

BEFORE THE
GOVERNING BOARD OF THE
PRINCETON JOINT UNIFIED SCHOOL DISTRICT
COUNTY OF GLENN
STATE OF CALIFORNIA

In the Matter of the Non-Reemployment of:

MICHAEL A. GARCIA,

Respondent.

OAH No. 2009061358

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on July 20, 2009, in Princeton, California.

Michelle L. Cannon, Attorney at Law, appeared on behalf of the Princeton Joint Unified School District.

There was no appearance by, or on behalf of respondent Michael A. Garcia.

The case was submitted for decision on July 20, 2009.

FACTUAL FINDINGS

1. John S. Greene, Ed.D., is the Superintendent of the Princeton Joint Unified School District (District). He made and filed the Accusation in his official capacity.

2. Michael A. Garcia (respondent) is a probationary certificated employee of the District. By letter dated July 2, 2009, the District served written notice on respondent that it had been recommended that notice be given to him pursuant to Education Code sections 44949, 44955 and 44955.5 that his 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 Governing Board of the District had passed a Resolution (No. 2008-09-012) reducing the certificated staff by 1.0 full-time equivalent (FTE) position. Respondent timely requested in writing a hearing to determine if there is cause for not reemploying him for the ensuing school year.

3. The Superintendent made and filed the Accusation against respondent. The Accusation with required accompanying documents and blank Notice of Defense were timely served on respondent. Respondent timely filed a Notice of Defense to the Accusation.

The District served a Notice of Hearing on respondent on July 2, 2009. The Notice of Hearing was hand-delivered to respondent by Debby Beymer, District Business Manager, on July 2, 2009. Ms. Beymer also mailed (certified mail-return receipt) respondent a copy of the Notice of Hearing on that same date. All pre-hearing jurisdictional requirements were satisfied. This case proceeded by way of default under Government Code section 11520.

4. On June 30, 2009, at a regular meeting, the District's Governing Board was given notice of the Superintendent's recommendation that notice be given to respondent that his services would not be required for the next school year, and stating the reasons for that recommendation.

5. On June 30, 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 one position. The District's Governing Board adopted Resolution No. 2008-09-012 providing for the reduction of one assistant principal/counselor position (1.0 FTE).

6. The District maintains a Certificated Seniority List which contains employees' seniority dates (first date of paid service), credentials and authorizations. The District used the seniority list to determine the least senior employee assigned to the services being reduced. Respondent has a District seniority date of July 28, 2008. He appears to be the least senior certificated employee.

7. The District has determined that its total revenue limit per unit of average daily attendance will not increase by at least two percent (2%), and as a result it has a need to reduce the number of certificated employees in the District. Ms. Beymer noted that the District's revenue limit has actually decreased by seven percent.¹

8. No permanent or probationary certificated employee with less seniority is being retained to render a service which respondent is certificated and competent to render.

9. The reduction or discontinuation of the particular kind of service set forth in Resolution No. 2008-09-012 is related to the welfare of the schools and the students thereof within the meaning of Education Code sections 44949 and 44955. The decision to reduce or discontinue this service is neither arbitrary nor capricious, but rather a proper exercise of discretion of the District's Governing Board.

¹ The District's Revenue Limit Summary shows a significant reduction in revenue limit between FY 2008-2009 (\$1,867,639.84), and FY 2009-2010 (\$1,729,776.91).

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949, 44955 and 44955.5 were met. The notice sent to respondent 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 notices, 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. Respondent was timely served all pleadings, including the Notice of Hearing. This matter proceeded as a default hearing under Government Code section 11520. (See Finding 3.)

3. Education Code section 44955.5, subdivision (a) provides as follows:

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.

4. As noted in Finding 7, the District's total revenue limit per unit of average daily attendance will not increase by at least two percent. The District's Governing Board has determined that as a result it needs to reduce the number of certificated employees in the District. The District's revenue limit has actually decreased by seven percent.

5. The services identified in Board Resolution No. 2008-09-012 are particular kinds of services that could be reduced or discontinued under Education Code sections 44955 and 44955.5. 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.

6. Cause exists to reduce the number of certificated employees of the Princeton Joint Unified 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.

ORDER

Notice shall be given to Michael A. Garcia that his services will not be required for the 2009-2010 school year because of the reduction or discontinuation of particular kinds of services.

DATED: July 28, 2009

JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings