

BEFORE THE
SUPERINTENDENT OF THE
SAN MATEO COUNTY OFFICE OF EDUCATION
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

VEL ANDERSEN-RANDLE; JENNIFER
ANGERS; HARRIETT BECK;
KATHARINE RIVEIRA; JEANNE
RUSSELL; and JENNIFER SMITH

OAH No. N 2004030299

Respondents.

PROPOSED DECISION

On April 27, 2004, in San Mateo, California, within the facilities of the San Mateo Office of Education, at 101 Twin Dolphin Drive, Redwood City, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings ("OAH"), State of California, heard this matter.

John C. Beiers, Deputy County Counsel, Office of County Counsel, 400 County Center, Sixth Floor, Redwood City, California, 94063, ("Complainant's counsel") represented the Senior Human Resources Administrator for the Office of Education, San Mateo County.

Costa Kerestenzis, Esq., of Beeson, Tayer & Bodine, Attorneys at Law, 1001 6th Street, Suite 500, Sacramento, California 95814-3324, ("Respondents' counsel") represented Respondents in this matter. However, only Respondents Vel Andersen-Randle and Jennifer Angers appeared at the hearing of this matter. Respondent Jeanne Russell remained a party to this matter; but, she was absent from the hearing proceeding. Respondents' counsel represented that Respondents Harriett Beck and Katharine Riveira had withdrawn her respective Request for Hearing form; so that each was no longer a party to the hearing.

The record was held open to afford the parties the opportunity to file written closing arguments. On Thursday, April 29, 2004, OAH received written, by way of telefacsimile transmission from Respondents' counsel a letter brief, which was marked as exhibit "6;" and, the document was received as argument. Also, on April 29, 2004, OAH received from Superintendent's counsel a letter brief, which was marked as exhibit "B;" and, the letter was received as argument.

On April 29, 2003, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. On April 5, 2004, in his official capacity, Reynaldo Santa Cruz, Senior Human Resources Administrator for the San Mateo County Office of Education ("Complainant"), made and filed the respective Accusations regarding Respondents Vel Andersen-Randle; Jennifer Angers; Harriett Beck; Katharine Riveira; Jeanne Russell; and Jennifer Smith.

2. At the hearing of this matter, counsel for Respondent declared that Respondents Harriett M. Beck, Katharine Riveira, and Jennifer Smith had authorized him to withdraw each teacher's respectively filed Request for Hearing. Accordingly, the proceeding did not include evidence regarding their interests.

3. Respondents Vel Andersen-Randle ("Respondent Andersen-Randle"), Jennifer Angers ("Respondent Angers"), and Jeanne Russell ("Respondent Russell") are certificated employees of the Office of Education, who contest the instant proposed teacher lay-off action.

Respondent Angers and Respondent Russell credentialed employees are probationary teachers in either the first year or the second year of service to the Office of Education. Respondent Andersen-Randle is a teacher with permanent or tenured status with the Office of Education. For the current school term, each Respondent has held an assignment in the Community School program of the Office of Education.

4. On March 11, 2004, the Office of Education's Superintendent of Schools adopted Resolution number 04-3.

The resolution recites that it had become necessary for the Office of Education to reduce and/or to discontinue, no later than the beginning of the 2004-2005 school year, particular kinds of services in the form of 7 (seven) FTE (full time equivalent) positions as follows:

Teachers, Court/Community School 7.0 FTE positions

5. The parties stipulate and agree that by individual letter, the Office of Education's dispatched respective preliminary notice¹ to a number of probationary and permanent teachers, including each respondent named in Factual Finding 1, above. The preliminary notice informed the subject certificated employees that the Office of Education's County Superintendent had an intention to reduce or to discontinue the particular service provided by each person who received the notice. Hence, due to the prospective elimination of the particular kind of service now rendered to the District, each of the remaining three respondents learned the Office of Education would not reemploy the individuals in the certificated positions each had worked during the current year.

¹ "Notice that Services Will Not be Required."

Also, in accordance with the stipulation between the parties, the letter conveyed to each Respondent that no certificated employee of the Office of Education having less seniority than each respective respondent would be retained for the 2004-2005 school year to render a service that each respondent is credentialed and competent to render to students under the Office's competency criteria.

6. The written preliminary notice to each respondent from the Office of Education's Superintendent states legally sufficient reasons of the District's Board's intent to eliminate the course as taught by respondents.

7 Respondents each timely requested in writing a hearing to determine whether or not cause exists for not reemploying each respondent for the ensuing school year.

8. District's Human Resources Senior Administrator timely served upon each respondent the Accusation, dated April 5, 2004, and related documents. Each respondent filed timely notices of defense.

9. All pre-hearing jurisdictional requirements were met.

Respondents' Contentions

10. Respondents aver that the Office of Education's action is procedurally defective and improper insofar as the prospective elimination of 7.0 FTE positions, and the corresponding lay-off of credentialed employees, in the Community Schools Program is contrary to law and unnecessary.

In particular, Respondents contend that the lay-off directive will deprive troubled students, who are enrolled in the Community Schools, of essential educational services that are best offered in the setting of the Community Schools. Furthermore, Respondents aver that elimination of Community Schools will violate federal law (i.e., Individuals with Disabilities Act ("IDEA"), 29 United States Code section 794, et. seq.) because certain special education youth may not have Individual Education Plans (IEPs) properly crafted and executed outside the Community School setting.

Respondents' contentions are without merit and are rejected.

11. No Respondent offered evidence, under oath, at the hearing of this matter. Nor did Respondents call any expert witness to offer evidence in support of the contentions argued by Respondents' counsel.

Acts by Designees of the Office of Education

12. John Mehl, Ed.D., the Superintendent for the Office of Education of San Mateo County ("the Superintendent"), appeared at the hearing of this matter to provide credible and persuasive evidence.

The prospective elimination of particular kinds of services for the 2004-2005 school years directly results from a prospective shortfall in money for the Office of Education's budget.

On March 11, 2004, the San Mateo County Probation Officer informed the Superintendent that for the ensuing school year, no probation employees would be assigned to community school class rooms. Probation Officers at the community school rendered vital assistance to classroom teachers by, among other things, maintaining security in the classrooms, which included students who have been released from facilities for juveniles convicted of crimes. Probation Officers also maintain attendance by tracking down tardy or truant students. The Superintendent expressed that the community school program can not operate safely without the presence of probation officers at the facilities. Although the San Mateo County Probation Officer eventually expressed a compromise position to pay half the costs of probation officers at the community schools, under the plan the Superintendent would be required to pay \$128,000 for the ensuing school year in order to gain the necessary number of probation officers at the four community schools² of the Office of Education.

In order to partially aid the Office of Education in crafting a reasonable budget for the ensuing school year, the Superintendent reasonably decided that certain certificated positions be eliminated due to lack of funds to properly maintain safety and security for the community schools program.

The Superintendent in his official capacity was reasonable in his exercise of discretion in executing the procedures associated with lay-offs required by the subject resolution. The Superintendent was not arbitrary, capricious nor fraudulent in carrying out the San Mateo County Office of Education's Resolution 04-3.

13. Ms Susan Larramendy, Associate Superintendent for Student Services of the San Mateo County Office of Education ("Ms Larramendy"), appeared at the hearing to offer credible and compelling evidence.

Ms Larramendy confirmed that the San Mateo County Chief Probation Officer's decision to seek partial funding from the Office of Education for retention of probation officers in classrooms of the Community School would impact the Office of Education in an amount of \$128,000. The Office of Education did not have surplus funds to absorb the costs sought by the Chief Probation Officer.

² The Gateway Center, Community School North, Community School Central and Community School South.

Ms Larramendy represented that 20% of students, who are enrolled in the community schools program, have learning disabilities or are classified as special education needs youth. Some of the students within the Office of Education's Community Schools are eligible to services under the federal government program known as IDEA³ and have educational plans as specified in IEP ("individual education plan") documents.

But, Ms Larramendy established that under IDEA the "school district of residence" is ultimately responsible as the "local educational agency" to assure that affected students receive free and appropriate education under the federal law. Ms Larramendy's office has informed the local school districts of the prospect that the students currently in the community schools must be absorbed for the ensuing school year due to closure of the Office of Education's program for such students. Moreover, Ms Larramendy showed that other alternatives exists (for example, continuation schools and community day schools as operated by local high school districts) for the provision of educational services to students now in the Office of Education Community Schools program.

Ms Larramendy offered that the IEPs for special education students now in the Community Schools program will be crafted to determine the appropriate placement next year for the students, under the principle of "least restrictive environment, which may show the best setting to be a regular school program.

14. Mr. Michael Guevara, Human Resources Coordinator for the San Mateo County Office of Education ("Mr. Guevara") appeared at the hearing to offer credible and persuasive evidence.

Upon learning that the Office of Education was required to initiate lay-off proceedings for teacher employees of the District, Mr. Guevara and other employees of the Office of Education effected reasonable and lawful steps to develop the District's seniority list for the Office of Education's teachers.

Mr. Guevara accurately attended to identifying the Office of Education's seniority list for probationary and permanent employees the dates that established first day of paid service to the Office of Education by the permanent and probationary teachers, who have standing under Education Code sections 44949 and 44955.

Mr. Guevara established that at the time of dispatch of the preliminary notice on March 15, 2004, Respondent Russell and Respondent Angers possessed Multiple Subject Credentials. Neither respondent held a credential in special education disciplines.

Mr. Guevara showed the Respondent Andersen-Randle had been known by his office to hold a Multiple Subject Credential until near the date of dispatch of the preliminary notice. However, a few days before March 15, 2004, the Office of Education's Human Resources

³ Individuals with Disabilities Act, 29 U.S.C. section 794, et seq.

learned that Ms Andersen-Randle held a Learning Handicapped credential. But, Respondent Andersen-Randle offered no evidence that she registered the specialized credential with the District as of the date of execution of her contract with the Office of Education, or before a date shortly before March 15, 2004. Moreover, Respondent Andersen-Randle possessed no credential that would enable her to bump into a position held by a teacher to be retained for next year by the Office of Education. And, Respondent Andersen-Randle provides no competent evidence that the Office of Education has retained any faculty member junior to her for which Ms Andersen-Randle possesses a credential and is competent to teach or to provide service to the Office of Education's students.

Ultimate Findings

15. No competent and credible evidence establishes that as a result of the proposed elimination of the full time equivalent positions respectively held by respondents, the Office of Education will retain any teacher who is junior to respondents to perform services for which respondents have been certificated or found to be competent to teach in such FTE positions for the next school year.

16. The decision of the Office of Education's Superintendent to eliminate or discontinue a total of 7.0 FTE positions as specified in Resolution 04-3, including the positions held by each respondent, was neither arbitrary nor capricious. Rather, the Superintendent's determination was within the proper exercise of the discretion bestowed by law upon the Office of Education.

17. The Office of Education's proposed elimination or discontinuation of the subject full time equivalent positions, including the positions respectively held by respondents, for the ensuing school year, is related to the welfare of the Office of Education and its overall student population.

18. The Superintendent determined that it will be necessary, due to the elimination of particular kinds of services, to decrease the number of teachers before the beginning of the next academic year. The Superintendent lawfully directed the notification to respondents of the elimination of the certificated positions held by each respondent.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955.

2. The Office of Education provided all notices and other requirements of Education Code sections 44949 and 44955. This conclusion of law is made by reason of the matters set forth in Factual Findings 1 and 9.

3. Evidence Code section 664 establishes a presumption that the action or official duties of a public entity, such as the Office of Education and its governing board, have been

regularly performed. Respondents offer no evidence to rebut the presumption that the Office of Education has properly performed actions related to the procedures that seek the non reemployment of respondents.

4. Although not on point as to the facts pertaining to Respondent Andersen-Randle, the recent decision in *Fine v. Los Angeles Unified School District* (March 15, 2004) 2004 DJDAR 3221, offers some guidance.

The *Fine* appellate court opinion sets out that "Education Code section 44330 governs the '[e]ffect of registration' of a teaching credential, and strongly suggests the registration of a credential operates to authorize the teacher's service under that credential, rather than the validity date of that credential.... [¶] Therefore, registration is, by statute, the *sine qua non* for a teacher's service under a credential. Without registration of the credential, service is not authorized.... [¶] In short, the statute does not compel classification retroactive to the validity date of a teaching credential...."

In this matter, no evidence shows that before early March 2004 Respondent Andersen-Randle properly gave notice to the Office of Education that she possesses a credential for Learning Handicapped classroom teaching so that proper consideration could be given to her ability to bump another teacher, with less seniority or qualifications. But, Mr. Guvera showed that through the date of the hearing, the Office of Education could not identify that the affected respondent would have been retained even had she timely registered the credential for the provision of learning handicapped teacher services.

5. Pursuant to Education Code sections 44949 and 44955 cause exists to give respondents notice of the discontinuation of full-time equivalent positions in the particular kinds of services rendered by respondents, by reason of the matters set out in Factual Findings 12 to 16, inclusive, and 18.

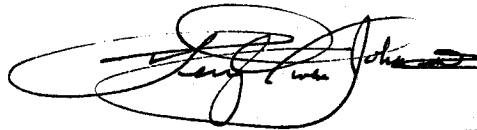
6. The discontinuation of the subject particular kinds of service provided by each respondent relates solely to the welfare of the Office of Education and its students within the meaning of Education Code sections 44949 and 44955, by reason of the matters in Factual Finding 17.

ORDER

1. The Accusation served on each respondent is sustained.

2. Final notice may be given to Respondents Vel Andersen-Randle; Jennifer Angers; Harriett Beck; Katharine Riveria; Jeanne Russell; and Jennifer Smith, that their respective services will not be required for the 2004-2005 school year because of the reduction or discontinuance of the particular kinds of services by the San Mateo County Office of Education.

DATED: May 5, 2004

A handwritten signature in black ink, appearing to read "Perry O. Johnson", is written over a horizontal line.

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings
State of California