

BEFORE THE
GOVERNING BOARD OF THE
CHAWANAKEE UNIFIED SCHOOL DISTRICT

In The Matter Of The Accusations Against:

LANA JACKSON
MICHELLE PIOTROWSKI
DIANE JACKSON
STEFANIE FERGUSON

OAH No. N2005030589

Respondents.

PROPOSED DECISION

Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 28, 2005, in Madera, California.

Bryan G. Martin and K. La Hatlavongsa, Attorneys at Law, represented the Governing Board of the Chawanakee Unified School District.

Ernest H. Tuttle, Attorney at Law, represented respondents.

Evidence was received and the parties were given leave to file written argument on or before May 2, 2005. Only the District filed written argument which was marked exhibit 10 and made a part of the record. The matter was submitted on May 2, 2005.

FACTUAL FINDINGS

1. Stephen Foster is the Superintendent for the Chawanakee Unified School District. He made and filed the Accusations in his official capacity.
2. Respondents are employed by the Superintendent as permanent certificated employees.

3. On or about March 9, 2005, the Superintendent recommended to the Governing Board that it take action to reduce particular kinds of services resulting in notice to affected employees that, pursuant to Education Code sections 44949 and 44955, their services would not be required for the ensuing school year. The Governing Board approved the recommendation.

4. On or about March 10, 2005, respondents were given written notice of the Superintendent's recommendation that their services would not be required for the ensuing school year and stating the reasons therefor. Respondents filed timely requests for a hearing to determine if cause exists for not reemploying them for the 2005-2006 school year.

5. The Accusations each allege the cause for notice as the reduction or discontinuation of particular kinds of services described in Governing Board's Resolution number 16-2004/05, attached to the Accusations. The Resolution describes the particular kinds of services to be reduced or discontinued as follows:

1. 1.44 FTE¹ K through 8 Independent Study Certificated teaching positions at the Chawanakee Academy.
2. 4.0 FTE K through 12 Independent Study Certificated teaching positions at the Chawanakee Academy.
3. 6.60 FTE K through Adult Independent Study Certificated teaching positions at the Chawanakee Academy.
4. .5 FTE 9 through Adult Independent Study Independent Study Certificated teaching positions at the Chawanakee Academy.
5. 1.0 FTE 9 through 12 Social Science Certificated teaching position at Mountain Oaks High School.
6. 1.0 FTE 9 through 12 Math Certificated teaching position at Mountain Oaks High School.²

6. The Chawanakee Academy is an independent study facility operated by the District which draws approximately 75 to 80 percent of its students from outside the District. The average daily attendance (ADA) for this school year is approximately 350 and the student population has been increasing every year because of the popularity of the program and the teachers assigned to it. The student-teacher ratio is similar to that of a conventional classroom, approximately one teacher for every 25 students, and some classes meet at the school site once per week. Many of the students are "home-schooled." All of the respondents teach at the Chawanakee Academy.

¹ This is the acronym for full time equivalent teaching positions.

² According to documents received in evidence, the Superintendent and the Governing Board also resolved to reduce or discontinue 1.0 FTE District certificated Library Media teaching position and 2.0 FTE District Reading teacher positions. These reductions are not relevant to the respondents in this matter.

7. Superintendent testified at the administrative hearing and described his reasons for the planned reductions and discontinuation of services at the Academy. There are at least three reasons for the changes. First, in November of 2004, an election determined that three elementary schools and a high school would be transferred from the District to an adjoining school district. By law, tenured teachers can elect to remain with the District, rather than following the shift of schools. Seven teachers elected to remain with Chawanakee Unified School District. These elementary school teachers are relatively senior and their re-assignments will likely result in the involuntary reassignment of less senior teachers to the Chawanakee Academy. This scenario provides the basis for the Superintendent's second reason for the planned reductions and discontinuation of services. The Superintendent felt that teachers involuntarily reassigned to the academy to make room in the conventional school setting for the seven teachers who have elected to stay with the District may be less enthusiastic about the Academy model. This, he felt, would result in fewer students being attracted to the Academy next year. His best educated guess was a potential enrollment drop of approximately 20 percent. The Superintendent's third reason is a threatened lawsuit by Clovis Unified School District and Fresno Unified School District, who have lost a combined total of 37 students to the Academy, along with the ADA state funds which are now paid to the District. The Superintendent explained that he calculated that the loss of the 37 students would mean a 1.5 FTE reduction in teaching services. Superintendent estimated the total impact of possible reductions in enrollment at the Academy to be 4.0 FTE certificated teaching positions.

