

BEFORE THE GOVERNING BOARD OF THE
OXNARD UNIFIED SCHOOL DISTRICT

In the Matter of the Layoffs of:

Certificated Employees of the Oxnard
Unified School District,

Respondents.

OAH No.: 2010030713

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Oxnard, California, on April 19, 2010.

James R. Lynch, Attorney at Law, represented the Complainant.

Alexis Ridenour, Attorney at Law, represented all Respondents.

Oral and documentary evidence and evidence by way of stipulation and official notice was received.

The Administrative Law Judge now finds, concludes and orders as follows:

SUMMARY

The Governing Board (Board) of the Oxnard Unified School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2010/2011 school year for budgetary reasons. The decision was not related to the competency and dedication of the teachers whose services were proposed to be reduced or eliminated. District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, "skipping," and breaking ties between employees with the same first dates of paid service. The selection process complied with Education Code requirements.

FACTUAL FINDINGS

Parties

1. Complainant Sean Goldman filed the accusation¹ in this proceeding in his official capacity as Assistant Superintendent of the District.

2. The following persons, the Respondent's herein, are certificated employees of the District:

Maria Belen-Ortiz
Mirna Castro
Susan Castro
Rudy Gonzalez
Veronica Gonzalez
Stacie Halas
Cindee Hernandez
Tamara Hunt
Claudia M. Pantoja
Sylvia Valencia
Irene Zavala

Reduction of Services

3. On February 10, 2009, the Governing Board of the District, upon recommendation by the Complainant, adopted and issued resolution number 09-15 entitled "Reduction of Elimination of Particular Kinds of Service" (Resolution) to reduce or discontinue particular kinds of certificated services no later than the beginning of the 2010-2011 school year because of financial constraints resulting from revenue being insufficient to maintain the current levels of programs and necessary program changes resulting therefrom.

4. The Resolution specifies the Reduction or Elimination of Particular Certificated Services as follows:

¹ The term "accusation" refers to a pleading utilized under the Administrative Procedure Act, Government Code section 11503. Respondents are not "accused" in the every-day sense of that word, unless it can be said they are accused of not having enough seniority to retain their positions with the District in the face of a resolution to reduce positions.

<u>TYPE OF PROGRAM</u>	<u>FTE (Full-Time Equivalent)</u>
K-6 Classroom Teacher	30
Categorically-Funded Teacher EL Specialist (TOSA)	.3
Total FTEs	30.3 FTE

The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.

5. With regard to services provided by the District, Exhibit B of the Resolution sets forth tie-breaking criteria to determine the order of layoff for those certificated employees with the same date of first paid probationary service.

6. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District’s discretion given the budgetary constraints, other factors considered by the Board, and the manner in which the decision to reduce or discontinue services was reached.

7. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and has become necessary to decrease the number of certificated employees as determined by the Board.

Notice and Process

8. On March 3, 2010, pursuant to Education Code sections 44949 and 44955, the Governing Board directed that notice be given to Respondents that their services will not be required for the ensuing school year, and stating the reasons therefore.

9. On or before March 15, 2010, within the deadline set forth in Education Code section 44949, the Respondents were provided written notice of the recommendation that Respondents receive notice pursuant to Education Code sections 44949 and 44955 that their services will not be required for the ensuing school year, and stating the reasons therefore.

10. Each Respondent timely requested a hearing. Thereafter, an accusation was served upon each of the Respondents, and the Respondents filed notices of defense, which were timely, or accepted, by the District without objection.

Skipping Criteria

11. Exhibit A, part of the Resolution, sets forth “Skipping Criteria pursuant to Education Code section 44955(d)(1)” as follows:

The District shall retain certificated employees in the particular kind of services identified in Board Resolution #09-15, regardless of their seniority, to the extent one or more of their assignments meet any of the following criteria:

1. Employees with experience and who possess a credential authorizing the teaching of special education classes during at least two of the previous three school years, and are expected to teach one or more special education classes for the District in the 2010-2011 school year.
2. Employees with experience and who possess bilingual teaching certification in English/Spanish, are teaching English/Spanish bilingual courses during at least two of the previous three school years, and are expected to teach one or more of these courses for the District in the 2010-2011 school year.

Employees who meet any of the foregoing criteria for some but not all of their assignment(s) shall be retained only as to that portion of their assignment(s) in 2009-2010 that meets the foregoing criteria.

The Superintendent or designee is authorized to determine which employees qualify to be “skipped” from the Reduction in Force and to determine the manner in which the foregoing criteria shall be applied to each employee.

The evidence established that the skipping criteria were reasonable and not arbitrary and that the promulgation of Exhibit A was within the sound discretion of the District and the Board and in the best interest of the District and its pupils.

Findings Re: Certain Respondents

12. Sylvia Valencia testified on her own behalf. Ms. Valencia currently teaches kindergarten SEI (Structured English Instruction) at McAuliffe School and has been employed by the District as a certificated employee (teacher) since October 3, 2005. Ms. Valencia did establish that she has had 20 years teaching experience beginning in the Modesto City Schools and that for many years she had bilingual teaching assignments

consistent with her BCLAD² credential. However, Ms. Valencia did not establish that she has taught English Language/Spanish Language bilingual courses during at least two of the previous three school years.

13. Mirna Castro testified on her own behalf. Ms. Castro currently teaches combination fifth/sixth grade SEI at Elm School and has been employed by the District since November 15, 2004. Ms. Castro originally taught in the Los Angeles Unified School District and that for at least 10 years in that District she had bilingual teaching assignments consistent with her BCLAD credential. However, Ms. Castro did not establish that she has taught English Language/Spanish Language bilingual courses during at least two of the previous three school years.

Seniority

14. The District maintains a Seniority List³ which contains employees' seniority dates (the first date of paid service) current assignments and locations, credentials, authorizations and employment status (permanent, probationary or temporary). The evidence established that the Seniority List utilized in the layoff process is accurate as to the information contained therein. 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 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents by reason of Findings 8, 9 and 10.

2. Cause was established required by Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services by reason of Findings 3, 4 and 5. The Board's decision to reduce or eliminate the identified services set forth in Finding 4 was neither arbitrary nor capricious in that the decision relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949, by reason of Findings 6 and 7.

² Crosscultural, Language and Academic Certificate authorizing teachers to provide certain types of instruction to English Language learners.

³ The most senior employee is listed as number 76 on the Seniority List; the least senior employee is listed as number 1.

3. Education Code section 44955, subdivisions (b) and (c), set forth a general rule requiring school districts to retain senior employees over more junior employees and to retain permanent employees over temporary employees. Any exception to this general rule must be based on statute.

4. Education code section 44955, subdivision (d) sets forth an exception to the general rule that the services of a senior employee must be retained over the services of more junior employees.

Education Code section 44955, subdivision (d) provides:

Notwithstanding subdivision (b), a school district may deviate from termination a certificated employee in order of seniority for either of the following reasons:

- (1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.
- (2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

5. Cause exists to sustain the Accusation as to Sylvia Valencia pursuant to Education Code section 44955, subdivision (d) by reason of Findings 11 and 12.

6. Cause exists to sustain the Accusation as to Mirna Castro pursuant to Education Code section 44955, subdivision (d) by reason of Findings 11 and 13.

7. No permanent or probationary employee with less seniority is being retained to render a service for which Respondents are certificated and competent by reason of Finding 14. Accordingly, cause exists to sustain the Accusation as to all Respondents.

9. Cause exists to give notice to Respondents that their services will not be required for the 2010/2011 school year by reason of the whole of the Findings herein.

ORDER

The Accusations are sustained as to all Respondents. Notice may be given to Respondents that their services will not be required for the 2010/2011 school year.

Dated: _____

RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm