

BEFORE THE
GOVERNING BOARD
OF THE MT. SAN JACINTO
COMMUNITY COLLEGE DISTRICT

In the Matter of the Dismissal of:

BRETT S. DOOLEY,

Respondent.

OAH No. 2017040315

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Temecula, California, on May 3, 2017.

Andrea Naested, and Kendall C. Swanson, Attorneys at Law, Currier & Hudson, represented complainant, Jack Miyamoto, Ed.D., Interim Vice President, Mt. Jacinto Community College District.

Marianne Reinhold, Attorney at Law, Reich, Adell & Cvitan, represented respondent Brett S. Dooley, who was present throughout this hearing. Marianne Reynolds, Regional Uniserv Staff, Community College, California Teachers Association, was also present.

The matter was submitted on May 3, 2017.

CASE SUMMARY

The district created a new position, Professional Development Coordinator, because professional development for faculty and staff was a top priority. Ms. Dooley was hired in January 2016 for that newly-created position. Almost immediately after she began working at the district, multiple problems arose. The evidence established that although there were contributing factors, the majority of the issues were caused by Ms. Dooley's lack of understanding, inability and/or unwillingness to perform her job duties. Despite being given numerous directives, feedback, and assistance, Ms. Dooley continued to flounder in her position. While the evidence demonstrated that Ms. Dooley possesses extensive professional development knowledge and can perform professional development presentations, these skills did not translate to the skills required for her position. The evidence established that it is in the best welfare of the district and the students to affirm the Board of Trustees' decision not to employ Ms. Dooley as a second-year contract probationary academic employee.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 30, 2017, Roger Schultz, Superintendent/President, Mt. Jacinto Community College District, authored a letter to the Board of Trustees recommending that they not re-employ Ms. Dooley for a second year of probationary employment.

President/Superintendent Schultz also sent a letter to Ms. Dooley advising her of his recommendation and her right to appear before the Board of Trustees.

On February 10, 2017, Dr. Miyamoto authored a letter to Ms. Dooley advising her that the Board of Trustees approved the recommendation not to re-employ her. Dr. Miyamoto advised Ms. Dooley of her “right to a hearing pursuant to Education Code sections 87610.1 and 87740.”

Ms. Dooley emailed her “request for a hearing pursuant to Education Code sections 87610.1 and 87740” to Dr. Miyamoto on February 16, 2017.

On February 16, 2016, Dr. Miyamoto acknowledged receipt of Ms. Dooley’s email and her request for an Education Code section 87740 hearing. Dr. Miyamoto advised Ms. Dooley that her request for hearing “under section 87610.1 is premature” because she had filed a grievance and those claims needed to be addressed in that process before she could have an 87610.1 hearing. Dr. Miyamoto did not reference in his e-mail that it was his February 10, 2017, letter that mistakenly informed Ms. Dooley of her right to an 87610.1 hearing, nor did he fully acknowledge his error in his testimony. Any confusion regarding the proper forum for Ms. Dooley to address her concerns was caused by Dr. Miyamoto’s February 10, 2017, letter.

On March 29, 2017, the jurisdictional documents were served on Ms. Dooley. The accusation alleged that cause existed not to re-employ Ms. Dooley related “to the welfare of the college and the students.”

Ms. Dooley timely filed a notice of defense, and this hearing ensued.

Argument Re: Proper Forum/Procedure

2. Ms. Dooley filed a grievance regarding her evaluation. That process is currently underway. Ms. Dooley asserted that this hearing should not go forward because of her grievance. In her opening brief (Exhibit 4) Ms. Dooley laid out her argument and position, reciting the facts at issue and her assertions regarding violations of the collective bargaining agreement. That agreement, entitled “Agreement between the Board of Trustees of Trustees of Mt. San Jacinto Community College District and the Faculty Association CTA/NEA Contract, July 1, 2015 - July 30, 2017,” confirms that the Faculty Association is

the “exclusive representative” for the college’s academic employees (Unit Members) and identifies the rights and responsibilities of the parties.

Article V sets forth the grievance procedures. Article X sets forth the evaluation procedures. Article X, section A1, establishes the evaluation timelines noting: “For faculty hired in the spring semester, the first evaluation shall occur in the spring semester of hiring and then each fall semester thereafter. First Year: typically the first semester of service.” Article X, section C, provides: “With respect to Article X, the grievance procedure shall be used solely for the purpose of challenging alleged violation [sic] of specific provisions of this contract relating to evaluation procedures and not the substance upon which the Unit Member is evaluated.”

The basis for Ms. Dooley’s grievance is that she was hired in the 2016 spring semester but not evaluated until the 2016 fall semester. She asserted that this hearing, which seeks to affirm the Board of Trustees’ decision not to reemploy her as a second year contract probationary academic employee based primarily on her evaluation, cannot proceed because she is grieving that evaluation. The college asserted that it has a two track system, one where the procedures but not the substance of an evaluation can be grieved and another where the substance/basis for the decision not to reemploy can proceed to an administrative hearing. Based upon the language of the agreement, Ms. Dooley’s argument is rejected as the agreement clearly provides that the grievance procedure is to be used “solely” to challenge “evaluation procedures and not the substance” of an evaluation. Because this administrative hearing addresses the substance of Ms. Dooley’s evaluation and the Board of Trustees’ decision not to reemploy her, this hearing was proper.

Chronology of Events

3. On January 19, 2016,¹ Ms. Dooley was hired as the Professional Development Coordinator for the college. The job description clearly identified the duties and responsibilities of that position. In both her Opening Brief and her testimony, as well as referenced in many of the documents introduced at hearing, Ms. Dooley asserted that she did not understand that her job was to “coordinate” professional development; rather, based upon her interview, she understood her position to be one where she would be presenting professional development. Given both the job description and the job title, Professional Development Coordinator, that assertion was difficult to understand.

4. The testimony of the district’s witnesses established that Ms. Dooley’s job was newly created because professional development for faculty and staff was a top priority for President/Superintendent Schultz. Prior to creating that position, various faculty members performed professional development tasks as part of their assigned duties. Many of the documents introduced identified the desired trainings, desired speakers, desired topics, and

¹ The accusation alleged Ms. Dooley was hired on January 11, 2016, but her first probationary contract was dated January 19, 2016, and stated that her employment commenced on January 19, 2016.

desired time frames for professional development, as well as the many issues that arose with Ms. Dooley's ability to achieve those desires.

5. Ms. Dooley began working as the Professional Development Coordinator in the spring 2016 semester. She did not have an evaluation in the spring of 2016. According to Jack Miyamoto, Ed.D., Interim Vice President, Mt. Jacinto Community College and Jeremy Brown, Ed.D., Dean of Instruction, this was an oversight by the district. Dr. Miyamoto testified that the oversight was likely due to the fact that Ms. Dooley's position was newly-created. Ms. Dooley testified that she requested a spring 2016 evaluation from Dr. Brown but, he testified that he could not recall her making that request.

6. Pamela Wright, Ed.D., Director of Student Equity and Success, testified about her interactions, supervision and evaluations of Ms. Dooley. They were hired at approximately the same time and introduced to the Board of Trustees at the same meeting. Shortly thereafter, there was a restructuring and Dr. Wright became Ms. Dooley's immediate supervisor. Dr. Wright's testimony was supported by the numerous documents introduced at this hearing. Several e-mails outlined the issues that arose as early as February 2016. As Dr. Wright described, there were issues regarding communication between she, Ms. Dooley and Dr. Brown. Dr. Wright testified that she began e-mailing information to Ms. Dooley because of the miscommunications. Dr. Wright explained that Ms. Dooley either failed to understand information given to her verbally, incorrectly performed tasks assigned to her, made multiple communication errors such as providing wrong dates and times, prematurely sent out information, and overall, appeared to have a very hard time performing her job duties. Dr. Wright testified that she does not believe Ms. Dooley possesses the skills necessary to perform her job. Dr. Wright served on the evaluation team that recommended Ms. Dooley not be issued a second year probationary contract.

7. Dr. Brown discussed his interactions and supervision of Ms. Dooley. His testimony echoed that of Dr. Wright and he, too, discussed the multiple miscommunications and missteps, how those mistakes reflected poorly on the district, and Ms. Dooley's inability to perform her job duties. Dr. Brown also served on the evaluation team that recommended Ms. Dooley's contract not be renewed.

8. E-mails in February 2016 documented phone conferences that Ms. Dooley set up and Dr. Wright's concern that those conferences were premature. Another e-mail expressed concern regarding Ms. Dooley's ability to get people to attend the trainings she was proposing.

9. A February 25, 2016, e-mail from the Vice President of Instruction, Rudolph Besikof, Ed.D., summarized the meeting between the Dr. Besikof, Dr. Wright and Ms. Dooley. Dr. Besikof noted the "importance of establishing a rich professional development program is great at [the district]" and he looked forward to "the opportunities that will be created for enrichment on the part of staff, faculty and administrators under your leadership." His e-mail identified the "two deliverables" that were to be carried out during the spring 2016 and in the future, provided specifics for achieving them, and indicated that funding

should not be an issue because “the umbrella of [Student Equity and Success] is so large” and “professional development is a priority now.”

10. Dr. Brown’s March 7, 2016, e-mail to Ms. Dooley and Dr. Wright summarized their meeting and noted that “disagreements and misunderstandings arose over the past couple of weeks, but that it is important moving forward to ‘hit the reset button,’ to keep our relationships professional and fruitful to the end of making great strides for staff development and student success.” Dr. Brown’s e-mail identified specific tasks to be performed, noting that he received clarification regarding getting the Professional Development Committee started, and Ms. Dooley “ONLY” needed to take the structure/charge to the **college council** . . . and hav[e] it put on the next agenda” (Emphases in original.)

11. The latter part of Dr. Brown’s March 7, 2016, e-mail corroborated Ms. Dooley’s testimony regarding the instructions she was given about “resurrecting” the Professional Development Committee. As she testified, part of the reason it took so long to get that committee restarted was because she was told that it needed to be an agenda item for the college council meeting. She was later told by President/Superintendent Schultz that she did not need to follow that procedure.

12. Dr. Brown’s March 22, 2016, e-mail summarizing his meeting with Dr. Wright and Ms. Dooley, noted that they discussed “some concerns that arose [the] last few weeks.” Dr. Brown wrote that Ms. Dooley has “expressed frustration that her job is far more coordination than presentation of [professional development] events, and that the job interview and initial job description had more of a presentation focus.” Dr. Brown could not comment on the job interview, “but the job ad pulled its list of qualifications and duties from the current job description.” He noted: “Regardless, [Ms. Dooley] needs to focus on the coordination effort to have a more wide spread impact on the college” and that he supported the “small-scale events” that she wanted to lead but it was “important that she communicate with [Dr. Wright] when those events are being planned.”

Dr. Brown’s e-mail also “reiterated the importance” that Ms. Dooley’s concerns be handled within the supervisory structure, that he was aware she had been complaining to other faculty members, and that she must stop that practice in order to maintain faculty morale. Dr. Brown acknowledged Ms. Dooley’s frustration that she was only receiving feedback regarding what she was doing wrong, but not “on how to be correct,” but he “stressed” that Ms. Dooley “needs to be open to the feedback she is receiving” and he cited to the assistance she had been given “that should provide solid direction.” Dr. Brown further noted that the professional development faculty role “is largely about building and maintaining credibility,” that Ms. Dooley “needs to work to build credibility in the practical elements of the job,” that a “number of missteps have occurred so far that will reduce confidence among our faculty colleagues - double booking dates, creating an agenda for a [professional development] meeting that should not be agendized,” and he recommended that Ms. Dooley “send any planning communications to [Dr. Wright] and I [sic] before sun-

shining to faculty.” Dr. Brown provided several specific steps for Ms. Dooley to follow and tasks for her to complete in order to perform her job.

13. E-mails in March 2016 referenced “a more cohesive document” Ms. Dooley prepared regarding “the different equity speakers” and Dr. Brown’s and Dr. Wright’s input on her suggestions. An e-mail from Dr. Besikof advised Ms. Dooley that her scheduling the Professional Development Committee meeting for April 15, 2016, was too far in the future because the meeting “needs to take place sooner than a month from now.” An e-mail from Dr. Wright advised Ms. Dooley that the selected “day/time [of the committee meeting] overlaps with the [other] workshop that [Ms. Dooley is] scheduling.” An e-mail from another faculty member also expressed confusion that the committee meeting was being scheduled for that date and time because Ms. Dooley had informed that faculty member “yesterday about this date and time for [another professional development] speaker event.”

14. In March 2016, several e-mails between Ms. Dooley and Jeff Duncan-Andrade, Ed.D., documented her attempts to retain him to be a keynote speaker at the opening convocation, which Ms. Dooley informed him would take place on August 11, 2016. As he noted in an e-mail, his “fee for convocation keynote is \$11,500 plus expenses.” E-mails from his staff advised that they would bill the district for his travel and hotel expenses. However, the date for convocation was actually August 12, 2016, causing issues regarding Dr. Duncan-Andrade’s availability to speak at the district. E-mails from Dr. Wright advised Ms. Dooley that she was to double check the date because she gave Dr. Duncan-Andrade the wrong date. Thereafter, despite the fact that it was Ms. Dooley who got the date wrong, in her e-mail to Dr. Duncan-Andrade’s staff, Ms. Dooley wrote: “Apparently there was some confusion on this campus as to when the convocation will be. It has now been confirmed, I am told, for Friday, August 12.” Dr. Duncan-Andrade’s staff advised Ms. Dooley that he was already booked for that date but they would try to resolve the issue.

15. Ms. Dooley’s April 25, 2016, e-mail to the Professional Development Committee advised that the meeting would take place on April 28 at 3:30 and attached the agenda. However, the agenda identified the meeting as starting at 3:00 but noted that the May meeting would begin at 3:30. Dr. Wright testified that because of this confusion, a quorum of committee members did not attend the meeting. Ms. Dooley testified that committee members knew the actual time, despite her erroneous e-mail, but that on the day of the meeting, four of the committee members were directed by their supervisors to attend another meeting and that is why a quorum did not convene. Ms. Dooley’s testimony about the error in her e-mail was nonchalant, with her acknowledging the “typo” but contending that there was no harm as committee members knew the actual time. Her testimony demonstrated that she failed to appreciate that those types of errors were unprofessional.

16. E-mails in May 2016 documented issues regarding the use of flyers for upcoming training. The e-mails documented Dr. Wright’s concerns about the flyers and her advising Ms. Dooley that the marketing plan was part of Ms. Dooley’s job duties. A May 11, 2016, e-mail directive from Dr. Besikof to Dr. Wright with a copy to Ms. Dooley,

reassigned the responsibility for all equity-related professional development activities to Dr. Wright with Ms. Dooley “serving in a more supportive role going forward.”

17. The numerous e-mails repeatedly showed the missteps made by Ms. Dooley, the multiple miscommunications, and the frustrations experienced by her supervisors because of those multiple mistakes. Owing to Ms. Dooley’s multiple errors and inability to perform her job tasks, many of her responsibilities were taken from her and reassigned to Dr. Wright. While the e-mails also conveyed Ms. Dooley’s frustrations, her e-mails, as well as her testimony, demonstrated that she was either unable or unwilling to acknowledge that her mistakes and ineffectiveness in her job caused most of these frustrations.

18. On May 16, 2016, Dr. Wright issued a letter of reprimand to Ms. Dooley for her “below-standard performance.” Dr. Wright identified the error made regarding scheduling the keynote convocation speaker, noting that any confusion about the date was Ms. Dooley’s fault, as the convocation was scheduled before the start of the academic year. Dr. Wright noted Ms. Dooley’s error regarding the time set for the April 28, 2016, Professional Development Committee meeting. Dr. Wright noted that those two “incidents show your ongoing pattern of failing to organize your schedule and failure to properly coordinate events/meetings related to professional development. This performance is inconsistent with your job description (Professional Development Coordinator) which requires coordinating activities with campus, community and statewide groups. This performance is also contrary to the ability to coordinate professional development events and activities your position requires.”

Dr. Wright noted that these errors were similar to those that Ms. Dooley made on March 8, 2016, when she planned to book a speaker to conduct a workshop on the same day as the all faculty training; the error she made on March 10, 2016, when she double booked meetings; that it took her so long to coordinate the Professional Development Committee meeting that another faculty member had to intervene; and that when the committee meeting did finally take place, she failed to lead it despite having an agenda prepared for her. Dr. Wright referenced previous warnings given to Ms. Dooley about her below standard performance and her other missteps. Dr. Wright noted that these errors adversely impacted the district, the convocation and the Professional Development Committee. Dr. Wright directed Ms. Dooley to “take time to carefully research the appropriate dates for events and not to double book events . . . [and] ensure your e-mail communications contain the correct dates and times for events” Dr. Wright offered suggestions to address those concerns. Dr. Wright attached supporting documentation for the issues identified in the letter of reprimand.

19. In her rebuttal to her letter of reprimand, Ms. Dooley wrote, “I acknowledge my part in errors made with scheduling events. I have taken steps towards addressing this issue.” Ms. Dooley then explained the double booking mistake. Ms. Dooley further wrote that the “letter of reprimand present[ed] incomplete or misleading information that gives a skewed impression of the nature of the events.” She wrote, “It is not equitable that all blame and reprimand be mine. There were other contributing factors that led to these errors.” Ms. Dooley blamed her supervisors for the convocation date error because when she sent them e-

mails about the speaker, they did not inform her that she had the wrong date. She blamed the typo regarding the time of the committee meeting on another faculty member because that person did not advise Ms. Dooley that her e-mail contained the wrong time when she sent that person the e-mail to review. Ms. Dooley asserted that her inability to lead the meeting was due to her laryngitis and acute bronchitis.

Ms. Dooley further wrote:

A heretofore unmentioned factor that has had a detrimental influence on my ability to perform my job is a negative work climate. From early in the establishment of the new supervisory chain I have grown to expect that all actions will be seen as incorrect. Inaction due to lack of instruction or fear of a reprimand is seen as ambivalence. I have mentioned multiple times the position as currently construed is not compatible with the job that was described and accepted based on my interview. I have confirmed with several individuals from the hiring committee that my expectations were not, in fact, unfounded.

I have been told directly that my job is to coordinate, not to provide any professional development, yet even within my own department I am not invited to participate until events have already been planned.

Ms. Dooley identified the courses planned without her, noting that “[d]ue to the discrepancy between my expectation and reality in the lack of campus culture to support a person in my position, I have been confused as to what my responsibilities are and have asked Dr. Wright multiple times, or in person and e-mail, for explanations.” Ms. Dooley referenced the numerous times she asked for directions, asserted that Dr. Wright advised that she had her own job to do and could not also do Ms. Dooley’s job, and wrote that her repeated requests of what she should be doing went unanswered. Ms. Dooley noted that her “every move is second guessed and no path for explanation is available.” Ms. Dooley wrote that she was often given incompatible and limited directions, no explanation as to why her actions were unprofessional, and that there was a failure to recognize that her use of phone calls instead of e-mails was an alternative way to glean information. Ms. Dooley noted that while there were “many aspects of [her] position that were new to [her] . . . andragogy and best practices in professional development [were] not.” She concluded by noting,

The vague and often contradictory instructions I have received and the constant, unjustified attacks on my professionalism, as well as the efforts to exclude me from conversations and decision-making affecting my job have resulted in a negative and untenable workplace environment. Given the adverse workplace environment and the incomplete portrayal of the complaints, I do not acknowledge the reprimand was justified.

Ms. Dooley's Fall 2016 Evaluation

20. Dr. Brown, Dr. Wright, and faculty members Del Helms and Tamara Smith, the last two being faculty members selected by Ms. Dooley, performed Ms. Dooley's evaluation in the fall of 2016. The documents² regarding that evaluation were introduced at this hearing. These included the observations of the four team members, Dr. Brown's administrative review and summary, as well as a November 1, 2016, letter of reprimand issued by Dr. Wright. That letter of reprimand identified multiple errors Ms. Dooley committed in the 2016 fall semester that demonstrated lack of professionalism, failures to coordinate professional development activities, failures to follow procedures, and her continuing to provide confusing dates and times. Dr. Wright explained that she was informed that the November 1, 2016 letter reprimand should be attached to the evaluation because it was not proper for her, as a faculty member, to issue a letter of reprimand to another faculty member, even though she supervised that faculty member. Ms. Dooley's Self-Evaluation was also attached to the documents introduced to hearing. In short, while the observations did contain some positive feedback, particularly noting that Ms. Dooley is well-versed regarding professional development literature and that her professional development knowledge is strong, the overwhelming portions of the observations were highly critical of her ability to perform her job.

The criticisms included her inability to follow instructions, her many mistakes, "missteps and difficulty with process," problems with the volume and quality of the work she produced, the numerous struggles she has encountered, concerns that her skill set do not translate to her current role, concerns because Ms. Dooley continued to express in private conversations and public meetings that she was unsure of her job duties and how to perform or to achieve those she did understand, a lack of leadership and initiative, a negative impact among faculty regarding her credibility and authority, and concerns that no further training would be warranted because Ms. Dooley has received a great deal of guidance and did not demonstrate an ability to retain and apply information provided to her in previous exchanges. The most critical evaluation came from Ms. Smith, the faculty member chosen by Ms. Dooley. Ms. Smith wrote, "I am not confident that continued training will be sufficient to ensure that [Ms. Dooley] oversees her duties in an effective manner."

As with her rebuttal to her May 2016 letter of reprimand, Ms. Dooley offered various excuses and blamed others for her failures, but did not seem to understand that the primary issues and problems stemmed from her inability to perform her job duties. Again, while she may be extremely knowledgeable regarding professional development and able to provide

² A Contract Faculty Evaluation Process Summary, dated December 1, 2016, and signed by the Tenure Review Committee Chair, with an illegible signature that Dr. Miyamoto could not identify, advised the evaluation team that the Tenure Review Committee was concerned that "the evaluation process as established was not followed in its entirety" and encouraged "the area dean and team to follow the established process in the future." The district's witnesses established that the criticism was because Ms. Dooley had not been evaluated in the spring of 2016.

professional development trainings, these were not the primary job duties of the job for which she was hired.

Dr. Wright testified that the evaluation team unanimously decided that Ms. Dooley should not be offered a second year probationary contract, a fact corroborated by Dr. Brown's summary. That summary identified Ms. Dooley's strengths but also identified her weaknesses as being difficulty scheduling and following processes, failure to retain pertinent instructions and guidance, failure to build credibility with constituents, and unprofessional behavior in important and highly visible settings.

Dr. Brown's administrative review noted that Ms. Dooley's overall performance rating was unsatisfactory and that it was not recommended that she continue her appointment after her current contract expired. Dr. Brown wrote, "[i]t is important to note that the significance of deficiencies in implementation far outweighs the commendations, because those deficiencies limit Ms. Dooley's ability to effectively provide service and leadership in the role for which she was hired." Dr. Brown acknowledged "the spirit of collaboration and professional growth that [Ms. Dooley] shares with college employees, [but] the implementation has not been effective, and I do not see evidence that it will become effective in the future."

Witness Testimony

21. Jack Miyamoto, Ed.D., Interim Vice President, Mt. Jacinto Community College, testified about his preparation of the documents for the Board of Trustees' February 9, 2017, meeting. He explained the dual process of grievances for procedural complaints and administrative hearings.

22. Pamela Wright, Ed.D., Director of Student Equity and Success, discussed her interactions, supervision and evaluations of Ms. Dooley. She testified consistent with the documents introduced. She described the numerous attempts she made and effort she expended trying to help Ms. Dooley perform her job duties, as well as the "painstaking meeting" she had with Ms. Dooley where she went over her job description "line by line," something she has never had to do with any other employee.

23. Jeremy Brown, Ed.D., Dean of Instruction, discussed his interactions and supervision of Ms. Dooley, as well as his role in Ms. Dooley's evaluation. His testimony was consistent with the documents introduced.

24. Ms. Dooley testified regarding her work at the district, the problems she encountered, and other facts which caused many of the issues. While her testimony established that there were other contributing factors, it did not address the primary concern presented: namely that Ms. Dooley lacks the skill set necessary to perform her job duties. Her claim that the job for which she interviewed was not the job for which she was hired was unpersuasive and supported the district's position that she is not qualified to be the Professional Development Coordinator.

LEGAL CONCLUSIONS

Relevant Statutory Authority

1. Education Code section 87608 provides:

If a contract employee is working under his or her first contract, the governing board, at its discretion and not subject to judicial review except as expressly provided in Sections 87610.1 and 87611, shall elect one of the following alternatives:

(a) Not enter into a contract for the following academic year.

(b) Enter into a contract for the following two academic years.

(c) Employ the contract employee as a regular employee for all subsequent academic years.

2. Education Code section 87610, subdivision (a), provides:

The governing Board of Trustees shall give written notice of its decision under Section 87608 and 87608.5 and the reasons therefor to the employee on or before March 15 of the academic year covered by the existing contract. The notice shall be by registered or certified mail to the most recent address on file with the district personnel office. Failure to give the notice as required to a contract employee under his or her first or second contract shall be deemed an extension of the existing contract without change for the following academic year.

3. Education Code section 87740 provides in part:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

[¶] . . . [¶]

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year.

[¶] . . . [¶]

Applicable Appellate Law

4. The Education Code authorizes community college districts to hire qualified academic employees in any of three categories: regular (permanent), contract (probationary) and temporary. This classification system is designed to give a degree of academic tenure in direct relation to years of employment. A “regular” employee is one who has achieved tenure. “Contract” status is the first step toward tenure. Regular and contract employees cannot be arbitrarily dismissed and are entitled to notice and hearing before termination. (*Balasubramanian v. San Diego Community College Dist.* (2000) 80 Cal.App.4th 977, 982.)

5. There must be “substantial evidence” to support a governing board’s decision (*Lindros v. Governing Board of Trustees of the Torrance Unified School District* (1973) 9 Cal.3d 524) and the cause for dismissal must reasonably relate to the welfare of the school (*Griggs v. Board of Trustees of Trustees* (1964) 61 Cal.2d 93).

Evaluation

6. Substantial evidence established the repeated and continuous confusion caused by Ms. Dooley’s errors, the frustration all parties encountered, Ms. Dooley’s repeated failures to follow through on assigned tasks, the errors she committed when she attempted tasks, and the repeated directives and instructions given to her that she was unable to accomplish or fulfill. Moreover, no adequate or reasonable explanation was offered for why it took Ms. Dooley so long to accomplish what appeared to be basic tasks. Ms. Dooley’s excuses that others were also to blame for her errors because they did not promptly notify her of her mistakes and/or that her duties and responsibilities changed were not persuasive.


Ms. Dooley was not a lower level subordinate, she was hired to be a faculty level Professional Development Coordinator, a position of high importance as the evidence established. To make the numerous mistakes that she made, and then assert that they should be excused because others did not catch them, established that Ms. Dooley failed to comprehend the importance of her position. The district should not have to monitor her every action. Her claim that her job changed failed to account for the fact that many of those changes came about because her duties were re-assigned when she was unable to fulfill them. Her contention that the job she interviewed for was not the job she got lacked merit. The job title was “Professional Development Coordinator,” the job description identified the coordinating tasks she was to perform, and the multiple directives and instructions she received continually attempted to guide her, to no avail.

Overall, the substantial evidence clearly demonstrated that Ms. Dooley was unable to fulfill her job duties and she continued to struggle despite repeated attempts by the district to give her direction. This is not to say that Ms. Dooley is not capable of giving a professional development presentation, or does not possess great knowledge regarding professional development, in fact her testimony concerning her knowledge and ability was unrefuted and the evaluation team commended her for that knowledge, but the substantial evidence established that Ms. Dooley is incapable of performing the job for which she was hired: Professional Development Coordinator. While Ms. Dooley may be knowledgeable and a competent professional development presenter, the evidence clearly established that she lacks the skill set necessary to be the district's Professional Development Coordinator.³

RECOMMENDATION

It is recommended that the decision of the Board of Trustees Mt. San Jacinto Community College District to give notice to Brett S. Dooley that she will not be employed as a second year-contract probationary employee be affirmed. Mt. San Jacinto Community College District shall not enter into a contract with Brett S. Dooley for the next academic year pursuant to Education Code section 87608.

DATED: May 5, 2017

DocuSigned by:

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MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

³ Although not an issue in this proceeding, it was unclear how a spring 2016 evaluation would have resulted in a different decision being reached by an evaluation team, since almost from the very beginning of her employment, Ms. Dooley demonstrated that she was unable to perform her job duties.