

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

In the Matter of the Accusation Against:

ERIN DOOLEY
BARBARA PRICE
YOLANDA ROSSI,

OAH No. N2004040134

Respondents.

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Kentfield, California on May 20, 2004.

Larry Frierson, Attorney at Law, 3265 Lake County Highway, Calistoga, California 94515, represented the Marin Community College District.

Respondents Erin Dooley, Barbara Price and Yolanda Rossi were present and were represented by Martin Fassler, Attorney at Law, 1611 Telegraph Avenue, Suite 936, Oakland, California 94612.

The record was held open to allow the parties to submit written argument. Respondents' letter brief was received on May 24, 2004 and was marked as Exhibit B for identification. The district's brief was received on May 26, 2004 and was marked as Exhibit 11 for identification. The matter was deemed submitted on May 26, 2004.

FACTUAL FINDINGS

1. On March 9, 2004, the Board of Trustees of the Marin Community College District adopted Resolution No. 2004-3-4-12C, in which the board resolved to reduce or discontinue the following particular kinds of services for the 2004-2005 school year and authorized the interim superintendent/president or her designee to initiate the procedures necessary to not reemploy academic/certificated employees pursuant to Education Code sections 87740 and 87743:

	<u>Full-Time Equivalents</u>
Child Care Program	3.12
Director of Child Care Programs	.12
Assistant Site Supervisor	1.00
Teacher	2.00

2. The district operates child care centers at its two campuses. The centers provide child care services both for children of students at the campuses and for children of community members. Respondents are all employees of the child care centers. They are "permit teachers" who may be laid off at any time under the provisions of Education Code section 8366. However, pursuant to the collective bargaining agreement between the district and United Professors of Marin, respondents have been afforded layoff rights under sections 87740 and 87743. Respondents do not have bumping rights into any other programs offered by the district.

3. The interim superintendent/president gave written notice to respondents that it had been recommended that notice be given them that their services would not be required for the 2004-2005 school year. Respondents all filed timely requests for hearing and notices of defense. All jurisdictional requirements of Education Code sections 87740 and 87743 have been met.

4. The interim superintendent/president's recommendation to the board included a one-page explanation of her recommendation and a series of budgets representing four options for operation of the child care centers for the 2004-2005 school year. Option 1 represented continuation of the centers at their current levels, i.e., preschools at each of the college's two campuses and a toddler center at the Indian Valley campus, with a total of 72 slots for children.¹ This option showed a projected deficit of \$97,437. It noted, however, as did each of the budget options, that the district was "applying for \$80,000 one time local grant." Although in the explanation of her recommendation the interim superintendent/president said that the Marin Education Foundation "had agreed to accept a proposal" to fund the \$80,000 grant, at the hearing she testified that the grant funds did not become available until after the board adopted Resolution No. 2004-3-4-12C. The budget option the interim superintendent/president recommended, and which the board adopted, was Option 2. This called for the elimination of the Indian Valley toddler program, with the preschool programs at each campus remaining intact. The number of children's slots available under this option dropped to 56, with 56 College of Marin families and 72 total families to be served. Under this option the projected deficit (without consideration of the \$80,000 grant) dropped to \$47,196.² Although the budget for the current (2003-2004) school year showed a projected year-end surplus for the child care centers of \$84,192, each of the budget options showed a carryover to 2004-2005 of only \$70,000.

¹ The centers actually serve more than 72 children. Because some children attend for only part of the day, more than one child may be accommodated in a single "slot." In the current school year, the centers serve the children of 56 College of Marin students and of approximately 40 more community families. The total number of children in the centers was not established.

² Option 3 called for elimination of the Indian Valley preschool, leaving its toddler program and the Kentfield campus preschool intact. It showed a projected deficit of \$73,050. Option 4 called for elimination of all child care services at the Indian Valley campus, leaving only the Kentfield preschool, and showing a projected surplus of \$40,885. Again, the \$80,000 grant was not considered in either of these budgets.

5. Since the board adopted Resolution No. 2004-3-4-12C, additional funds have been found that significantly change the budget numbers. In particular, the district has identified an additional \$20,000 in parent fees that had not been included in the various budget options and the budget carryover from the current school year is now projected to be \$141,854 rather than \$84,192. As a result, the updated projection for Option 2, including the \$80,000 grant and the \$141,854 carryover, shows that the program would end the 2004-2005 school year with a surplus of \$82,517, not the deficit of \$47,196 that was presented to the board.

6. Respondents point out that, with the updated budget numbers, keeping the child care center program intact for the 2004-2005 school year would result in the program showing a \$37,656 surplus at the end of that year rather than the \$97,437 deficit that was presented to the board. Respondents contend that there are therefore no financial circumstances that make it necessary to reduce the child care center program and to terminate their employment. Respondents argue that, because the district administrators "misled" the board about the district's financial condition and because financial circumstances do not necessitate the layoff of child care center employees, to lay them off would be an arbitrary and capricious act that violates the Education Code.

7. The interim superintendent/president concedes that the district could run the child care program at its existing level for the 2004-2005 school year without creating a deficit. However, doing so would result in a very small end-of-the-year carryover and, she notes, the program "has been living off carryover money." The carryover for the current year was reduced by nearly 50% from the prior year. If the program were to remain at its current level for the 2004-2005 school year (Option 1), the projection for the 2005-2006 school year shows that the program would end that year with a deficit of \$189,884. The district's dean of enrollment services, who has direct responsibility for the child care program, testified that this deficit would be so severe that the district would be forced to eliminate all child care at both campuses unless a new funding source could be found. And it was noted that the Marin Education Foundation's \$80,000 grant comes with a stipulation that requires the district to follow through with a strategic plan that would make the child care centers self-funding. Respondents do not dispute that, if no cuts are made in the program, the district will be unable to operate the child care centers on a self-sustaining basis for 2005-2006. But they assert that the district's 2005-2006 projections are based on "a series of pessimistic assumptions." (Conversely, the district asserts its assumptions were "prudent" ones.)

8. There is no evidence the district acted fraudulently, arbitrarily or capriciously. It is true the budget numbers upon which the interim superintendent/president made her recommendation to the board have changed, and that it would now be possible to keep the child care program intact for the 2004-2005 school year without creating a budget deficit. But that does not make the district's decision to go forward with the proposed reduction an arbitrary or capricious one. The district and the board have broad discretion in determining whether and to what extent to reduce services. Here, while the district could continue to provide child care services at their current level without creating an immediate budget

deficit, it has determined that the longer term effects of doing so would result in the creation of a larger, and essentially unmanageable, deficit. Whether the assumptions the district has based that determination upon are properly characterized as "pessimistic" or "prudent" is of no consequence. It is within the district's and the board's discretion to opt for a small reduction in services now in order to increase the chances of saving the child care program in future years. And such a decision, taken in consideration of the overall welfare of the child care program and of the colleges and their students, cannot be found to be fraudulent, arbitrary or capricious. No abuse of discretion was shown.

9. Respondent Yolanda Rossi is the designated assistant site supervisor at the Kentfield child care center. She is the only designated assistant supervisor at the site. It is undisputed that state law requires child care centers to have a site supervisor at the facility at all times. A site supervisor is a position for which the Department of Education issues a special permit. No such permit is required to be an assistant site supervisor and the law does not require that a facility have an assistant supervisor. The district has not yet determined whether there will be assistant site supervisors at either child care center next year. Nor has the district yet determined how the requirement that a site supervisor be present at all times will be met should the supervisor need to be absent from the facility. But teachers can be designated to serve as assistant site supervisors in the absence of the site supervisor, and that is what the district sometimes does now. Respondent Rossi has failed to establish that her designation as an assistant site supervisor somehow insulates her from layoff in this proceeding.

LEGAL CONCLUSIONS

1. Respondents' assertion that Education Code section 87743 permits districts to lay off employees only when *necessary* is correct. But respondents seem to read that section to mean that layoffs may occur only when there is a financial necessity. What the section actually provides, however, is that a district may lay off certificated employees only when "it shall have become necessary by reason of" either a decline in attendance or a reduction in particular kinds of services. In other words, section 87743 does not require a district to show that financial difficulties have made it necessary to lay off employees, rather the district must only show that the reduction of services necessitates the layoff. Here, the district has done that since the elimination of the Indian Valley toddler center means the district will require fewer employees to operate the child care program. The "necessity requirement" of section 87743 has been met.

2. Cause for the elimination of 3.12 FTE positions exists in accordance with Education Code sections 87740 and 87743. This cause relates to the welfare of the colleges and the students thereof within the meaning of Education Code section 87740. Cause thereby exists to give respondents notice that their services will not be required for the 2004-2005 school year.

ORDER

Notice may be given respondents Erin Dooley, Barbara Price and Yolanda Rossi that their services will not be required for the 2004-2005 school year.

DATED: May 27, 2004

MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings