

BEFORE THE GOVERNING BOARD
SCOTTS VALLEY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

TONI DUNN,

Respondent.

OAH No. 2010030653

PROPOSED DECISION

Mary-Margaret Anderson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Scotts Valley, California, on April 22, 2010.

Richard M. Noack, Attorney at Law, Hopkins & Carley, represented the Scotts Valley Unified School District (District).

Michelle A. Welsh, Attorney at Law, Stoner, Welsh & Schmidt, represented Respondent Toni Dunn.

The record closed on April 22, 2010.

SUMMARY

The Governing Board of the Scotts Valley Unified School District decided to reduce or discontinue particular kinds of services provided by certificated employees for the 2010-2011 school year for financial reasons. The decision was not related to the competency and dedication of the employees whose services were proposed to be reduced or eliminated. The selection process complied with Education Code requirements.

FACTUAL FINDINGS

1. Susan Silver, Ed.D., filed the Accusation in her official capacity as Superintendent of the District.
2. Respondent Toni Dunn is a certificated employee of the District.
3. On March 9, 2010, the Governing Board of the District adopted Resolution No. 10-017, in which the Board resolved to reduce or discontinue the following particular

kinds of services (PKS) for the 2010-2011 school year and directed the Superintendent or her designee to send notice to certificated employees that their services would be terminated at the end of the 2009-2010 school year, as follows:

- Grades Kindergarten through 6 Classroom Teachers by 6.00 FTE
- Grades 7 through 12 English Classroom Teachers by 0.60 FTE
- Grades 7 through 12 Social Studies Classroom Teachers by 0.60 FTE
- Grades 7 through 12 Mathematics Classroom Teachers by 0.80 FTE
- Grades 7 through 12 Science Classroom Teachers by 0.40 FTE
- Grades 7 through 12 Physical Education Teachers by 0.20 FTE
- Grades 7 through 12 Spanish Classroom Teachers by 0.20 FTE
- Grades 7 through 12 Performing Arts (Drama) Teachers by 0.20 FTE
- Grades 7 through 12 English Language Development Teacher by 0.20 FTE

The total is 20 FTE positions.

4. Resolution No. 10-017 states that the Board’s action is the “result of the fiscal emergency in the State of California and declining revenues from multiple sources.” It was not demonstrated that the decision to reduce or discontinue the identified services was arbitrary or capricious.

5. On March 12, 2010, the Superintendent gave written notice to certificated employees in 20 FTE positions that it had been recommended that notice be given them that their services would not be required for the 2010-2011 school year. Many of the noticed employees, including Respondent, filed timely requests for hearing, and an Accusation was filed and served. Many of the employees, including Respondent, filed timely notices of defense.

6. Prior to the hearing, the District rescinded the Accusations against all of the noticed employees except Respondent. This hearing followed.

Skipping issue

7. The District seeks to reduce Respondent’s position as a math teacher by .04 FTE. Respondent’s seniority date is August 25, 2008, and she has taught math (Algebra 1 and 2) at Scotts Valley High School for almost two school years. She majored in math in college and holds a clear single subject math credential. Respondent is senior to another math teacher, John Postovit, whom the District has not noticed for layoff. The District plans to retain Postovit, despite his lack of seniority.

8. The District’s intention in this regard is set forth in Resolution No. 10-017, as follows:

As provided by Education Code Sections 44955(d), 44956, and 44957, it will be necessary to retain the services of certain

certificated employees, regardless of seniority, who possess qualifications and competencies needed in the projected educational program for the 2010-2011 school year which are not possessed by more senior employees thereby subject to layoff. The Governing Board has determined that with respect to this resolution, competency shall mean, at a minimum, possession of a preliminary, clear, professional clear, lifetime, or other full credential, and at least one year's actual teaching experience within the past five (5) school years for the subject matter, educational program (an example includes IB HL Mathematics 1 and IB HL Mathematics 2), or grade level to which the employee may bump a less senior employee or will be assigned.

Inasmuch as the District needs to retain an individual teacher in the specific course or course of study identified below due to the teacher's specialized training and experience related to those courses which more senior employees do not possess, the Superintendent and/or her designee is authorized to deviate from terminating that certificated employee in order of seniority in instances where the teacher is currently assigned to teach those courses and will be assigned to teach those courses again for the next school year and more senior employees do not possess the same specialized training and experience related to such courses or courses of study:

IB Math, including the experience, training, and ability to teach IB HL Mathematics 1 and IB HL Mathematics 2, must hold a valid, clear Single Subject Math credential, [have] successfully completed the IB training, and have at least one year's actual teaching experience in IB Math within the past five (5) school years;

Although Postovit is not identified by name in the Resolution, District staff acknowledged that the competency definition and skipping criteria are intended to and do describe the advanced math classes Postovit teaches and his qualifications to teach them.

9. The District recruited Postovit to teach advanced math classes following the retirement of a very experienced teacher. Postovit has many years of teaching experience in other districts, including advanced placement (AP) math classes. The District does not offer the AP program; instead, it offers a similar program, International Baccalaureate (IB). IB HL (higher level) Math 1 and 2 are similar to AP Calculus A and B. In order to teach IB math, a teacher must have completed an IB training course. The District arranged for Postovit to take this course prior to beginning to teach for the District in August 2009. Postovit therefore meets the qualifications set forth in the resolution: he holds the credential,

has completed the IB training, and by the end of this school year will have one year of experience teaching IB math.

10. Respondent asserts that she is competent to teach the advanced math classes in that she could take the IB training course this summer in the same fashion that Postovit did last year, and be ready to teach in the fall. Respondent holds the same credential as Postovit, and points out that she took many calculus classes as a math major in college. Respondent also contends that the requirement of one year's teaching of IB math is unfair, in that it can apply only to Postovit.

11. When a district seeks to disregard seniority order in a layoff proceeding, it bears the burden to prove that it has a specific need for personnel to teach a specific course, that the less senior employee has special training or experience that is necessary to teach the course, and that any more senior employees do not have the necessary training or experience. (Ed. Code, § 44955, subd. (d).) The burden of proof in this respect is on the District. (*Davis v. Gray* (1938) 29 Cal.App.2d 403, 408; *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3rd 555, 566-567.)

12. The District has established the specific need to teach IB math and that Postovit has special training to teach it. It has also been shown that Respondent does not have the necessary training, in that she has not taken the IB training course. It is acknowledged that Respondent asserts she would be willing to take the course, but it remains that if she did not, the District could be left without a suitable instructor. Given that the District has met its burden, the experience criterion issue is not addressed.

Tie-breaking issues

13. On February 9, 2010, the Board passed Resolution No. 10-016, which sets forth the criteria to be used to determine the order of layoff of certificated employees with the same first date of paid service. It provides:

For certificated employees to be laid off, the Superintendent or his designee shall determine the order of termination or reappointment solely based on the needs of the District and its students considering the following criteria, which are not listed in any particular order of importance:

A. Credentials and experience to teach or serve in a particular program or provide a particular service of need for the District (Examples include, but are not limited to, bilingual, special education, mathematics, science, independent study)

B. Satisfactory evaluations

- C. Rating preference shall be given to credentials in the following order: Clear Credentials, Preliminary Credentials, Intern Credentials, Emergency Credentials
- D. Number and types of supplemental authorizations
- E. Years of experience as a full-time, credentialed teacher in a probationary/permanent, K-12 teaching position in a public school, prior to beginning current employment with the Scotts Valley Unified School District
- F. Bilingual language competency and training for teaching bilingual students relevant to District need, including B-CLAD and CLAD authorizations
- G. Need for language skills or certification in designated languages
- H. Professional growth activities, training sessions, and presentations relevant to District need
- I. Academic preparation, including undergraduate major and minor courses of study
- J. Service to school: extra-curricular activities, co-curricular activities, school committees or adjunct duties
- K. Management of professional responsibilities
- L. Summer school and/or intervention programs

Breaking Remaining Ties

In the event that permanent or probationary certificated employees who have common hire dates are equally qualified in the sole determination of the Superintendent, or her designee, based on application of the above criteria, the District will then break ties by utilizing a lottery.

- 14. District staff created a chart containing the names of teachers tied with others and information concerning the different tie-breaking criteria. The information was obtained from District records and information supplied by the employees.
- 15. Respondent was tied with three other teachers who share her seniority date. District staff applied the tie-breaking criteria, and Respondent ended up in the last position.

Respondent presented information that she contends should be considered in various of the tie-breaking categories, but it was not demonstrated that even with these additions the result would be different. Respondent also argues that the criteria are too vague.

16. In breaking ties, districts have broad discretion to determine the criteria used and to apply the criteria to individuals. The only legal requirement is that they “determine the order of termination solely on the basis of the needs of the district and the students thereof.” (Ed. Code, § 44955, subd. (b).) It was not established that the District applied its tie-breaking criteria in an arbitrary or capricious manner. Accordingly, there is no basis to require the District to re-evaluate Respondent’s position on the seniority list.

17. No certificated employee junior in seniority to Respondent is being retained by the Board to perform services that Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 have been provided as required. The District has therefore established jurisdiction for this proceeding as to Respondent.

2. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees in 20 full-time equivalent positions due to the reduction or discontinuation of particular kinds of services. The decisions made relate solely to the welfare of the District’s schools and pupils within the meaning of Education Code section 44949.

3. All contentions made by Respondent not specifically addressed above are found to be without merit and are rejected.

ORDER

Notice may be given to Respondent Toni Dunn that her services will not be required for the 2010-2011 school year because of the reduction or discontinuation of particular kinds of services.

DATED: _____

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings