

BEFORE THE  
GOVERNING BOARD  
KERNVILLE UNION SCHOOL DISTRICT  
COUNTY OF KERN  
STATE OF CALIFORNIA

In the Matter of the Layoff of:

Eric Pearson,

Respondent.

OAH Case No. L2011031183

**PROPOSED DECISION**

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 5, 2011, in Bakersfield, California.

Peter C. Carton, Attorney at Law, represented Robin Shive (Shive), Superintendent of the Kernville School District (District).

Ernest H. Tuttle, Attorney at Law, represented Eric Pearson (Respondent).

The District has decided to reduce or discontinue certain educational services and has given Respondent and other certificated employees notice of its intent not to reemploy them for the 2011-2012 school year. Respondent requested a hearing for a determination of whether cause exists for not reemploying him for the 2011-2012 school year.

Oral and documentary evidence was presented at the hearing, and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. Superintendent Shive filed the Accusation in her official capacity.
2. Respondent is a certificated employee of the District.

3. On March 11, 2011, the Governing Board of the District (Governing Board) adopted Resolution Number 01-0311, reducing or discontinuing the following services for the 2011-2012 school year:

<u>Service</u>	<u>FTE<sup>1</sup> Reduction</u>
Self-contained Classroom Instruction, Grades K-6	2.0
Special Day Class Mild-Moderate	<u>2.0</u>
Total	4.0

4. Superintendent Shive thereafter provided written notice to the Governing Board and to Respondent that she recommended the termination of Respondent's services for the 2011-2012 school year due to the reduction of particular kinds of services.

5. On March 11, 2011, the District provided notice to Respondent that his services will not be required for the 2011-2012 school year due to the reduction of particular kinds of services. Respondent filed a timely request for hearing on March 16, 2011.

6. On March 24, 2011, the District filed and served the Accusation and other required documents on Respondent. On March 25, 2011, Respondent filed a timely notice of defense, seeking a determination of whether cause exists for not reemploying him for the 2011-2012 school year.

7. All prehearing jurisdictional requirements have been met.

8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.<sup>2</sup>

9. The District is not actually reducing or discontinuing special education services. It plans to offer the same three special education classes to a student population not anticipated to change. Despite giving notices of non-reemployment to Respondent and another special education teacher, Marie Sampson (Sampson), the District plans to retain a special education teacher and hire two new certificated teachers to provide special education instruction in the three special education classes planned for the 2011-2012 school year.

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<sup>1</sup> Full-time equivalent position.

<sup>2</sup> All further references are to the Education Code.

10. Respondent and Sampson received notice that their services would not be required for the 2011-2012 school year because the District was informed by the Kern County Board of Education that the District's special education program was not in compliance with State law due to the credentials that Respondent and Sampson held.<sup>3</sup>

11. Respondent has a seniority date of August 11, 2006. He holds a special education certificate (mild-moderate) and a single subject (art) credential. He teaches special day classes in which most of the students need special education. Some of the students do not have individual program plans, but need remedial assistance.

12. Sampson has a seniority date of August 10, 2007, and holds a special education (mild-moderate) credential.

13. The Governing Board's decision to reduce or discontinue self-contained classroom instruction in grades Kindergarten to Sixth set forth in factual finding number 3 is not arbitrary or capricious but is rather a proper exercise of the District's discretion.

14. The reduction of self-contained classroom instruction in grades Kindergarten to Sixth set forth in factual finding number 3 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

#### LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 8.

3. Cause exists under sections 44949 and 44955 for the reduction of self-contained classroom instruction in grades Kindergarten to Sixth, as set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 8, and 13 and 14.

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<sup>3</sup> Except for the testimony of Shive, no evidence was received regarding the Kern County Board of Education's determination and the matter of the correctness of its conclusions was not litigated at the hearing.

4. Section 44955 provides, in pertinent part: “[b)] Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. . .”

As its plain language makes clear, section 44955 authorizes districts to reduce the number of certificated employees for specified economic reasons. As the court in *Cousins v. Weaverville Elementary School* (1994) 24 Cal.App.4th 1846, 1853, noted in a case involving the non-retention of a probationary employee, section 44955 is a narrowly prescribed statute authorizing termination of employees for economic reasons.

As set forth in factual finding number 9, the District is not reducing or discontinuing special education services. Rather, it seeks to dismiss Respondent and Sampson for non-economic reasons not related to any reduction or discontinuation of special education services, by reason of factual finding numbers 10 through 12. This it may not do under section 44955, a statute narrowly prescribing the cause(s) for such termination. Accordingly, cause does not exist to terminate the services of Respondent or Sampson.

ORDER

The Accusation is dismissed.

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

SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings