

BEFORE THE
EL DORADO COUNTY SUPERINTENDENT OF SCHOOLS
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

ANTONIA HALL,

Respondent.

OAH No. 2018040242

PROPOSED DECISION

This matter was heard before Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 30, 2018, in Placerville, California.

Michael Tucker, Attorney at Law, represented the El Dorado County Office of Education (EDCOE).

Matthew Chevedden, Attorney at Law, represented Antonia Hall (respondent or Ms. Hall).

Testimony and documentary evidence were received, and oral closing arguments were made. The record was closed, and the matter was submitted for decision on April 30, 2018.

FACTUAL FINDINGS

1. Ed Manansala is the El Dorado County Superintendent of Schools (Superintendent). The Superintendent's actions and those of EDCOE's staff and Governing Board, were taken solely in their official capacities.

2. On February 27, 2018, the Superintendent signed a Resolution of Intention to Reduce or Discontinue Particular Kinds of Service (Resolution), authorizing the reduction or discontinuance of particular kinds of services (PKS) no later than the beginning of the 2018-2019 school year. The reduction or discontinuance consisted of: (1) Court School Teacher, General Education Credential, 1 FTE; and (2) School to College and Career Pathway, Director, 1 FTE.

3. On February 28, 2018, the Superintendent caused respondent to be timely served with a written Notice of Layoff. The Notice of Layoff advised respondent, a certificated employee of EDCOE, that her services would be terminated at the close of the 2017-18 school year because of the discontinuance or reduction of PKS, as set forth in the Resolution. Respondent timely filed a Request for Hearing, and this hearing followed.

4. In determining the extent by which to reduce or discontinue PKS, the Superintendent and EDCOE considered all positively assured attrition up to and including the date of the Resolution. The Resolution does not reduce services below the mandated levels.

5. The Resolution established criteria allowing the Superintendent to deviate from terminating certificated employees in order of seniority (skipping) if it is demonstrated that: (1) there is a specific need for personnel to teach a specific course or course of study, and (2) a junior certificated employee has special training and experience necessary to teach the course or course of study, which more senior certificated employees do not possess. The Resolution states in relevant part, as follows:

WHEREAS, the County Superintendent requires certificated personnel who are authorized to provide special education instruction to students with disabilities, including students at the juvenile court school who hold an Education Specialist or Preliminary Education Specialist Certificate;

WHEREAS, the County Superintendent requires certificated personnel who are assigned to the juvenile court school to obtain and maintain the necessary security clearance from the El Dorado County Probation Department, the party responsible for the juvenile court school in which the El Dorado County Office of Education provides certificated personnel for instruction;

NOW, THEREFORE, BE IT RESOLVED that the County Superintendent may deviate from terminating any certificated employee in the order of seniority if by March 1, 2018, such employee possesses:

a) Possesses an [sic] Preliminary Education Specialist or Education Specialist credential, that are valid through the 2018-2019 school year; or

b) Possesses one or more credentials, certifications, or permits authorizing instruction in special education (including, without limitation, a District Intern Permit, a University Intern Permit, a Provisional Internship Permit, a Special Temporary

Certificate, a Short-Term Staff Permit, an Emergency Permit) authorizing service in the area of special education; and

c) For the 2018-2019 school year, will be assigned within the scope of any one or more of such credentials, certifications, or permits and/or to teach a specific course or course of study; and

d) Possesses, or possesses the ability to obtain, security clearance from the El Dorado County Probation Department.

6. EDCOE prepared a seniority list of certificated employees. The Superintendent skipped three certificated employees junior to respondent in determining to serve respondent with a Notice of Layoff. Two of the certificated employees who were skipped, Aiko Akers and Anna Njoten, meet the skipping criteria in that they possess special education credentials and security clearance from the El Dorado County Probation Department (Probation). A third certificated employee who was skipped, David Delgado, does not meet the skipping criteria, in that he does not have any of the special education credentials or qualifications set forth in the skipping criteria (a) and (b), but does have security clearance from Probation. None of these three certificated employees junior to respondent were served with a Notice of Layoff.

7. Respondent does not have any of the special education qualifications set forth in the skipping criteria (a) and (b), nor does she have security clearance. Probation notified EDCOE by memorandum dated December 6, 2017, that respondent's security clearance had been revoked, effective on the same date. The Chief of Probation testified that it is necessary for teachers to have security clearance to enter the enclosed areas where classes are taught in juvenile detention facilities. No evidence was introduced why respondent's security clearance was revoked, or whether she possesses the ability to obtain such security clearance.

8. Respondent was placed on administrative leave after Probation revoked her security clearance, and remains on administrative leave as a certificated employee of EDCOE. Prior to that, she taught for approximately 11 years at EDCOE court schools housed in juvenile detention facilities in El Dorado County.

9. In order to deviate from the order of seniority and retain a junior teacher, the District must satisfy the requirements of Education Code section 44955, subdivision (d). This section provides in relevant part:

Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, . . . and that the

certificated employee has special training and experience necessary to teach that course or course of study . . . which others with more seniority do not possess.

- (2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

10. By the standards in Education Code section 44955, subdivision (d), and based on the skipping criteria set forth in the Resolution, EDCOE properly skipped Ms. Akers and Ms. Njoten. Mr. Delgado, however, was not properly skipped because he does not have any of the special education qualifications required by skipping criteria (a) or (b).

11. Counsel for EDCOE argues that the skipping criteria should be read to mean that junior employees may qualify for skipping if they (1) possess the special education qualifications under criteria (a) or (b), or (2) possess security clearance or the ability to obtain security clearance as set forth in criterion (d). This argument is rejected as unsupported by a plain reading of the Resolution and the skipping criteria contained therein. Specifically, the skipping criteria is phrased in the disjunctive only as between criteria (a) and (b). The skipping criteria is phrased in the conjunctive as between criteria (b), (c), and (d). Moreover, the two paragraphs of the Resolution preceding the skipping criteria enumerate the Superintendent's requirements of certificated personnel, including (1) authorization to provide special education instruction, and (2) security clearance from Probation. A plain reading of the Resolution and the included skipping criteria compels an interpretation that a junior employee may qualify for skipping only if he/she possesses the special education qualifications under criteria (a) or (b), and possesses Probation security clearance or the ability to obtain such clearance. This plain reading has additional support in the testimony of EDCOE's Executive Director of the Special Services Department, that approximately 30 percent of the students in court schools have special needs, and require a special education teacher.

12. EDCOE did not establish cause under Education Code section 44955, subdivision (d), to deviate from seniority order with respect to David Delgado. Respondent has been affected by the erroneous decision to skip Mr. Delgado. The appropriate remedy for this error is to direct EDCOE to rescind the Notice of Layoff to respondent.

LEGAL CONCLUSIONS

1. The fundamental principle of a particular kind of service layoff is that permanent teachers must be laid off in inverse order of seniority. Pursuant to Education Code section 44955, subdivision (b), a district may deviate from seniority and retain junior employees only when authorized by statute to do so. In Education Code section 44955, subdivision (d)(1), the Legislature authorized districts to deviate from terminating employees in order of seniority only when certain conditions apply, including when "the certificated


employee [to be skipped] has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.” As set forth in Factual Findings 10 through 12, Mr. Delgado does not have the requisite training and experience in special education set forth in the skipping criteria. Therefore, EDCOE did not established cause to skip Mr. Delgado and issue the Notice of Layoff to respondent.

2. Because EDCOE did not establish compliance with section 44955, subdivision (d)(1), when it skipped Mr. Delgado and issued a Notice of Layoff to respondent, the Notice of Layoff served on respondent should be rescinded.

RECOMMENDATION

Based on the Factual Findings and Legal Conclusions, EDCOE shall rescind the Layoff Notice served on Antonia Hall.

DATED: May 21, 2018

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TIMOTHY J. ASPINWALL
Administrative Law Judge
Office of Administrative Hearings