

BEFORE THE BOARD OF TRUSTEES
MIDDLETOWN UNIFIED SCHOOL DISTRICT
LAKE COUNTY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LIVIA AVINA, JANICE EBERT,
STACIE ENGRAHM, JAIME FORSLUND,
MONICA GRICE, DARREN JEKEL,
MICHELLE MACKEY,
MARYANNE MARTINELLI, and
KARA MORGAN,

Respondents.

OAH No. 2009040022

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Middletown, California, on April 15, 2009.

Carl C. Corbin, Attorney at Law, represented complainant Korby Olson, Ed.D., Superintendent, Middletown Unified School District.

James D. Allen, Attorney at Law, represented respondents Livia Avina, Janice Ebert, Stacy Engrahm, Jaime Forslund, Monica Grice, Darren Jekel, Michelle Mackey, Maryanne Martinelli, and Kara Morgan, all of whom were present at hearing.

The matter was submitted for decision on April 15, 2009.

FACTUAL FINDINGS

1. Korby Olson, Ed.D., made and filed the Accusation in his official capacity as Superintendent of the Middletown Unified School District.
2. Respondents Livia Avina, Hilary Devine, Janice Ebert, Stacie Engrahm, Jaime Forslund, Monica Grice, Darren Jekel, Michelle Mackey, Maryanne Martinelli, and Kara Morgan are certificated employees of the district.
3. On March 11, 2009, the district's Board of Trustees adopted Resolution No. 11-08-09 reducing particular kinds of services and directing the superintendent to give appropriate notices to certificated employees whose positions will be affected by the action.

4. On March 12, 2009, Superintendent Olson gave written notice to 13 certificated employees, including respondents, of the recommendation that their services will not be required for the 2009-210 school year. Each notice set forth the reasons for the recommendation.

5. Each of the nine respondents filed a timely request for hearing to determine if there is cause for terminating their services for the 2009-2010 school year.

6. An accusation was served on each of the nine respondents. Each of the respondents filed a notice of defense. All prehearing jurisdictional requirements were met as to each respondent.

7. In its resolution, the board took action to reduce or eliminate the following particular kinds of services for the 2009-2010 school year:

<u>Services</u>	<u>FTE¹ Reduction</u>
School Site Administration	2.0
Counselor	1.0
ROP Program	0.86
Secondary Art	0.5
Secondary Departmentalized English	1.0
Secondary Departmentalized Science	1.0
Secondary Departmentalized Special Education	2.0
Secondary Intervention Program (MAPS)	1.0
Elementary School Instructional Services	5.0
Elementary Intervention Teacher	1.0
Total:	15.36

8. Superintendent Olsen described that his recommendation and the board resolution were required by the district's budget situation, an anticipated \$1 million shortfall. With respect to the ROP program, the district anticipates that it will receive a reduced amount of average daily attendance dollars from the county based on historical attendance numbers rather than current attendance numbers. Because ROP is a Tier 3 program, the district is able to use those resources for any education purpose. The district will remain able to provide all mandatory services notwithstanding the reduction in services.

9. Prior to recommending the 15.36 FTE reductions, Superintendent Olson took into account all positively assured attrition.

¹ Full-time equivalent positions.

10. After implementing the board's resolution, the district learned of six certificated employees that were taking advantage of the district's incentives and were retiring. The district rescinded the notice to Tara Martz, an elementary school teacher who holds a multiple subject credential. Ms. Martz's first date of paid service was August 30, 2005. The district also rescinded the notice to Hilary Devine, a high school teacher with a single subject English credential. Ms. Devine has a seniority date of September 18, 2006. Neither Ms. Martz nor Ms. Devine is a respondent in this proceeding

11. The district will also rescind .5 FTE of the notice to respondent Darren Jekel. Mr. Jekel is a middle school Life Sciences teacher. He has a single subject Art credential, with supplementary authorizations in Biology and Introduction to Science. Mr. Jekel has a seniority date of August 30, 2006. Because he is credentialed and competent to teach high school art, he is entitled to the remaining .5FTE High School Art position that will exist for the 2009-2010 school year. This .5 FTE position is available because the current high school Art instructor has elected to move into a vacant full-time elementary school position.

12. The district must issue the final layoff notices before May 15, and when it does so the district will take into account any additional attrition that has occurred. After that, further attrition will allow the district to rehire laid off employees.

13. Respondents Kara Morgan and Janice Ebert share the same first date of paid service to the district of August 27, 2007. The district adopted tie-breaking criteria many years ago to determine the relative seniority of employees with the same first date of paid service, but did not apply them in this case because it found that both employees are subject to layoff. The district will apply its tie-breaking criteria in the event it is necessary to do so during the rehire process. No respondent submitted a request, pursuant to Education Code section 44955, that the district furnish him or her a statement of its tie-breaking criteria.

Respondents contend that, even though it makes no difference to the elimination of their services, Education Code section 44955 required the district to apply its tie-breaking criteria. Their contention lacks merit. Under Education Code section 44955, the district must apply tie-breaking criteria when it affects the order of termination, and in this case it did not.

14. Respondent Livia Avina occupies the .86 FTE Regional Occupational Program position eliminated by the board's resolution. She holds a Preliminary Full-Time Designated Subjects Career Technical Education Teaching Credential that authorizes her to teach business, finance and information technology. During this school year she has taught four ROP classes, three in Office Skills and one in office lab. Students who complete Avina's ROP classes are eligible to receive community college credit at no cost to them.

Respondents argue that reduction of ROP services is not in the best interests of students, who receive classes that teach them how to effectively integrate into the work community. ROP services are not mandated services. The decision to reduce ROP services is a matter that lies within the discretion of the board. In light of the district's financial

situation, the board's decision to reduce these services by .86 FTE was neither arbitrary nor capricious.

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

16. No permanent or probationary employee with less seniority is being retained to render a service for which respondents are certificated and competent.

17. The cause for the layoff relates to the welfare of the schools and their pupils.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to all respondents (with the exception of Mr. Jekel) that their services will not be required for the 2009-2010 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

3. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to respondent Jekel that .5FTE of his services will not be required for the 2000-2010 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

1. Notice may be given to respondents Livia Avina, Hilary Devine, Janice Ebert, Stacie Engrahm, Jaime Forslund, Monica Grice, Michelle Mackey, Maryanne Martinelli, and Kara Morgan that their services will not be required for the 2009-2010 school year because of the reduction of particular kinds of services.

2. Notice may be give to respondent Darren Jekel that .5 FTE of his services will not be required for the 2009-10 school year because of the reduction of particular kinds of services.

DATED: _____

MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings