

BEFORE THE
BOARD OF EDUCATION OF THE
CYPRESS SCHOOL DISTRICT
COUNTY OF ORANGE
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

Julie Anderson, Rachel England, Lindsay
Lennon, Megan Marshall, Viviana Martin,
Tiffany Michalka, Deanna Ragle, Eunice
Tasser, Nicole Terall, and Mary Van Cott-
Hand,

Respondents.

OAH Case No. 2009030596

PROPOSED DECISION

Amy C. Lahr, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 21, 2009, in Cypress, California.

David C. Larsen, Attorney at Law, represented Linda S. Snell (Snell), Assistant Superintendent Human Resources and Instruction, of the Cypress School District (District).

Kent Morizawa, Attorney at Law, represented Julie Anderson, Rachel England, Lindsay Lennon, Megan Marshall, Viviana Martin, Tiffany Michalka, Deanna Ragle, Eunice Tasser, Nicole Terall, and Mary Van Cott-Hand (Respondents).

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2009-2010 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2009-2010 school year.

At the hearing, the District withdrew the Accusation against Rachel Victoreen.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Assistant Superintendent Snell filed the Accusation in her official capacity.

2. Respondents are certificated employees of the District.

3. On March 10, 2009, the governing board of the District (Governing Board) adopted Resolution number 0809-12, reducing or discontinuing the following services for the 2009-2010 school year:

<u>Service</u>	<u>Full-Time-Equivalent Positions</u>
Class Size Reduction in Kindergarten (Option 1 to Option 2)	8.0
Multiple Subject Self-Contained Instruction (Grades 1-6)	7.0
Specialized Instructional Program Offerings	
Music Program	2.0
Resource Specialist Program	<u>1.0</u>
Total	18.0

4. Assistant Superintendent Snell thereafter notified the Governing Board that the Superintendent recommended that notice be provided to Respondents that their services will not be required for the 2009-2010 school year due to the reduction or discontinuance of particular kinds of services.

5. By March 15, 2009, Assistant Superintendent Snell provided notice to Respondents that their services will not be required for the 2009-2010 school year due to the reduction or discontinuance of particular kinds of services.

6. Respondents timely requested hearings and filed notices of defense, to determine if there is cause for not reemploying them for the 2009-2010 school year.

7. All prehearing jurisdictional requirements have been met.

8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.¹

9. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 primarily because of the uncertainty surrounding future funding. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

10. The reduction of services set forth in factual finding number 3 is related to the

¹ All further references are to the Education Code.

welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

11. At the hearing, Respondent Eunice Tasser testified regarding her seniority date. She does not disagree with its accuracy; rather she is dissatisfied that the school will not honor her prior seniority date. Ms. Tasser previously taught for the District, and resigned in 2007. The District restored Ms. Tasser's status, salary, and benefits, and entered her new seniority date as her date of rehire, August 27, 2008. Ms. Tasser acknowledged that her new seniority date is in accordance with the Education Code, but she asked the District to make an exception and use her original hire date, August 27, 1999. As the District properly explained, the law requires that Ms. Tasser's new seniority date be the date of her rehire, August 27, 2008. (Section 44848; *San Jose Teachers Assn. v. Allen* (1983) 144 Cal. App. 3d 627, 631 "When a permanent certificated employee resigns and is reemployed within 39 months, the reemployment restores all individual rights, benefits and burdens of a permanent employee; however, for seniority purposes, the employee does not regain his or her original hiring date.") Accordingly, the District's calculation of Ms. Tasser's seniority date is correct.

12. Ms. VanCott-Hand testified that she believes that she is qualified to be a Site Program Coordinator (SPC). The SPC position requires a credential authorizing instruction of core subjects for students from kindergarten through sixth grade, which Ms. VanCott-Hand does not possess. The District established that Ms. VanCott-Hand does not possess the proper credential to be retained in the SPC position, or any other position to which any junior employee has been retained to render.

13. No certificated employee junior to any Respondent was retained to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 8.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 13.

4. Cause exists to terminate the services of Respondents Julie Anderson, Rachel

England, Lindsay Lennon, Megan Marshall, Viviana Martin, Tiffany Michalka, Deanna Ragle, Eunice Tasser, Nicole Terall, and Mary Van Cott-Hand, by reason of factual finding numbers 1 through 13, and legal conclusion numbers 1 through 3.

ORDER

The Accusation is sustained and the District may notify Respondents Julie Anderson, Rachel England, Lindsay Lennon, Megan Marshall, Viviana Martin, Tiffany Michalka, Deanna Ragle, Eunice Tasser, Nicole Terall, and Mary Van Cott-Hand that their services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services.

DATED: April 29, 2009

AMY C. LAHR
Administrative Law Judge
Office of Administrative Hearings