

BEFORE THE
GOVERNING BOARD OF THE
MILPITAS UNIFIED SCHOOL DISTRICT

In the Matter of the Non-Reemployment of
Certain Certificated Employees

OAH No. 2009040045

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Milpitas, California, on April 28, 2009.

Donald A. Velez, Attorney at Law, Miller Brown & Dannis, 71 Stevenson Street, Nineteenth Floor, San Francisco, California, represented the Milpitas Unified School District.

Christopher Schumb, Attorney at Law, 10 Almaden Boulevard, Suite 1250, San Jose, California, represented respondent Nicole Poulin.

The matter was submitted for decision on April 28, 2009.

FACTUAL FINDINGS

1. On March 10, 2009, the governing board of the Milpitas Unified School District adopted Resolution No. 2009.32, in which the board resolved to reduce or eliminate the following particular kinds of services no later than the beginning of the 2009-2010 school year and directed the superintendent or his designee to send appropriate notice to employees whose positions might be lost by virtue of this action:

PARTICULAR KINDS OF SERVICES	NUMBER OF FULL-TIME EQUIVALENT POSITIONS
Principal, Community Day School	1.0 FTE
Assistant Principals	1.0 FTE
Class Size Reduction 3 rd Grade	14.0 FTE
Class Size Reduction 9 th Grade	4.0 FTE
Elementary Music	1.4 FTE
High School, Counselor	1.0 FTE
Middle School, Counselor	1.0 FTE

Middle School, Librarian	1.0 FTE
District Nurse	0.6 FTE
Independent Study	<u>0.5 FTE</u>
TOTAL	25.5 FTE

2. On or before March 15, 2009, the superintendent gave written notice to seven certificated employees that, pursuant to Education Code sections 44949 and 44955, it was being recommended that their services would be reduced or eliminated for the 2009-2010 school year. Four employees – Nicole Poulin, Deanna Sainten, Sarah Santos, and Tammy Trumbo – filed timely requests for hearing and were then served with accusation packets. The district subsequently withdrew the notices sent to all respondents except Nicole Poulin.

3. The reductions were based on the district’s financial situation. As a result of the state budget crisis, the district is projecting a budget deficit of approximately \$9 million for the 2008-2009 through 2010-2011 school years. Considering this, the reductions are in the interest of the schools and their pupils.

4. Respondent Poulin is the district’s least senior music teacher. She currently occupies a 1.0 FTE position teaching music at middle school. Three senior music teachers each teach a portion of the district’s 1.4 FTE in elementary music. Each of those teachers will be reassigned to teach high school or middle school music. One of them, Joseph Santomieri, will bump into 0.6 FTE of Poulin’s middle school position, leaving her with a 0.4 FTE assignment for the 2009-2010 school year.

5. The district is considering providing elementary school music instruction for the 2009-2010 school year through a before- or after-school fee-based program through Adult Education. If such a program is offered, the district intends to offer the position to Poulin.

6. No junior employee is being retained to render a service that respondent Poulin is certificated and competent to provide.

LEGAL CONCLUSIONS

Cause for the elimination of 25.5 FTE positions exists in accordance with Education Code sections 44949 and 44955. Cause further exists to give respondent Poulin notice that her services will be reduced to 0.4 FTE for the 2000-2010 school year. This cause relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notice may be given respondent Nicole Poulin that her services will be reduced to 0.4 FTE for the 2000-2010 school year.

DATED: _____

MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings