

BEFORE THE
GOVERNING BOARD
FALLBROOK UNIFIED HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of Accusation Against:

OAH No. L2004030421

A CERTIFICATED EMPLOYEE,

Respondent.

PROPOSED DECISION

On April 23, 2004, in Fallbrook, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

William Wood Merrill, Attorney at Law, represented the Fallbrook Unified High School District.

Fern M. Steiner, Attorney At Law, represented respondent George Kreutz.

The matter was submitted on April 23, 2004.

FACTUAL FINDINGS

1. On March 24, 2004, Michael J. Millerick, Director of Human Resources of the Fallbrook Unified High School District (hereafter, "the District"), made and filed the accusation against respondent in his official capacity.

2. Respondent is a certificated employee of the District.

3. Before March 15, 2004, pursuant to Education Code sections 44949 and 44955, Mr. Millerick notified the Governing Board of the District of the District Superintendent's recommendation that respondent and one other certificated employee of the District be notified their services will not be required for the ensuing school year. The Superintendent's notification to the Governing Board set forth the reasons for the recommendation.

4. On or before March 15, 2004, respondent was given written notice by Mr. Millerick that it has been recommended that notice be given to respondent, pursuant to

Education Code sections 44949 and 44955, that his services will not be required for the ensuing year. The written notice set forth the reasons for the recommendation.

5. Respondent timely requested in writing a hearing to determine if there is cause for not reemploying him for the ensuing school year. An accusation was timely served on respondent, and respondent filed a timely Notice of Defense. All pre-hearing jurisdictional requirements have been met.

6. The Governing Board of the District took action to reduce or discontinue the following services for the 2004-05 school year:

Agriculture	1 full time equivalents
Art	1 full time equivalents

The services set forth above are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. The decision to reduce or discontinue the services is neither arbitrary nor capricious but rather a proper exercise of the District's discretion.

7. No certificated employee junior to respondent is retained to perform services which respondent is certificated and competent to render.

8. The reduction or discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees of the District as determined by the Governing Board.

9. The District considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

10. Respondent is a permanent employee of the District with a seniority date of August 22, 2001. He has a Life Standard Secondary credential in the area of agricultural science (academic).

11. The District maintains three high schools: a comprehensive school (Fallbrook), a continuation school (Ivy), and an alternative school (Oasis). Respondent, during the 2003-04 school year, was one of three agricultural science teachers at Fallbrook High School. He taught two agricultural science 1 classes, and taught an hour a day at the continuation school. He is the most junior of three. He has taught for 26 years.

Respondent testified part of his duties included recruiting new agricultural science students from local junior high schools. He had learned there had been a decline in the number of agricultural science students in the current school year, even though the recruiting efforts had been successful. He testified the agricultural science teachers had again recruited a large number of students for their program for the 2004-05 school year, and based on those projected numbers, he believed it would have been impossible for two agricultural science

teachers to teach all of those students. He noted that because of the decline in enrollment, he taught a health class for the first semester, but he did not have a credential to teach it.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject 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 or discontinuation of particular kinds of services pursuant to Education Code section 44955 to give notice to respondent as set forth in the Factual Findings. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

3. Respondent challenges the wisdom of the Governing Board's decision to reduce the agriculture program by one full-time equivalent position and argues the one-year decline in enrollment was an aberration. That decision, however, is one the Governing Board is authorized to make and it was reasonable for the Board to base that decision on a decline in enrollment in the agriculture program. There is no guarantee all the recruited students will in fact register for agricultural science classes, and there was no evidence the District would otherwise not meet the students' needs. Agricultural science is not a mandated course, and it may be properly reduced.

ORDER

The Accusation served on George Kreutz is sustained. Notice shall be given to respondent before May 15, 2004 that his services will not be required for the 2004-05 school year pursuant to the Governing Board's resolution because of the reduction of particular kinds of services.

DATED: 4/29/04


ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings