

BEFORE THE
GOVERNING BOARD OF THE
ST. HELENA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RAMAH COMMANDAY, LINDA
COOLEY, LISA DOXSEE, MARGARET
HILDEBRANDT, and SUSAN WOOD-
DeGUILIO,

Respondents.

OAH No. N2007040003



PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings heard this matter on April 25, 2007, in St. Helena, California.

Lawrence M. Schoenke, Esq., Miller, Brown & Dannis, 71 Stevenson Street, Nineteenth Floor, San Francisco, California 94105 represented the St. Helena Unified School District.

David Weintraub, Esq., Beeson, Tayer & Bodine, 1404 Franklin Street, Fifth Floor, Oakland, California 94612 represented the respondents.

The matter was submitted on April 25, 2007, after receipt of faxed case citations for counsel for District. The fax was marked as Exhibit 9 for identification. The record was reopened on April 27, 2007, upon receipt of two letters of reference that been inadvertently omitted by respondent's counsel from Exhibit C. The letters were added to Exhibit C in evidence. On May 3, 2007, faxed case citations were received from counsel for respondent and marked as Exhibit E for identification. This case was deemed submitted on May 3, 2007.

FACTUAL FINDINGS

1. Allen E. Gordon made and filed the Accusation against respondents in his official capacity as the Superintendent (Superintendent) of the St. Helena Unified School District (District).
2. Respondents Ramah Commanday, Linda Cooley, Lisa Doxsee, Margaret Hildebrandt and Susan Wood-DeGuilio are all certificated employees of District.

3. On March 12, 2007, the Superintendent recommended to the Governing Board (Board) of District that the following particular kinds of services be reduced or discontinued for the 2007-2008 school year:

1.	Director of Special Education	1.0 F.T.E.
2.	School Psychologist	1.0 F.T.E.
3.	Speech and Language Therapy	1.5 F.T.E.
4.	Special Education: Mild to Moderate	1.0 F.T.E.
5.	School Nursing	<u>0.5 F.T.E.</u>

Total 5.0 F.T.E.¹

4. On March 12, 2007, the Board adopted Resolution No. 06-11, reducing or discontinuing particular kinds of services for the 2007-2008 school year and directing the Superintendent or his designee to send appropriate notices to all employees affected by the reduction.

5. On March 13, 2007, the Superintendent gave written notice to respondents Commanday, Doxsee, Hildebrandt and Wood-DeGuilio, pursuant to Education Code sections 44949 and 44955, of the recommendation that their services would not be required for the ensuing school year.² The written notice set forth the reasons for the recommendation.

6. On March 8, 2007, the Superintendent sent respondent Cooley a letter stating, "It is with regret that I inform you that your services will not be needed for the 2007/2008 school year."

7. On March 29, 2007, the Superintendent gave written notice to respondent Cooley, pursuant to Education Code sections 44949 and 44955, of the recommendation that her services would not be required for the ensuing school year. The written notice set forth the reasons for the recommendation.

8. Respondents each made a timely request in writing for a hearing to determine if cause existed for not reemploying them for the 2007-2008 school year. However, respondent Doxsee failed to return a Notice of Defense. District refuses to waive Doxsee's failure to file a Notice of Defense and contends she has forfeited her right to a hearing.

¹ Robert Haley, Assistant Superintendent for District, testified that the indicated services were being reduced because a Memorandum of Understanding between four school districts for shared special education resources was expiring and would not be renewed. All of the reduced services were "called for under the Memorandum of Understanding."

² Employee David Miller was also served with a notice of non-reemployment but did not request a hearing and therefore has waived his right to a hearing.

District provided a Statement to Respondent to each respondent. The Statement to Respondent advised that if a written request for a hearing was not delivered or mailed to the Governing Board within five days of personal service of the Accusation on the respondent, "the Governing Board may proceed upon the Accusation without a hearing." The Statement to Respondent further advised that "failure to request a hearing by the filing of a Notice of Defense within the period specified above will constitute a waiver of your right to a hearing." Doxsee did not file a Notice of Defense. No explanation was provided for her failure to do so. However, District clearly had notice Doxsee wanted a hearing, she was represented by counsel at hearing and there is no evidence of any prejudice to District by her failure to file the Notice of Defense. After considering all of the evidence, it is determined that equity requires that Doxsee be granted a hearing.

7. All prehearing jurisdictional requirements have been met with respect to respondents Commanday, Doxsee, Hildebrandt and Wood-DeGuilio. A dispute exists regarding whether all jurisdictional requirements have been met with respect to respondent Cooley.

