

BEFORE THE GOVERNING BOARD OF THE
MILPITAS UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Non-reemployment of
Four (4) Full Time Equivalent Certificated
Employees:

Tyler Beatie, Ryan Carter, Julie Cler,
Jennifer Young,

Respondents.

OAH No. N2005030438

PROPOSED DECISION

This matter was heard before Steven C. Owyang, Administrative Law Judge, State of California, Office of Administrative Hearings, in Milpitas, California, on April 15, 2005.

John R. Yeh, of Miller, Brown, Dannis, represented the Milpitas Unified School District.

Christopher Schumb, Esq., represented respondents Tyler Beatie, Ryan Carter, Julie Cler, and Jennifer Young.

At hearing, the district withdrew the accusation against Jennifer Young. The matter was submitted on April 15, 2005.

FACTUAL FINDINGS

1. Karl Black, Superintendent, Milpitas Unified School District, made and filed the accusation in his official capacity.

2. On March 10, 2005, upon the recommendation of Superintendent Black, the governing board of the Milpitas Unified School District adopted Resolution No. 2005.57, in which the board resolved to reduce or discontinue the following particular kinds of services for the 2005-2006 school year:

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|---|--------|
| Elementary, Class Size Reduction, Grade 3 | 15 FTE |
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| High School, Class Size Reduction, Grade 9 | 5 FTE |
|--|-------|

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|---------------------------------|-------|
| Middle School, Counselor | 2 FTE |
| High School, Counselor | 1 FTE |
| Elementary, Assistant Principal | 4 FTE |
| Coordinator, IT | 1 FTE |

The board's resolution involves three FTE (full-time equivalent) middle school and high school counselor positions. The board directed the superintendent or his designee to send notice to certificated employees that their services would be terminated at the end of the 2004-2005 school year. The board further resolved to retain the services of certificated employees in the 2005-2006 school year regardless of seniority, who possess qualifications needed for special education, mathematics, physics/physical science, chemistry, economics, and life science/biology, and who have taught at least one semester in the subject within the last three years.

3. On March 10, 2005, upon the recommendation of Superintendent Black, the governing board of the Milpitas Unified School District adopted Resolution No. 2005.58, in which the board established tie-breaking criteria to be used to determine the order of termination of employees having the same seniority date. The board directed that the superintendent or his designee use the following criteria to determine the order of seniority for certificated employees with the same date of first paid service:

1. Possession of BCLAD, CLAD, SDAIE, SB 1969, BCC authorization;
2. Possession of special education credential;
3. Number of credentials held;
4. Numbers of advanced degrees held (in increasing order of priority: Masters, Ed.D., Ph.D.);
5. Teaching experience at different subject areas, by number of subjects taught;
6. Teaching experience at different grade levels, by numbers of grades taught;
7. Number of classes taken towards continuing education in assignment-related subject areas.

The board directed that employees holding the same first date of paid probationary service shall undergo the tie-breaking process by application of the above criteria in the order listed above. If a tie still exists after application of a criterion, the next criterion is to be applied, and the process continued, until all ties are broken.

4. Respondents are certificated employees of the district. All respondents were properly and timely served with notice of layoff. All respondents were properly and timely served an accusation, statement to respondent, notice of defense, notice of hearing, and relevant statutes. All respondents have made a timely request for hearing and timely notice of defense. All jurisdictional requirements of Education Code sections 44949 and 44955 have been met.

5. Respondents are employed as counselors for the district. Their first dates of paid service are:

- | | |
|-----------------|----------|
| 1. Julie Cler | 08/22/01 |
| 2. Tyler Beatie | 08/22/01 |
| 3. Ryan Carter | 08/25/04 |

7. Tyler Beatie and Julie Cler have the same first date of paid service, August 22, 2001. The district therefore applied its tie-breaking criteria to Beatie and Cler. Neither had an advantage under the first (BCLAD, CLAD, etc.) or second (special education credential) criteria. Application of the third criterion (number of credentials held) resulted in Cler prevailing, in that she holds two credentials (Professional Clear Pupil Personnel Services and Internship Administrative Services) while Beatie holds one credential (Clear Pupil Personnel Services). Because the tie was broken after application of the third criterion, the district did not utilize the remaining criteria.

8. Respondents assert that the district's tie-breaking criteria, as applied to counselors, are unreasonable, arbitrary and capricious. Respondents' argument is rejected. As to employees who first rendered paid service on the same date, Education Code section 44955, subdivision (b), vests discretion in the governing board to determine the order of termination "solely on the basis of the needs of the district and the students thereof." The board's tie-breaking criteria were based on the needs of the district and its students.

9. Tyler Beatie and Julie Cler assert that their first date of paid service was August 16, 2001, because the district asked them to come to school several days before the students arrived. Neither Beatie nor Cler established that their attendance was mandatory, or that they provided paid service on August 16, 2001. The evidence does not establish that their August 22, 2001, seniority date is incorrect.

10. The planned reduction of a 1.0 FTE high school counselor will leave 3.0 FTE counselors at the high school level. The planned reduction of 2.0 middle school counselors

will leave no counselors at the middle school level. Even at current staffing levels, counselors have difficulty meeting their responsibilities for individual education plans, special needs students, career counseling, college counseling, student study teams, instances of child abuse, etc. The district has not made definite plans for meeting its counseling needs in the coming school year, but it may turn to administrators and outside contractors.

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

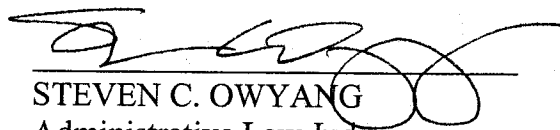
LEGAL CONCLUSIONS

1. The accusation against Jennifer Young is dismissed.
2. Cause for the elimination of 2.0 FTE middle school and 1.0 FTE high school counselor positions exists in accordance with Education Code sections 44949 and 44955. This cause relates solely to the welfare of the district and the pupils thereof.
3. All contentions made by respondents not specifically addressed above are found to be without merit and are rejected.

ORDER

Notice may be given to respondents Tyler Beatie, Ryan Carter, and Julie Cler that their services will not be required for the 2005-2006 school year.

DATED: May 5, 2005


STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings