

BEFORE THE
GOVERNING BOARD OF THE
GARVEY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JANET A. HEIGHTLAND, Respondent.	OAH No. L2004040260
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PROPOSED DECISION

Timothy S. Thomas, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 4, 2004 at Rosemead, California.

Daniel E. Wright, Attorney at Law, represented the Garvey School District (hereinafter the District).

Glenn Rothner, Attorney at Law, represented Janet A. Heightland (hereinafter respondent), who was also present.

The District also filed an Accusation against respondent Kathryn Contreras, and a hearing as to her proposed dismissal was scheduled for the same day and time. Ms. Contreras did not attend, and during the hearing her counsel, Mr. Rothner, withdrew the Notice of Defense on her behalf. The hearing therefore proceeded as against Ms. Heightland only.

The matter was submitted on May 4, 2004.

FACTUAL FINDINGS

1. Dr. William Loose, District Superintendent, filed the Accusation in his official capacity.

2. The District operates thirteen schools, including 11 elementary schools and two intermediate schools. While every school has a library, their daily operations are handled by teachers' aides, who are supervised by one District librarian. Following months of study by his staff, the District Superintendent recommended that the Garvey School District Board of Education eliminate the position of District Library/Media Teacher. On March 12, 2004 the governing board of the District passed Resolution No. 03-04-33, which "resolved that it shall be necessary to terminate at the end of the 2003/2004 school year the employment of full-

time equivalent employee positions of the Garvey School District as a result of the above reduction in services.”

3. On March 12, 2004 the Superintendent signed a letter addressed to respondent that notified her of the Board’s decision “that your services will not be required for the 2004/2005 school year. This recommendation is based upon the following reason which relates solely to the welfare of the schools and the pupils of the district:

“Because the particular kinds of services listed below are to be reduced or discontinued not later than the beginning of the school year, it has become necessary to terminate the services of not more than a corresponding percentage of the employees who perform that particular kind of service in the district. The particular kinds of services to be reduced are:

<u>“Service</u>	<u>Number of Full Time Equivalent Positions</u>
“District Library/Media Teacher	1”

4. The letter was served on the members of the governing board and hand-delivered to respondent prior to March 15, 2004, and she timely requested a hearing. On or about April 20, 2004 the Superintendent caused an Accusation to be filed with the Office of Administrative Hearings, and respondent executed a Notice of Defense in a timely fashion. Counsel for the district caused a Notice of Hearing to be timely served on respondent for May 4, 2004.

5. Respondent is a teacher with the District whose original hire date and seniority date are September 1, 1972. Respondent served the District as an elementary grade teacher for many years, and holds a lifetime teaching credential. She is senior to literally hundreds of teachers who are being retained, and whose positions respondent is certificated and competent to fill. The District has expressed an intention to offer respondent her choice of teaching vacancies.

6. In 2000 respondent assumed her current duties as District Library/Media Teacher. Only one such position exists in the District. Respondent’s duties are primarily four: 1) Training and support of library staff in the installation and use of the libraries’ software program (which requires approximately 50% of her time); 2) Assessment of each school’s needs, and the formulation and delivery of recommendations to the schools’ principals for the acquisition of books and materials (25%); 3) Services related to the drafting and revising of the District’s library plan (10%); and 4) Reading to students in the schools’ libraries, and assisting pupils with research and, generally, how to use their libraries (10%). Other miscellaneous responsibilities occupy the remaining 5% of respondent’s time.

7. On February 12, 2004 the Board of Education for the District instructed its Superintendent to work with the various “stakeholders” affected by a statewide “fiscal crisis,” including teachers. Loose wrote to all employees on February 24, 2004 seeking their

input to help "identify possible school configurations and consolidations" in order to avoid layoffs.

8. Deborah Loob, Assistant Superintendent for Instructional Services, is respondent's immediate supervisor. Loob, who testified she was asked by the Superintendent to "find ways to save," explored a number of options that included expanding the duties of the District Library/Media Teacher position. Prior to Loob's employment, the District had eliminated an administrative position that had previously handled the ordering of textbooks for the District (as opposed to library books and materials), and since that time a teacher on special assignment has assumed those duties. That teacher, however, must be paid for extra hours and extra days, as an administrator's workday and work year are longer than a teacher's contractual arrangement. Loob and respondent explored the possibility of the Library/Media Teacher's position assuming textbook ordering responsibilities, but respondent balked at such an arrangement. Loob eventually recommended to the Assistant Superintendent for Human Resources that the textbook procurement administrator's position be filled again, that the libraries be operated in a decentralized manner under the authority of the principals, and that the services related to reading to students at the various libraries by a roving librarian be eliminated. The technology support is to be transferred to the District's technology department. In these ways Loob determined the Library/Media Teacher position could be eliminated.

9. Genaro Alarcon, Assistant Superintendent for Human Resources, testified that he recommended to the Superintendent that respondent's position be eliminated due to "budgetary issues and a decline in enrollment." Decline in enrollment, Alarcon pointed out, has been dramatic. From an historical high in the 1991-1992 school year of 7,322 students, and an enrollment of 6,936 as recently as 2000-2001, the enrollment in the fourth months of 2003-2004 was 6,427. Recently the District mailed a survey to parents in the District describing this trend, adding, "The challenge of declining enrollment facing the District is compounded by the fact the state of California is also plagued by a budget crisis. Potential impacts to the operation of our schools may be severe with shrinking financial resources. (A reduction of more than 1.2 million dollars from the 2004-05 state revenue may be expected due a decline of 249 students in enrollment from 2002-03 to 2003-04.)" One option discussed in the District and mentioned in the survey is the possible need to close a school next year. Alarcon testified that declining enrollment is "one of the variables" considered in the elimination of respondent's position.

LEGAL CONCLUSIONS

1. Respondent challenges the District's action to eliminate the Library/Media Teacher position on three grounds. First, she argues that the District's actual rationale for the reduction in services is a decline in enrollment or average daily attendance (ADA), and the District failed to notify her of that fact in its letter/notice to her of March 12, 2004. Second, respondent asserts that the particular kind of service (PKS) represented by her position is not being eliminated at all, rather, with the exception of the 10% of time she spends reading to students, her duties are merely being reassigned. Therefore, respondent argues that any order

sustaining the District's position in this matter should be limited to the elimination of 0.1 full-time equivalent (FTE) for the position she holds.

2. No later than March 15 a teacher is entitled to notice from the employing district of its intention to not reemploy the teacher for the following school year, and the notice must state the reasons for the decision not to reemploy. (Education Code section 44949(a).) Respondent here contends that the notice to her, which stated as the reason for the decision not to reemploy her a reduction or discontinuation in a particular kind of service, actually misrepresented the reason, in that the evidence at the hearing revealed the primary reason to be a decline in ADA. Respondent describes as "on all fours" Karbach v. Board of Education of the Lawndale School District, 39 Cal. App. 3d 355 (1974) in support of her position. In Karbach, 43 teachers were given layoff notices for the sole reason of a decline in ADA. Since ADA had declined 5.79%, only 13 of the teachers could be terminated on that basis. The hearing officer allowed the district to amend its accusation to add reduction in PKS as an additional reason for the terminations, and the district thereafter adopted the decision of the ALJ allowing the termination of the additional 30 teachers for PKS reductions. The court held the district board had no power to terminate the teachers based upon the March 15 notices that did not recite the actual reason for the attempted terminations. But in our matter while it may be true that a decline in enrollment was an important factor in the decision to eliminate respondent's position, a fair interpretation of the evidence is that a declining ADA is one of two main factors precipitating the decision. The other is described in general as "budgetary issues" and "state fiscal crisis" and is consistently referred to in the testimony of the decision makers and the letters that went out to parents and employees during the months that District staff was seeking input into solutions sought by the Superintendent. No authority is cited or found that requires the District to utilize a statutory ground that is somehow proportional or weighted to the actual analysis leading to the decision to eliminate or reduce positions. It is sufficient that the District specified in its March 15 notice the statutory grounds set forth in Education Code section 44955. (Santa Clara Federation of Teachers v. Governing Board of Santa Clara Unified School District, 116 Cal. App. 3d 831, 841 (1981).) Unlike respondents in Karbach, respondent's position herein is being eliminated, at least in substantial part, for the reason stated in her March 15 notice, a reduction in a particular kind of service.

3. Respondent next argues that the position of Library/Media Teacher is not, in fact, being eliminated or significantly reduced. Rather, the argument goes, her duties will merely be assumed by others, and under the authority of Santa Clara, supra, a PKS allegedly being eliminated cannot be continued by having the services performed by others if there is no difference in the method or manner of delivery of the services. In that case, the district sought to lay off nurses while transferring the services they performed (first aid, health instruction and child abuse complaints) to others. Citing Campbell Elementary Teachers Assoc. v. Abbott, 76 Cal. App. 3d 796 (1978), the Santa Clara court reaffirmed that "a district may not dismiss an employee pursuant to section 13447 [now 44955] and yet continue the identical kind of service *and position* held by the terminated employee." (Santa Clara at page 844. Emphasis added.) The court affirmed the trial court's determination that the health care positions were invalidly eliminated, pointing out that the district offered no

evidence that there would be a difference in the method or manner of provision of the services. (Santa Clara, supra, at page 844.) Campbell and other cases are the source of respondent's candid admission that a particular kind of service may nevertheless be eliminated even though a service continues to be offered if provided in a different manner by the district. (Campbell, supra, at page 812.) Here, unlike in Campbell, substantial evidence supports the conclusion that the services of the Library/Media Teacher would either be eliminated (the reading function), or delivered in a different method or manner (all other duties). The decision to decentralize the function of respondent's position as a roving librarian, and distribute the duties to 13 principals and the District technology department is similar to the changes approved by the court in Davis v. Berkeley School District, 2 Cal. 2d 770 (1934), in which a roving art instructor's duties were assumed by regular teachers at the various campuses. (Davis was cited with approval by Campbell.)

4. Finally, respondent urges that if an order is issued reducing her PKS that the order be to reduce the service by only 0.1 FTE, as only 10% of her services (direct student contact) are being eliminated. For the reasons stated in Legal Conclusion 3, it is determined that the District has the discretion to define the nature, manner and method of the delivery of services to its students, and may eliminate the position entirely. Library/Media Teacher is a PKS that may be reduced or discontinued within the meaning of Education Code section 44955. The decision to eliminate the Library/Media Teacher PKS is related to the welfare of the schools of the District and the pupils thereof.

5. While the District may eliminate the position of Library/Media Teacher, it may not terminate respondent, who is senior to many employees being retained to render services that respondent is certificated and competent to render. (Education Code section 44955.)

ORDER

1. Insofar as the Accusation seeks an order allowing the Garvey School District to reduce or eliminate the position of Library/Media Teacher, it is sustained.

2. As to the continued employment of respondent Janet A. Hightland, the Accusation is not sustained. The District shall offer respondent a position as a teacher consistent with her credential and competence for the 2004-2005 school year.

DATED: May 5, 2004

TIMOTHY S. THOMAS
Administrative Law Judge
Office of Administrative Hearings