

BEFORE THE GOVERNING BOARD OF THE
DURHAM UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Employment Status of:

KATHLEEN ANDERSON, MICHELLE
EATON, BRIAN GLOVER, KATHY
HARRIS, JACQUELINE LINCOLN and
BILL STEVENS,

Respondents.

OAH No. N2006030916

DECISION

Muriel Evens, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Durham, California, on April 18, 2006.

School and College Legal Services of California, by Elizabeth B. Mori, Assistant General Counsel, represented the Durham Unified School District.

A. Eugene Huguenin, Jr., Attorney at Law, represented all respondents.

The matter was submitted on April 24, 2006.

FACTUAL FINDINGS

1. Dr. Penny Chennell, Superintendent of the Durham Unified School District, made and filed the Accusations in her official capacity.
2. Respondents are certificated District employees.
3. On or before March 15, 2006, in accordance with Education Code section 44949 and 44955, the Superintendent notified the Governing Board of the District (the Board) and respondents in writing of the Superintendent's recommendation that respondents be notified that their services would not be required for the ensuing school year. The Superintendent stated the reasons for the recommendation. The recommendation that respondents be terminated from employment was not related to their competency as teachers.

4. On and before March 15, 2006, a notice of termination was delivered to each respondent, either by personal delivery or by depositing the notice of termination in the United States registered mail, postage prepaid and addressed to the respondent's last known address.

The written notices of termination specifically stated that respondents' services would not be required for the ensuing year. Each notice set forth the reasons for the recommendation.

Each notice advised respondents of their right to a hearing, that each respondent had to deliver a request for a hearing in writing to the person sending the notice of termination and that the failure to request a hearing would constitute a waiver of the right to a hearing.

5. Each appearing respondent timely filed a written request for a hearing to determine if there was cause for not reemploying that respondent for the ensuing year.

6. Accusations were timely served on respondents thereafter. Each respondent appearing in this matter filed a timely Notice of Defense. All prehearing jurisdictional requirements were met.

7. The Board took action to reduce or discontinue the following particular kinds of services for the 2006-2007 school year:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Durham Elementary School:	
Classroom	1.5 FTE
Physical Education	.16 FTE
VAPA	.15 FTE
Durham Intermediate School	
Exploratory (Agriculture)	.20 FTE
Durham High School	
Foreign Language (Spanish)	.20 FTE
Social Studies (World History, Econ./Civics)	.40 FTE
English (English II)	.20 FTE
Science (Biology)	.20 FTE
Art (Drama)	.20 FTE
Industrial Arts (Welding)	.20 FTE
Independent Study	.20 FTE
Total	3.61FTE

The proposed reductions total 3.61 full-time equivalent (FTE) positions.

8. The services were "particular kinds of services" that could be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to

reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper exercise of discretion.

9. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

10. The Board considered all known leaves, attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

11. No certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render except as otherwise discussed below.

12. Respondent Lincoln has a seniority date of October 1, 1995, and holds a permanent .68 FTE position in the elementary school. Respondent Harris has a seniority date of February 9, 1998, and holds a permanent .40 FTE position in the elementary school, with .04 FTE reemployment rights as a result of a previous layoff. Both respondents hold only the Professional Clear Multiple Subject teaching credentials. Neither teacher has held a greater FTE position than set forth here.

Both Lincoln and Harris are senior to certain elementary teachers being retained, and certificated and competent to teach the elementary classes taught by those retained. However, the retained teachers are permanent, full-time teachers in self-contained classrooms. It would not be efficient or in the interests of the children to break up the teaching day or week by dividing the teaching assignment between multiple teachers for one elementary classroom. While the District has permitted two elementary teachers to take a leave for .20 FTE of their full-time assignments, the District has not sought to expand that number.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Cause exists under Education Code section 44949 and 44955 for the Durham Unified School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the Accusations. It is recommended that the Board give respondents notice before May 15, 2006, that their services will no longer be required by the District.

ORDER

The Accusations served on the named respondents are sustained. Notice shall be given to respondents before May 15, 2006, that their services will not be required because of the reduction or discontinuation of particular services as indicated.

Dated: May 5, 2006

A handwritten signature in dark ink, appearing to read 'Muriel Evens', is written over a horizontal line.

MURIEL EVENS
Administrative Law Judge
Office of Administrative Hearings