

BEFORE THE
GOVERNING BOARD OF THE
VENTURA COUNTY COMMUNITY COLLEGE DISTRICT
STATE OF CALIFORNIA

In The Matter Of The Accusations Against:

OAH No. L2005030069

Toni Allen

and

Victor Fuentes,

Respondents.

PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 26, 2005, at the Ventura County Community College District, in Camarillo, California.

Warren S. Kinsler of Atkinson, Andelson, Loya, Ruud & Romo represented the Ventura County Community College District.

Lawrence Rosenzweig, attorney at law, represented Victor Fuentes and Toni Allen (collectively Respondents).

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on April 26, 2005.

FACTUAL FINDINGS

1. Complainant, Dr. James Meznik, filed the Accusation while acting in his official capacity as the Chancellor of the Ventura County Community College District (District).
2. Respondents are academic employees of the District.
3. On or before March 15, 2005, the District gave notice to each Respondent that their services would not be required for the 2005-2006 school year. On that same date, the District served the Accusation against each Respondent.
4. Respondents timely filed Requests for Hearing to determine if there was cause for not reemploying them for the 2004-2005 school year. They filed their Notices of Defense at the same time they filed their Requests for Hearing.

5. On March 8, 2005, the Board of Trustees (Board) of the District adopted Resolution A-12 to reduce and discontinue the following particular kinds of academic services no later than the beginning of the 2005-2006 school year:

			<u>FTE</u>¹
1.	Reduced	Ceramics Instruction	1.00
2.	Reduced	College Strategies Instruction	1.00
3.	Discontinued	Companion Animal Pet Studies Instruction	.40
4.	Reduced	Computer Information Systems Instruction	4.25
5.	Reduced	Counseling Services	11.79
6.	Reduced	Disabled Student Programs & Services	.40
7.	Reduced	Education Instruction	.60
8.	Discontinued	Electronics Instruction	.70
9.	Discontinued	Electronics Technology Instruction	1.00
10.	Reduced	English as Second Language Instruction	3.20
11.	Reduced	French Instruction	1.00
12.	Reduced	German Instruction	.99
13.	Discontinued	Horticulture Instruction	1.19
14.	Discontinued	Hotel Management Instruction	1.33
15.	Discontinued	Interpretation Instruction	.60
16.	Reduced	Japanese Instruction	.33
17.	Reduced	Journalism Instruction	1.19
18.	Discontinued	Machine Tool Technology Instruction	1.85
19.	Reduced	Matriculation Services	1.00
20.	Reduced	Intercollegiate Men's & Women's Cross-Country Instruction	.20
21.	Reduced	Reading Instruction	3.13
22.	Reduced	Spanish Instruction	.80
23.	Reduced	Theater Arts Instruction	1.53

TOTAL SERVICES REDUCED = 39.48 FTE

The Board further determined that the reduction in services necessitated a decrease in the number of academic employees at the close of the present school year by a corresponding number of FTE positions, and directed the Chancellor to notify the appropriate employees to implement the Board's determination.

6. The services set forth in Factual Finding 5 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 87743.

7. Board Resolution A-12 was not related to the competency and dedication of the individuals whose services were proposed to be reduced or eliminated.

¹ Full Time Equivalent

8. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

9. The District maintains a Seniority List which contains employees' seniority dates (first date of paid service), seniority number², current assignments and locations, tenure status, and faculty service areas.³

10. Each District faculty member is assigned one or more faculty service areas (FSAs) in which he/she is certified as competent to teach. The faculty member is assigned to courses or duties falling within the ambit of his/her FSA(s). A faculty member will be considered "competent" to render service in a FSA if the faculty member satisfies the state minimum qualifications of competency to teach in that FSA.⁴ Certification in a particular FSA is initially made at the time a faculty member is hired. Thereafter, a faculty member may apply for further FSA certifications.

11. In implementing the Board's resolution, the District first notified all temporary employees performing services in the identified reduction areas that their services would be terminated at the end of the current school year and not required for the 2005-2006 school year. The District also notified all full-time employees performing "extra assignments"⁵ that their extra assignments in the identified reduction areas would be terminated at the end of the current school year and not required for the 2005-2006 school year.

12. With regard to its tenured and probationary employees, the District used the Seniority List to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District determined that nobody less senior than Respondents was being retained to render services in the FSAs in which Respondents are competent to serve.

13. The District provides classes at Oxnard, Ventura and Moorpark Colleges.

14. (a) Respondent Victor Fuentes (Respondent Fuentes) currently teaches PC Repair and Upgrade at Oxnard College. Electronics Instruction and Electronics Technology Instruction are being discontinued. The District records reflect that his FSA is Electronic Technology, which includes radio, television, computer repair and avionics. He holds an Instructor Credential

² If employees share a first date of paid service, seniority is determined by a lottery conducted upon their first date of paid service. The lottery results in the assignment of seniority numbers indicating their seniority placement in relation to other employees with the same first date of paid service. The employee's seniority number remains the same throughout their employment with the district.

³ "Faculty service area" means a service or instructional subject area or group of related services or instructional subject areas performed by faculty and established by a community college district." (Ed. Code section 87743.1.)

⁴ Pursuant to Education Code section 87743.2, FSAs must be established through the collective bargaining process. The Collective Bargaining Agreement between the District and the Ventura County Federation of College Teachers, AFT Local 1828, AFL-CIO, section 5.7, provides that the list of FSAs in the District shall be the same as the minimum qualifications list defined by the Board of Governors of the California Community Colleges.

⁵ "Extra assignments" are assignments in addition to a full time faculty member's one FTE.

in the subject matter area of Industrial, Machine and Related Technologies, but does not possess any degrees or certificates.

(b) Respondent Fuentes argued that, since PC Repair and Upgrade appears in the Oxnard College Schedule of Classes under the umbrella category of "Engineering Technology," his FSA is Engineering Technology. He further argued that he is competent to teach at least one of the Engineering Technology classes which is currently being taught by someone less senior than him. These arguments are not persuasive. A faculty member's FSA is not determined using the Schedule of Classes,⁶ but by satisfaction of the minimum qualifications for that FSA. Respondent Fuentes does not satisfy the minimum qualifications for competency to render service in the FSA of Engineering Technology.

(c) No employee with less seniority is being retained to render a service in the FSA in which the records of the District reflect that Respondent Fuentes is competent to serve.

15. (a) Respondent Toni Allen (Respondent Allen) teaches journalism at Oxnard College. Journalism Instruction is being reduced by 1.19 FTE. The District intends to reassign Respondent Allen to a .33 FTE assignment at Moorpark College, where she would assume a load previously carried by a part-time employee. The District records reflect that Respondent Allen's FSAs are Journalism and Mass Communication. She holds master's degrees in journalism and mass communication, a bachelor's degree in business organization management and an associate's degree in journalism.

(b) Respondent Allen contends that she should be retained to fill a new full-time "Humanities/Film Instructor" position at Moorpark College. Between March 15 and April 4, 2005, Respondent Allen received a notice of "Full-Time Academic Transfer Opportunities," which included a listing for the "Position Title" of "Humanities/Film Instructor" at Moorpark College. Attached to the notice was a job announcement for a "Humanities/Film Instructor, Full-time Tenure Track Position," for the Fall 2005 semester. Respondent Allen did not meet the minimum education requirements for the position. While she did submit a supplemental questionnaire claiming that her qualifications were equivalent to the required qualification, the District declined her application, noting that it was seeking an applicant with more film experience. There was no evidence that a less senior teacher had been retained to the transfer position.

(c) No employee with less seniority is being retained to render a service in the FSA in which the records of the District reflect that Respondent Allen is competent to serve.

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⁶ It is noted that the Moorpark College Schedule of Classes listed PC Repair and Upgrade under the umbrella category of "Electronics."

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 87740 and 87743 were met. (Factual Findings 1 through 4.)

2. The services listed in Factual Finding 5 are each determined to be a particular kind of service within the meaning of Education Code section 87743. (Factual Findings 5 and 6.)

3. Cause exists to reduce the number of academic employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code sections 87740 and 87743. (Factual Findings 5 through 8.)

4. Education Code section 87743 provides, in pertinent part:

[t]he services of no tenured employee may be terminated . . . while any probationary employee, or any other employee with less seniority, is retained to render a service in a faculty service area in which the records of the district . . . reflect that the tenured employee possesses the minimum qualifications prescribed by the board of governors and is competent to serve under district competency criteria.

5. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) In the case at hand, Respondent Allen sought transfer to a position outside her FSA and which she was not competent to fill. Additionally, even if her qualifications were deemed equivalent to those required for the transfer position, there is no evidence that a junior teacher has been retained to the transfer position. Therefore, at this time, Respondent Allen cannot "bump" an unknown person with unspecified seniority and qualifications for purposes of avoiding the reduction in her employment.

6. No employee with less seniority is being retained to render a service in the FSA in which the records of the District reflect that Respondents are competent to serve. (Factual Findings 9 through 15.)


7. Cause exists within the meaning of Education Code sections 87740 and 87743 for terminating or reducing Respondents' employment for the 2005-2006 school year. (Factual Findings 1 through 15.)

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ORDER

The Accusations served on the Respondents are sustained. Notice may be given to Respondents before May 15, 2005, that their services will be reduced or terminated for the 2005-2006 school year because of the reduction or discontinuation of particular services as indicated.

Dated: May 4, 2005



JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings