

BEFORE THE
GOVERNING BOARD OF THE
FOUNTAIN VALLEY SCHOOL DISTRICT
COUNTY OF ORANGE
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

Jessica Boyles, et al.,

Respondents.

OAH Case No. 2009030749

PROPOSED DECISION

Amy C. Lahr, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 22, 2009, in Fountain Valley, California.

Spencer E. Covert, Parker & Covert, L.L.P., represented Dr. Barry Blade (Blade), Deputy Superintendent Human Resources and Business Services, of the Fountain Valley School District (District).

Jesus E. Quinonez, Holguin, Garfield & Martinez, P.C., represented Jessica Boyles, Julie Breiter, Jody Brekke, Autumn Burza, Ashley Clendenin, Jill Doyle, Tara Erb, Elizabeth Hudson, Rebecca Jensen, Mindy Olson, Dawn Rose, Michelle Siefker, Amelia Terich, Kelly Woods, Tiffini Workman, Kevin Yamabe, and the Principal (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 Andrea Benson, Emily Harvest, and the Principal. The District requested that the Principal not be referred to by name; they are identified as number 15 in the alphabetical list of layoff notices, at Exhibit 2.

During the hearing, Respondent's counsel requested that the District provide the names and positions held by 15 employees, who submitted letters of resignation or retirement prior to March 15, 2009. The request is denied, as explained below.

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

FACTUAL FINDINGS

1. Dr. Blade filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. On February 19, 2009, the Governing Board of the District (Governing Board) adopted Resolution number 2009-19, reducing or discontinuing the following services for the 2009-2010 school year:

| <u>Service</u> | <u>Full-Time-Equivalent Positions</u> |
|---|---------------------------------------|
| Elementary Classroom Teachers K-5 | 18.0 |
| School Counselors | 2.0 |
| Middle School Activities Directors (6 periods; 2 per Middle School) | 1.0 |
| Middle School (3 periods each Supervision & Technology) | 1.0 |
| School Reading/Literacy Specialists K-5 | 4.0 |
| School Reading/Literacy Specialists/Middle School | <u>1.0</u> |
| Total | 27.0 |

4. Superintendent Marc Ecker thereafter notified the Governing Board that he recommended that the services be discontinued or reduced accordingly; and he directed his designee to provide 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.

5. By March 15, 2009, the Governing Board 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.

¹ All further references are to the Education Code.

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 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. A total of 15 certificated employees notified the District before February 19, 2009, that they will resign or retire at the end of the 2008-2009 school year. The Governing Board considered those resignations and retirements in coming to its resolution to reduce or eliminate particular kinds of services. Such a determination is properly within the District's discretion. (*San Jose Teachers Ass'n v. Allen* (1983) 144 Cal. App. 3d 627, 635-36.) Therefore, those resignations and retirements do not reduce the number of employees to be terminated. Accordingly, Respondents are not entitled to the names and positions of those employees.

12. Since the February 19, 2009, resolution, on or about April 12, 2009, one teacher who held a speech credential, died. Because this teacher did not provide a particular kind of service that is subject to the instant layoff, the District was not required to reduce the layoff number. (*San Jose Teachers, supra* 144 Cal. App. 3d at 635.)

13. Resolution number 2009-26, adopted at the Governing Board's meeting on March 12, 2009, established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. In the tie-breaking process, employees earn points in seven specified criteria. Resolution number 2009-26 provided that, in accordance with the District's and students' needs, employees with a greater number of points shall be considered more senior than employees with a few number of points, for purposes of determining layoff order, as follows:

| <u>Criterion</u> | <u>Points</u> |
|---|---------------|
| Long Term Substitute Fountain Valley School District (FVSD) | 1 |
| Spotlight Teacher | 1 |
| Day to Day Substitute on a regular basis – FVSD | 1 |
| Student Teaching in FVSD | 1 |
| Remediation Teacher – FVSD | 1 |
| Master's Degree | 1 |
| Previous Public School Experience | 1 |

14. Respondents Jody Brekke, Amelia Terich and Tiffini Workman testified regarding the District's assignment of tie-breaker points. They participated in the "Spotlight Teacher" program, and the District credited them with one tie-breaker point for this service.

Respondents Brekke, Terich and Workman mistakenly believed that they should receive two points for their “Spotlight Teacher” service. Dr. Blade explained that the “Spotlight Teacher” service entitled Respondent to one point, not two. Thus, each of the Respondents received the appropriate number of tie-breaker points. There was no evidence that the tiebreak criteria, or its application, was arbitrary or capricious.

15. Ms. Workman testified that she anticipates receiving her master’s degree in Educational Research in several weeks. She has yet to complete her final presentation, which is a mandatory requirement to receive the degree. Because Ms. Workman does not yet possess her master’s degree, the District was not required to consider this credential when determining the layoff order. (*Degener v. Governing Bd.* (1977) 67 Cal. App. 3d 689, 698; *Campbell Elementary Teachers Ass’n v. Abbott* (1978) 76 Cal. App. 3d 796, 814-15.)

16. Respondent Julie Brieter and Kevin Yamabe testified that they should receive additional consideration because they had participated in homework club. The District did not use homework club as part of its tie-break criteria because it is not available to all teachers. The District fairly determined and applied the tie-break criteria; Respondents Breiter and Yamabe are not entitled to additional tie-breaker points.

17. 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 17.

4. Cause exists to terminate the services of Respondents Jessica Boyles, Julie Breiter, Jody Brekke, Autumn Burza, Ashley Clendenin, Jill Doyle, Tara Erb, Elizabeth Hudson, Rebecca Jensen, Mindy Olson, Dawn Rose, Michelle Siefker, Amelia Terich, Kelly Woods, Tiffini Workman, and Kevin Yamabe, by reason of factual finding numbers 1 through 17, and legal conclusion numbers 1 through 3.

ORDER

The Accusation is sustained and the District may notify Respondents Jessica Boyles, Julie Breiter, Jody Brekke, Autumn Burza, Ashley Clendenin, Jill Doyle, Tara Erb, Elizabeth Hudson, Rebecca Jensen, Mindy Olson, Dawn Rose, Michelle Siefker, Amelia Terich, Kelly Woods, Tiffini Workman, and Kevin Yamabe 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