

BEFORE THE BOARD OF TRUSTEES OF THE
REDWOODS COMMUNITY COLLEGE DISTRICT
HUMBOLT COUNTY, STATE OF CALIFORNIA

In the Matter of the Accusations Against:

KEITH LEVEL and
DEBORAH NOLAN,

Respondents.

OAH No. N2007030449

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Eureka, California, on April 4, 2007.

Robert J. Henry, School and College Legal Services of California, represented the Redwoods Community College District.

Robert J. Bezemek, Law Offices of Robert J. Bezemek, represented respondents Keith Level and Deborah Nolan, who were present.

Post-hearing briefs were timely filed and the matter was submitted for decision on April 13, 2007.

FACTUAL FINDINGS

1. Jeffrey Bobbitt, Acting President/Superintendent of the Redwoods Community College District, made and filed the accusations in his official capacity.

2. On March 6, 2007, the Board of Trustees of the Redwoods Community College District adopted Resolution No. 603, finding that it was in the best interest of the district that, as of the end of the 2006-2007 school year, "certain particular kinds of services now being provided by the District" be reduced or discontinued as follows:

1. Eliminate the equivalent of one (1.0) F.T.E. Engineering position.¹
2. Eliminate the equivalent of one (1.0) F.T.E. Education position.

The board further authorized the Acting President/Superintendent or his designee to initiate and pursue the procedures necessary to not re-employ the equivalent of two full-time academic employees pursuant to Education Code sections 87740 and 87743.

¹ "F.T.E." means full-time equivalent (FTE).

3. The district anticipates a deficit of about \$4 million for the 2007-2008 school year. It has implemented or is considering a series of cost reduction measures, including: holding vacant administrative positions open; "freezing" vacant academic positions; holding vacant support staff positions open; and, reallocating resources away from low enrollment courses and programs. The proposed discontinuance of the engineering and education positions in this matter is part of these cost reduction efforts.

4. The reduction or discontinuation of particular kinds of services related to the welfare of the district and its pupils.

5. Respondents Keith Level and Deborah Nolan are employed by the district as academic employees. Each holds a 1.0 FTE position. The parties stipulated that the district properly served respondents with the documents necessary to establish jurisdiction in this matter. Level and Nolan requested a hearing to determine if there is cause for not reemploying them for the 2007-2008 school year.

6. Although the board's March 6, 2007, resolution spoke of one FTE engineering position and one FTE education position as "particular kinds of service now being provided," the district did not provide such services in the 2006-2007 school year. Instead, it provided 0.8 FTE in engineering and 0.77 FTE in education.

7. District instructors' teaching loads are tracked by "teaching load units" (TLU). 45 TLU are considered a standard load for a full-time equivalent position.

8. Although there is no engineering department or engineering program as such in the district, it offers a number of engineering courses that are prerequisites for degrees and certificate programs or provide transfer credits for students seeking to transfer to the University of California and California State University systems. In the 2006-2007 school year, those courses amounted to 36 TLU, or 0.8 FTE ($36/45 = 0.8$). Respondent Level taught all of those courses, including Engineering 23 – Engineering Graphics. Level also taught non-engineering courses that constituted the balance of his 1.0 FTE position; the district has not proposed the discontinuance or reduction of these non-engineering services.

9. A few weeks after the board's March 6, 2007 resolution, Acting President/Superintendent Bobbitt and Vice President Sydney Fisher Larson had a conversation with Steven Brown, a professor of drafting technology and former chair of the district's business and technology division. Brown informed Bobbitt and Larson that the Engineering 23 course was a foundational course for several district degree and certificate programs. Brown advised Bobbitt and Larson that it was important to provide the Engineering 23 course in the 2007-2008 school year. Bobbitt and Larson concurred; thus the district will provide two Engineering 23 courses in the 2007-2008 school year. Based on Brown's testimony and respondents' exhibits, it appears that the two Engineering 23 courses to be provided in the 2007-2008 school year will amount to 24 TLU, or about 0.5 FTE. Brown, a long time district employee with more seniority than respondent Level, is scheduled to teach the Engineering 23 courses.

10. Respondent Deborah Nolan was hired in 2004 to teach in the district's education program. Since then, and including the 2006-2007 school year, Nolan has been the only instructor in the district's education program. Nolan holds a 1.0 FTE position, but not all of her teaching was in education courses. In the 2006-2007 school year, 0.77 FTE of her assignment was in education. Nolan also taught general studies courses that constituted the balance of her 1.0 FTE position; the district has not proposed the discontinuance or reduction of these general studies services.

11. Nolan was recently granted an FSA (Faculty Service Area) for music. It was not established that Nolan applied to the district to add this FSA qualification before February 15, 2007.

LEGAL CONCLUSIONS

1. The particular kinds of services provided by the district in engineering in the 2006-2007 school year did not amount to 1.0 FTE. The actual amount of those services was 0.8 FTE, and 0.8 FTE was the maximum amount the district might have eliminated for the 2007-2008 school year. The evidence established further, however, that the district will provide two Engineering 23 courses in the 2007-2008 school year, amounting to 0.5 FTE. Thus, the district will be reducing engineering services by 0.3 FTE (0.8 FTE - 0.5 FTE).

2. Cause for the elimination of 0.3 FTE in engineering exists in accordance with Education Code sections 87740 and 87743. This cause relates to the welfare of the district and its students within the meaning of Education Code section 87740. Cause thereby exists to give respondent Level notice that 0.3 FTE of his service will not be required for the 2007-2008 school year.²

3. The particular kinds of services provided by the district in education in the 2006-2007 school year did not amount to 1.0 FTE. The actual amount of those services was 0.77 FTE, and 0.77 FTE is the maximum amount the district may eliminate for the 2007-2008 school year.

4. Education Code section 87743.3 requires that a faculty member apply to the district to add an FSA before February 15 in order for that FSA to be considered in any proceeding under Education Code section 87743. It was not shown that respondent Nolan met this requirement with regard to her music FSA.

5. Cause for the elimination of 0.77 FTE in education exists in accordance with Education Code sections 87740 and 87743. This cause relates to the welfare of the district and its students within the meaning of Education Code section 87740. Cause thereby exists


² By respondents' calculation, respondent Level may be reduced by 0.4 F.T.E. The record, however, shows the actual amount is 0.3 F.T.E.

to give respondent Nolan notice that 0.77 FTE of her service will not be required for the 2007-2008 school year.

ORDER

1. The district may give notice to respondent Keith Level that 0.3 FTE of his service will not be required for the 2007-2008 school year.
2. The district may give notice to respondent Deborah Nolan that 0.77 FTE of her service will not be required for the 2007-2008 school year.

DATED: *April 25, 2007*


STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings