

BEFORE THE
GOVERNING BOARD OF THE
BELLA VISTA ELEMENTARY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Non-Reemployment of:

ELIZABETH FARRAR and
MICHELLE NICOLLS,

Respondents.

OAH No. 2009031256

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on April 24, 2009, in Bella Vista, California.

Travis J. Lindsey, Attorney at Law, appeared on behalf of the Bella Vista Elementary School District.

Joan Maredyth, Attorney at Law, represents respondents Elizabeth Farrar and Michelle Nicolls. However, Ms. Maredyth, Ms. Farrar and Ms. Nicolls did not appear on the scheduled hearing date. The matter proceeded as a default hearing under Government Code section 11520.

The case was submitted for decision on April 24, 2009.

FACTUAL FINDINGS

1. George DeFillipo is the Superintendent of the Bella Vista Elementary School District (District). He is also the principal of Bella Vista Elementary School. Mr. DeFillipo made and filed the Accusation in his official capacity.

2. Respondents Elizabeth Farrar and Michelle Nicolls are permanent or probationary certificated employee of the District. On February 10, 2009, the District served on respondents written notice that it had been recommended that notice be given to them pursuant to Education Code sections 44949 and 44955 that their services would be reduced or would not be required for the 2009-2010 school year. The written notice set forth the reasons for the recommendation and noted that the District's Governing Board had passed a Resolution reducing the certificated staff by 8.5 full-time equivalent (FTE) positions.

Respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

3. The Superintendent made and filed an Accusation against respondents. The Accusation with required accompanying documents and blank Notice of Defense was personally served on respondents on March 5 and 6, 2009. Neither respondent filed a Notice of Defense to the Accusation. The District nevertheless served both respondents with a notice of hearing. The District complied with all service requirements under the Administrative Procedure Act, and this matter proceeded by way of default against respondents under Government Code section 11520.

4. On February 10, 2009, at a regular meeting, the District's Governing Board was given notice of the Superintendent's recommendation that certificated employees holding 8.5 FTE positions be given notice that their services would be reduced or not required for the next school year, and stating the reasons for that recommendation.

5. On February 10, 2009, the District's Governing Board determined that it was necessary to decrease programs and services and thus it was necessary to reduce teaching and other certificated services affecting employment of 8.5 FTE positions. The District's Governing Board adopted a Resolution (No. 2008-09-07) providing for the reduction or elimination of the following particular kinds of services (PKS):

	<u>Services</u>	<u>FTE</u>
a.	Music Teaching Services	0.5
b.	Elementary School Teaching Services	6.5
c.	Title I Teaching Services	1.5
	Total Full-Time Equivalent Reduction	8.5

The total number of positions to be reduced or discontinued under this resolution is 8.5 FTE certificated positions. The Board has determined that the services of a corresponding number of certificated employees shall be terminated at the close of the current 2008-2009 school year.

6. The District consists of a single school (grades K-8) with 26 teachers and 435 students. Instruction for lower grades is provided via self-contained classrooms, while a departmentalized approach is taken for the upper grades.

7. The District maintains a Certificated Seniority List which contains employees' seniority dates (Original Date of Hire). It also maintains separate staff information that includes employees' credentials, permits and special authorizations. The District used the seniority list to develop a proposed layoff list of the least senior employees assigned in the various services being reduced.

8. In determining which teachers were to be given layoff notices, the District skipped four teachers believed necessary to teach a specific course or course of study. They include:

- a. Kerrie Barnard. She has a District seniority date of August 25, 2006, and holds a mathematics credential. She is assigned to teach mathematics classes and no one senior to her was noticed and who is so credentialed.
- b. Brian Brickey. He has a District seniority date of August 14, 2003. He holds a single credential in social science. He is assigned to teach classes requiring this credential and no one senior to him was noticed and who is so credentialed.
- c. Tom Hoffman. He has a District seniority date of August 20, 1998. He holds a special education/speech credential and works as a speech pathologist for the District. No one senior to him was noticed and who is so credentialed.
- d. Heather Tuggle. She has a District seniority date of August 22, 1996. She holds a single subject credential in English and is assigned to teach classes requiring this credential. No one senior to her was noticed and who is so credentialed.

9. Except as provided by statute, no permanent or probationary certificated employee with less seniority is being retained to render a service which respondents are certificated and competent to render. As between employees who first rendered paid service to the District on the same date, the order of termination will be based solely on the needs of the District and the students thereof. The District applied tie-break criteria as part of the layoff process. The criteria were those set forth in Article 10 (Criteria to Determine Seniority) of the collective bargaining agreement between the District and the teachers association.

10. The District served ten teachers with notices of non-reemployment. The District rescinded the two notices served on Bonnie Bowman and Annamarie Miller. Six teachers did not request a hearing. They either entered into a layoff agreement with the District or were served with a Notice of Nonreemployment. Respondents comprise the remaining two teachers.

11. The reduction or discontinuation of the particular kinds of services set forth in Resolution 2008-09-07 are related to the welfare of the school and the students thereof within the meaning of Education Code sections 44949 and 44955. The decision to reduce or discontinue these services is neither arbitrary nor capricious, but rather a proper exercise of discretion of the District.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. The notice sent to respondents indicated the statutory basis for the reduction of services and, therefore, was sufficiently detailed to provide him due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notice, adequately described particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

2. The services identified in the Board Resolution are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The District Governing Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

Cause exists to reduce the number of certificated employees of the Bella Vista Elementary School District due to the reduction and discontinuation of particular kinds of services. Cause for reduction or discontinuation of services relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

3. As set forth in the Factual Findings, the District applied skipping rules with consistency and care. It allowed skipping only after demonstrating that the skipped teachers could teach a specific course or course of study in which they had special training and experience, and which others with more seniority did not possess. (Ed. Code, § 44955, subd. (d)(1).)

ORDER

Notice shall be given to respondents and others occupying up to 8.5 FTE that their services will not be required for the 2009-2010 school year because of the reduction or discontinuation of particular kinds of services.

DATED: April 28, 2009

JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings