

BEFORE THE BOARD OF TRUSTEES
OF THE
MIDDLETOWN UNIFIED SCHOOL DISTRICT
LAKE COUNTY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

HILARY DEVINE,
JANICE EBERT,
JAIME FORSLUND, and
KARA MORGAN,

Respondents.

OAH No. 2008030760

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Middletown, California, on April 17, 2008.

Joseph C. Kinkade, Attorney at Law, represented complainant Korby Olson, Superintendent, Middletown Unified School District.

James D. Allen, Attorney at Law, represented respondents Hilary Devine, Janice Ebert, Jaime Forslund, and Kara Morgan, who were present.

The matter was submitted for decision on April 17, 2008.

FACTUAL FINDINGS

1. Korby Olson made and filed the Accusation in his official capacity as Superintendent of the Middletown Unified School District.
2. Respondents are certificated employees of the district.
3. On March 12, 2008, the district's Board of Trustees adopted Resolution No. 05-07-08 reducing particular kinds of services and directing the superintendent to give appropriate notices to certificated employees whose positions will be affected by the action.
4. On or about March 13, 2008, Superintendent Olson gave written notice to 10 certificated employees, including respondents, of the recommendation that their services will

not be required for the 2008-2009 school year. Each notice set forth the reasons for the recommendation.

5. Each of the four respondents filed a timely request for hearing to determine if there is cause for terminating her services for the 2008-2009 school year.

6. An Accusation was served on each of the four respondents. All prehearing jurisdictional requirements were met as to each respondent.

7. Respondents Devine and Forslund filed notices of defense; respondents Ebert and Morgan did not. Superintendent Olson acknowledged that the failure of respondents Ebert and Morgan to file notices of defense did not prejudice the district in the preparation of its case for hearing. Respondents Ebert and Morgan were granted a hearing.

8. In its resolution, the board took action to reduce the following particular kinds of services for the 2008-2008 school year:

<u>Services</u>	<u>FTE¹ Reduction</u>
Director of Educational Services	1.0
Secondary Alternative Education Program	1.0
ROP/Work Experience Program	0.86
Secondary Departmentalized Math	0.28
Secondary Departmentalized English	1.0
Secondary Departmentalized Special Education	1.6
Secondary Intervention Program (MAPS)	1.0
Elementary School Instructional Services	2.0
Elementary Intervention Teacher	1.0
Elementary Title I Teacher	2.0

9. Respondents Ebert and Morgan, and two other certificated employees, share the same first date of paid service to the district, August 27, 2007. The district has adopted tie-breaking criteria to determine the relative seniority of employees with the same first date of paid service, but did not apply them in this case because it found that all four employees are subject to layoff. Superintendent Olson stated that the district will apply its tie-breaking criteria in the event it is able to reemploy one or more of the employees. Neither Ebert nor Morgan submitted a request, pursuant to Education Code section 44955, that the district furnish a statement of its tie-breaking criteria.

Respondents contend that, even though it makes no difference to the elimination of their services, Education Code section 44955 required the district to apply its tie-breaking criteria. Their contention lacks merit. Under Education Code section 44955, the district

¹ Full-time equivalent positions.

must apply tie-breaking criteria when it affects the order of termination, and in this case it did not.

10. Respondents question whether the district will be able to provide adequate foreign language services after it eliminates the services of respondent Morgan who, in addition to a multi-subject credential, holds a supplemental credential in French. The evidence established, however, that the layoff will not prevent the district from providing all mandated services.

11. No permanent or probationary employee with less seniority is being retained to render a service for which respondents are certificated and competent.

12. The cause for the layoff relates to the welfare of the schools and their pupils.

LEGAL CONCLUSIONS

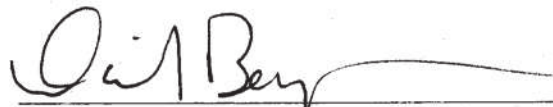
1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2008-2009 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notice may be given to respondents Hilary Devine, Janice Ebert, Jaime Forslund, and Kara Morgan that their services will not be required for the 2008-2009 school year because of the reduction of particular kinds of services.

DATED: April 21, 2008



DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings