

BEFORE THE  
GOVERNING BOARD OF THE  
MORELAND SCHOOL DISTRICT  
COUNTY OF SANTA CLARA  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JAMIE ACOSTA and various other  
certificated employees of the District,

Respondents.

OAH No. 2010030641

**PROPOSED DECISION**

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in San Jose, California on April 6, 2010.

Pascale-Sonia Roy and Janet Cory Sommer, Attorneys at Law, Burke, Williams & Sorensen, LLP, represented the Governing Board of the Moreland School District.

Christopher Schumb, Attorney at Law, represented all the respondents.

The matter was submitted on April 6, 2010.

**FACTUAL FINDINGS**

1. Glen Ishiwata made the accusations in his official capacity as the Superintendent of the Moreland School District (District) and not otherwise.
2. Each of the named respondents was at all times mentioned herein, and now is, a certificated employee of the District.<sup>1</sup>
3. On February 23, 2010, the Governing Board of the District was given written notice by the Superintendent of his recommendation that notice be given respondents that his/her services will be terminated at the close of the current school year and stating the reasons for the recommendation.

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<sup>1</sup> A list of the respondents served with a March 15, 2010 notice is attached as Attachment A.

4. On March 8, 2010, respondents were given written notice by the Superintendent that it was recommended that notice be given respondents that his/her services will not be required for the ensuing school year.<sup>2</sup>

5. Respondents timely requested, in writing, a hearing to determine if there is cause for terminating his/her services for the ensuing school year.

6. On February 23, 2010, the Governing Board adopted Resolution No. 13-2009/2010, directing the Superintendent or his designee to give notices to certificated employees that their services will not be required for the 2010-2011 school year.

7. The programs to be reduced or eliminated include 26.5 FTE.'s as follows:

- 1.0 FTE Principal on Special Assignment
- 1.0 FTE Psychologist
- 13.0 FTE Class Size Reduction Kindergarten – 3rd Grade Teachers
- 1.0 FTE 4th – 5th Grade Core Teacher
- 4.0 FTE 6th – 8th Grade Core Teachers
- 1.5 FTE Teacher on Special Assignment
- 1.0 FTE Elementary Music Teacher
- 4.0 FTE Performing Arts Teachers

The Governing Board rescinded notices given to Melissa Capurro (math), Brittney Gese (physical education), Natalie Jovic (psychologist), John Lozano (special education), Jana Petersen (psychologist), Sheila Severinghaus (special education), and Elizabeth Villalovos (psychologist).

8. All jurisdictional requirements were met.

9. Cause exists within the meaning of Education Code sections 44949 and 44955 for not reemploying respondents for the ensuing school year. In the opinion of the Governing Board, it will be necessary to decrease the number of certificated employees in the District on account of the above reduction or discontinuance of services. As a consequence, the Board has determined that the services of a corresponding number or less of the certificated employees of the District shall be terminated at the close of the current 2009-2010 school year.

10. The Governing Board by Resolution No. 12-2009/2010 dated February 23, 2010, has further determined that, as between employees who first rendered paid service on the same date, the order of termination listed on the seniority list has been based solely on the basis of the needs of the District and the students thereof. One of the subsections of the listed criteria was not applied. However, the Governing Board ratified the application of the

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<sup>2</sup> An annotated list of respondents who were served an accusation packet is attached as Attachment B.

criteria on March 23, 2010, thereby making the application of the missed criterion unnecessary.

11. No permanent or probationary certificated employee with less seniority is being retained to render a service, which the respondents, or any of them, are certificated and competent to render.

12. The cause for not reemploying respondents relates solely to the welfare of the schools in the District and the pupils thereof.

13. The District proposes to layoff Rebecca Ayer (music) because Barbara Wong, who is one of the performing arts teachers whose position is being eliminated, is bumping into Ms. Ayer's position. Ms. Wong is senior to Ms. Ayer. However, there has been an additional retirement since March 15, 2010, of a music teacher in the district. The District was not required to take that into account for the March 15, 2010 notices, but is required to take it into account for the final layoff notices. The District is only authorized to reduce music by 1.0 FTE. The vacant position left by the retirement must be filled by the most senior teacher qualified to teach in that position.

14. There was also one additional resignation of a multiple subject teacher. The District is only authorized to reduce the multiple subject positions by a specific number. Therefore, that position must be filled by the most senior teacher qualified to teach in that position.

15. The reduction in service included 1.0 FTE Psychologist. The respondents argued that the District could not meet its mandated services if this reduction is implemented. The District indicated that it could meet its mandated services and presented a plan to do so.<sup>3</sup> The plan was criticized by the psychologists. However, it is sufficient to meet the qualifications of a plan for the purposes of this proceeding. The District can layoff 1.0 FTE Psychologist.

## LEGAL CONCLUSIONS

1. Cause for the termination of the particular kinds of service listed in Finding 7 and the corresponding positions exists in accordance with Education Code sections 44949 and 44955. It is determined that the cause relates solely to the welfare of the schools and their pupils.

2 Pursuant to Education Code section 44955, subdivision (b) only the Governing Board can determine the order of termination for employees who first rendered paid service to the district on the same date. It has done so.

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<sup>3</sup> The District's plan is in compliance with *Daniels v. Shasta-Tehama-Trinity Junior Community College District* (1989) 212 Cal.App.3d 909.

3 Notice shall be given in inverse order of seniority.

ORDER

Notice may be given to respondents in accordance with the Legal Conclusions that their services will not be required for the 2010-2011 school year.

DATED: \_\_\_\_\_

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RUTH S. ASTLE  
Administrative Law Judge  
Office of Administrative Hearings