

BEFORE THE
GOVERNING BOARD
BISHOP UNION ELEMENTARY SCHOOL DISTRICT
COUNTY OF INYO
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Susan Dillard and Other
Certificated Employees of the
Bishop Union Elementary School District,

Respondents.

OAH Case No. L2008030558

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 25, 2008, in Bishop, California.

Darren C. Kameya, Attorney at Law, represented Barry Simpson (Simpson), Superintendent of the Bishop Union Elementary School District (District).

John F. Kohn, Attorney at Law, represented Jeff Burror (Burror), Susan Dillard (Dillard), Meghan Hosey (Hosey), Trisha Hildenbrand (Hildenbrand), and Usha Wilbur (Wilbur), 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 2008-2009 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2008-2009 school year.

Oral and documentary evidence, and evidence by written and oral stipulation on the record, was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Superintendent Simpson filed the accusation in his official capacity.
2. Respondents are certificated employees of the District.

3. On February 28, 2008, the Governing Board of the District (Governing Board) adopted Resolution number 07-08-06, reducing or discontinuing the following services for the 2008-2009 school year:

<u>Service</u>	<u>Full-Time-Equivalent Positions</u>
Title One Intervention	.5
Sixth Grade Instruction	1.57
Eighth Grade Instruction	.1741
Fifth Grade Instruction	1.0
First to Fourth Grade Instruction	3.0
Administration Services	<u>1.0</u>
Total	7.24

4. Superintendent Simpson timely notified the Governing Board, and provided timely notice to Respondents, that Respondents' services will not be required for the 2008-2009 school year due to the reduction of particular kinds of services.

5. Respondents requested a hearing, the District issued an accusation, and Respondents thereafter filed notices of defense, to determine if there is cause for not reemploying them for the 2008-2009 school year. As stipulated by the parties, all documents were timely filed.

6. All prehearing jurisdictional requirements have been met.

7. At the hearing, the District dismissed the accusation against Respondents Burror and Wilbur.

8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.¹

9. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 primarily because of the uncertainty surrounding State funding. The District fears it may lose approximately \$600,000 based on the Governor's latest budgetary proposals. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

¹ All further references are to the Education Code.

10. The reduction of services set forth in factual finding number 3 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

11. The District retained four employees junior to Respondents, one of whom is teaching science and three of whom are teaching special education. All retained employees have credentials to teach their subject matter areas, and no Respondent is certificated to teach the special education and science classes at issue. Retention of these four junior employees is appropriate as the District demonstrated the specific need for their services and the individuals in question have the requisite training and experience.

12. The Governing Board has adopted Resolution No. 07-08-07, setting forth the criteria to determine seniority among employees who first rendered paid service in a probationary position on the same date (tie-breaking criteria). It sets forth the following criteria, in order of importance: No Child Left Behind Compliance; Crosscultural, Language and Academic Development/ Bilingual Crosscultural, Language and Academic Development (CLAD/BCLAD) Certifications or Equivalent; Multiple Credentials and Subject Matter Authorizations; 07-08 Experience in Stipend/Coaching/Extra-curricular Positions; Advanced Degrees; and Years of Service. The tie-breaking criteria are reasonable as they relate to the skills and qualifications of certificated employees and to the needs of the District and its pupils.

13. The District properly utilized the criteria to break ties involving Respondents Burror, Dillard, Hosey, and Wilbur, two of whom were retained. Each of these Respondents first rendered paid service in a probationary capacity on August 21, 2006, and hold multiple subject credentials. All met the first two criteria (No Child Left Behind Compliance and CLAD/BCLAD authorization). Respondent Wilbur received the greatest seniority rank because she also holds a single subject (art) credential (third criterion). Respondent Burror was ranked above Respondents Dillard and Hosey because of his experience in a position receiving a stipend, tech leader.

14. Respondent Hildenbrand has a seniority date of August 17, 2007, and holds a preliminary multiple subject credential. She and two individuals who did not request a hearing, Julie Castaneda and Abby Sada, share the same seniority date and are the most junior certificated employees holding multiple subject credentials.

15. No certificated employee junior to any Respondent was retained to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 6.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 8.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of 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 15.

4. Cause exists to terminate the services of Respondents Susan Dillard, Megan Hosey, and Trisha Hildenbrand for the 2008-2009 school year due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 6, and 8 through 15, and legal conclusion numbers 1 through 3.

ORDER

The Accusation is sustained and the District may notify Respondents Susan Dillard, Megan Hosey, and Trisha Hildenbrand that their services will not be needed during the 2008-2009 school year due to the reduction of particular kinds of services.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings