

BEFORE THE GOVERNING BOARD OF THE
ACTON AGUA DULCE UNIFIED SCHOOL DISTRICT

In The Matter Of The Accusations Against:

OAH No. L2010031160

Anali Ortiz, Rosemary Oppenheim, Bonnie Tate (Russon), Heidi Witeby, Shelley Kinsey, Marilyn Alford, Diane David-Healy, and Karen Coker,

Respondents.

PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 30, 2010, at the Acton Agua Dulce Unified School District Offices in Acton, California.

Maggy M. Athanasious of Fagen, Friedman & Fulfrost, LLP, represented the Acton Agua Dulce Unified School District (District). Shirley A. Lee of Schwartz, Steinsapir, Dohrmann & Sommers, LLP, represented all Respondents.

Oral and documentary evidence was received. The record was left open to allow counsel to submit simultaneous written closing briefs, which were timely filed. The District's Closing Brief was marked as District's Exhibit 13 and lodged. The Respondent's Closing Brief was marked as Respondent's Exhibit E and lodged. The record was closed, and the matter was submitted for decision on May 4, 2010.

FACTUAL FINDINGS

1. Complainant, Dr. Brent Woodard, Superintendent, filed the Accusation while acting in his official capacity as the Interim Superintendent of the District.
2. Respondents are certificated employees of the District.
3. On March 11, 2010, the Governing Board (Board) of the District adopted a resolution (Resolution 09.10.8) to reduce and discontinue the following particular kinds of services provided by the District no later than the beginning of the 2010-2011 school year:

Services

Number of Full-Time
Equivalent (FTE) Positions

Elementary School Teacher

9.0 FTE

Secondary School Teacher – Social Science	1.0 FTE
Special Education Teacher – Special Day Class	1.0 FTE
Special Education Teacher – Resource Specialist Program	3.0 FTE
Total FTE Reduction:	14.0 FTE

4. The Board further determined that the reduction in services necessitated a decrease in the number of certificated employees at the close of the 2009-2010 school year by a corresponding number of FTE positions, and directed the Superintendent to notify the appropriate employees to implement the Board’s determination.

5. Following the adoption of the Resolution 09.10.8, the District determined that the following terminated FTEs would be addressed by way of attrition (retirement, resignation, non-reelection): 3.0 FTE Elementary School Teachers,¹ 1.0 FTE Special Education Teacher – Resource Specialist Program, and 1.0 Secondary School Teacher – Social Science. Since the retirement of the Social Science Teacher was known prior to issuance of preliminary layoff notices, no Social Science Teacher received a layoff notice. Additionally, only two Special Education Teachers – Resource Specialist Program received preliminary notices of layoff.

6. On or before March 15, 2010, the District gave notice to each Respondent of the potential elimination of her position for the 2010-2011 school year. On March 26, 2010, the District served the Accusation on each Respondent who requested a hearing.

7. All Respondents served with the Accusation timely filed requests for hearing and Notices of Defense to determine if there was cause for not reemploying them for the 2010-2011 school year.

8. The services set forth in Factual Finding 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. The Board’s decision to reduce or discontinue the identified particular kinds of services was neither arbitrary nor capricious, and constituted a proper exercise of discretion.

9. The reduction or discontinuation of particular kinds of services was related solely to the needs and welfare of the District and its pupils.

10. The Board considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

¹ Michelle Mokler was an elementary school teacher whose resignation was taken into account prior to the Board’s adoption of Resolution 9.10.8. Therefore, her resignation was not counted as part of the Elementary School FTEs identified for reduction.

11. The District maintains a Seniority List which contains employees' seniority dates, current assignments, and credential and certificate information.

12. The District used the Seniority List with seniority dates to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District also considered each teacher's credentials and certifications.

13. On March 11, 2010, the Board adopted a resolution (Resolution 09.10.9) which established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. According to Resolution 9.10.9, the order of termination shall be based on the needs of the District and its students in accordance with the following system:

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

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

14. The District used information from the District's Seniority List to apply the tie breaking criteria of Board Resolution 09.10.9.

15. On April 28, 2010, the District rescinded the layoff notices of the following employees: Danielle Cancasci (#50 on the Seniority List, seniority date 4/1/06) (.5 FTE Elementary School Teacher), Charmony Murray (#55, seniority date 8/28/06) (.5 FTE Elementary School Teacher), Kelly Oliver (#58, seniority date 8/28/06) (1.0 FTE Elementary School Teacher), Danielle Johnson (#59, seniority date 8/28/06) (1.0 FTE Elementary School Teacher), Taiz Nadjarians (#61, seniority date 9/1/06) (1.0 FTE Elementary School Teacher), and Lisa Williams (#94, seniority date 8/31/09) (1.0 FTE Special Education Teacher – Special Day Class).

16. The District determined that nobody less senior than Respondents was being retained to render services which Respondents are certificated and competent to render.

17(a). The District issued a preliminary layoff notice to Taiz Nadjarians as an Elementary School Teacher because she was mis-assigned and would need to be assigned to an elementary school teaching position. Ms. Nadjarians teaches high school art (grades 9 through 12). At the time the preliminary layoff notices were issued, she had a multiple

subject credential with a supplemental art authorization which only allowed her to teach art to grades 9 and below. However, on March 18, 2010, the California Commission on Teacher Credentialing issued Ms. Nadjarians a single subject art credential which allows her to teach that subject to grades 10 through 12. This corrected her “mis-assignment.”

17(b). The District has a special need for a teacher with an art credential to teach high school art. Ms. Nadjarians is the only teacher in the District who is credentialed to teach high school art.

17(c). Respondents Rosemary Oppenheim (#60, seniority date 9/1/06) and Anali Ortiz (#54, seniority date 8/28/06) are more senior than Ms. Nadjarians. However, neither Respondent Oppenheim nor Respondent Ortiz have an art credential which would allow them to teach high school art.

17(d). The District appropriately “skipped” Ms. Nadjarians because she was rendering services which the more senior Respondents (Oppenheim and Ortiz) were not certificated and competent to render.

18(a). When it issued the preliminary notices of layoff to Respondent Karen Coker (#89, seniority date 10/22/09), it was for reduction of 1.0 FTE Special Education Teacher – Resource Specialist Program. However, the District later determined that Respondent Coker’s assignment was actually as a Special Education Teacher – Special Day Class (SDC). The District had already issued a preliminary layoff notice for reduction of the 1.0 FTE of SDC to Lisa Williams (#94, seniority date 8/31/09). Since Ms. Williams had been employed by the District longer, the District rescinded her notice of layoff, and counted Respondent Coker as the 1.0 FTE of SDC to be reduced.

18(b). Respondent Coker is a probationary employee with a Preliminary Education Specialist Instruction Credential. Ms. Williams is a probationary employee with a Provisional Internship Permit, Education Specialist. By virtue of her Provisional Internship Permit and her experience, Ms. Williams she is certificated and competent to render services as a Special Education Teacher – Special Day Class. There was no evidence that Respondent Coker has special training and experience necessary to teach a SDC which Ms. Williams does not have. Therefore, the District appropriately retained Ms. Williams as the more senior SDC teacher.

19(a). Respondent Diane David-Healy (#88, seniority date 10/19/09) is a Special Education Teacher – Resource Specialist Program.

19(b). After the preliminary notices of layoff were issued, Marna Peterson, who taught Special Education – Preschool, notified the District of her retirement. Respondent David-Healy holds a credential which authorizes her to teach the preschool level Special Education which Ms. Peterson taught.

19(c). Despite the vacancy and Respondent David-Healy's certification, the District did not rescind her layoff notice. Although the preschool level Special Education FTE was not listed in the Board's resolution, the District now is considering eliminating that position for the 2010-2011 school year. Consequently, the District does not intend to fill the vacant position at this time.

19(d). There was no evidence or authority presented which would require the District to retain probationary employee, Respondent David-Healy, to fill the vacant position.

LEGAL CONCLUSIONS

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

2. Cause exists to reduce the number of certificated employees in the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code sections 44955.

3. Education Code section 44955, subdivision (b), provides, in pertinent part:

[T]he services of no permanent employee may be terminated . . . 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.

[¶] . . . [¶]

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof.

4(a). Education Code section 44955, subdivision (d)(1), allows the District to deviate from terminating a certificated employee in order of seniority, if the District demonstrates that there is a specific need for personnel to teach a specific course or course of study, and that the certificated employee has special training and experience necessary to teach that course or course of study which others with more seniority do not possess.

4(b). The District demonstrated that there was a specific need to retain Ms. Nadjarians as a high school art teacher and that she has the special training and certification necessary to hold this position, which no Respondent with more seniority possessed. Therefore, the District appropriately "skipped" Ms. Nadjarians.

5. No certificated employee junior to any Respondent is being retained to perform any services which any Respondent is certificated and competent to render.

6. Cause exists within the meaning of Education Code section 44955 for terminating or reducing Respondents' employment for the 2010-2011 school year, as set forth in Factual Findings 1 through 19 and Legal Conclusions 1 through 5.

ORDERS

1. The Accusations served on Respondents are sustained. Notice may be given to Respondents that their services will be reduced or terminated for the 2010-2011 school year because of the reduction or discontinuation of particular services as indicated.

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

Dated: May 5, 2010

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings