

BEFORE THE
GOVERNING BOARD OF THE
NEVADA CITY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

OAH No. 2010020985

LAURA BRYAN, DOREEN BALDOCK,
MICHAEL CATANZARITE, ERICKA
CLAWSON, BRIAN ELLIS, KIMBERLY
EWING, TRACY GREEN, LAURIE
KEMPENAAR, MARIE KITTLE, VANESSA
LACKEY, RICHARD LOONEY, ANDREA
MARKS, ANTONINA SHUMAKER,
KIMBERLY SILVERA, RACHAEL SMITH,
JULIE RAMIREZ, JENNIFER TAYLOR, and
SHARON WHITLOCK,

Respondents.

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, in Nevada City, California, on April 15, 2010.

Allen R. Vinson, Attorney at Law, represented the Nevada City School District (District).

Andrea Price, Attorney at Law, represented respondents.

On April 15, 2010, the parties reached a stipulated settlement, which was put on the record and is reflected in the proposed decision below.

FACTUAL FINDINGS

1. Respondents are employed by the District as permanent or probationary certificated employees.

2. On February 16, 2010, the Governing Board of the District was given notice by the Superintendent of her recommendation that notice be given to respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing school year and stating the reasons therefor.

3. On February 16, 2010, the Governing Board adopted Resolution #0910-40, entitled “Resolution of Intention to Dismiss Certificated Employees for Particular Kinds of Service and Average Daily Attendance” (Resolution). Pursuant to the Resolution, the Governing Board determined that it was necessary for the District to reduce or discontinue certain particular kinds of services and to decrease certificated District employees no later than the beginning of the 2010-2011 school year. The Governing Board also determined that the average daily attendance in all schools of the District for the first six months in which school was in session for the current 2009-2010 school year had declined below that of the corresponding period for the prior comparison school year.

4. The Resolution identified the following services for reduction or discontinuance:

<u>Administrative Positions</u>	
Psychologist	.8 FTE ¹
Principal	.4 FTE
<u>Certificated Positions</u>	
Special Education	1.5 FTE
Loss of Average Daily Attendance	3.0 FTE
K-3 (increase class size)	6.0 FTE
6-8 Advisory	1.0 FTE
Community Day Program	1.0 FTE
Title 1 – Math	.34 FTE
6-8 Choir	.5 FTE
6-8 Remedial Math & Reading	.84 FTE
TUPE Instructor	.17 FTE
3-5 Rotation	1.0 FTE

Total: 16.55 FTE

5. On or about March 10, 2010, respondents were given written notice by the Superintendent of her recommendation pursuant to Education Code sections 44949 and 44955, that their services would not be required for the ensuing school year, and stating the reasons therefor (preliminary layoff notices).

6. Pursuant to Education Code section 44949, respondents, in writing, duly requested a hearing to determine if there was cause for not reemploying them for the 2010-2011 school year.

¹ “FTE” stands for full-time equivalent.

7. At the hearing on April 15, 2010, the District agreed to rescind the preliminary layoff notices served upon the following respondents: Ericka Clawson, Vanessa Lackey, Richard Looney, Andrea Marks, Kimberly Silvera, Rachael Smith, and Julie Ramirez.

8. At the hearing, the parties agreed that the FTE's of the remaining respondents will be reduced as set forth on Attachment A hereto, so long as the District sends final layoff notices to these respondents in accordance with Education Code sections 44949 and 44955.

9. As part of the stipulation between the parties, respondent Michael Catanzarite agrees that he will submit to the District a letter from his college, National University, certifying that his coursework for his Level II Education Specialist credential has been completed.

The District agrees to submit the letter to the Nevada County Superintendent of Schools (NCSOS), along with the District's agreement that a temporary certificate be issued as soon as possible. As soon as NCSOS issues the temporary certificate, the District agrees to return Mr. Catanzarite to the classroom.

10. The District further agrees that all respondents who are probationary employees for the 2009-2010 school year shall have the 24-month rehire rights provided for in Education Code section 44957 extended for an additional nine months, for a total of 33 months.

In addition, all respondents who are permanent employees for the 2009-2010 school year shall have the 39-month rehire rights provided for in Education Code section 44956 extended for an additional nine months, for a total of 48 months.

This extension of rehire rights applies only to respondents terminated at the end of the 2009-2010 school year, and is not applicable to any future reduction in force that may occur.

LEGAL CONCLUSIONS

1. Cause exists within the meaning of Education Code sections 44949 and 44955 for not reemploying certain identified respondents for the 2010-2011 school year because the Governing Board of the District has determined to reduce or discontinue particular kinds of service, and the average daily attendance in all schools of the District for the first six months in which school was in session for the current 2009-2010 school year has declined below that of the corresponding period for the prior comparison school year.

2. Cause exists to give notice to the respondents identified on Attachment A that their services will be reduced or will not be required for the 2010-2011 school year because of the reduction or elimination of particular kinds of services and the decline in average daily attendance.

RECOMMENDATION

1. Pursuant to Finding 7, the District shall rescind the preliminary layoff notices served upon respondents Ericka Clawson, Vanessa Lackey, Richard Looney, Andrea Marks, Kimberly Silvera, Rachael Smith, and Julie Ramirez.

2. Pursuant to Finding 8, notice may be given to the respondents listed on Attachment A that their services will be reduced or will not be required for the 2010-2011 school year. Notice shall be given in inverse order of seniority.

3. The Board shall adopt the stipulations reached by the parties as set forth in Findings 9 and 10.

DATED: April 23, 2010

KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings