

BEFORE THE  
GOVERNING BOARD OF THE  
NAPA VALLEY UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In The Matter Of The Accusation Against:

Catherine George,

Respondent.

OAH No. N2004040318

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on April 27, 2004, in Napa, California.

Sally J. Dutcher, General Counsel, represented the Napa Valley Unified School District.

David Weintraub, Esq., represented Catherine George, who was also present.

The matter was submitted for decision on April 27, 2004.

**FACTUAL FINDINGS**

1. John P. Glaser, Ph.D., is the Superintendent of the Napa Valley Unified School District (District). He made and filed the Accusation in his official capacity as such public officer.

2. Catherine George (respondent) first rendered paid service in a probationary position for the District on August 8, 2001. Since that date she has been and now is a certificated employee of the District.

3. On March 11, 2004, the Governing Board of the District was given notice, in accordance with Education Code sections 44949 and 44955, of Dr. Glaser's recommendation that respondent be notified that her services would not be required for the ensuing school year and stating the reasons for that recommendation.

4. On March 12, 2004, the District served respondent with written notice that it had been recommended that notice be given pursuant to Education Code sections 44949 and

44955 that her services would not be required for the ensuing school year and setting forth the reasons for the recommendation.

5. On March 16, 2004, respondent requested in writing a hearing to determine if there is cause for terminating her services for the ensuing school year.

6. On March 11, 2004 the Governing Board of the District passed and adopted a resolution providing for the reduction or elimination of the following particular kinds of services: Multi-Media Design and Critique – 1.00 Full Time Equivalent (FTE).

7. Respondent is the only teacher in the District who teaches Multi-Media Design and Critique. Although she has seniority over other teachers, none were retained to provide the service that is being recommended for reduction or elimination. Respondent holds no other credential that would make her eligible to bump into another teaching position. She currently teaches under an Education Code provision that allows non-credentialed persons to teach specialized secondary programs who possess unique talents or skills from business, performing arts or post-secondary institutions. (Ed. Code, § 58803.)

Respondent has a Bachelor of Arts degree in Fine Arts from Syracuse University. She has also attended a number of seminars and has received certifications from Macromedia and various other programs. Prior to teaching respondent was a manager and developer with expertise in multimedia product development and production. She has worked for a range of companies including small businesses and large corporations, in marketing groups as well as in software development and engineering organizations. Her twelve years industry experience includes work with Adobe Systems, MP3.com, as well as her own start-up company.

8. Respondent is currently assigned to New Technology High School (NTHS) where she serves as the Digital Media Instructor. She provides 11<sup>th</sup> and 12<sup>th</sup> grade instruction in Digital Media Design and Criticism, I and II. She prepared the following course description:

This year long course is a beginning study in contemporary media. The class is structured around projects emphasizing the art elements of line, shape, form, color, space, and texture. It will introduce the student to the principles of design including typography, perspective, color theory, and layout. Students will develop an appreciation of traditional artistic expression as well as an understanding of the role of contemporary media as a verbal and visual means of communication in today's society. After a brief teacher-led instruction to hardware and software common to the industry, students work together to design, create, critique, and present digital media art projects.

Because courses entitled "Digital Media I and II" are being offered next year at NTHS through the Napa County Office of Education, Regional Occupational Program

(ROP), respondent contends that the District is not really reducing or eliminating a particular kind of service and that she should therefore be retained to teach these courses.

9. NTHS currently provides instruction for high school juniors and seniors only. The District intends to expand NTHS to include grades 9 and 10. NTHS historically had difficulty recruiting students owing to its status as a Grade 11 – 12 School. By adding grades 9 and 10, middle school recruitment can now be initiated. The District plans to add only grade 9 for the 2004-05 school year, and then grade 10 the following school year as the entering 9<sup>th</sup> grade class advances. The projected number of incoming freshmen is 100 and under the collective bargaining agreement additional FTEs will open up at NTHS as a consequence.

Mark Morrison is the principal of NTHS. He and other interested parties convened a special committee to evaluate and establish a complete program for incoming freshmen to ensure that courses are offered them that meet skill and graduation requirements. Thus, a foreign language (Spanish) course was added along with a course called "Power Skills" that is considered a foundational class for the technology-based high school. The committee recommended and the District decided not to offer Digital Media Design and Criticism for the 2004-05 school year. Instead, the District plans to offer Digital Media Design and Criticism, the class currently taught by respondent, to tenth graders but this will not happen until the 2005-06 school year. Respondent has been offered a leave of absence during the interim.

