

BEFORE THE GOVERNING BOARD
OF THE DEL MAR UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Certified Employees Identified in
Exhibit A,

Respondents.

OAH No. 2010020352

PROPOSED DECISION

Greer D. Knopf, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California on April 26, 2010.

William Wood Merrill, Best Best & Kriger, Attorneys at Law, represented the Del Mar Union School District.

Fern M. Steiner, Tosdal, Smith, Steiner & Wax, Attorneys at Law, represented the respondents.

The matter was submitted on April 26, 2010.

FACTUAL FINDINGS

1. Holly McClurg, Assistant Superintendent of Instructional Services (Assistant Superintendent) of the Del Mar Union School District (the District), made and filed the accusation dated March 30, 2010, in her official capacity as the Assistant Superintendent of the District and as the designee of the Superintendent of the District. The accusation was originally filed against 27 respondents identified in Attachment A attached hereto and incorporated herein.

2. The respondents are all certificated employees of the District.

3. On February 12, 2010, in accordance with Education Code sections 44949 and 44955, Dr. Sharon McClain, the Superintendent of the District (Superintendent), notified the Governing Board of the District (the Board) in writing

of her recommendation to reduce or discontinue services for the ensuing school year. The Superintendent stated the reasons for the recommendation. The Superintendent recommended the reduction of particular kinds of services for the 2010-2011 school year.

4. On February 10, 2010, the Board adopted Resolution No. 2010-01 Determination of Seniority Among Certificated Employees With The Same Seniority Date “Tie Breaker Resolution” (Tie Breaker Resolution). This Tie Breaker Resolution set forth the tie breaker criteria by which ties between employees with the same first hire date would be broken in order to determine the final order of layoff.

5. On February 17, 2010, the Board adopted Resolution No. 2010-02 Reducing and Eliminating Certain Certificated Services for the 2010-2011 School Year (the Resolution to Reduce Services) determining that it is necessary to reduce particular kinds of services at the end of the current school year. The Board determined that the particular kinds of services that must be reduced for the 2010-2011 school year are the following full time equivalent (FTE) positions:

Music Teaching	6.6	F.T.E.
Art Teaching	7.0	F.T.E.
Science Teaching	2.2	F.T.E.
Physical Education Teaching	6.0	F.T.E.
Technology Teaching	3.2	F.T.E.
Drama Teaching	1.1	F.T.E.
Spanish Teaching	0.5	F.T.E.
Classroom Teachers K-6	22.0	F.T.E.
Coordinator of State and Federal Projects	1.0	F.T.E.
Total	49.6	F.T.E.

6. The Board directed the Superintendent to determine which employees’ services would not be required for the 2010-2011 school year as a result of the reduction of these particular kinds of services. The Board further directed the Superintendent to “take all steps necessary under the law not to employ those certificated employees of the District because of the reduction and elimination of these programs and services.” These steps included sending notices to all certificated employees of the District who would be laid off as a result of the reduction of these particular kinds of services.

7. On or before March 12, 2010, the Superintendent served a Notice to the Governing Board of Service of Preliminary Notice of Layoff Pursuant to Education Code sections 44949 and 44955, by either personal delivery or by registered mail, a written notice to each of the respondents herein that the Superintendent had

recommended not to re-employ them in the upcoming 2010-2011 school year. The written notice notified respondents that their services would not be required for the upcoming 2010-2011 school year. The written notice to respondents set forth the reasons for the recommendation. Each written notice advised respondents of their right to a hearing, that each respondent had to deliver a Request for Hearing in writing to the District no later than ten days from receipt of the preliminary notice of layoff, and that the failure to deliver a Request a Hearing would constitute the waiver of the right to a hearing. The recommendation that respondents be terminated from employment was not related to their job performance as teachers.

8. Some certificated employees given written notice that they would not be re-employed for the ensuing school year did not file a Request for Hearing. However, each of the 27 respondents named in Attachment A to the accusation herein timely filed a written Request for Hearing to determine if there is cause for not reemploying them for the 2010-2011 school year.

9. Subsequently, on March 30, 2010, the District filed and then timely served the Accusation dated March 30, 2010, a Notice to Respondent, a blank Notice of Defense form, a Notice of Hearing, and relevant Education Code and Government Code sections, upon each of the 27 respondents listed in Attachment A to the accusation herein who had timely requested a hearing in this matter. Some of the certificated employees who were served with the Accusation herein filed a timely Notice of Defense. However, at the hearing, there was an issue as to whether or not the Notices of Defense were received by the District for several of the respondents who were present at the hearing. The District agreed to waive the issue of timely receipt of the Notices of Defense for all respondents present at the hearing with the understanding that this waiver would not serve as precedent for any other proceedings in future years. The District did not make this waiver as to respondent Ariella Leeder, who was not present at the hearing and who did not submit a timely Notice of Defense requesting a hearing in this matter.

10. All pre-hearing jurisdictional requirements were met by the District.

11. The services the Board addressed in the Resolution to Reduce Services are “particular kinds of services” that can be reduced or discontinued within the meaning of Education Code section 44955. The Board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper and reasonable exercise of its discretion. The Board’s decision to make these cuts was the result of deliberation and consideration of the necessary cuts in the District’s budget for the ensuing school year. The District is facing a significant budget deficit in the next school year. The Board’s action to reduce services is a proper exercise of its discretion to address the need for budget cuts for the 2010-2011 school year.

12. The reduction or discontinuation of particular kinds of services relates solely to the welfare of the District and its pupils. The District faces extremely difficult financial times due to the current state budget crisis. While it may not be desirable to cut back staff, the District is facing a grave financial situation in the coming year. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

13. Some of the employees named as respondents were hired on the same date. Between these employees who first rendered paid service to the district on the same date, the Board determined their order of termination solely on the basis of the needs of the district and the students. The specific criteria used to determine the order of termination was set forth by the Board in the Tie Breaker Resolution. The District fairly applied the tie breaker criteria to rank those employees hired on the same date. Under these criteria the District properly retained certain employees while the respondents herein were properly given notice that their services would no longer be required for the ensuing school year.

14. The Board considered all known attrition, resignations, and retirements in determining the actual number of necessary layoff notices to be delivered to its employees. The District also first released temporary employees that had been employed during the 2009-2010 school year.

15. Respondent Sarah Grosso (Grosso) testified at the hearing that she believed the District should have considered the fact that she had a supplemental credential in deciding on the order of layoff. However, Grosso's supplemental credential, while issued in January 2010, was not actually cleared and registered by the state until April 2010. The District is entitled to rely on the information it has prior to March 15 so that it may accurately determine the order of layoff and send out the notices of layoff by March 15, 2010 as required by law.

16. No certificated employee junior to any respondent is being retained to perform any services which any respondent is certificated and competent to render. The Board appropriately set forth the criteria to determine whether an employee is deemed "competent" to render services, within its discretion, as part of the Resolution to Reduce Services and the District properly applied those criteria.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Cause exists under Education Code sections 44949 and 44955 for the Del Mar Union School District to reduce particular kinds of services. The cause for the reduction of particular kinds of services is related solely to the welfare of the schools and the pupils thereof.

3. A preponderance of the evidence sustained the charges set forth in the accusations herein. Therefore, cause exists for the Board to give the respondents listed in Attachment A final notice before May 15, 2010, that their services will no longer be required by the District for the 2010-2011 school year.

ORDER

The accusation served on the respondents listed in Attachment A herein is sustained and notice shall be given to those respondents listed in Attachment A before May 15, 2010 that their services will not be required in the next school year because of the reduction of particular services as indicated.

Dated: _____

GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A

1. Rachelle Armstrong
2. Michelle Beeson
3. Marisa Camarillo
4. Genevieve Chapluk
5. Donna Chung
6. Karyn Conner
7. Adrienne Crabtree
8. Christopher Delehanty
9. Abby Farricker
10. Alison Fieberg
11. Robin Gordon
12. Sarah Grosso
13. Stephanie Ilkhanipour
14. Ariella Leeder
15. Emily Mackie
16. Lauren Markarian
17. Shannon McAfee
18. Shawna Murphy
19. Natasha Rosario
20. Alicia Saunders
21. Marie Schwab
22. Andrea Shea
23. Adrienne Sheffield
24. Kristin Stanton
25. Michelle Turnbull
26. Traci Waxman
27. Melissa Weinbaum-Davis