8. Respondent Linda Cooley holds a School Nurse Services Credential. District currently employs Cooley as a 0.5 F.T.E. nurse.³ District has assigned Cooley a seniority date of August 20, 2003. Cooley is listed as a temporary employee on District's seniority list. Cooley holds the 0.5 F.T.E. school nursing position that is being eliminated.

9. On March 8, 2007, District sent Cooley a letter advising her that her services would not be needed for the 2007/2008 school year. District believed Cooley to be a temporary employee when it sent her the March 8 letter. It still held that belief when it sent out its initial notices of non-reemployment on March 13, 2007. Therefore, it did not notice Cooley. However, District subsequently learned that the employment contract between District and Cooley listed Cooley as a probationary employee. District then sent Cooley a non-reemployment notice on March 29, 2007.

Cooley contends District may not lay her off because District failed to notify her, pursuant to Education Code sections 44949 and 44955, by March 15, 2007, of the recommendation that her services would not be required for the 2007-2008 school year. District contends its failure to send the notice required by the Education Code by March 15 was a non-substantive, non-prejudicial error because Cooley was given notice of non-reemployment pursuant to the March 8, 2007, letter.

10. The Education Code authorizes a school district to reduce its certificated staff if the school board decides to reduce a particular kind of service. The Education Code also establishes a procedure for implementing the reduction. Under the procedure, the school district must, no later than March 15 of the school year preceding dismissal, give a notice

³ At hearing Assistant Superintendent Robert Haley testified that he believed Cooley's contract currently provides for 0.39 F.T.E. employment.

(preliminary notice) to each certificated employee of the decision recommending that the employee not be reemployed for ensuing school year, stating the reasons therefore and the employee's entitlement to a hearing. The preliminary notice must be personally delivered or deposited in the United States registered mail, postage pre-paid and addressed to the last known address of the employee. A hearing then takes place before an administrative law judge, who prepares a proposed decision which the school board may or may not accept. The board's final decision to terminate and notice to the employee of that decision must be made by May 15. Any employee not given the preliminary and final notices is deemed reemployed for the following school year. (Ed. Code §§ 44955, 44949; *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3rd 627, 631-632; *Campbell Elementary Teachers Assn., Inc. v. Abbot* (1978) 76 Cal.App.3d 796.)

In this case Cooley was notified by letter on March 8, 2007, that her services would not be required for the 2007-2008 school year. However, the letter did not state the reason for the non-reemployment or advise her of her right to a hearing. Therefore, the March 8 letter failed to satisfy the statutory criteria for a preliminary notice. This failure was not a nonsubstantive procedural error. Cooley did not receive proper notice until March 29, 2007, well after the March 15 jurisdictional deadline for such notices. She must therefore be deemed reemployed for the 2007-2008 school year and may not be laid off.

11. Respondent Susan Wood-DeGuilio holds a Pupil Personnel Services: Basic, School Psychology Credential. District currently employs her as a 0.2 F.T.E. psychologist. District has assigned Wood-DeGuilio a seniority date of August 30, 1990.

Respondent Margaret Hildebrandt holds a Pupil Personnel Services: School Counseling, School Psychology Credential. District currently employs her as a 0.8 F.T.E. psychologist. District has assigned Hildebrandt a seniority date of August 21, 2003.

Respondent Ramah Commanday holds a Pupil Personnel Services: Counseling, School Psychology Credential. District currently employs her as a 1.0 F.T.E. special education psychologist. District has assigned Commanday a seniority date of August 16, 2004.

12. Both Wood-DeGuilio and Hildebrandt are senior to Commanday. District proposes to lay off respondents Wood-DeGuilio and Hildebrandt and retain respondent Commanday. District does not allow a part-time employee to bump a full-time employee. It also believes that a full-time psychologist is what is needed for program continuity.

Citing Education Code section 44955, subdivisions (c) and (d), respondents Wood-DeGuilio and Hildebrandt contend they are entitled to retain their positions. Section 4495, subdivision (c), requires that the services of employees noticed for layoff "be terminated in the inverse of the order in which they were employed" and that the governing board of a school district "make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render." Education Code section 44955, subdivision (d), permits a school district to deviate

from terminating a certificated employee in order of seniority if 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 the course or course of study, which others with more seniority do not possess.

Wood-DeGuilio and Hildebrandt argue that pursuant to Education Code section 44955, subdivisions (c) and (d), where several employees are qualified to hold a position, the employees must be terminated in the order of their seniority unless the criteria set forth in Education Code section 44955, subdivision (d), are satisfied. Wood-DeGuilio and Hildebrandt maintain they are qualified to fill the position held by Commanday because they both hold Pupil Personnel Services credentials. They then reason since they are senior to Commanday, and are qualified to hold Commanday's position, and since District has not made a showing of a specific need for Commanday's special training and experience, they must be retained to fill the remaining 1.0 F.T.E. school psychologist position.

Respondents' contentions are not persuasive. Case law establishes that a full time employee cannot be displaced by a part-time employee. *Murray v. Sonoma County Office of Education* (1989) 208 Cal.App.3d 456, is instructive on this issue. In *Murray* a part-time school district nurse was laid off pursuant to Education Code section 44955, but, pursuant to Education Code section 44956, retained a right of preferential hire if the discontinued service was reestablished. A full-time nurse was later hired and assigned to cover the duties the part-time nurse had previously performed. The part-time nurse sought a writ of mandate to compel her rehire as a part-time school nurse. The writ was denied. In reaching its decision the court noted that under section 44956 an employee is entitled to the same (not more) employment rights that she would have had if no layoff had occurred, and that a laid off part-time employee thus was not entitled to be rehired into a full-time position. The court also noted that a part-time employee did not have the right to force the Sonoma County Office of Education to divide a full-time position to accommodate her desire for a part-time position. And it also found that the "service" that was discontinued was the part-time position and not a particular assignment. (And see *King v. Berkeley Unified School District* (1979) 89 Cal.App.3d 1016 [school district acted within its discretion in hiring an employee with less seniority than another employee with preferential rehire rights where the senior employee lacked one of two credentials (i.e., a teaching credential) necessary for a 50 percent counseling and fifty percent teaching position.])

In this case respondents Wood-DeGuilio and Hildebrandt are entitled to the same part-time positions they would have held had no reduction in service occurred. The part-time positions which they are entitled to retain by virtue of seniority and qualifications have been discontinued. Wood-DeGuilio and Hildebrandt do not have the right to force District to divide a full-time position to accommodate their desire for part-time employment. Therefore, District may lay off both Wood-DeGuilio and Hildebrandt.

13. Commanday contends that if she is bumped by Wood-DeGuilio and Hildebrandt, that she should be permitted to bump into the position held by Theresa O'Leary, who has a 2006 hire date and is less senior than Commanday. O'Leary is a temporary 0.6

F.T.E. employee serving under contract in a categorically funded position that requires a Pupil Personnel Services credential. This contention will not be addressed given the conclusion in Factual Finding 12 that Wood-DeGuilio and Hildebrandt may be laid off by District.

14. Respondent Doxsee holds a Clinical Rehabilitation Services: Language, Speech and Hearing Credential. District currently employs her as a 0.5 F.T.E. special education speech pathologist. District has assigned Doxsee a seniority date of September 4, 2003. Doxsee argues she must be retained because she provides speech therapy, which is a mandated service (e.g., speech therapy is required under many Individual Education Plans).

District anticipates that it will be able provide the necessary speech services during the upcoming 2007-2008 school year. If District finds it difficult to provide mandatory services next year, it has the option of changing the manner or method of offering the service. (*Campbell v. Abbot* (1978) 76 Cal.App.3d 796; *Gallup v. Loma School Dist.* (1996) 41 Cal.App.4th 1571.)

15. The evidence established that the District will be reducing services for the ensuing school year.

16. No certificated employee junior to any respondent is being retained to perform services which any respondent is certificated and competent to render.

17. The reduction or discontinuance of services is related to the welfare of the District and its pupils.

LEGAL CONCLUSIONS

1. Each of the services set forth in Finding 3 is a kind which may be reduced or discontinued in accordance with applicable statutes and case law. (See Ed. Code § 44955; *Campbell v. Abbot, supra*, 76 Cal.App.3d 796; *Degener v. Governing Bd.* (1977) 67 Cal.App.3d 689.) The decision to reduce or discontinue the services is neither arbitrary nor capricious but rather a proper exercise of the District's discretion.


2. Cause exists for termination of 5.0 full-time equivalent positions as a result of the reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

3. By reason of the matters set forth in Finding 10 notice may not be given to respondent Linda Cooley.

ORDER

Notice may be given to respondents that their services will not be required for the 2007-2008 school year, except that notice shall not be given to respondent Linda Cooley.

DATED: May 4, 2007



CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings