

BEFORE THE
GOVERNING BOARD OF THE
LEGGETT VALLEY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

MARIA VELAZQUEZ-SOTELO,

Respondent.

OAH No. 2010031522

PROPOSED DECISION

Administrative Law Judge Dianna L. Albini, State of California, Office of Administrative Hearings, heard this matter in Ukiah, California, on April 27, 2010.

Margaret M. Merchat, General Counsel, School and College Legal Services of California, represented Leggett Valley Unified School District.

Phoebe Graubard, Attorney at Law, represented respondent Maria Velazquez-Sotelo.

On April 27, 2010, the record closed and the matter was submitted for decision.

FACTUAL FINDINGS

1. Catherine Scott made and filed the Accusation against respondents in his official capacity as the Superintendent (Superintendent) of the Leggett Valley Unified School District (District)
2. Respondent Maria Velazquez-Sotelo is a certificated employee of the District.
3. On March 10, 2010, Superintendent Catherine Scott presented the District's Governing Board with a recommendation that the District give notice that particular kinds of services (PKS), then offered through the District, be reduced or eliminated by the District for the ensuing school year (2010-2011) in the form of three full time equivalent (FTE) certificated positions as follows:

a. Eliminate the equivalent of	.5 (FTE) Dean of Students;
b. Eliminate the equivalent of	1.0 (FTE) Elementary Instructional Services;
c. Eliminate the equivalent of study hall instructional services (4 periods);	.64 (FTE) High School Spanish combined with
d. Eliminate the equivalent of conditioning (K-8) instructional services (1 period);	.166 (FTE) Elementary Spanish combined with
e. Eliminate the equivalent of Services (1 period);	.166 (FTE) Physical Education Instructional
f. Eliminate the equivalent of period);	.166 (FTE) English Instructional Services 1
g. Eliminate the equivalent of Services (1 period);	.166 (FTE) Cultural Geography Instructional
h. Eliminate the equivalent of	.166 (FTE) Study Hall (1 period).
Total	3.0 FTE

4. On March 10, 2010, the District’s Governing Board ratified the recommendation of the Superintendent and adopted Resolution No. 10-12. The resolution recites that, pursuant to Education Code sections 44949 and 44955, it has become necessary for the District to reduce or to eliminate particular kinds of services (PKS), no later than the beginning of the 2010-2011 school year, and directs the Superintendent or her designee to initiate and pursue procedures necessary not to reemploy the equivalent of 3.0 FTE.

5. On March 11, 2010, the Superintendent gave written notice to respondent, pursuant to Education Code sections 44949 and 44955, of her recommendation that notice be given her that her services would not be required for the ensuing school year. The written notice set forth the reasons for the recommendation.

6. Respondent timely requested a hearing to determine whether or not cause exists for not reemploying her for the 2010-2011 school year.

7. The accusation was served and the respondent timely filed a notice of defense.

8. All prehearing jurisdictional requirements have been met.

9. The District anticipates a loss of funding in the amount of approximately \$900,000, due to the budget deficit in California and the declining enrollment in the District. In order to have the funds available for mandated services, the District is modifying the manner in which it provides the Spanish foreign language class. The Spanish class for the 2010-2011 school year will be a provided as a self-study Rosetta Stone program offered in the computer lab. Self study computer courses have been used by the District in the past. Spanish is not a mandated service.

10. Since 1996, respondent has been a Spanish teacher with the Leggett Valley

Unified School District. She is currently assigned to teach the K-12 Spanish classes and an Independent Study class. Respondent has a clear Single Subject credential in Spanish, as well as a Masters degree, a Community Life Credential and authorization to teach Introduction to French and English. Respondent is currently assigned to teach four periods of high school Spanish combined with study hall instructional services, as well as, one period of elementary Spanish combined with conditioning (K-8) instructional services. The Board's resolution eliminates respondent's positions. Respondent was also informed that based on her seniority rights and credentials, she has bumping rights into a .4 position (2 periods) in Spanish at the Whale Gulch Elementary School. Respondent declined at hearing to accept her right to bump into the .4 position.

11. Respondent contends the Board's resolution to terminate her position and offer Spanish as a self study course is not related to the welfare of the District or the students. She believes that learning a foreign language through a self study course will not provide the students with the type of quality education. Respondent believes this will have a negative impact on those students wishing to advance to four-year colleges.

Further, respondent maintains the Board's resolution as it pertains to her, is fraudulent, arbitrary and capricious. Respondent did not provide any specific facts to support her claim. She also argues that since the amount of funding the District is to receive is unknown at this time it is speculative for the District to assert an approximately \$900,000 loss in funding as a justification for eliminating her position.

Where a governing board determines to discontinue or reduce a particular kind of service, it is within the discretion of the board to determine the amount by which it will reduce a particular kind of service so long as a district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.) The evidence established that the District's determination that it can comply with all statutory mandates with a reduced foreign language staff was not arbitrary, but rather was based upon reasonable considerations.

The district believes it has retained a sufficient number of teachers and can adequately implement the Rosetta Stone program in order to meet the needs of the District. The District anticipates that it will be able to provide the necessary foreign language services during the upcoming 2010-2011 school year. If the District finds it difficult to provide foreign language services, it has the option of changing the manner or method of offering the service. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 808; *Gallup v. Loma School Dist.* (1996) 41 Cal.App.4th 1571.)

12. The services set forth above are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955.

13. The reduction or elimination of services is related to the welfare of the district and of its pupils.

LEGAL CONCLUSIONS

1. Cause exists to reduce the number of certificated employees at Leggett Valley Unified School District due to the reduction or elimination of particular kinds of services set forth in Finding 3, pursuant to Education Code section 44955.

2. The discontinuation of the particular kinds of service provided by respondent relates solely to the welfare of the District and its students within the meaning of Education Code sections 44949 and 44955.

ORDER

Notice may be given to respondent Maria Velazquez-Sotelo that her services will not be required for the 2010-2011 school year

DATED: May 6, 2010

DIANNA L. ALBINI
Administrative Law Judge
Office of Administrative Hearings