

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

In the Matter of the Layoff of)	OAH NO. 2009061131
CERTIFICATED EMPLOYEES OF THE)	
McFARLAND UNIFIED SCHOOL)	
DISTRICT,)	
)	
Respondents.)	
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PROPOSED DECISION

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 17, 2009, in McFarland, California.

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

Joshua F. Richtel, 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 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 and seniority. 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 June 11, 2009, Ms. McManaman (on behalf of the Superintendent) of the District recommended that the Board decrease the number of certificated employees no later than August 14, 2009. Ms. McManaman recommended the reduction of the following services of the District:

Elementary K-6 Teaching	9.0 FTE
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Total	9.0 FTE

4. On June 11, 2009, the Board adopted Resolution No. 0809-18, to discontinue or reduce the particular kinds of services set forth in Factual Finding 3, based in the Board's determination that the District's total revenue limit per unit of average daily attendance for fiscal year 2009/2010 has not increased by at least two percent. The Board further determined that based on the 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 as set forth in Factual Finding 3. 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 applied the tie-breaking criteria. As of the time of the hearing, the District intended to resolve any remaining ties among certificated employees with a coin flip.

5. The Board directed the Superintendent to notify the employees affected by the Board's resolution. On or about June 16, 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 June 30, 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 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 established through the testimony of its Chief Business Officer that, based on the Budget Act passed in February 2009, its total revenue limit per unit of average daily attendance for fiscal year 2009/2010 has not increased by at least two percent.

10. 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.

11. The District used the Seniority List to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. In determining who would be laid off for the 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.

12. 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, 44955 and 44955.5 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents.

2. Education Code section 44955.5 provides:

(a) During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent, and if in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. The termination shall be pursuant to [Sections 44951](#) and [44955](#) but, notwithstanding anything to the contrary in [Sections 44951](#) and [44955](#), in accordance with a schedule of notice and hearing adopted by the governing board.

(b) This section is inoperative from July 1, 2002, to July 1, 2003, inclusive.

3. In this case, the Governing Board of the District determined that based on the Budget Act passed on February 20, 2009, the District determined that its total revenue limit per unit of average daily attendance has not increased by at least two percent, and, in the opinion of the Governing Board of the District, it is necessary to decrease the number of permanent employees in the District.

4. A District may reduce services within the meaning of section 44955, subdivision (b), 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.)

5. Respondent contended that the District cannot proceed with the layoffs because there was no budget in place at the time it gave notice to respondent of the layoff. Respondents' contention is not persuasive. The District is properly made its determination based on the Budget Act passed on February 20, 2009, in that this Budget Act affects the 2009/2010 school year.

6. Cause was established as required by Education Code sections 44949, 44955 and 44955.5 to reduce the number of certificated employees due to the reduction of particular kinds of services. The Board's decisions to reduce 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.

7. 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 Carlota Mesquita, Patricia Carillo, Tamera Gallegos, Eric Garcia, Sandra Gutierrez, Patricia Gutierrez, Maria Gutierrez, Sarah Kay, Angie Maldonado, Noemi Moreno, Michelle Rubio, and Julie Schmidt, that their services will not be required for the 2009-2010 school year.

Dated: July 30, 2009

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings