

BEFORE THE GOVERNING BOARD OF THE
LAGUNITAS SCHOOL DISTRICT
MARIN COUNTY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

YVETTE CONNOR,

Respondent.

OAH No. 2013031165

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on April 23, 2013, in San Geronimo, California.

Noel J. Shumway, Attorney at Law, Lozano Smith, represented complainant Lawrence H. Enos, Superintendent, Lagunitas School District.

Ed Hasson, California Teachers Association, represented respondent Yvette Connor, who was present.

The matter was submitted on April 23, 2013.

FACTUAL FINDINGS

1. Complainant Lawrence H. Enos issued the accusation in his official capacity as superintendent of the Lagunitas School District (district).

2. Respondent Yvette Connor is a certificated employee of the district. She is a full-time (1.0 F.T.E.¹) employee.

3. The district's average daily attendance is approximately 280 students. It operates a K-5 "Waldorf-inspired" program; a K-5 Montessori program; and a K-6 open class. At grade 6 or grade 7, depending on the elementary program the student attended, the programs merge into a middle school semi-departmental program.

4. On March 13, 2013, the district's governing board adopted Resolution No. 2013-06 (the PKS resolution). In that resolution, the board determined that it is necessary to

¹ "F.T.E." means full-time equivalent.

discontinue certain particular kinds of services at the close of the 2012-2013 school year. It states that the particular kinds of services to be discontinued are as follows:

1. Eliminate the equivalent of four tenths (.4) F.T.E. Resource Specialist Teaching Services.
2. Eliminate the equivalent of one tenth (.1) F.T.E. Intervention Teaching Services.

The resolution directs the superintendent to send appropriate notices to the employee whose position may be reduced or eliminated by virtue of the board's action.

The board took this action because the district faces uncertain funding for these two programs.

5. On or before March 15, 2013, the district gave written notice to respondent of the recommendation that her services will be reduced by .5 F.T.E. for the 2013-2014 school year. (All of the proposed reductions called for by the PKS resolution are being effected through reductions in respondent's position.) The reasons for the recommendation were set forth in the preliminary layoff notice. Before issuing the preliminary layoff notice, the district took into account all positively assured attrition.

6. Respondent filed a timely request for hearing to determine if there is cause for reducing her services for the 2013-2014 school year. An accusation was served on respondent, and she filed a timely notice of defense. All prehearing jurisdictional requirements have been met.

7. Respondent holds a multiple subject credential, a supplemental credential in Art, and a Level II Education Specialist credential. This year, respondent's full-time position is divided into .4 F.T.E. as a resource specialist teacher, and .6 F.T.E. as an intervention teacher.

8. If the layoff were implemented in accordance with the PKS resolution, respondent would be left with a .5 F.T.E. position for the 2013-2014 school year. Respondent maintains that she has the right to bump a less senior teacher as to .5 F.T.E. to maintain her full-time position. There are six teachers who are junior in seniority to respondent. Five of the six teachers hold full-time positions; the sixth holds a .6 F.T.E. position, but that teacher has been non-re-elected, and the position will be full-time in 2013-2014. One of those positions is in the district's semi-departmental program for grades 6-8, but the other five are in the district's elementary school program. The district informed respondent that it would not agree to a partial (.5 F.T.E.) bump of a full-time position. The district, however, offered respondent the full-time position of the elementary school teacher who was non-re-elected. Respondent declined the offer.

9. Although the PKS resolution states that the district will “eliminate” .4 F.T.E. of resource specialist services, that is not the case. Superintendent Enos acknowledged at hearing that the .4 F.T.E. of resource specialist services currently being performed by respondent will be transferred to Karen Mansell for the 2013-2014 school year. Mansell is five months senior to respondent. Mansell is currently a .6 F.T.E. resource specialist teacher, and a .4 F.T.E. intervention services teacher. The district’s plan is to have Mansell be a full-time (1.0 F.T.E.) resource specialist teacher in 2013-2014. There will be no reduction in resource specialist services in the district. The evidence did not establish who, if anyone, will perform the .4 F.T.E. intervention services currently performed by Mansell; it appears that the district is anticipating less demand for such services, or that it will fund those services at a lower level.

10. Except as otherwise permitted by statute, no permanent employee is being terminated while any probationary employee, or any other employee with less seniority, is being retained to render a service which the permanent employee is certificated and competent to render.

LEGAL CONCLUSIONS

1. Respondent argues that her position cannot be reduced by .4 F.T.E. if the district is not truly eliminating .4 F.T.E. of resource specialist services. Respondent’s argument is persuasive.

Education Code section 44955 authorizes the governing board of a school district to terminate the services of a permanent teacher when a “particular kind of service is to be reduced or discontinued,” and the board has determined that it is therefore necessary to decrease the number of permanent employees of the district. (Ed. Code, § 44955, subd. (b).) A district may not terminate a teacher pursuant to section 44955 “and yet continue the identical kind of service and position held by the terminated employee.” (*Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 812.)

The sole justification for reducing respondent’s full-time position by .4 F.T.E. is to implement the governing board’s decision to “eliminate” .4 F.T.E. of resource specialist services. Contrary to the terms of the PKS resolution, however, the district is not in fact eliminating .4 F.T.E. of resource specialist services, but is transferring those responsibilities to another teacher.

It is acknowledged that “the *particular kind* of service of the employee may be eliminated even though a service continues to be performed or provided in a different manner by the district.” (*Campbell, supra*, 76 Cal.App.3d at p. 812.) The *Campbell* decision used the case of *Davis v. Berkeley School Dist.* (1934) 2 Cal.2d 770 to illustrate this point. In *Davis*, the governing board terminated the services of “traveling art teachers,” teachers who went from school to school, providing instruction in art. The district terminated the services of these teachers, but continued to offer art instruction by regular art instructors. The court

upheld the board's action on the ground that "the *particular service* performed by the [traveling art teachers] had in fact been discontinued even though the teaching of art was a service still being performed by the school district." (*Campbell, supra*, 76 Cal.App.3d at p. 812; emphasis in original.)

That is not the case here. The particular service performed by respondent – resource specialist teaching services – is not being discontinued, nor is there any evidence that it will be provided in a different manner in the 2013-2014 school year. The service is simply being given to another employee to provide. Under these circumstances, Education Code section 44955 does not authorize the district to terminate .4 F.T.E. of respondent's position.

Cause does not exist, under Education Code section 44955, to reduce respondent's position by .4 F.T.E. due to the asserted elimination of resource specialist services. Insofar as it seeks to reduce her position by .4 F.T.E., the accusation against respondent is dismissed.

2. Respondent argues that she is entitled to bump a junior employee by .1 F.T.E. in order to maintain her full-time position. Respondent cites no authority for this contention, and it is not persuasive.

Under Education Code section 44955, subdivision (c), a district must "make assignments and reassignments in such a manner that employees shall be retained to render a service which their seniority and qualifications entitle them to render." The district did that in this case. It offered respondent a full-time teaching position, which would have recognized her seniority and allowed her to maintain her full-time status. Respondent declined the district's offer. Nothing requires the district to give respondent the full-time assignment of her choice, much less a full-time assignment that would require the creation of new part-time positions. (See *Hildebrandt v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334.)

Cause exists pursuant to Education Code section 44955 to reduce respondent's position by .1 F.T.E. due to the reduction in intervention teaching services. The cause for the reduction in that particular kind of service relates to the welfare of the district's schools and the pupils thereof.

RECOMMENDATION

1. Notice may not be given to respondent that her services as to .4 F.T.E. (resource specialist teaching services) will not be required for the 2013-2014 school year.

2. Notice may be given to respondent that her services as to .1 F.T.E. (intervention teaching services) will not be required for the 2013-2014 school year because of the reduction or elimination of that particular kind of service.

DATED: _____

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings