

BEFORE THE
GOVERNING BOARD
HOPE SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations
Against:

CYNTHIA EVERMAN, CLAIR KROCK,
LISA MONSON, MELISSA RICE, and IVY
MACIA-STEVENSON, Certificated Employees
of the Hope School District,

Respondents.

OAH Case No. 2009040031

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge, on April 20, 2009, at Santa Barbara. Complainant Superintendent of the Hope School District was represented by Pilar Morin, Attorney at Law. Respondents Cynthia Everman, Clair Krock, Lisa Monson, Melissa Rice were present and represented by Adam A. Acevedo, Attorney at Law. Respondent Ivy Macia-Stevens was present and represented herself.

Oral, documentary, and stipulated evidence and oral and written arguments having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on April 1, 2009, the Accusation was made and filed by Gerri Fausett in her official capacity as Superintendent of the Hope School District, County of Santa Barbara, State of California (District).
2. Respondents, and each, of them, are permanent certificated employees of the District.
3. The District is an elementary school district that serves and educates students in the city and/or county of Santa Barbara. Due to the current state budget crisis and the uncertainty of the anticipated reduced amount of state funding available for education for the

next school year, and decreased enrollment, the Superintendent of the District has determined that it must reduce expenditures of the District to ensure a balanced budget.

4. (A) On February 23, 2009, the Governing Board of the District adopted Resolution No. 08/09-10 and found that, because of the uncertainty of future funding and a shortfall in the District's budget, it is necessary to reduce or discontinue particular kinds of services which are now being rendered by certificated personnel for the 2009-2010 school year by a total of 6.6 full-time equivalent (FTE) positions as follows: elementary teachers by 6.5 FTE positions and reading teacher by a 0.1 FTE position. The Governing Board determined that it is in the best interests of the District to reduce the appropriate number of certificated employees.

(B) The Governing Board further resolved that, due to this reduction or discontinuance of particular kinds of services, the "legal number of certificated employees" must not be re-employed for the ensuing school year pursuant to Education Code section 44955.¹ The Governing Board also resolved that the Superintendent give Notice of Recommendation Not to Re-Employ in accordance with sections 44949 and 44955 to the number of certificated employees allowable under section 44955.

(C) On February 23, 2009, the Governing Board adopted tiebreaking criteria to be used in determining the order of non-reemployment of certificated employees who first rendered paid service to the District on the same date or have the same date of hire. In addition, in Resolution No. 08/09-06, the Governing Board adopted criteria to determine competency of any certificated employee who seeks to move into a position requiring certification qualifications held by a less senior certificated employee.

5. On or before March 15, 2009, and pursuant to the Resolution of the Governing Board, the Superintendent timely gave Notices of Recommendation Not to Re-Employ to respondents, providing them with notice of her recommendation that their services will not be required by the District for the 2009-2010 school year due to the reduction or discontinuance of particular kinds of services. Subsequently, respondents, and each of them, filed timely Requests for Hearing to determine if there is cause for not re-employing them for the ensuing school year.

6. On or about April 1, 2009, the District timely served respondents with a Notice of Accusation, Accusation, copies of Government Code sections 11507.5-11507.7 and 11506, and a blank Notice of Defense form, and Notice of Hearing. As exhibits to the Accusation, the District attached a list of teachers requesting a hearing (Acc. Exh. A) and the Governing Board's Resolution No. 08/09-10 (Acc. Exh. B).²

¹ All further section references are to the Education Code, unless indicated otherwise.

² The List of Teachers Requesting Hearing (Accusation, Exh. A) named five teachers and their FTE positions: respondents Cynthia Everman, 1.0 FTE; Claire Krock, 1.0 FTE; Lisa Monson, 1.0 FTE; Melissa Rice, 1.0 FTE; and Ivy Stevens, 0.1 FTE.

7. On or about April 3, 2009, all respondents filed timely Notices of Defense, acknowledging service of the Accusation and requesting a hearing to determine if there is cause not to employ them for the ensuing school year. On or about April 6, 2009, the District properly served respondents with the Notice of Hearing for this matter.

8. All prehearing and jurisdictional requirements under the Education Code and Government Code have been met by the parties. Jurisdiction exists in this matter. The Seniority List of certificated employees (Exh. 7) prepared by the District in February 2009 is accurate and complete. The positions of respondents on the Seniority List are likewise accurate and correct and respondents have not raised any issue with respect to the Seniority List or the District's Skipping List (Exh. 8). Nor did respondents raise any argument or claims that the District applied bumping or the tie-breaking criteria in incorrect manner or abused its discretion in making or applying bumping or the criteria to certificated employees.

9. The services set forth in Finding 4(A) above are particular kinds of services performed by certificated employees of the District which may be reduced or discontinued within the meaning of Education Code section 44955. The determination of the Governing Board to reduce or discontinue these services is within its sound discretion and is not arbitrary or capricious. The District demonstrated that the reduction or discontinuance of these particular kinds of services is related to the welfare of the District and its pupils and is necessary to maintain a balanced budget while anticipating a reduction of state funding and decreased enrollment next year. The District demonstrated that it can still meet its obligation to provide state-mandated services, including those for English learners, through different means including use of classroom aides.

Individual Respondents

10. Since the Governing Board adopted Resolution No. 08-09/10, the District has made "changes in the budget" and there have been changes in funding such that, during the hearing in this matter, the District withdrew the Notices of Recommendation Not to Re-Employ and the Accusation that were issued to respondents Krock, Monson, and Rice.

11. (A) Respondent Macia-Stevens is a certificated employee who works as a reading teacher for grades one through three at the District's Hope School. She holds a clear multiple subject credential, a clear reading specialist credential, and a CLAD authorization. Her date of first paid service with the District is September 1, 1997. Macia-Stevens was given a layoff notice for the 0.1 FTE reduction of a reading teacher position.³

³ On February 24, 2009, respondent Macia-Stevens was given a Notice of Recommendation Not to Re-Employ that stated the Superintendent had recommended that she not be re-employed for "0.1 FTE of [her] position" in the District.

(B) Respondent Macia-Stevens is permanently employed in a 0.6 FTE position as a reading teacher. Initially, she was hired in a 0.5 FTE position but, on an undetermined date, the principal at her school site increased her position to a 0.6 FTE position. For the 2007-2008 school year, Macia-Stevens signed a contract showing that she is a 0.6 FTE, or 60 percent of full-time, reading teacher.⁴

(C) Respondent Macia-Stevens's position as a reading teacher may be reduced by the District by 0.1 FTE from a 0.6 FTE position to a 0.5 FTE position pursuant to the current reduction of the particular kind of service for a reading teacher.

12. (A) Respondent Cynthia Everman is a half-time, or 0.5 FTE, reading teacher for students in kindergarten through grade three at Monte Vista Elementary School. She holds a clear multiple subject credential and a BCLAD certificate. Her seniority date with the District is January 3, 2005. As set forth in the District's Seniority List, respondent Everman is a reading teacher. She is not an elementary teacher or elementary classroom teacher. As such, respondent Everman may not be terminated or her services reduced or discontinued pursuant to the District's reduction or discontinuance of 6.5 FTE of elementary teachers.

(B) On February 3, 2009, the Governing Board resolved to reduce the particular kind of service of reading teacher by only 0.1 FTE. On or about March 9, 2009, pursuant to the direction of the Governing Board, the Superintendent gave written notice to respondent Macia-Stevens that her position as a reading teacher was to be reduced by that 0.1 FTE. In other words, the Governing Board resolved to reduce reading teacher services by 0.1 FTE and the Superintendent and District has given notice and applied this reduction to the 0.6 position held by Macia-Stevens. As such, respondent Everman may not be terminated or her services reduced or discontinued pursuant to the District's reduction or discontinuance of reading teacher by 0.1 FTE.

13. (A) In this proceeding, the District argues that the Governing Board's Resolution was erroneous or incorrect in decreeing that reading teacher be reduced by only 0.1 FTE. The District contends that the Governing Board intended to reduce reading teachers by 0.6 FTE and to specifically discontinue the half-time position of respondent Everman as the only half-time reading teacher. The District further argues that the teachers named in the List of Teachers (Exhibit 1) were supposed to be reduced or discontinued and that the Governing Board had this list when adopting its Resolution.

(B) Based on the evidence in this matter, the District's arguments are not persuasive for several reasons. The Resolution clearly states that the position of reading teacher is to be reduced by 0.1 FTE. The Governing Board did not change or amend its resolution regarding reading teachers at any time even though the Governing Board did

⁴ For the 2007-2008 school year, respondent Macia-Stevens refused to sign an earlier contract that attempted to downgrade her position to a half-time (0.5 FTE) reading teacher and a temporary 10 percent (0.1 FTE) Title 1 reading teacher.

amend the Resolution by interlineation to change the reduction of classroom teachers to 6.5 FTE from the 9.5 FTE first proposed by the Superintendent. No evidence was presented that the Governing Board intended to specifically reduce or discontinue Everman's half-time position.⁵ The teachers set forth in the List of Teachers appear to be a list of respondents in this proceeding and, while their FTE positions are described, there is no description of the services that they perform for the District. In other words, the evidence does not show that the Governing Board was aware that respondent Everman was a reading teacher and intended to specifically terminate her services.⁶

14. Moreover, when she gave written notice to respondents Everman and Macia-Stevens on or about March 9, 2009, the Superintendent stated that the District was discontinuing 6.5 FTE of elementary teachers and 0.1 FTE of a reading teacher. In the notice to Everman, the Superintendent wrote that she was recommending that Everman not be re-employed in the District. In the notice to Macia-Stevens, the Superintendent wrote that she was recommending that Macia-Stevens "not be re-employed for 0.1 FTE of [her] position in this district." The Superintendent's recommendation to Macia-Stevens in conjunction with the reference to the discontinuance of 0.1 FTE of reading teacher provided notice to Macia-Stevens that her position of a 0.6 FTE reading teacher was to be reduced by 0.1 FTE. On the other hand, unlike the notice given to Macia-Stevens, the Superintendent's written notice to Everman did not specifically describe the extent of the reduction of her position and did not provide adequate notice that her half-time position was to be reduced or discontinued in its entirety. Inasmuch as respondent Everman was not provided adequate notice and was prejudiced by this lack of due process, the District may not reduce or discontinue her position as a half-time reading teacher pursuant to its reduction or discontinuance of particular kinds of services.

15. It was not established there is any other certificated employee with less seniority than respondents, who is being retained by the District to provide services that respondents are certificated and competent to render.

* * * * *

⁵ The District has argued that respondent Everman is the only half-time reading teacher but the Superintendent has also tried to characterize respondent Macia-Stevens as a half-time reading teacher and prepared the half-time contract that Macia-Stevens refused to sign for the 2007-2008 school year.

⁶ Education Code section 44955, subdivision (b), authorizes a governing board of a school district to terminate the employment of certificated employees when it determines it is necessary to reduce or discontinue a particular kind of service, and not necessarily a specific teacher.

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Jurisdiction exists for the subject proceedings pursuant to Education Code sections 44949 and 44955, based on Findings 1 – 9 above. All notices, accusations, and other related papers and reports required by these Education Code sections have been provided in timely manner and, as such, the parties have complied with the statutory requirements.

2. Cause exists pursuant to Education Code sections 44949 and 44955 to reduce by 6.6 full-time equivalent positions the concomitant number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services, as set forth in Findings 4(A) and 9 above. With respect to respondent Macia-Stevens whose employment has been found to be reducible or discontinuable, in part, by the District and any other certificated employees who received notices but did not request a hearing, if any, the causes set forth in the Accusation relate solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. Based on Findings 1 – 10 and 15 above, there is no certificated probationary or permanent employee with less seniority than any one of respondents or the certificated employees who is being retained by the District for the 2009-2010 school year to render services which any one of respondents or certificated employees is certificated and competent to render.

4. Cause does not exist pursuant to Education Code sections 44949 and 44955 to reduce or discontinue the employment of respondents Clair Krock, Lisa Monson, and Melissa Rice due to the reduction or discontinuance of particular kinds of services, based on Finding 10 above.

5. Cause does not exist pursuant to Education Code sections 44949 and 44955 to reduce or discontinue the employment of respondent Cynthia Everman due to the reduction or discontinuance of particular kinds of services, based on Findings 11 – 14 above. Respondent Everman is a half-time reading teacher and may not be terminated due to the reduction or discontinuance of particular kinds of services for a reading teacher or elementary teachers. Here, the Governing Board has determined to reduce the particular kind of service of reading teacher by 0.1 FTE for the next school year. Education Code section 44955, subdivision (b), requires the District to terminate or reduce the services of not more than a corresponding percentage of a certificated employee or employees at the close of this school year. The District thus may not exceed the authority granted to it by its Governing Board under section 44955, subdivision (b), and reduce or terminate the services of a certificated employee or employees that exceed more than 0.1 FTE of a reading teacher. The District has elected to apply the 0.1 FTE reduction of reading teacher to respondent

Macia-Stevens and failed to provide adequate notice and due process to respondent Everman of the proposed termination of her services.

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WHEREFORE, the Administrative Law Judge makes the following Order:

ORDER

1. The Accusation issued to respondents Clair Krock, Lisa Monson, and Melissa Rice is dismissed, based on Conclusion of Law 4 above, respectively. These three respondents may not be given notice that their services will not be required for the 2009-2010 school year.
2. The Accusation issued against respondent Ivy Macia-Stevens is sustained, based on Conclusions of Law nos. 1 – 3 above. The Hope School District may give notice to respondent Macia-Stevens that 0.1 FTE of her services will not be required for the ensuing 2009-2010 school year because of the reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955.
3. The Accusation issued to respondent Cynthia Everman shall be dismissed, based on Conclusions of Law 5 above. Respondent Everman may not be given notice that her services will not be required for the 2009-2010 school year.
4. The Hope School District may give notice to those certificated employees, if any, who were served with notices that their services will not be needed next year but did not file requests for hearing, that their services will not be required for the ensuing 2009-2010 school year because of the reduction or discontinuance of particular kinds of services pursuant to Education Code sections 44949 and 44955.
5. Before giving notice to respondent Macia-Stevens and the other certificated employees who did not request a hearing, if any, the Hope School District shall determine and take into account any additional positively assured attrition among certificated employees in deciding how many and when certificated employees should be terminated before the ensuing 2009-2010 school year.

Dated:

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings