

**BEFORE THE GOVERNING BOARD  
OF THE McFARLAND UNIFIED SCHOOL DISTRICT**

In the Matter of the Layoff of	)	OAH NO. 2009031207
CERTIFICATED EMPLOYEES OF THE	)	
MCFARLAND UNIFIED SCHOOL	)	
DISTRICT,	)	
	)	
Respondents.	)	
_____	)	

**PROPOSED DECISION**

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 15, 2009, in McFarland, California.

James R. Lynch, Attorney at Law, represented the McFarland Unified School District.

Ernest Tuttle, Attorney at Law, represented the respondents.

Evidence was received, and the matter was submitted for decision.

**SUMMARY**

The Governing Board (Board) of the McFarland Unified School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2009-2010 school year for budgetary reasons.

District staff carried out the Board's decision by using a selection process involving review of credentials, seniority, skipping, bumping and breaking ties between employees with the same first dates of paid service. The selection process complied with Education Code requirements.

**FACTUAL FINDINGS**

1. Kim McManaman, Assistant Superintendent-Administrative Services of the District, filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.

3. On or before February 25, 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 13.6 full-time-equivalency (FTE) certificated employees as follows:

Elementary K-5 Multiple Subjects	4.0 FTE
Elementary Literacy Teacher	1.0 FTE
Middle School Home Economics	1.0 FTE
Middle School Woodshop	1.0 FTE
Middle School Band	1.0 FTE
Middle School Spanish	1.0 FTE
Middle School PE	1.0 FTE
High School Math	1.6 FTE
High School Spanish	1.0 FTE
Continuation School English	1.0 FTE
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Total	13.6 FTE

4. On February 25, 2009, the Board adopted Resolution No. 0809-08, 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 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 did not apply the tie-breaking criteria in this case because all Respondents are subject to layoff.

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5. The Board directed the Superintendent to notify the employees affected by the Board's resolution. On or about March 10, 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.

6. On March 25, 2009, Assistant Superintendent McManaman made and filed Accusations against each Respondent.

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

8. 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.

9. 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.

10. The District used the Seniority List to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. In determining who would be laid off for each kind of service reduced the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other employees.

11. 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 Fiona Agee, Russ Atkins, Amber Gates, Carrollyn Henshaw, Gilverto Herrera, Sarah Kay, Angie Maldonado, Joyce McDonald, and John Reed, that their services will not be required for the 2009-2010 school year.

Dated: April 27, 2009

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HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings