

BEFORE THE
BOARD OF EDUCATION
MOUNT DIABLO UNIFIED SCHOOL DISTRICT

In the Matter of the Proposed Layoff of:

Certificated Employees,

Respondents.

OAH No. 2010030157

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on April 27, 2010, in Concord, California.

Deborah Cooksey, Associate General Counsel, and Joshua A. Stevens, of Fagen Friedman & Fulfroost LLP, represented the Mount Diablo Unified School District.

Ernest M. Tuttle III, of Tuttle & McCloskey, represented all respondents except for Jessica Hjort.

There was no appearance by or on behalf of respondent Jessica Hjort.

The matter was submitted for decision on April 27, 2010. On April 28, 2010, the record was reopened upon receipt from the district of an updated list of respondents. That list was marked as Exhibit 9 and admitted in evidence. (Mr. Tuttle stipulated to admission of the list.) On April 28, 2010, the record was closed and the matter deemed submitted for decision.

FACTUAL FINDINGS

1. Dr. Steven Lawrence made and filed the accusation in his official capacity as Superintendent of the Mount Diablo Unified School District.

2. Respondents are listed on Appendix A, attached hereto and by this reference incorporated herein. Each respondent is a certificated employee of the district.

3. On March 9, 2010, the Board of Education adopted Resolution No. 09/10-45, reducing or discontinuing particular kinds of services for the 2010-2011 school year and directing the Superintendent or his designee to give appropriate notices to certificated employees whose positions will be affected by the action.

4. On or before March 15, 2010, Superintendent Lawrence gave written notice to respondents and other certificated employees of the recommendation that their services will not be required for the 2010-2011 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

5. Respondents and other certificated employees filed timely requests for hearing to determine if there is cause for terminating their services for the 2009-2010 school year. An accusation was served on respondents and others, and all respondents are deemed to have filed timely notices of defense. All prehearing jurisdictional requirements have been met.

6. On March 9, 2010, in order to address a projected budget deficit, the board took action to reduce or discontinue the following particular kinds of services for the 2010-2011 school year:

| | |
|---|-----------------------|
| District Wide | |
| Special Education Administrator, DIS | 1.00 FTE ¹ |
| Student Services Coordinators | 3.00 FTE |
| DIS Teacher | 1.00 FTE |
| Special Day Class Teacher | 1.00 FTE |
| School Psychologists | 2.00 FTE |
| Resource Specialists | 24.50 FTE |
| Instrumental Music – 5 th grade | 7.33 FTE |
| Vocal Music – Elementary | 15.00 FTE |
| Library Media Teachers | 23.00 FTE |
| Adult Education Teacher | 10.00 FTE |
| | |
| Elementary Teaching Positions | |
| K-5 Classroom Teachers | 34.00 FTE |
| Reading/Language Arts/Math Intervention Teacher | 6.53 FTE |
| | |
| Middle School Teaching Positions | |
| Core | 10.34 FTE |
| Science | 1.85 FTE |
| Spanish | .68 FTE |
| AIMS | 1.17 FTE |
| Mathematics | 1.74 FTE |
| English | 2.28 FTE |
| Reading | .37 FTE |
| PE | 1.77 FTE |
| History | 1.74 FTE |
| Academic Literacy | .56 FTE |
| Hands on Technology (HOT) | .14 FTE |

¹ Full-time equivalent positions.

| | |
|---|----------|
| French | .14 FTE |
| Woodshop | .14 FTE |
| Academic Success | 1.34 FTE |
| Chorus/Music | .37 FTE |
| Band | .37 FTE |
| | |
| High School Teaching Positions | |
| Commercial Art (ROP) | .20 FTE |
| Advanced Photography (ROP) | .80 FTE |
| Computerized Accounting and Computer Applications (ROP) | .60 FTE |
| Biotechnology (ROP) | 1.00 FTE |
| Robotics (ROP) | .40 FTE |
| Advanced Automotive Technology (ROP) | .60 FTE |
| Commercial Baking (ROP) | .40 FTE |
| Restaurant Occupations (ROP) | .40 FTE |
| AP Environmental Science (ROP) | .20 FTE |
| Construction Technology (ROP) | .20 FTE |
| Computer Programming (ROP) | .20 FTE |
| Journalism Productions (ROP) | .40 FTE |
| Careers in Teaching and Careers in Teaching Internships (ROP) | .60 FTE |
| Photography and Art and Animation (ROP) | .40 FTE |
| Sports Medicine (ROP) | .80 FTE |
| Creative Writing (ROP) | .20 FTE |
| Radio Station Broadcasting (ROP) | .40 FTE |
| Computer Graphics and Web Page Design (ROP) | .40 FTE |
| Analytical Forensic Science (ROP) | .20 FTE |
| Sports Medicine and Advanced Sports Medicine (ROP) | .40 FTE |
| Developmental Psychology of Children (ROP) | .20 FTE |
| Intro to Law (ROP) | .40 FTE |
| Art of Video Productions and Computer Art and Animation (ROP) | .40 FTE |
| Mathematics | 2.60 FTE |
| English | 3.60 FTE |
| Spanish | 2.80 FTE |
| History | 2.80 FTE |
| Sociology | 1.20 FTE |
| Earth Science | 1.40 FTE |
| Chemistry | 1.70 FTE |
| Biology | 2.10 FTE |
| Physics | 1.80 FTE |
| AIMS | .60 FTE |

| | |
|----------------------------------|-------------------|
| PE | 1.40 FTE |
| Weights | .20 FTE |
| Work Experience (WEE) | .20 FTE |
| Foods | .20 FTE |
| Art | 1.40 FTE |
| Photography | .40 FTE |
| German | .20 FTE |
| Zoology | .80 FTE |
| Ceramics | .80 FTE |
| Drama | .60 FTE |
| Auto Shop | .20 FTE |
| Psychology | 1.60 FTE |
| Science | .80 FTE |
| Computers | 1.20 FTE |
| Economics | 1.80 FTE |
| Government | 1.20 FTE |
| Athletic Director | .20 FTE |
| WASC | .20 FTE |
| Intervention Teacher | .20 FTE |
| Multiple Subjects (Horizons CIS) | 3.00 FTE |
| | |
| Total: | 199.36 FTE |

7. Before issuing the preliminary layoff notices, the district took into account all positively assured attrition. Additional attrition which became known before the hearing enabled the district to rescind many of the notices. As of the time of the hearing, the district was planning to lay off 171 certificated employees in 152.30 full-time equivalent positions. 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.

8. Pursuant to the board's resolution, the district intends to retain regardless of seniority (i.e., "skip" in the layoff process) certificated employees who possess a BCLAD² certificate and bilingual school psychologists. All employees with a BCLAD certificate will be assigned next year to positions requiring such certification.

9. Under Education Code section 44955, subdivision (b), "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 certificated and competent to render." (Italics added.) To comply with this provision in determining which employees will be laid off in a particular subject area, the district has given preference to permanent employees over probationary employees, even when a probationary employee has an earlier seniority date than a permanent employee. Except in this unusual circumstance, no certificated employee

² Bilingual, Cross-Cultural, Language and Academic Development.

junior in seniority to any respondent is being retained by the district to perform services that any respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955.

2. Cause exists because of the reduction or elimination of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2010-2011 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

Notice may be given to respondents that their services will not be required for the 2010-2011 school year because of the reduction or elimination of particular kinds of services.

DATED: _____

NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

Appendix A – Respondents

| | | |
|--------------------------|---------------------------|---------------------|
| Abdullah, Bashar | Diamond, Eric | Kennedy, Jane |
| Abella, Rachel | Didion, Deirdre | Klaas, Karin |
| Aguilera, Claudia | Diestler, Jenna | Koontz, Kathleen |
| Alcaide Tubio, Francisco | Dillon, Paula | Krause, Emily |
| Almond, Josh | Dolley, Corey | Kriel, Travis |
| Alumbaugh, Arlan | Doster, Dennis | Liebow, Cheri |
| Amodio, Kathleen | Edwards, John | Louie, Mamie |
| Anderson, Kimberly | Emigh, Christian | Lowande, Karen |
| Andrade, Jacqueline | Evans, Robin | Lowell, Justin |
| Andrews, Emily | Evans, Sandra | Luebke, Christopher |
| Archangelo, Karen | Ferris, Danielle | Luthra, Vandana |
| Ayon, Gina | Fierros, Carlota | Marek, Andrea |
| Ayres, Sherry | Filipinia, Maria Teresita | Mares, Michael |
| Azevedo, Katherine | Fisher, Adam | Martin, Juan |
| Ballard, Benjamin | Gamblin, Lori Ann | Martini, Nancy |
| Barabak, Marianne | Gamez, Sarah | McCollum, Bryan |
| Barambani, Stephanie | Garcia, Vanessa | McCurdy, Briannon |
| Batson, Jennifer | Gilford, Spencer | Medina, Amanda |
| Bautista, Jan | Graham, Emily | Mikuni, Ronald |
| Beerbaum, Jessica | Greenblatt, Laura | Miller, Robert |
| Benbrook, Ross | Grewe, Kimberly | Mills, Virginia |
| Berry, Meghan | Gundelfinger, Paul | Mimbs, Kristin |
| Blubaugh, Erin | Hatch, Suzanne | Minglana, Ernesto |
| Bond, Alyssa | Hatcher, Rose Mary | Montgomery, Ruth |
| Breashears, Barbara | Herald, Nicholas | Moore, Carolyn |
| Bromley, Josephine | Hernandez, Simone | Moore, Sherrie |
| Brooks, Ryann | Hile, Gregory | Moseley, Brendan |
| Brown, Gregory | Hjort, Jessica | Moseley, Jane |
| Brown, Stella | Hoelle, Allison | Moser, Michael |
| Bullard, Deborah | Hood, Denise | Moses, Jonathan |
| Calderon, Marie | Hood, James | Murphy, Megan |
| Campopiano, Benjamin | Husen Collins, Kathy | Nassrallah, Zoila |
| Carney, Bridget | Iglesias, Ninfa | Nesbeth, Keya |
| Chevial, Matthew | Jaquez, Magic | Nichols, Sandra |
| Coartney, Gary | Johnson, Janelle | Nnaji, Carolyn |
| Cook, Julie | Johnson, Ollie | Okimura, Shelley |
| Crandell, Kathryn | Kahrer, Martha | Opsahl, Cynthia |
| Crisp, Jennifer | Kamal, Raj | Patton, Emilie |
| DeAngelis, Jennifer | Kaput, Susan | Perona, Linette |
| Delaney, Jamie | Kaur, Ramanpreet | Phan, Khoa |
| DeMaggio, Sarah | Kellersberger, Nicole | Piotrasch, Michael |
| Dewes, Nicole | Kelly, Matt | Pratt, Erica |

Prodoehl, Daniel
Ravin, Monica
Richards, Emily
Rogers, James
Roy, Bradley
Runge, Virginia
Sabatier Lacher, Celine
Sain, Timotny
Shaw, Bryan
Shumate, Ruth
Sierra, Jade
Sikorski, Janet
Sinquefield, Danielle
Smith, Susanne
Smythe, Amanda
Snyder, Linda
Solinger, Carol
Sparks, Thomas
Spink, Patricia
Stevens, Nancy
Stoyer, Nancy
Sugden, Carissa
Tafoya, Monique
Taylor, Tracy
Tessandori, Iris
Thomas, Marcus
Thompson, Eric
Torres, Barbara
Townsend, Danya
Trujillo, Erin
Tsuruda, Shannon
Valerio, Elizabeth
Villars, Nikolas
Walker, Achilles
Weaver, Lauren
Welch, Jacqueline
Wharton, Michael
Wieland, Elizabeth
Willner, Stephen
Wilson, Elijah
Winterich, Anne
With, M. Lynn
Wright, David
Xiromamos, Pamela