

BEFORE THE
GOVERNING BOARD OF THE
LITTLE LAKE CITY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

VERONICA CAMELO AND OTHER
CERTIFICATED EMPLOYEES OF THE
LITTLE LAKE CITY SCHOOL DISTRICT,

Respondents.

OAH No. 2012030182

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Santa Fe Springs, California on April 23, 2012.

Eric Bathen, Attorney at Law, represented Phillip Perez, Ed.D., Superintendent, Little Lake City School District (District).

Angela Serranzana, Attorney at Law, represented respondents Veronica Camelo, Andrea Hannibal, Monica Herrera, Marsha W. Kao, Kerlan Kim, Jennifer Lam, Sabrina LaRosa, Georgette Manohorathat, Melissa L. Ramirez, Jaclyn Reed, Michelle S. Torres, Carrie E. Winn, and Shereen A. Wittenberg.

Respondents Shelley Lopez and Susie Luu Hoang were not represented and did not appear.

The District has decided to reduce or discontinue certain educational services and has given respondents notice of its intent not to reemploy them for the 2012-2013 school year. At the outset of the hearing, the parties stipulated that 14.2, and not 19.4, full time equivalent positions are subject to reduction or discontinuation. The issue presented is whether cause exists for not reemploying respondents for the 2012-2013 school year.

Evidence was received by stipulation, testimony, and documents. The record was closed and the matter was submitted for decision on April 23, 2012.

FACTUAL FINDINGS

1. Superintendent Perez filed the Accusation in his official capacity.

2. Respondents are certificated employees of the District.

3. On March 7, 2012, the District provided written notice to respondents pursuant to Education Code¹ sections 44949 and 44955 that their services would not be required for the 2012-2013 school year.

4. On March 29, 2012, the District filed and thereafter served the Accusations and related documents on respondents. Respondents thereafter filed a timely Notice of Defense requesting a hearing for a determination of whether cause exists for not reemploying them for the 2012-2013 school year. All prehearing jurisdictional requirements were met.

5a. On February 28, 2012, the Board of Education (Board) of the District adopted *Resolution [12-044] for a Reduction and/or Discontinuance of Particular Kinds of Services Performed by Certificated Staff*, which provides for the elimination of the following services for the 2012-2013 school year:

<u>SERVICES</u>	<u>NUMBER OF FULLTIME EQUIVALENT POSITIONS [FTE]</u>
Multiple Subject Credential Teachers	12.4
Middle School Science	1.00
Special Education (DHH) Teacher	2.00
Special Education (SH) Teacher	2.00
Special Education (LH) Teacher	1.00
Special Education (RSR) Teacher	1.00
Total Full time Equivalent Reduction:	19.4 ²

5b. The Board set forth its tie-breaking criteria for the District's certificated employees with the same seniority date in *Resolution [12-041] Determination of Tie-Breaking Criteria for 2012-2013 School Year*. The resolution provides for an order of termination, based solely on the needs of the District and its students, using the following criteria in order of priority:

¹ All statutory citations are to the Education Code, unless indicated otherwise.

² The parties stipulated at the hearing that 14.2 full time equivalent positions are subject to reduction or discontinuation without specifying the affected services.

- a. Meet the criteria to be NCLB Compliant for current assignment
- b. Possession of a Bilingual Cross-Cultural Language Academic Development (BCLAD) Certificate (or equivalent)
- c. Possession of a Cross-Cultural Language Academic Development (CLAD) Certificate (or equivalent)
- d. Issuance of a Temporary County Certificate (TCC) for a BCLAD or CLAD (or equivalent)
- e. National Board Certification
- f. Hold credential for the longest period of time
- g. Total number of years of teaching experience in the District
- h. Total number of years of teaching experience in education

5c. The District's tie-breaking criteria are reasonable as they relate to the skills and qualifications of certificated employees. Respondents did not challenge the District's application of the criteria.

6. The services set forth in Factual Finding 5a are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.

7. The Board took action to reduce the services set forth in Factual Finding 5a because of uncertainty surrounding future State funding. The decision to reduce services was not related to the capabilities and dedication of the individuals whose services are proposed to be reduced or eliminated. The decision to eliminate the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

8. The District's Personnel Services Administrator Sonya Cuellar and Personnel Specialist Toni Traster were responsible for implementation of the technical aspects of Resolution 12-044. They reviewed available information to compile a tentative seniority list containing seniority dates, current assignments, and credentials and certifications. They then provided certificated employees within the District with opportunities to verify, update, or correct information.

9. 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, including whether more senior employees affected by the layoffs held credentials in another area and were entitled to displace or "bump" other less senior employees. In determining who would be laid off for each 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. The District then checked the credentials of affected individuals and whether they could "bump" other employees.

10. The District properly considered all known attrition, resignations, and retirements in determining the actual number of layoff notices to be delivered to

employees by March 15, 2012. The District notified 16 of its certificated employees that they were subject to layoff, but subsequently rescinded one notice of layoff. The District plans to continue to consider all future additional positively assured attrition to avoid unnecessary layoffs.

11. The District did not retain any certificated employee junior to any respondent to render a service which any respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Section 44949 provides in pertinent part as follows:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefore.

2. Section 44955 provides in pertinent part as follows:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certified and competent to render.

[¶] . . . [¶]

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis on needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish . . . a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group

(c) . . . [S]ervices of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. . . .

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

(1) The district demonstrated a specific need for personnel to teach a specific course or course of study . . . 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.

3. All notice and jurisdictional requirements set forth in sections 44949 and 44955 were met.

4. Boards of education hold significant discretion in determining the need to reduce or discontinue particular kinds of services, which is not open to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School Dist.* (1976) 64 Cal.App.3d 167.) Such policy-making decisions are not subject to arguments as to the wisdom of their enactment, their necessity, or the motivations for the decisions. (*California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1529.) Such decisions and action must be reasonable under the circumstances, with the understanding that “such a standard may permit a difference of opinion.” (*Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831, 845.) Numerous cases stand for the proposition that the process of implementing layoffs is a very flexible one and that school districts retain great

flexibility in carrying out the process. (See e.g. *Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796.)

5. The services set forth in Factual Finding 5a are particular kinds of services which may be reduced or discontinued within the meaning of section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

6. A school district may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce service' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford, supra*, 64 Cal.App.3d at 178-179.)

7. Cause exists pursuant to sections 44949 and 44945 to reduce the number of certificated employees of the District due to the reduction or discontinuation of the particular kinds of services set forth in Factual Finding 5a. The District properly identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

8. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

ORDER

The Little Lake City School District may give notice to respondents Veronica Camelo, Andrea Hannibal, Monica Herrera, Susie Luu Hoang, Marsha W. Kao, Kerlan Kim, Jennifer Lam, Shelley Lopez (40%), Sabrina LaRosa (80%), Georgette Manohorathat, Melissa L. Ramirez, Jaclyn Reed, Michelle S. Torres, Carrie E. Winn, and Shereen A. Wittenberg that their services will not be required for the 2012-2013 school year.

Dated: April 24, 2012

JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings