

BEFORE THE  
GOVERNING BOARD OF THE  
WILLITS UNIFIED SCHOOL DISTRICT

In the Matter of the Accusation Against:

JULIE BECKSTED, ARDELLE FISHER,  
GINA HIRSCH, DAVID-HULSE-  
STEPHENS, SCOT LAMON, JIM  
LAYTON, DAVID LILKER, LIESL  
MASON, KELLER MCDONALD,  
MARETTE MYERS AND ROBERTA  
ZIMMERMAKER,

OAH No. N2004040111

Respondents.

**PROPOSED DECISION**

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings heard this matter on April 29, 2004, in Ukiah, California.

Robert J. Henry, Esq., School and College Legal Services, 5350 Skylane Boulevard, Santa Rosa, California 95403 represented the Willits Unified School District.

James D. Allen, Esq., 726 College Avenue, Santa Rosa, California 95404 represented respondent Marette Myer. None of the other respondents were present or otherwise represented at hearing.<sup>1</sup>

The matter was submitted on April 29, 2004.

**FACTUAL FINDINGS**

1. Steve Jorgensen made and filed the Accusation against respondents in his official capacity as the Superintendent (Superintendent) of the Willits Unified School District (District).
2. Respondents are all certificated employees of District.

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<sup>1</sup> At hearing District indicated that the Notice of Non-reemployment sent to respondent Scot Lamon had been rescinded.

3. On March 10, 2004, the Board of Trustees of District (Board) adopted a resolution finding it was necessary to terminate certain employees due to a reduction or discontinuance of the following particular kinds of services for the 2004-2005 school year:

1.	Elementary teaching positions	2.0 F.T.E.
2.	Middle School teaching positions	1.0 F.T.E.
3.	Title I Reading Specialist positions	2.0 F.T.E.
4.	Resource Special Education teaching positions	1.7 F.T.E.
5.	High School English teaching positions	0.43 F.T.E.
6.	High School Music teaching position	0.14 F.T.E.
7.	High School Spanish teaching position	0.28 F.T.E.
8.	High School Math teaching positions	0.43 F.T.E.
9.	High School Social Studies teaching position	1.0 F.T.E.
10.	Assistant Superintendent position	1.0 F.T.E.
11.	Title I Reading and Math Specialist position	1.0 F.T.E.
12.	Willits High School Counseling position	<u>1.0 F.T.E.</u>

Total 11.98 F.T.E.

The resolution also authorized the Superintendent to send appropriate notices to all employees affected by the reduction.

5. On or about March 10, 2004, the Superintendent gave written notice to respondents, pursuant to Education Code sections 44949 and 44955, of his recommendation that notice be given them that their services would not be required for the ensuing school year. The written notice set forth the reasons for the recommendation.

6. Only respondent Marette Myers made a timely request in writing for a hearing to determine if cause existed for not reemploying her for the 2004-2005 school year. None of the other respondents requested a hearing.

7. An accusation was timely served on respondent Myers and Myers filed a timely Notice of Defense.

8. All prehearing jurisdictional requirements have been met.

9. Respondent Marette Myers holds a Standard Elementary Life Teaching Credential and a Specially Designed Academic Instruction in English (SDAIE) certificate. District currently employs Myers as a 1.0 F.T.E. Title I Reading Specialist. Myers' position is categorically funded. District has assigned Myers a seniority date of August 23, 2002, and classifies her as a second year probationary employee.

10. Myers contends she should have an earlier seniority date. Myers was originally hired by District in 1995 under the Miller-Unruh Basic Reading Act (Miller-Unruh

Act) as a reading specialist. She was hired as a temporary employee. Myers was rehired each succeeding year as a reading specialist through the 2003-2004 school year and worked at least 75 percent of the school year each year of her employment. Myers was classified by District as a temporary employee through the 2002-2003 school year.

11. On January 8, 2003, District's Board adopted a policy that provided in pertinent part:

Any person classified as a temporary employee and employed in a categorically funded program, which is not required by federal or state statute, shall attain second year probationary status upon satisfactory completion of the equivalent of four years of full-time employment.

The Board policy further provided that service as a temporary employee would only be included in computing service toward permanent status if the employee served pursuant to the policy in full-time status during the prior school year and the employee was subsequently employed as a full-time probationary teacher.

Myers had successfully served as a full-time temporary employee for at least four years prior to the 2003-2004 school year and was employed as a reading specialist full-time during the 2003-2004 school year. Therefore, in accordance with the terms of the Board policy District classified Myers as a second year probationary employee for the 2003-2004 school year. Myers was assigned a seniority date of August 23, 2002, which represented her first date of paid service during the prior 2002-2003 school year.

12. Myers contends that pursuant to Education Code section 44909 she should have a seniority date of August 23, 2001. Education Code section 44909 provides in pertinent part:

The governing board of any school district may employ persons possessing an appropriate credential as certificated employees in . . . categorically funded projects which are not required by federal or state statutes. The terms and conditions under which such persons are employed shall be mutually agreed upon by the employee and the governing board and such agreement shall be reduced to writing. Service pursuant to this section shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee unless (1) such person has served pursuant to this section for at least 75 percent of the number of days the regular schools of the district by which he is employed is maintained and (2) such person is subsequently employed as a probationary employee in a position requiring certification qualifications. . . ."

Myers contends that she was actually a first year probationary employee during the 2002-2003 school year because she attained second year probationary status during the 2003-

2004 school year. She then reasons that since she served as a temporary employee of District at least 75 percent of the prior 2001-2002 school year pursuant to Education Code section 44909 her service during the 2001-2002 school year should be credited toward her eligibility for permanent status. Under this analysis Meyers would have completed probation at the end of the 2002-2003 school year and would be entitled to a seniority date that is one year earlier, i.e., August 23, 2001.

13. Myers contention is not persuasive. As noted by District, the Board policy does not grant affected employees first year probationary status. Instead, affected employees remain temporary employees until they attain second year probationary status by fulfilling the conditions set forth in the Board policy. Respondent Myers has not cited any legal authority that mandates the Board grant her first year probationary status. Moreover, Education Code section 44909 provides for hiring of employees into non-mandated categorically funded positions under terms and conditions that are mutually agreed upon by the employee and the governing board. It is undisputed that Myers signed a contract for the 2002-2003 school year in which she was classified as a temporary employee. Lastly, it is worth noting that Education Code section 44909 clearly anticipates only one year of credit for service as a temporary employee. If Myers' interpretation were adopted, it would permit her to use two years of service as a temporary employee as probationary service and allow her to avoid actually serving any probationary period.

14. Respondent Myers alternately contends that she should have been granted probationary status when she was hired as a reading specialist under the Miller-Unruh Act in 1995. Myers primarily relies on Education Code section 54122 which provides that persons employed by school districts as reading specialists under the Act "shall be considered as classroom teachers for purposes of all laws dealing with permanent status of certificated employees employed by school districts." Myers reasons that if Education Code section 54122 requires that a reading specialist employed under the Miller-Unruh Act be treated the same as a regular classroom teacher, then she should have been granted probationary status in the fall of 1995 when she was hired as a Miller-Unruh categorically funded reading specialist. Under such an analysis Myers would have a first hire date of August 31, 1995. There are several persons with more recent hire dates holding positions that Myers could bump into.

15. It is unclear from the language of section 54122 what the Legislature meant when it provided that reading specialists under the Miller-Unruh Act are to be "considered as classroom teachers." No definition or explanation of this requirement is provided in the statute. Myers suggests that section 54122 requires that any service as a reading specialist under the Miller-Unruh Act must be credited toward permanent status. District disagrees with Myers' interpretation. It notes that since adoption of section 54122 in 1981 thousands of teachers have been employed as categorically funded Miller-Unruh reading specialists and there has never been any suggestion that this was legally improper.

Although Education Code section 54122 requires that persons hired as reading specialists under the Miller-Unruh Act be "considered as classroom teachers" for purposes of all laws dealing with permanent status, it does not necessarily follow that this means a person hired as a temporary employee into Miller-Unruh categorically funded reading specialist position is entitled to have such service count toward permanent status. An equally plausible interpretation of section 54122 would be that a person hired as a temporary employee into a Miller-Unruh categorically funded reading specialist position is entitled to progress in the same manner as a classroom teacher hired as a temporary employee into a categorically funded position. Under such an interpretation Myers would be bound by the terms of her contract and would not be entitled to have her temporary service count toward permanent status. (See *Rutley v. Belmont Elementary School Dist.* (1973) 31 Cal.App.3d 702 [individual hired as a substitute teacher to replace a permanent teacher who had resigned was not entitled to classification as a probationary employee where the contract under which the individual was hired specifically classified her as a substitute; terms of the contract were controlling]. Moreover, to interpret section 54122 in the manner suggested by respondent Myers would give persons hired as temporary employees into Miller-Unruh categorically funded reading specialist positions greater rights than classroom teachers hired as temporary employees into categorically funded positions. Pursuant to Education Code section 44909 the service of individuals hired into non-mandated categorically funded positions is not included in the service required to attain or be eligible for permanent status unless specific conditions are met.

Application of the rules of statutory construction also suggests that it was not the intent of the Legislature to require that school districts credit service of individuals hired as temporary employees into categorically funded Miller-Unruh Act reading specialist positions toward permanent status. In determining the meaning of a section, the intent of the Legislature must be ascertained so as to effectuate the purpose of the law. In determining intent a court looks first to the words of the statute, which must be construed in context, keeping in mind the statutory purpose. It must then harmonize, to the extent possible, related statutes and statutory sections. (*Walnut Creek Manor v. Fair Employment & Housing Com.* (1991) 54 Cal.3d 245, 268; cf. *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798. When interpreting a legislative enactment courts must also assume there is an awareness by the Legislature of existing related laws and an intent to maintain a consistent body of law. (*Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors* (1968) 263 Cal.App.2d 41, 54.)

Education Code section 54101 states that the Miller-Unruh Act was enacted "to provide salary payments for reading specialists." This statement of Legislative intent undermines Myers' argument that the intent of Education Code section 54122 was to require that all service as a Miller-Unruh Act reading specialist be counted toward attainment of permanent status.

It is also worth noting that if the interpretation of section 54122 urged by Myers (i.e., that **any** service as a reading specialist under the Miller-Unruh Act must be credited

toward permanent status) is adopted a conflict with Education Code section 44909 would exist. Section 44909 provides that the service of individuals hired into non-mandated categorically funded positions shall not be included in the service required as a prerequisite to attainment of, or eligibility to, permanent status unless certain conditions are met. However, if section 54122 is read to mean that individuals hired as temporary employees into categorically funded Miller-Unruh Act reading specialist positions are entitled to progress in the same manner as classroom teachers hired into categorically funded positions no conflict exists. The provisions of section 44909 would be equally applicable to both groups. The two statutes would be harmonized and the law consistently applied.

Education Code section 44909 provides that the hiring of employees into non-mandated categorically funded positions is to be done under terms and conditions that are mutually agreed upon by the employee and the governing board. Under the terms of the agreement(s) between Myers and District she was hired as a temporary employee (not a probationary employee) in 1995 and each succeeding year except the current 2003-2004 school year. It is therefore found respondent was a temporary employee in 1995 and is not entitled to classification as a probationary employee in 1995 or any year prior to the 2003-2004 school year.

16. The evidence established that the District will be reducing services for the ensuing school year.

17. No certificated employee junior to any respondent is being retained to perform services which any respondent is certificated and competent to render.

18. The reduction or discontinuance of services is related to the welfare of the District and its pupils.

### LEGAL CONCLUSIONS

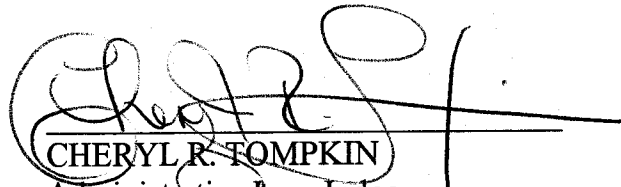
1. Each of the services set forth in Finding 3 is a kind which may be reduced or discontinued in accordance with applicable statutes and case law. (See Ed. Code § 44955; *Campbell v. Abbot* (1978) 76 Cal.App.3d 796; *Degener v. Governing Bd.* (1977) 67 Cal.App.3d 689.) The decision to reduce or discontinue the services is neither arbitrary nor capricious but rather a proper exercise of the District's discretion.

2. Cause exists because of the reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the ensuing school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

## ORDER

Notice may be given to respondents that their services will not be required for the 2004-2005 school year because of the reduction or discontinuation of particular kinds of services.

DATED: May 5, 2004



CHERYL R. TOMPKIN  
Administrative Law Judge  
Office of Administrative Hearings