

BEFORE THE
BOARD OF EDUCATION OF THE
TRACY UNIFIED SCHOOL DISTRICT
SAN JOAQUIN COUNTY
STATE OF CALIFORNIA

In the Matter of the Accusation against:

OAH No. 2013030393

MARIA LETICIA AYALA,
CHINDA BAN,
ARMINDA CASTELLON,
LETICIA DOMINGUEZ,
DINA GRAVES,
JANIS GREEN,
JANICE HESS,
JOHN HUNTER, II,
AMANDA LIS,
ANNABELLE MOTYKA,
HEATHER NIELSEN,
TINA ORINO,
JESSE RAGAN,
DESI ROSALES,
JORJA RULE,
HEATHER SIRAPONIAN,
BARBARA TAPIA-GUILLEN,
JUSTINE WEBB,
JESSICA WEISS,

Respondents.

PROPOSED DECISION

This matter was assigned to Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, for issuance of a Proposed Decision on the written record, pursuant to the “Stipulation Between the Parties” executed on April 10, 2013 (Stipulation).

Marie A. Nakamura, Attorney at Law, of the law firm of Kronick, Moskovitz, Tiedman & Girard, represents the Tracy Unified School District (District).

Thomas J. Driscoll, Attorney at Law, of the Driscoll Law Firm, represents the respondents.

The Stipulation and Exhibits 1 through 9 are admitted in evidence. The Stipulation is attached to this Proposed Decision as Attachment A, and incorporated herein.

The matter was submitted for decision and the record was closed on April 10, 2013.

FACTUAL FINDINGS

1. James Franco is the Superintendent of the Tracy Unified School District. His actions were taken in his official capacity.

2. On or before February 26, 2013, the Superintendent determined that as a result of staffing and budget concerns and in order to balance the budget, it was necessary to reduce staffing for the 2013-2014 school year, thereby necessitating the reduction or elimination of certain particular kinds of services. The Superintendent recommended to the Board that certain particular kinds of services be reduced or eliminated, affecting employees occupying 20.8 full-time equivalent (FTE) positions. The Superintendent's recommendation to eliminate and reduce teaching services for the fiscal health of the District was made solely for the welfare of students.

3. On February 26, 2013, the Board adopted Resolution No. 12-17, providing for the reduction or elimination of particular kinds of services, resulting in reduction or elimination of 20.8 certificated positions.

4. On March 13, 2013, the Superintendent served a "Recommendation That Services Will Not Be Required" for the ensuing school year, 2013–2014 (Layoff Notice or Notice) on employees affected by the reduction and elimination of particular kinds of services. The Notice stated that the Superintendent had recommended to the Board that notice be given to respondents pursuant to Education Code sections 44949 and 44955, that their services would not be required for the ensuing school year. The Notice advised that the Board had passed a Resolution reducing or discontinuing particular kinds of services which reduced the certificated staff, and enclosed a copy of the Resolution identifying the particular kinds of services to be reduced or eliminated.

5. Respondents timely requested a hearing to determine if there is cause for not re-employing them for the ensuing school year.

6. The Superintendent made and filed Accusations against each of the employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense were timely served on those employees.

7. Respondents timely filed Notices of Defense to the Accusations.

8. Prior to hearing, the District and respondents entered into the Stipulation attached hereto. The Stipulation provides in pertinent part:

The Precautionary Layoff Notice issued to Heather Siraponian is rescinded.

The Layoff Notices issued to the following employees are rescinded: Justine Webb, Desi Rosales, Amanda Lis and Heather Nielsen.

9. The Stipulation does not address the Layoff Notices issued to the remaining respondents. There was no evidence or argument challenging the layoff of any of the remaining respondents.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met.

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, “in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction.” The District must be solvent to provide educational services and cost savings are necessary to resolve its financial crisis. The Superintendent’s decision to reduce particular kinds of services was a proper exercise of his discretion.

3. The services identified in Board Resolution No.12-17, are particular kinds of services that could be reduced or discontinued under Education Code section 44955. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the County’s schools and pupils within the meaning of section 44949.

4. A 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 services’ 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. The Notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them 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's Resolution and in the Notices, adequately describe 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.)

6. Cause exists under Education Code sections 44949 and 44955 to provide final Notice to the following respondents that their services will not be required in the ensuing school year.

Maria Leticia Ayala

Chinda Ban

Arminda Castellon

Leticia Dominguez

Dina Graves

Janis Green

Janice Hess

John Hunter II

Anabelle Mootyka

Tina Orino

Jesse Ragan

Jorja Rule

Barbara Tapia-Guillen

Jessica Weiss

ORDER

1. The District shall rescind Layoff Notices issued to Heather Siraponian, Justine Webb, Desi Rosales, Amanda Lis and Heather Nielsen.

2. The Accusations served on the remaining respondents, who are listed in Legal Conclusion 6, are sustained. Final Notices shall be given to the remaining respondents that their services will not be required for the 2013-2014 school year because of the reduction or discontinuation of particular kinds of services.

DATED: April 30, 2013

ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings