

**BEFORE THE  
GOVERNING BOARD  
OF THE FIREBAUGH-LAS DELTAS UNIFIED SCHOOL DISTRICT**

In the Matter of the Accusations Against:  
  
Shannon Bickford and Heather Hernandez,  
  
Respondents.

OAH NO. 2011040250

**PROPOSED DECISION**

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 18, 2011, in Firebaugh, California.

Mary Beth De Goede, Attorney at Law, represented the Firebaugh-Las Deltas Unified School District. Joshua Richtal, Attorney at Law, represented the Respondent Shannon Bickford. Respondent Heather Hernandez represented herself.

Evidence was received, and the matter was submitted for decision.

**SUMMARY**

The Governing Board (Board) of the Firebaugh-Las Deltas Unified School District (District) decided to reduce particular kinds of services provided by certificated personnel for the 2011-2012 school year for budgetary reasons. District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, and the needs of the District.

**FACTUAL FINDINGS**

1. Russell Freitas, Superintendent of the District, filed the Accusations in his official capacity.
2. Respondents are certificated employees of the District.
3. On March 10, 2011, the Board adopted Resolution No. 10/11-24, to discontinue or reduce particular kinds of services for the 2011/2012 school-year as follows:

|                                       |                |
|---------------------------------------|----------------|
| Psychologist Services                 | .9 FTE         |
| <u>Agricultural Teaching Services</u> | <u>1.0 FTE</u> |
| Total                                 | 1.9 FTE        |

4. The Board passed Resolution 10/11-24 pursuant to Education Code section 44955 and made a determination to decrease the number of certificated employees for the ensuing school year by a corresponding number of full-time equivalent positions as set forth in Factual Finding 3.

5. The Board directed the Superintendent to notify the employees affected by the Board's resolution. On or about March 11, 2011, the Superintendent notified Respondents in writing that it had been recommended their services would not be required for the next school year. The mailing included the reasons for the notification. Respondents made timely requests for hearing.

6. On March 25, 2011, Superintendent Freitas made and filed Accusations against each Respondent.

7. Respondents filed a Notice of Defense.

8. The reduction of the particular kinds of services set forth in Factual Finding 3, related to the welfare of the District and its pupils.

9. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid service in a probationary position), current assignments and locations, advanced degrees, credentials, and authorizations. The District used the Seniority List to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced.

10. The Agricultural Teaching Services position is currently vacant so the District is able to eliminate the position without laying off any teachers.

11. Regarding the reduction of Psychologist Services, Respondent Bickford works part-time (.9 FTE) pursuant to an agreement with the District and Respondent Hernandez works full-time. In fact, both Respondents work more than 40 hours a week even though Respondent Bickford took approximately 23 days off. Most of those off days were taken because of the Respondent Bickford's reduced .9 FTE. Respondent Bickford has more seniority than Respondent Hernandez.

12. Superintendent Freitas testified that because of serious budgetary concerns, the District must reduce Psychologist Services by .9 FTE but must maintain at least one full-time FTE to maintain essential services. The District intends to layoff Respondent Bickford but gave notice to Respondent Hernandez as a precautionary measure. Superintendent Freitas further testified that if the District were forced to keep Respondent Bickford in a .9 FTE with the attendant days off, the students of the District would suffer because a psychologist needs to be available to the students on a full-time basis. Finally, Superintendent Freitas stated that the District would find it extremely difficult, if not impossible, to hire a psychologist at .10 FTE (approximately 2 days a month). The District is correct in its assertion that dividing the position in this manner would hurt the students.

13. Respondent Bickford testified that she informed her supervisor that she would be willing to work full-time if need be. As it is, she is now working more than 40 hours per week in her current .9 FTE position.

14. The District considered positively assured attrition, including resignations and retirements, occurring prior to sending notices of non-reemployment to the certificated employees affected by the decision to reduce particular kinds of services.

15. Respondents are not certificated and competent to render a service being performed by any employee with less seniority who is being retained.

### **LEGAL CONCLUSIONS**

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents.

2. Cause was established as required by Education Code sections 44949 and 44955 to reduce the number of certificated employees due to the reduction of particular kinds of services. The Board's decision to reduce the identified services of respondents was neither arbitrary nor capricious. The decision relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949.

3. A school district is generally not required to split a full-time position held by a junior employee in order to accommodate a senior part-time employee who wishes to bump into that junior employee's position. (*Hildebrandt v. St Helena Unified School District* (2009) 172 Cal.App.4th 374.) In *Hildebrandt*, the court did not allow two senior part-time psychologists to bump into a full-time position held by a psychologist with less seniority than the two part-time psychologists even if the sum of the hours worked by the more senior part-time employees equaled one FTE.

4. In this matter, Respondent Bickford, who is senior to Respondent Hernandez, indicated that she would be willing to work full-time next year. Respondent Bickford's seniority shall be respected on the condition that she agree in writing, prior to the final decision in this matter, to work full-time (1.0 FTE) for the ensuing 2011/2012 school year.

### **ORDER**

1. The District shall notify Respondent Shannon Bickford that she will retained as a psychologist for the District if she agrees in writing to work full-time (1.0 FTE) for the 2011/2012 school year. Respondent Bickford must enter into this written agreement prior to the issuance of the final decision in this matter in order to be retained. If Respondent Bickford agrees to work full-time, the District may give notice to Respondent Heather Hernandez that her services will not be required for the 2011/2012 school year.

2. In the event that Respondent Bickford refuses to enter into a written agreement to work full-time (1.0 FTE) for the 2011/2012 school year, Respondent Heather Hernandez shall be retained and the District may give notice to Respondent Shannon Bickford that her services will not be required for the 2011-2012 school year.

Dated: May 3, 2011

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HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings