

BEFORE THE
GOVERNING BOARD
EL TEJON UNIFIED SCHOOL DISTRICT
COUNTY OF KERN
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

John Domke, Yvette Heasley, Shannon Norris,
and William Shillig,

Respondents.

Case No. 2012030473

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 26, 2012, in Bakersfield, California.

Christopher W. Hine, Attorney at Law, represented Katherine A. Kleier (Kleier), Superintendent of the El Tejon Unified School District (District).

Joshua Richtel, Attorney at Law, represented John Domke (Domke), Yvette Heasley (Heasley), Shannon Norris (Norris), and William Shillig (Shillig), who are collectively referred to as Respondents.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2012-2013 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2012-2013 school year.

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

FACTUAL FINDINGS

1. Superintendent Kleier filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.

3. On February 8, 2012, the Governing Board of the District (Governing Board), following the recommendation of Superintendent Kleier, adopted Resolution Number 12-06, reducing or discontinuing the following services for the 2012-2013 school year:

<u>Service</u>	<u>FTE¹ Reduction</u>
Self-Contained Classroom Instruction, Grades K-8	2.50
Special Education Resource	
Grades K-5	.50
Grades 6-8	.50
Departmentalized Instruction, High School:	
Art	.50
Agriculture	.50
Drama	.13
English	1.75
Foreign Language	.75
Social Science	1.38
Technology	.63
Academic Achievement	.63
Prep Period	1.00
Special Education RSP	<u>.25</u>
Total	11.00

4. Superintendent Kleier thereafter notified the Governing Board that she had recommended that notice be provided to Respondents that their services will not be required for the 2012-2013 school year due to the reduction of particular kinds of services.

5. On February 15, 2012, the District provided notice to Respondents that their services will not be required for the 2012-2013 school year due to the reduction or discontinuation of particular kinds of services.

6. Respondents thereafter timely requested a hearing to determine if there is cause for not reemploying them for the 2011-2012 school year.

7. On March 19, 2012, the District issued the Accusation, and served it on Respondents.

8. Respondents thereafter filed timely Notices of Defense.

¹ Full-time equivalent position.

9. All prehearing jurisdictional requirements have been met.

10. a. The “prep period” set forth in Resolution 12-06 does not relate to instruction or other direct service to students. It does not stand apart from a certificated employee’s FTE position, and an employee who is laid off from his/her teaching position does not otherwise retain a “prep period.” Accordingly, it is not a particular kind of service within the meaning of section 44955.

b. With the exception of the “prep period,” the services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.

11. a. Resolution 12-06 eliminates all of the District’s high school services in Art, Agriculture, Drama, English, Foreign Language, Social Science, and Technology services.

b. The Governing Board is considering the elimination of all services in the high school and in Comteck Academy (Academy), a technical vocational school within the high school. The Academy provides core and vocational instruction to a targeted at-risk high school student population, and receives State funding for that purpose. The State funding is renewable each year, and has not been terminated for the 2012-2013 school year. Students receive instruction in three core areas and in communications technology. The Academy is the only District program dedicated to the provision, at least in part, of career technical education. However, as of the time of the hearing the Governing Board had not actually decided to cease providing high school instruction or instruction at the Academy. Moreover, Resolution 12-06 contemplates that three periods of high school academic achievement services and two periods of special education RSP will continue to be provided at the high school, which is, at a minimum, inconsistent with the intent to cease providing all high school services and constitutes evidence of a present intent to continue providing high school services. In these circumstances, it was not established that the District will not be providing instruction at the Academy or at the high school for the 2012-2013 school year.

12. Superintendent Kleier did not provide evidence regarding the reason(s) for the Governing Board to take action to reduce or discontinue the services set forth in factual finding number 3. However, it was not established that the Governing Board’s decision to reduce the K-8 services, or the high school agriculture, academic achievement, and special education services is arbitrary or capricious.

13. The reduction of Grades K-8, and high school agriculture, academic achievement, and special education services set forth in factual finding number 3 is related to the welfare of the District’s schools and its pupils, in the context of the potential loss of State funds and the need to continue providing services to students in the District, and it has become necessary to decrease the number of certificated employees as a result of these reductions.

14. Respondent Heasley, who has a seniority date of August 16, 2002, and who holds a single subject, English, credential, is the most senior employee certificated and competent to teach English at the high school. She also teaches an introductory technology class at the Academy. A retained teacher, Chuck Mullen, whose seniority date is August 25, 1989, holds a multiple subject credential with supplemental authorizations in English and Social Science, which would only allow him to teach English in grades below Tenth Grade.

15. Respondent Domke, who has a seniority date of August 18, 2002, teaches five periods of Social Sciences at the high school. He also teaches advanced technology classes at the Academy. However, two retained teachers with greater seniority, Chris Penella and Tim Garcia, hold single subject credentials that would allow them to teach social sciences in high school.

16. Respondent Shillig has a seniority date of August 11, 2004, and holds a single subject, Spanish, credential and a vocational technology credential. He is the most senior employee certificated and competent to teach Spanish at the high school, which is the only foreign language course offered by the District. He teaches one period of Spanish and three periods of technology classes at the Academy.

17. Respondent Norris has a seniority date of August 11, 2004, and holds a single subject, English, credential. She teaches five periods of English and one period of Drama at the high school. She is the most senior employee certificated and competent to teach Drama and the second most senior employee, behind Respondent Heasley, who can teach English. She is also certificated to teach Art.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 9.

2. With the exception of the “prep period,” the services listed in factual finding number 3 are particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 10.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the K-8 services, and the high school agriculture, academic achievement, and special education services 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 9, 10.b., 12 and 13.

4. A district may not reduce or eliminate particular kinds of services if it results in reductions below the level required by law. (*Degener v. Governing Board* (1977) 67

Cal.App.3d 689, 695-696.) The reduction or discontinuation of high school services set forth in Resolution 12-06 would reduce Art, Drama, English, Foreign Language, Social Science, and career technical education high school services below State-mandated levels, and, therefore, cannot be made.

5. The District asserts that it may have to stop providing all services at its high school, including those at the Academy. However, as of the time of the hearing the Governing Board had not taken such drastic action, and it was not established that such action was imminent or actually likely. Therefore, this argument is insufficient to justify the reductions.²

6. Cause does not exist to terminate the services of Respondents Domke, Heasley, Norris, or Shillig because termination of the particular kinds of services they provide would reduce the District's offerings below State-mandated levels, by reason of factual finding numbers 3, 11, 12, 14, 15, 16, and 17 and legal conclusion numbers 4 and 5.

7. Cause does not exist to terminate the portions of the assignments performed at the Academy by Respondents Domke, Heasley, Norris, or Shillig, because the Governing Board has not actually voted to discontinue offering instruction at the Academy, by reason of factual finding numbers 3, 11, 12, 14, 15, 16, and 17.

ORDER

The Accusation is dismissed against Respondents Domke, Heasley, Norris, and Shillig, and they shall be retained for the 2012-2013 school year.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings

² No argument was made, and thus no findings or conclusions are made, regarding whether the District may actually be able to cease providing all high school services consistent with State law.