10. The ROP is designed to offer students occupational skills leading to employment. The "Digital Media I and II" courses offered at NTHS next year will be provided directly through ROP. This means that the ROP instructor will be employed and supervised by the Napa County Office of Education and not by the District.<sup>1</sup> Respondent had a big hand in developing the current curriculum for Digital Media Design and Criticism. She believes that next year's "Digital Media I and II" curriculum is essentially identical to that which she now teaches. The District disagrees.

The District notes that within NTHS the ROP program has its own separate computer lab (classroom 9), computers and software. The computer hardware and software are all purchased by ROP funds. Respondent uses a different classroom and equipment/software supplied through the District. ROP programs are also linked to an industry review board so that the curriculum can be regularly supervised and modified to remain current and to change with industry needs. The course currently taught by respondent is not so linked. By definition ROP course offerings are more business and technically oriented with a focus on preparing students age 16 and older to enter the job market with competitive vocational

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<sup>1</sup> Respondent may apply directly for this position through the Napa County Office of Education. However, the governing collective bargaining agreement provides that the Napa County Office of Education must first post the job announcement internally for the ROP Digital Media Teacher position. Qualified in-house applicants are to be provided an opportunity to be interviewed prior to any outside applicants such as respondent.

skills. ROP also incorporates a "capstone" approach which provides students advanced training in viable skills just prior to their becoming employed.

As a result the "Digital Media I and II" courses, unlike the current courses taught by respondent, will place additional emphasis on technical skills and software development and less focus on topography and art. There will also be changes in how the course is presented to students. Up to a third of instruction will be via video and there will be more use of higher end software. The current course does not rely as much, if any, on video instruction. Respondent is certainly capable of teaching "Digital Media I and II" and may be the best qualified to do so. She has laid much of the foundation for these important and innovative programs at NTHS. However, it does not appear that the courses she now teaches are the same as those being offered next year through ROP. Though similar there are different emphases resulting from the courses being offered through ROP.

11. Although "Digital Media I and II" are being offered at NTHS next school year, the District has demonstrated that these courses are not identical to those currently being taught by respondent. The proposed service reduction (Multi-Media Design and Critique – 1.00 (FTE)) is a particular kind of service that may be reduced or discontinued within the meaning of Education Code section 44955.

It was established that the reduction or discontinuation of the particular kind of service is related to the welfare of the schools and the students thereof within the meaning of Education Code sections 44949 and 44955. The decision to reduce or discontinue the service was neither arbitrary nor capricious, but rather a proper exercise of discretion of the District Superintendent.

12. Except as provided by statute, no permanent or probationary certificated employee with less seniority is being retained to render a service which respondent is certificated, competent and legally entitled to render.

### LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceedings exists pursuant to Education Code sections 44949 and 44955, and all notice and other requirements of those sections have been provided as required.

2. A district may not dismiss an employee and yet continue the identical kind of service and position held by the terminated employee, but the particular kind of service of the employee may be eliminated even though the service continues to be performed or provided in a different manner by the district. (*Campbell Elementary Teachers Association, Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 812; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831, 844.) The district has the burden of affirmatively showing that the services at issue would continue to be performed but in a different manner. (See *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 640.) The District has sustained this burden here. The "Digital Media I and II" courses proposed to be offered

next year at NTHS through ROP are sufficiently differentiated from the courses currently taught by respondent in both manner offered and performed. (See Findings 8 through 11.)

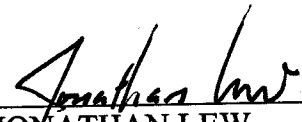
3. Cause exists to reduce the number of certificated employees of the Napa Valley Unified School District due to the reduction and discontinuation of a particular kind of service: Multi-Media Design and Critique – 1.00 FTE. The service identified in the Governing Board's Resolution is a particular kind of services that may be reduced or discontinued pursuant to Education Code section 44955. The Board's decision to reduce or discontinue the identified service was neither arbitrary nor capricious, but rather a proper exercise of its discretion.

4. The reduction or discontinuation of this particular kind of service relates to the welfare of the District and its pupils.

#### ORDER

Notice shall be given to Catherine George before May 15, 2004, that her services will not be required for the 2004-2005 school year because of the reduction or discontinuation of a particular kind of service.

DATED: May 4, 2004

  
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JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings