

BEFORE THE GOVERNING BOARD OF THE
MERCED CITY SCHOOL DISTRICT

In the Matter of the Employment Status of:

MARY BARRAZA., et al.,

Respondents.

OAH No. 2009030053

PROPOSED DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Merced, California, on April 14, 2009.

James Scot Yarnell, Attorney at Law,¹ represented the complainant, Rosemary Parga-Duran, Acting Superintendent, Mariposa County Unified School District.

Ernest H. Tuttle, III, Attorney at Law,² represented the respondents. There are 14 respondents, and they are listed in exhibit A.

The matter was submitted on April 14, 2009.

FACTUAL FINDINGS

GENERAL FINDINGS CONCERNING STATUTORY REQUIREMENTS

1. Respondents are certificated district employees.
2. Not later than March 15, 2009, in accordance with Education Code sections 44949 and 44955,³ the superintendent of the school district caused the governing board of the district and respondents to be notified in writing that it was recommended that respondents be notified that the district would not require their services for the ensuing school year. The notice stated the reasons for the recommendation. The recommendation was not related to respondents' competency.

¹ James Scot Yarnell, Attorney at Law, 2485 Natomas Park Drive, Suite 240, Sacramento, California 95833.

² Ernest H. Tuttle, III, Attorney at Law, 750 East Bullard Avenue, Suite 101, Fresno, California 93710.

³ All references to the Code are to the Education Code unless otherwise specified.

3. A notice was delivered to each respondent, either by personal delivery or by depositing the notice in the United States mail, registered, postage prepaid, and addressed to respondent's last known address.

4. The notice advised each respondent of the following: He or she had a right to a hearing. In order to obtain a hearing, he or she had to deliver a request for a hearing in writing to the person sending the notice. The request had to be delivered by a specified date, which was a date that was not less than seven days after the notice of termination was served.⁴ And the failure to request a hearing would constitute a waiver of the right to a hearing.

5. Respondents timely filed written requests for a hearing to determine whether there was cause for not reemploying them for the ensuing year. An accusation was timely served on respondents. Respondents were given notice that, if they were going to request a hearing, they were required to file a notice of defense within five days after being served with the accusation.⁵ Respondents filed timely notices of defense. All prehearing jurisdictional requirements were met.

6. The governing board of the district resolved to reduce or discontinue particular kinds of services. Within the meaning of Code section 44955, the services are "particular kinds of services" that can be reduced or discontinued. The decision to reduce or discontinue these services was not arbitrary or capricious but constituted a proper exercise of discretion.

SERVICES THE DISTRICT INTENDS TO REDUCE OR DISCONTINUE

7. The governing board of the district determined that, because particular kinds of services are to be reduced or discontinued, it is necessary to decrease the number of permanent employees in the district by 75 full time equivalents (FTE).

8. The particular kinds of services the governing board of the district resolved to reduce or discontinue are:

Elementary Instructional Services:

Elementary Classroom Instruction	56.00 FTE
Special Day Class Instruction	2.00 FTE
TSA Reading First Coach	7.00 FTE
TSA Content Specialist	4.00 FTE
TSA Preschool Instructional Coach	2.00 FTE

⁴ Employees must be given at least seven days in which to file a request for a hearing. Education Code section 44949, subdivision (b), provides that the final date for filing a request for a hearing "shall not be less than seven days after the date on which the notice is served upon the employee."

⁵ Pursuant to Government Code section 11506, a party on whom an accusation is served must file a notice of defense in order to obtain a hearing. Education Code section 44949, subdivision (c)(1), provides that, in teacher termination cases, the notice of defense must be filed within five days after service of the accusation.

TSA Family Literacy Specialist 1.00 FTE

Administrative Services:

Director 1.00 FTE
Coordinator 1.00 FTE
Assistant Superintendent 1.00 FTE

FINDINGS REGARDING OTHER MATTERS

9. Complainant noted that, because of additional attrition, the district was dismissing the accusation against one of the teachers who did not request a hearing and, therefore, is not a respondent in this matter. The teacher is Pang Moua.

10. The parties stipulated that, because of additional attrition, the accusation against respondent Kia Vang should be dismissed.

SUMMARY OF FINDINGS REGARDING RETENTION OF EMPLOYEES

11. With regard to respondents who are permanent employees, the district is not retaining any probationary employee to render a service that such a respondent is certificated and competent to render.

12. With regard to respondents who are permanent employees, the district is not retaining any employee with less seniority than such a respondent has to render a service that the respondent is certificated and competent to render.⁶

13. With regard to respondents who are either permanent or probationary employees, the district is not retaining any employee with less seniority than such a respondent has to render a service that the respondent's qualifications entitle him or her to render.⁷

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Code sections 44949 and 44955. All notice and jurisdictional requirements contained in those sections were satisfied.

⁶ Code section 44955, subdivision (b), provides seniority protection for a *permanent* employee in terms of the services the employee is "*certificated and competent to render.*"

⁷ Code section 44955, subdivision (c), provides seniority protection for both *permanent and probationary* employees in terms of the services an employee's "qualifications entitle [him or her] to render."

2. Within the terms of Code sections 44949 and 44955, the district has cause to reduce or discontinue particular kinds of services and to give notices 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.

ORDER

The accusation against Kia Vang is dismissed.

The district may give notice to the remaining respondents that the district will not require their services for the ensuing school year.

Dated: April 23, 2009


ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

LAST	FIRST	EXHIBIT A			
Barraza	Mary				
Boykin	Elisa				
Fullerton	Thomas				
Garcia	Kodi				
Guzman-Valdez	Esthela				
Lee	Nilda				
Machado- Tritthart	Maria				
McCarthy	Jeri				
Morgan	Kristin				
Saechao	Lo				
Saelaw	Fahmhinh				
Simmons	Erica				
Sychanthavong	Kongkham				
Vang	Kia				