the School District violated respondent's due process rights when it failed to give respondent at least 90 days notice of his unsatisfactory performance and an opportunity to correct his deficiencies before proceeding with this action. However, in so arguing, respondent fails to take into account the entirety of Section 44938, because subdivision (c) states that:

(c) "Unsatisfactory performance" as used in this section means, and refers only to, the unsatisfactory performance particularly specified as a cause for dismissal in Section 44932 and does not include any other cause for dismissal specified in Section 44932.

Upon referring to Section 44932, we find that it provides in relevant part:

(a) No permanent employee shall be dismissed except for one or more of the following causes:

...

(4) Unsatisfactory performance.

Thus, the requirements of Education Code section 44938 only apply to instances where a school district is attempting to discipline a permanent, certificated employee (teacher) for unsatisfactory performance, and therefore, does not apply to respondent.

When school districts of this size are dealing with probationary, certificated employees, the controlling sections are Education Code sections 44948.2 and 44948.3. Section 44948.2 allows a school district to elect to proceed against probationary, certificated employees pursuant to Section 44948.3, which is what occurred here.

Section 44948.3 establishes the time frames for disciplinary actions against probationary, certificated employees, which occur before March 15 of a school year. It provides in relevant part:

(a) First and second year probationary employees may be dismissed during the school year for unsatisfactory performance determined pursuant to Article 11

(commencing with Section 44660) of Chapter 3, or for cause pursuant to Section 44932. Any dismissal pursuant to this section shall be in accordance with all of the following procedures:

(1) The superintendent of the school district or the superintendent's designee shall give 30 days' prior written notice of dismissal, not later than March 15 in the case of second year probationary employees. The notice shall include a statement of the reasons for the dismissal and notice of the opportunity to appeal. In the event of a dismissal for unsatisfactory performance, a copy of the evaluation conducted pursuant to Section 44664 shall accompany the written notice.

(2) The employee shall have 15 days from receipt of the notice of dismissal to submit to the governing board a written request for a hearing. The governing board may establish procedures for the appointment of an administrative law judge to conduct the hearing and submit a recommended decision to the board. The failure of an employee to request a hearing within 15 days from receipt of a dismissal notice shall constitute a waiver of the right to a hearing.

...

Acting pursuant to the authority granted by Section 44948.2, the School District elected to proceed pursuant to Section 44948.3, and established teacher evaluation criteria as required by Section 44660, et seq. In taking action against respondent, a first year, probationary, certificated employee, the School District complied with the notice requirements of Section 44948.3.

Specifically, the School District served a written notice of dismissal at least 30 days prior to the dismissal. The notice stated the reason for dismissal, unsatisfactory performance, was issued prior to March 15, and informed respondent of his right to file an appeal within 15 days of receipt of the notice. A copy of the evaluation conducted pursuant to Section 44664 accompanied the written notice.

Neither *Morrison v. State Board of Education* (1969), 1 Cal3d 214, nor *Tarquin v Commission on Professional Competence* (1978), 84 CA3 251, apply to this proceeding because respondent is a probationary teacher. Those cases specifically deal with the rights of permanent, certificated employees under the laws controlling the discipline of such employees, and clearly so stated, not with the rights of probationary employees under quite different statutes.

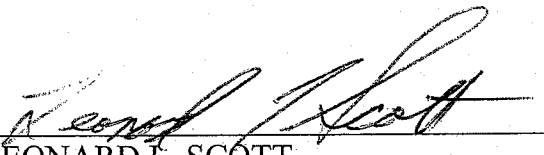
10. Cause exists within the meaning of Education Code section 44948.3, for unsatisfactory performance, to dismiss respondent from the position as a first-year,

probationary, certificated employee of the School District, as found in Findings 6 through 15, and 17.

ORDER

The dismissal of respondent William Cullingford is sustained, and his appeal is dismissed, pursuant to Legal Conclusions 1 through 10.

Dated: March 14, 2006


LEONARD L. SCOTT
Administrative Law Judge
Office of Administrative Hearings