

BEFORE THE BOARD OF TRUSTEES
OF THE KASHIA SCHOOL DISTRICT
COUNTY OF SONOMA, STATE OF CALIFORNIA

In the Matter of:

MARY CAPONIO,
A Probationary Certificated Employee,

Respondent.

OAH No. 2010040283

PROPOSED DECISION

This matter was heard before Diane Schneider, Administrative Law Judge, State of California, Office of Administrative Hearings, in Sea Ranch, California, on May 10, 2010.

Patrick C. Wilson, Attorney at Law, School and College Legal Services, represented complainant Beverly Flynn, Ed.D., Superintendent, Kashia School District.

James F. DeMartini, Attorney at Law, represented respondent Mary Caponio.

The matter was submitted on May 10, 2010.

FACTUAL FINDINGS

1. The Kashia School District consists of a single K-8 elementary school. The district serves approximately 11 pupils of varying ages, all of whom are Kashaya Pomo Indians. The district is governed by a three-member Board of Trustees.

2. Respondent Mary Caponio is a probationary certificated employee of the district. She began working as the district's lead teacher in the 2007-2008 school year. She is the only credentialed teacher in the district.

3. On March 12, 2010, Beverly Flynn, Ed.D., the district's superintendent and principal, submitted her written recommendation to the board that respondent not be

re-employed as the district's lead teacher.¹ On March 24, 2010, Dr. Flynn signed an Accusation pursuant to Education Code section 44948.5, alleging cause not to re-employ respondent for the 2010-2011 school year. Respondent was properly served with the Accusation and requested a hearing pursuant to Education Code section 44948.5, subdivision (c).²

4. The district's decision not to renew respondent's contract for the upcoming school year was based upon respondent's lack of self-restraint and diplomacy in dealing with the school board, site council and district staff. In respondent's first year of teaching, Dr. Flynn expressed concerns about respondent's professional maturity, judgment, and tact. In a January 18, 2008, addendum to respondent's evaluation, Dr. Flynn wrote:

1. Mary doesn't seem to use good judgment in difficult situations and reacts rather than calming the situation down. She lacks diplomacy and tact which have evidenced in her relationship with the Teacher's Aide.
2. She is not very open and approachable. In fact she seems to discourage other adults from helping or being in the classroom and is so distrustful of her aide that she limits more and more what the aide "may" do or who the aide can work with.
3. She had difficulty accepting new ideas or ways of looking at things. When I give her suggestions she has a reason why everything suggested won't work. When I said she needed to set aside time to talk with the aide she found a way not to do it.

5. These concerns did not resolve with time. In her March 2010 evaluation of respondent, Dr. Flynn wrote:³

There is a theme that runs through many of the parent complaints that relates to their concerns about your sense of respect and fairness -- one student hurts another and the victim comes to you and you call the victim a liar.

¹ Proof of service of Dr. Flynn's March 12 recommendation was not submitted into evidence. Respondent, however, does not contest jurisdiction.

² Due to the unavailability of a witness, the parties stipulated that this hearing could be held on May 10, 2010, three days after the May 7 deadline for the submission of the proposed decision. Accordingly, pursuant to Education Code section 44948.5, subdivision (j), the time for submission of the proposed decision is extended to May 13, 2010.

³ In the 2008-2009 school year respondent was evaluated by Les Crawford, the district's former superintendent.

Dr. Flynn expressed concerns that respondent's harsh words to students who have been victimized may make it difficult for students to feel emotionally safe in respondent's class. Dr. Flynn testified that during her visits to respondent's classroom, she observed respondent "not listen" to students. Dr. Flynn also recounted that respondent had an "extremely adversarial" relationship with her former class aide and that she has engaged in "standoffs" with the school custodian.

6. According to Dr. Flynn, respondent is "not a good listener" and takes "black and white" positions at school board and site council meetings. When conflict arises, respondent tends to "start yelling" at the board and site council members, which is "very uncomfortable" for them. Madeline (Lynne) Morello is the district's business manager and attends site council and school board meetings. Morello described respondent's relationship with the school board as "shaky" and "almost adversarial." According to Morello, respondent is "not at all receptive to ideas offered by the board." At times, respondent has raised her voice and even yelled at the board. Respondent's relationship is "even worse with the site council." In Morello's opinion, respondent "seems to resent their involvement in things."

7. Dr. Flynn observed that respondent is disconnected from the Pomo community as a whole. According to Dr. Flynn, respondent's interpersonal style is at odds with the Pomo people, who "rarely, if ever, raise their voices." Additionally, respondent does not welcome members of the community into her class, either to volunteer or for cultural events.

8. While most of Dr. Flynn's concerns pertain to respondent's conflict-ridden relationships, she also expressed concerns that respondent's teaching methods are "very rote" and do not include the development of critical thinking or collaborative learning.

9. Respondent has positive qualities as a teacher. Dr. Flynn noted in her March 2010 evaluation that respondent gives "corrective feedback in a positive manner and encouraged students in their work." The noise level is conducive to "seatwork," and there is a reward system for good behavior. Respondent organized textbooks and workbooks "to address each student's level of learning." Dr. Flynn also noted that respondent developed instructional plans for each student in the classroom, and that she had chosen field trips that introduced the students to new ideas. Additionally, the STAR test results for the district improved since respondent began teaching there.

10. Respondent acknowledges that she has disagreed with the board and the site council. With the exception of one incident, however, she denies raising her voice or yelling during her interactions with them. She stated that she "does not talk very much," and "just listens." Respondent denied that she refused to take feedback from the site council or board. Respondent also denied refusing a parent's request to volunteer in her classroom. According to respondent, she was not offered such assistance by a parent. Additionally, she denied that she called a student who had been victimized a "liar."

Respondent's testimony was less persuasive than the testimony of Dr. Flynn and Morello, both of whom observed respondent's interactions with members of the site council and the board on numerous occasions. Furthermore, as superintendent, Dr. Flynn was privy to the facts of numerous other conflicts between respondent and members of the school community.

11. In spite of the problems described above, the evidence also established that respondent is a well-meaning and hard-working teacher who devotes a substantial amount of her personal time and funds to support her students. Respondent shops for the school on Saturdays and devotes her Sunday afternoons to lesson preparation for the upcoming week. She also went to great lengths to locate an appropriate consultant for one of her students and spent time helping another student with a college application.

LEGAL CONCLUSIONS

1. The governing board of a school district with an average daily attendance of less than 250 pupils may elect not to reemploy a probationary employee for the following school year for cause. (Ed. Code, § 44948.5.)

2. The ultimate determination whether or not to reemploy a probationary employee remains with the board. (Ed. Code, § 44948.5, subd. (d).) The board is granted broad discretion in this area, subject only to the requirement that the cause for non-reemployment "relate solely to the welfare of the schools and the pupils thereof." (Ed. Code, § 44948.5, subd. (e).)

3. In *Griggs v. Board of Trustees* (1964) 61 Cal.2d 93, 97, the California Supreme Court found that "a teacher's lack of self-restraint and tact in dealing with co-workers, pupils and parents is clearly a matter which relates to the welfare of the school and its pupils" Similarly, respondent in the instant case demonstrated a lack of self-restraint and diplomacy in her dealings with the board, site council, and co-workers. Although she is clearly a well-meaning and hard-working teacher, she has difficulty accepting input from others and has difficulty working through conflicts with others. Thus, while the evidence did not establish that respondent is an incompetent teacher, it did establish that her temperament and teaching style are at odds with the needs of this district. In light of the broad authority vested to school boards of small districts concerning dismissal of probationary employees, the board's action to dismiss respondent cannot be found to demonstrate an abuse of discretion. Accordingly, cause exists not to re-employ respondent for the 2010-2011 school year. The cause is solely related to the welfare of the school and its pupils.

ORDER

Notice may be given respondent Mary Caponio, pursuant to Education Code section 44948.5, that her services will not be required for the 2010-2011 school year.

DATED: _____

DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings