

BEFORE THE GOVERNING BOARD
FORTUNA UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SARA R. DIXON
RACHEL HEAVILIN
ERIC HELMS
KIM PETERSON,

Respondents.

OAH No. N2005030680

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Eureka, California, on April 19, 2005.

Stephen L. Hartsell, Associate General Counsel, School and Colleges Legal Services of California, 901 Myrtle Avenue, Eureka, California 95501, represented the Fortuna Union High School District.

Anne M. Rudolph, Attorney at Law, Roberts, Hill, Bragg, Angell & Perlman, LLP, 434 Seventh Street, Eureka, California 95502-1248, represented respondents.

FACTUAL FINDINGS

1. On March 1, 2005, the governing board of the Fortuna Union High School District adopted Resolution No. 374, in which the board resolved to reduce or discontinue the following particular kinds of services as of the end of the 2004-2005 school year:

- 1.0 Community Day School
- .6 Social Science
- .6 English
- .6 Science
- .6 Mathematics
- .6 Spanish

The resolution directed the superintendent or his designee to initiate procedures to not reemploy four full-time equivalent certificated employees pursuant to Education Code sections 44949 and 44955.

2. On March 3, 2005, the superintendent sent notice to seven certificated employees of his recommendation that their services be reduced or discontinued for the 2005-2006 school year. Five of those employees requested a hearing to determine if there was cause to not reemploy them. One of those five subsequently withdrew his request for hearing. The remaining four employees – Sara R. Dixon, Rachel Heavilin, Eric Helms, and Kim Peterson – are the respondents in this proceeding.

3. The parties stipulated that the district has complied with all procedural requirements of Education Code sections 44949 and 44955. The parties further stipulated that only two issues are in dispute: 1) the district's determination to skip, and therefore retain, junior employee Heather Brown, and 2) the application of tie-breaking criteria in relation to respondent Heavilin.

Skippping Heather Brown

4. Heather Brown is a full-time teacher at East High School, the district's continuation school. Brown shares a seniority date with respondent Rachel Heavilin. She is junior to respondents Sara Dixon, Eric Helms, and Kim Peterson. Brown did not receive a layoff notice. The district asserts that it may retain Brown because she possesses the special training and experience necessary to teach in the continuation school that senior employees do not possess. Respondents dispute this and contend that respondents Dixon, Peterson, and Helms are all credentialed and competent to perform the services being provided by Brown.

5. Education Code section 44955, subdivision (b) provides that "the services of no permanent employee may be terminated . . . while any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render." However, section 44955, subdivision (d)(1), provides that a district may deviate from seniority order and retain a junior employee when it "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." In making a determination whether an employee is "competent" to render a given service within the meaning of section 44955, subdivision (b)(1), courts have recognized that school districts have discretion to establish competency standards, provided that those standards must relate to the specific skills and qualifications required for the position, and not to the quality of an employee's work performance.¹

6. This is the second year in which the district's determination to retain Brown over senior employees has been in dispute. The district issued layoff notices in March 2004. Among those receiving notices at that time were Brown and respondents Dixon and Peterson. Although Brown had received a notice, the district intended to retain her to teach in the

¹ *Forker v. Board of Trustees of the Whittier High School District* (1984) 160 Cal.App.3d 13, 19; See also, *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555.

continuation school and at last year's hearing both Dixon and Peterson contended they were certificated and competent to bump into Brown's position at East High School. Adopting the decision of an administrative law judge in May 2004, the board rejected Dixon's and Peterson's contentions, finding that the superintendent had "reasonably determined that respondents Kim Peterson and Sara Dixon do not possess the special training and experience necessary to teach the course taught by respondent Brown at East High School." In reaching this conclusion, the board made the following findings:

[Brown] holds a professional clear single subject credential in biological sciences. She has a Bachelor of Science degree in marine biology.

[S]tudents at East High School work with the same teacher on a variety of subjects at the same time. Students typically select a study subject for a set period of time – sometimes for hours, other times for days or even weeks. . . . Brown teaches life science, physical science, mathematics through algebra and economics. Because teachers at East High are expected to teach multiple subjects at the same time it is not feasible to split the assignments by subject matter between teachers. Mr. Hanson [then both the district superintendent and the principal of East High School] finds that . . . Brown has demonstrated the ability to teach multiple subjects at East High School and that based upon his review of District personnel files no respondents senior to her . . . are certificated and competent to render the service she provides. He also notes that . . . Brown holds a CLAD certificate, something he believes is particularly useful at East High School where he estimates there are twenty-two Hispanic, one Southeast Asian and seven English learners on campus. This was one of the reasons why he opted to retain her. . . . Brown is fluent in Spanish and she is able to connect well with students.

Respondent Peterson holds a clear single subject credential in mathematics and a clear single subject credential in chemistry. He is enrolled in the CLAD Certificate Program and expects to complete it later this summer. He is also pursuing graduate studies involving mathematical modeling. Mr. Hanson does not believe that respondent Peterson possess the necessary experience or competence to teach the science portion of the East High School assignment. He notes that chemistry hardly fits the setting at East High School.

[Respondent Dixon] currently teaches five sections of science at Fortuna High School. She holds a professional clear single

subject credential in life sciences and has a Bachelor of Science degree in biology. . . . She does not hold a math credential but has some experience teaching math in a junior high level remedial math program. She is enrolled in a CLAD Certificate Program and is expected to receive her certificate by month's end.

East High School is structured very differently from more traditional settings such as Fortuna High School. Some of the toughest and most at risk students are enrolled there. Teachers assigned to East High School must possess, in addition to necessary certification, special training and experience to teach multiple subjects in a self-contained venue. Mr. Hanson . . . is well positioned to evaluate whether teachers possess the special training and experience necessary to provide classroom instruction in such a setting. He does not believe that respondent Peterson's chemistry and other science background qualify him to provide the type of hands on outdoor education life science curriculum now being used. In contrast, respondent Brown has a marine biology background with prior independent study outdoor [education] and teaching experience in the Florida Keys and Monterey. She developed a curriculum based on these experiences. ¶ Similarly, Mr. Hanson does not believe that Ms. Dixon possesses requisite experience to teach a combination science, math and economics curriculum based on a review of her current assignment and records on file with the District.

7. The district contends that the board's 2004 layoff decision has res judicata effect in two areas. The first is to show the relative training and experience between Brown, Peterson, and Dixon as of May 2004. The second is to show the "needs and requirements" of the continuation school.

8. The board's May 2004 decision is entitled to the res judicata effect the district asserts. However, this does not preclude respondents from attempting to demonstrate that they currently possess the skills, experience, and training necessary to teach in the continuation school.

9. In its May 2004 decision, the board found that the ability "to teach multiple subjects in a self-contained venue" is necessary to teach at East High School. While the board found possession of a CLAD certification "useful" and noted Brown's fluency in Spanish, her marine biology background, and her outdoor education and hands-on teaching experience, it did not specifically find these or any other skill, special training, or experience necessary to teach at the continuation high school. At the present hearing, the district demonstrated that the ability to work with the kinds of students who attend East High

School – those who have fallen behind in their progress towards graduation, often because of personal, family, drug, or legal problems – is also a necessity for assignment at the continuation school.

Thus, the district has demonstrated only two skills that are “necessary to teach” at the continuation school: the ability to teach multiple subjects in a self-contained venue and the ability to work with the kinds of at-risk students who make up most of East High School’s population. The district has shown that Brown possesses these skills. The district has also shown that Brown has other skills and attributes that help make her an effective teacher at East High School, but which were not shown to be “necessary to teach” there. Much emphasis was placed on Brown’s Spanish skills. But none of the classes at East High School are taught in Spanish and no matter how useful it might be, the ability to speak Spanish cannot be used as a basis to skip a junior teacher unless the teacher is teaching in a bilingual program.² And although Brown has skill and experience in teaching outdoor education, in marine biology, and in using a hands-on approach to teaching science, none of those skills is “necessary” to teach at East High School.

10. David Moss has been superintendent of the district since July 5, 2004. He was not employed in the district at the time of the 2004 layoff proceedings and therefore had no involvement in the determination made at that time that Brown possessed special training and experience that entitled her to be retained over Dixon and Peterson. The evidence showed that in making a similar determination this year, Moss relied almost entirely upon the board’s prior decision. He made little, if any, effort to determine whether the senior employees over which Brown was being retained this year – Dixon, Peterson, and Helms – possessed the requisite special training and experience that would permit them to bump into Brown’s position at East High School. Other than reviewing the senior employees’ personnel files and speaking to each of them briefly, he made no inquiry into any training or experience any of them might possess. In fact, he did not give any of them an opportunity to explain why they felt qualified to teach at the continuation school; he essentially told them that last year’s decision “stood.”

11. Helms is the most senior respondent. He holds a single subject credential in math. He is currently pursuing a master’s degree in kinesiology. He is also currently enrolled in a CLAD program. Before becoming a full-time math teacher at Fortuna High School in 1998, Helms taught for one year in Orange County, where he taught Algebra I and Consumer Applied Math. In this latter class, 24 of the 28 students were English learners. Helms taught the class without a bilingual aide.

12. Peterson is the next most senior respondent. As a result of last year’s layoff, Peterson’s position was reduced from 1.0 FTE to his current position of 0.4 FTE. He teaches math at Fortuna High School. He holds a single subject credential in math with

² *Alexander v. Board of Trustees of the Delano Joint Union High School District* (1983) 139 Cal.App.3d 567.

supplementary authorizations in chemistry and biology. He is awaiting an additional supplementary authorization in introductory science. Since last year's layoff, Peterson has obtained an SB 395 certificate, which is similar to a CLAD certification. Peterson is also employed in a 0.5 FTE position in the Rio Dell Elementary School district, where he teaches middle school math and science. At Christian Life High School, a private school, Peterson previously taught earth science, life science and biology. These courses involved many hands-on activities. He also worked as a math and science tutor at College of the Redwoods and while pursuing a masters degree in environmental systems at Humboldt State University Peterson taught a math and integrated science class there. Peterson has worked with at-risk youth in volunteer positions in boys and girls clubs, taking them backpacking in the Trinity Alps. He also spent three summers working with at-risk youth supervising them in completing a number of projects through the Private Industry Council.

In April 2002, Hanson, then the district superintendent and principal of East High School, offered Peterson an assignment that would have seen him teaching three periods of math at Fortuna High School and one period of "math, science and economics" at East High School. In his memo offering this assignment, Hanson spoke of some of the unique aspects of East High School and advised Peterson that the assignment could change if there was a change in enrollment at Fortuna High School. Peterson spent two or three days observing the methods used at East High School. Ultimately, Peterson was not assigned to the split position offered by Hanson. Instead, he was given a full-time position at Fortuna High School. The position at East High School that Peterson was initially offered for the 2002-2003 school year was the same one in which Brown has taught (although full-time, not just one period) since the start of the 2003-2004 school year.

13. Dixon is junior to Peterson and senior to Brown. She holds a single subject credential in life science. Since last year's layoff, Dixon has obtained a CLAD certificate. She holds a 1.0 FTE position at Fortuna High School, where she teaches two sections of integrated science, two sections of life science, and one section of basic life science. Two days a week during her prep period Dixon also tutors Algebra I students at Fortuna High School. Before coming to the district, Dixon taught 7th and 8th grade science for four and a half years in the Ferndale Unified School District. Before that, Dixon taught for a year at Triple Junction High School in the Mattole Unified School District. Triple Junction High School is located in a very rural area of Humboldt County. When Dixon was there, the school served 48 students, many of whom experience the same types of personal and family problems that East High School students experience.

Dixon's science students at Fortuna High School participate in the Reaches to Beaches program, which involves an outdoor hands-on curriculum that includes field trips to conduct water quality tests in watershed areas. Her classes are also raising salmon fry that will be released to the creek near the end of the school year.

14. The three respondents senior to Brown have shown that they possess a number of skills and experiences that might qualify them to serve in the continuation school. Respondents Peterson and Dixon, in particular, possess many of the same attributes that

make Brown an effective continuation high school teacher. Both hold CLAD or CLAD-equivalent certificates, both have experience with the type of hands-on outdoor education life science curriculum used at East High School. But none of the three senior respondents has demonstrated that they possess one of the two skills found necessary to teach in the continuation high school – the ability to teach multiple subjects in a self-contained venue. That is a skill that Brown has shown. And while it might seem incongruous that Peterson is now being passed over even though he was in the past offered the position (or at least a portion of the position) that Brown now holds, that prior offer does not demonstrate that he possesses the special competence the district currently deems necessary to teach at the continuation school.³ Therefore, the district's determination that Brown is entitled to be skipped under Education Code section 44955, subdivision (d)(1), because she has special training and experience necessary to teach in the continuation school which others with more seniority do not possess must be sustained.

Application of Tie-Breaking Criteria

15. The district has adopted criteria to determine the order of termination among employees having the same seniority date. Those criteria provide that employees may be awarded points in eight categories, labeled A through H. The employee with the fewest total points becomes the first employee within that seniority date subject to layoff.

16. Respondent Rachel Heavilin shares a seniority date with Robin Pickering.⁴ Both teach social science. Pickering did not receive a layoff notice and the district intends to retain her for the 2005-2006 school year. In determining to retain Pickering while laying off Heavilin, the superintendent applied the district's tie-breaking criteria and determined that Pickering was entitled to seven points and Heavilin to five points. At the hearing, errors in the application of the tie-breaking criteria were pointed out. The superintendent then reapplied the tie-breaking criteria and determined that Pickering was entitled to six points and Heavilin to three points.

17. Heavilin and Pickering received the same number of tie-breaking points in four categories: A, D, E, and G. Pickering received one more point than Heavilin in each of three categories: B, C, and F. Heavilin disputes the superintendent's awarding points to Pickering in categories B (years of teaching experience previous to current employment) and

³ While it probably would have been in the district's interest to have formally adopted a competency standard for teaching at the continuation school (see Factual Finding 5, above), it cannot be found that it was required to have done so.

⁴ Also sharing a seniority date with Heavilin and Pickering is Heather Brown. Because the district had previously determined to retain Brown for the 2005-2006 school year, the tie-breaking criteria were not applied to her. Heavilin did not present evidence to show that she possesses the special skill and experience necessary to teach in the continuation school. Therefore, the district's failure to determine the relative seniority between Heavilin and Brown is of no consequence; regardless of their rankings on the tie-breaking criteria, Brown would have been retained over Heavilin.

F (multiple language skills relevant to district need). However, is not necessary to determine whether Pickering was properly awarded points in those categories. For even if those points were disregarded, Pickering was properly awarded one point in category C (supplementary authorizations) while Heavilin was awarded none. Both employees possess a single subject social science credential, but Pickering has a supplemental authorization in literature while Heavilin has no supplemental authorizations. Thus, Pickering was entitled to at least one more point than Heavilin on the tie-breaking criteria. The district properly determined that Heavilin was subject to layoff before Pickering.

18. Heavilin's contention that the district failed to comply with Education Code section 44955, subdivision (b), because the tie-breaking criteria were not properly applied before the layoff notices were sent is rejected. First, nothing in section 44955 requires that tie-breaking criteria be applied before layoff notices are sent. Second, even if there was such a requirement, and even if the superintendent's first erroneous calculation (awarding Pickering seven points and Heavilin five) were to be considered a failure to properly apply the criteria, because the proper application of the criteria resulted in the same order of termination, the erroneous first calculation would be considered a nonprejudicial procedural error that would not require the district to retain Heavilin.⁵

LEGAL CONCLUSIONS

Cause for the elimination of 4.0 FTE positions exists in accordance with Education Code sections 44949 and 44955. Cause further exists to give respondents notice that their services will not be required for the 2005-2006 school year. This cause relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notice may be given respondents that their services will not be required for the 2005-2006 school year.

DATED: May 3, 2005



MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

⁵ Education Code section 44949, subdivision (c)(3).