

BEFORE BOARD OF TRUSTEES
GOLDEN VALLEY UNIFIED SCHOOL DISTRICT
MADERA COUNTY
STATE OF CALIFORNIA

In the Matter of the Employment Status of:

DANIEL ALLAN, et al.,

Respondents.

OAH No. 2009031354

PROPOSED DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Madera, California, on April 24, 2009.

Robert V. Piacente, Legal Counsel, Fresno County Office of Education, represented the complainant, Sarah Koligian, Superintendent, Golden Valley Unified School District, Madera County, California.

Joshua F. Richtel, Attorney at Law,¹ represented the respondents. There are 9 respondents, and they are listed in exhibit A.

The matter was submitted on April 24, 2009.

FACTUAL FINDINGS

GENERAL FINDINGS CONCERNING STATUTORY REQUIREMENTS

1. Respondents are certificated district employees.
2. Not later than March 15, 2009, in accordance with Education Code sections 44949 and 44955,² the superintendent of the school district caused the governing board of the district and respondents to be notified in writing that it was recommended that respondents be notified that the district would not require their services for the ensuing

¹ Joshua F. Richtel, Attorney at Law, 750 East Bullard Avenue, Suite 101, Fresno, California 93710.

² All references to the Code are to the Education Code unless otherwise specified.

school year. The notice stated the reasons for the recommendation. The recommendation was not related to respondents' competency.

3. A notice was delivered to each respondent, either by personal delivery or by depositing the notice in the United States mail, registered, postage prepaid, and addressed to respondent's last known address.

4. The notice advised each respondent of the following: He or she had a right to a hearing. In order to obtain a hearing, he or she had to deliver a request for a hearing in writing to the person sending the notice. The request had to be delivered by a specified date, which was a date that was not less than seven days after the notice of termination was served.³ And the failure to request a hearing would constitute a waiver of the right to a hearing.

5. Respondents timely filed written requests for a hearing to determine whether there was cause for not reemploying them for the ensuing year. An accusation was timely served on respondents. Respondents were given notice that, if they were going to request a hearing, they were required to file a notice of defense within five days after being served with the accusation.⁴ Respondents filed timely notices of defense. All prehearing jurisdictional requirements were met.

6. The governing board of the district resolved to reduce or discontinue particular kinds of services. Within the meaning of Code section 44955, the services are "particular kinds of services" that can be reduced or discontinued. The decision to reduce or discontinue these services was not arbitrary or capricious but constituted a proper exercise of discretion.

SERVICES THE DISTRICT INTENDS TO REDUCE OR DISCONTINUE

7. The governing board of the district determined that, because particular kinds of services are to be reduced or discontinued, it is necessary to decrease the number of permanent or probationary employees in the district by 15 full time equivalents (FTE) and one part time employee.

8. The particular kinds of services the governing board of the district resolved to reduce or discontinue are:

1. Nine (9) Elementary (K-6) Teaching Positions.

³ Employees must be given at least seven days in which to file a request for a hearing. Education Code section 44949, subdivision (b), provides that the final date for filing a request for a hearing "shall not be less than seven days after the date on which the notice is served upon the employee."

⁴ Pursuant to Government Code section 11506, a party on whom an accusation is served must file a notice of defense in order to obtain a hearing. Education Code section 44949, subdivision (c)(1), provides that, in teacher termination cases, the notice of defense must be filed within five days after service of the accusation.

2. One (1) Music Teaching Position.
3. One (1) Secondary (9-12) Math Teaching Position.
4. One (1) Secondary (9-12) English Teaching Position.
5. One (1) Middle School (7-8) Reading/English Teaching Position.
6. One (1) Secondary (9-12) Agriculture Teaching Position.
7. One (1) Secondary (7-12).AJ.t Teaching Position.
8. One (1) Part Time BTSA Teaching Position.

DISTRICT'S INTENTION TO DEVIATE FROM SENIORITY (SKIPPING)

9. Pursuant to Code section 44955, subdivision (d)(1), the governing board of the district resolved to deviate from terminating employees in the order of seniority. The district has identified specific needs as follows: “[D]ue to the district’s need to retain properly credentialed and qualified employees to provide specialized services to children with disabilities and special needs, the Superintendent is authorized to deviate from the order of seniority and retain individuals who are currently authorized to provide special education and related services.” Further, the Superintendent is authorized “to deviate from the order of seniority where there is a specific need for personnel to teach a specific course or course of study and less senior employees have specialized training or experience to teach that course [or] course of study.”

RETAINING EMPLOYEES ACCORDING TO SENIORITY AND QUALIFICATIONS (BUMPING)

10. Pursuant to Code section 44955, subdivision (c), a “governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.” The board adopted a resolution concerning the qualifications required for bumping. The board resolved as follows: In order to be deemed competent to bump into a position held by a junior employee, “a senior employee must have at least one year's experience within [the] last ten years teaching the same subject matter or within the same specialized programs such as alternative education”

SUMMARY OF FINDINGS REGARDING RETENTION OF EMPLOYEES

11. With regard to respondents who are permanent employees, the district is not retaining any probationary employee to render a service that such a respondent is certificated and competent to render.

12. With regard to respondents who are permanent employees, the district is not retaining any employee with less seniority than such a respondent has to render a service that the respondent is certificated and competent to render.⁵

13. With regard to respondents who are either permanent or probationary employees, the district is not retaining any employee with less seniority than such a respondent has to render a service that the respondent's qualifications entitle him or her to render.⁶

STIPULATIONS

14. The parties, by and through their counsel, stipulated to all of the above.

LEGAL CONCLUSIONS

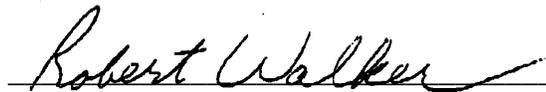
1. Jurisdiction in this matter exists under Code sections 44949 and 44955. All notice and jurisdictional requirements contained in those sections were satisfied.

2. Within the terms of Code sections 44949 and 44955, the district has cause to reduce or discontinue particular kinds of services and to give notices to respondents that their services will not be required for the ensuing school year. The cause relates solely to the welfare of the schools and the pupils.

ORDER

The district may give notice to the respondents that the district will not require their services for the ensuing school year.

Dated: April 30, 2009



ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

⁵ Code section 44955, subdivision (b), provides seniority protection for a *permanent* employee in terms of the services the employee is "*certificated and competent to render.*"

⁶ Code section 44955, subdivision (c), provides seniority protection for both *permanent and probationary* employees in terms of the services an employee's "qualifications entitle [him or her] to render."

Exhibit A

Last Name	First Name
Allan	Daniel
Canales	Nicole
Gutierrez	Sonia
Hardcastle	Shawn
Lane	Denice
Muccianti	Emily
Perez	Jon
Sobieralski	Nathan
Wagner	Stephanie