

FACTUAL FINDINGS

1. Rodney J. Van Norman, Superintendent of the District, filed the Accusation in his official capacity.

2. Respondents are certificated employees of the District.

3. On or before February 4, 2009, the Superintendent of the District recommended that the Board give notice that certain services performed by certificated employees be reduced or eliminated for the 2009-2010 school year. The Superintendent also recommended that the Board adopt a resolution to reduce or discontinue particular kinds of services for the 2009-2010 school year. Specifically, the Superintendent recommended the reduction and/or elimination of 81 full-time-equivalent (FTE) certificated employees as follows:

Self Contained Classroom Instruction, Grade K-6	18.0 FTE
Math	1.16 FTE
History	1.0 FTE
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Total	20.16 FTE

4. On February 4, 2009, the Board adopted Resolution 08-08-13 to discontinue or reduce the particular kinds of services set forth in Factual Finding 3. The Board further determined that based on the discontinuance or reduction of services, it would be necessary to decrease the number of certificated employees at the close of the present school year by a corresponding number of full-time equivalent positions. The Board also directed the Superintendent to notify the employees affected by the Board's resolution.

5. In Resolution 08-09-12, adopted February 4, 2009, the Board established tie-breaking criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination and reemployment would be based on the needs of the District and its students in accordance with the specific criteria set forth in the resolution. The District properly applied the tie-breaking criteria in this case for the Respondents with a seniority date of August 10, 2006.

6. Prior to March 15, 2009, the Superintendent notified certificated employees, including Respondents, in writing that it had been recommended their services would not be required for the next school year. The mailing included the reasons for the notification. Respondents made timely requests for hearing.

7. On March 18, 2009, the District Superintendent made the Accusations against Respondents.

8. Notices of Defense were timely filed by Respondents. All prehearing jurisdictional requirements were met.

9. On or about April 20, 2009, the District rescinded the layoff notices previously issued to Respondents Maryanna Baldrige, Dorothy Bones, Susan Hemmis, Michelle Hubkey, and Mary Vallejo. Respondents Judith Austin and Aida Ortiz waived their right to a hearing.

10. The reduction or discontinuation of the particular kinds of services set forth in Factual Finding 3, related to the welfare of the District and its pupils.

11. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid service in a probationary position), current assignments and locations, advanced degrees, credentials, and authorizations.

12. Respondents assert that Stephanie Lynn Ebeltoft, an employee holding an Internship Multiple Subject Teaching Credential since September 2007, was improperly released after serving the as a temporary employee for the 2007-2008 school year. Education Code section 44954 requires notification of release or non-reelect of temporary employee before the end of the school year in which the teacher is serving in a temporary capacity. Respondents' contention is not persuasive. In a letter dated February 26, 2009, the District informed Ms. Ebeltoft that "all employment with this District will end on or before June 30, 2008." This is sufficient notification under section 44954.

13. The District used the Seniority List to develop a list of employees who are assigned in the various services being reduced, and therefore subject to layoff. The District properly discharged its discretionary duties in determining which employees would be subject to layoff.

14. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents.

2. A District may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Cause was established as required by Education Code sections 44949 and 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services. The Board's decisions to reduce or eliminate the identified services were neither arbitrary nor capricious. The decisions relate solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949.

4. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

ORDER

Notice may be given to Respondents Amy Armstrong, Judith Austin, Jennifer Kurfess, Cindy McNutt, Keith Meyer, Jessica Mountz, Aida Ortiz, and Christine Shoptaw, that their services will not be required for the 2009-2010 school year.

Dated: May 5, 2009

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings