

BEFORE THE
GOVERNING BOARD OF THE
ACTON-AGUA DULCE UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2009031194

MARILYN ALFORD; JARED BRIGGS;
SHELLY KINSEY;
MICHELLE MOKLER;
SCOTT WALKER; and HEIDI WITEBY;

Certificated Employees of the
Acton-Agua Dulce Unified School District,

Respondents.

PROPOSED DECISION

Michael A. Scarlett, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 30, 2009, at the Acton-Agua Dulce Unified School District, in Acton, California.

Maggy M. Athanasious and James P. Fernow, Attorneys at Law, Fagen Friedman & Fulfrost LLP, represented the Acton-Agua Dulce Unified School District.

Shirley A. Lee, Attorney at Law, Schwartz, Steinsapir, Dohrmann & Sommers LLP, represented Marilyn Alford, Jared Briggs, Shelly Kinsey, Michelle Mokler, Scott Walker, and Heidi Witeby (hereinafter Respondents), certificated employees of the District.

At the hearing, the District, pursuant to stipulation between the parties, rescinded notices of recommendation to terminate and dismissed the Accusations against Respondents Heidi Witeby, Jared Briggs, and Scott Walker.

Oral and documentary evidence was received at hearing. Pursuant to the agreement of the parties, the record remained open for the parties to submit a written stipulation as to the recession of notice and dismissal of the Accusation against Respondents Witeby, Briggs, and Walker. On May 4, 2009, the parties filed the written stipulation with the Office of Administrative Hearings, which was marked as District Exhibit 14 and admitted into evidence. This matter was submitted for decision on May 4, 2009.

SUMMARY OF PROPOSED DECISION

The Governing Board of the Acton-Agua Dulce Unified School District (Board) determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are 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, "bumping," and breaking ties between employees with the same first dates of paid service. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. The Acton-Agua Dulce Unified School District (District) operates two elementary schools, one middle school, and two high schools.
2. Stan Halprin is the Superintendent of the District.
3. On March 12, 2009, the Board was given notice of the Superintendent's recommendation that six (6) Full Time Equivalent (FTE) employees be given notice that their services would not be required for the next school year and stating the reasons for that recommendation.
4. Board Resolution No. 08-09.18, adopted on March 12, 2009, proposed a layoff of six (6) FTE certificated employees. Specifically, Board Resolution No. 08-09.18 provided for the reduction or elimination of the following particular kinds of services:

Elementary School Teacher	4.0	FTE
Opportunity School Teacher	1.0	FTE
Special Education – Special Day Class	<u>1.0</u>	FTE
Total	6.0	FTE

5. On March 13, 2009, the District personally served on eight certificated employees a written notice that it had been recommended that notice be given to certificated employees pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year.¹ Each written notice set forth the reasons for the

¹ Prior to the hearing and before Accusations issued against Respondents, on March 17, 2009, the District rescinded the notices of recommendation that services would be terminated as to Jason Ervin and Nicole Moynihan. These two certificated employees were special education teachers – special day class, with the same seniority dates.

recommendation and noted that the Board had passed a Resolution reducing the certificated staff by six (6) FTE positions. Certificated employees timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year. Respondents' counsel also filed a timely Joint Request for Hearing on March 18, 2009.

6. On March 26, 2009, the Superintendent made and filed Accusations against each of the certificated employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense were timely served on those certificated employees.

7. Notices of Defense were timely filed by the Respondents. Respondents' counsel also filed a timely Joint Notice of Defense on March 30, 2009, for all of the Respondents.

8. Respondents in this proceeding are probationary or permanent certificated employees of the District.

9. The services set forth in Factual Findings 3 and 4 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.²

10. The Board took action to reduce or discontinue the services set forth in Factual Finding 4 primarily because of the unprecedented budget crisis facing the State of California, and the District's need to balance its budget for the upcoming 2009-2010 school year. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

11. The reduction of services set forth in Factual Findings 3 and 4 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board.

12. Board Resolution No. 08.09.19, adopted on March 12, 2009, established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination shall be based on the needs of the District and its students in accordance with the following:

- A. Number of teaching and/or special service credentials. Rating: +1 per credential;
- B. Number of Supplementary authorizations. Rating +1 per supplementary authorization;
- C. Earned degrees beyond the BA/BS level. Rating: +1 per degree.

² All further references are to the Education Code.

In the event that common day hires have equal qualifications based on application of the above criteria, the District will break ties by utilizing a lottery.

13. Subsequent to adoption of the Board's Resolution No. 08.09.18, the District identified vacancies in School Year 2009-10 due to attrition. At hearing the parties entered into a stipulation to rescind the layoff notices and dismiss the Accusations against Respondents Heidi Witeby (elementary school teacher), Scott Walker (opportunity school teacher), and Jared Briggs (elementary school teacher). Accordingly, the District determined that the number of certificated employees required to be terminated pursuant to this proceeding is three (3) Elementary School Teacher FTEs.

14. Pursuant to the parties' stipulation, the following Factual Findings are made:

(A) The tie-break criteria and procedure adopted by the Board are appropriate. As a result of ties in seniority dates among Respondents in this proceeding, the District properly applied and implemented the tie-breaking criteria and procedure. As a result of the District's application of the tie-breaking criteria and procedure, the seniority of Respondents Witeby, Mokler, Kinsey, and Alford are as follows: Witeby, Mokler, Kinsey, and Alford, with Witeby being the most senior and Alford being the least senior.³

(B) Respondents agree that the "competency standard" for teaching in an opportunity school as articulated in the fourth paragraph of Board Resolution No. 08.09.18 is appropriate. Respondents do not and will not challenge the competency standard. Respondents do not meet this standard and, as a result, no Respondent is competent to be reassigned (i.e. "bump") into a position at Opportunity High School.

(C) As of March 15, 2009, Respondent Jared Briggs held only a Preliminary Multiple Subject Teaching Credential and was assigned to teach single subject math courses at the secondary level. As such, as of March 15, 2009, Briggs was misassigned and, as a result, was appropriately noticed for layoff as an "elementary school teacher." On April 6, 2009, Briggs was issued a Preliminary Single Subject Teaching Credential in Foundation-Level Mathematics, which now authorizes Briggs to teach single subject math courses at the secondary level. Although the District is under no legal obligation to consider credentials issued after March 15, 2009, the District determined it is in the best interests of the District's schools and pupils to rescind the layoff notice and Accusation as to Respondent Briggs.

³ Respondents Alford, Kinsey, Mokler, and Witeby shared the same hire date of August 25, 2008, and application of the tie-breaker criteria did not resolve their seniority date. On March 26, 2009, their relative seniority was determined by a lottery which is also reflected in the parties' Stipulation.

15. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), current assignments and locations, advanced degrees, credentials, and authorizations. Credential and authorization data are obtained from the records of the County Office of Education, at which certificated employees must register such documents.

16. Maxine Griffin, the Director of Human Resources, was responsible for implementation of the technical aspects of the layoff. Ms. Griffin assured the accuracy of seniority dates and other data contained in the seniority list. The District made the seniority list available to employees.

17. The District used the seniority list to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other 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. No certificated employee challenged the accuracy or validity of the District's seniority list.

18. The District used information from the seniority list to apply the tie-breaker criteria of Board Resolution No. 08.09.19. The District's application of the tie-breaking criteria and procedure was not challenged or contested at hearing by Respondents.

19. No certificated employee junior to any of the Respondents was retained to render a service which any Respondents are certificated and competent to render.

LEGAL CONCLUSIONS

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

2. The services identified in Board Resolution No. 08.09.18 are particular kinds of services that could be reduced or discontinued under 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.

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.)

3. Cause exists pursuant to sections 44949 and 44955 to reduce the number of certificated employees of the District due to the reduction or discontinuation of particular kinds of services set forth in Factual Findings 3 and 4, as a result in the budget crisis facing the State of California and the District’s need to balance its budget for the 2009-2010 school year, by reason of Factual Findings 1 through 19. The District properly identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

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

5. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

ORDER

1. Notice may be given to Respondents Shelley Kinsley, Michelle Mokler, and Marilyn Alford, employees occupying three (3) full-time equivalent certificated elementary school teacher positions, that their services will not be required for the 2009-2010 school year because of the reduction and/or discontinuance of particular kinds of services.

2. Notice shall be given in inverse order of seniority.

Dated: May 6, 2007

Michael A. Scarlett
Administrative Law Judge
Office of Administrative Hearings