8. The approximately 4.0 FTE planned reductions in Academy services is clearly significantly fewer than the stated 12.54 stated in the resolution. The Superintendent explained that he came up with the total by adding together the seven positions attributable to the elementary school teachers electing to stay with the District, the three positions in library media and reading specialist services, and the four anticipated reductions at the Academy. Obviously, these figures are not in accord, and there was no reason offered for including the three FTEs in library and media services and reading specialist services. What is significant is the planned reduction of four FTE in the Academy, rather than the 12.54 stated in Resolution 16-2004/05. Further, this was not a situation in which the Governing Board's resolution reflected a policy decision to reduce a larger number of positions at the Academy than contemplated by the Superintendent. The Superintendent spent more than 40 hours discussing the planned reduction with Governing Board members.

LEGAL CONCLUSIONS

ISSUES PRESENTED BY RESPONDENT

Respondent raised the following contention at hearing:

District noticed too many certificated employees based on planned reductions and discontinuation of services in school year 2005-2006.

APPLICABLE LAW

1. Education Code section 44949 reads:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing.

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section.

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(e) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance. (Emphasis added.)

2. Education Code section 44955, subdivision (b), reads:

(b) Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the

district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

In computing a decline in average daily attendance for purposes of this section for a newly formed or reorganized school district, each school of the district shall be deemed to have been a school of the newly formed or reorganized district for both of the two previous school years.

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement. (Emphasis added.)

APPLICATION OF LAW TO FACTUAL FINDINGS

3. The Governing Board's resolution, based upon the Superintendent's recommendation, presumptively establishes the extent to which the District intends to reduce or discontinue particular kinds of services in the ensuing school year. In this matter, that presumption was overcome by the testimony of the Superintendent that his intent-communicated to the Governing Board- was to reduce services at the Chawanakee Academy by only 4.0 FTE. Clearly, the Superintendent, with the approval of the Governing Board, could have made a policy determination to reduce a greater number of positions at the Academy based on rational concerns about a possible decline in enrollment. And, as pointed out by respondents, they could have resolved to reduce services in the conventional elementary school program based on the loss of more than 300 students to the adjoining school district. However, had they reduced elementary school classroom teaching by seven FTE, this would have triggered the exercise of "bumping" by incumbents, which almost certainly would have led to a dif-

ferent group of teachers to whom notices were given because of credentialing and competence issues.

4. Education Code section 44955 requires that the District establish that the notices of non-reemployment are necessitated by reason of a reduction or discontinuation of services. District has established that 4.0 FTE will be reduced at the Chawanakee Academy in school year 2005-2006. Respondents are among approximately 15 certificated employees provided notice, including those whose notices are unrelated to reductions at the Academy. At this point, District will have to ascertain which four Academy teachers are least senior in order to determine to whom notices shall be provided on or before May 15, 2005.

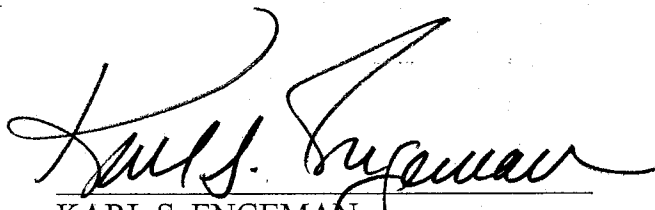
LEGAL CAUSE FOR NOTICE

5. Cause exists under Education Code sections 44949 and 44955 to provide notice to 4.0 FTE certificated teachers at the Chawanakee Academy that their services will not be required in the ensuing school year.

ORDER

Notice shall be given 4.0 FTE certificated employees assigned to the Chawanakee Academy in inverse order of their seniority.

Dated: May 6, 2005


KARL S. ENGEMAN
Administrative Law Judge
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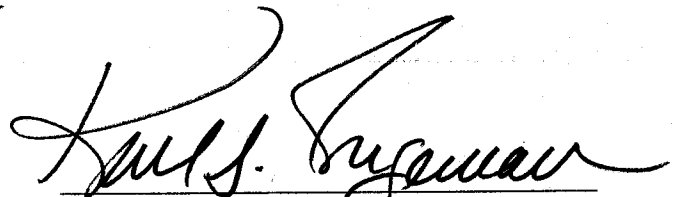
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