

BEFORE THE GOVERNING BOARD OF THE
LITTLE LAKE CITY SCHOOL DISTRICT

In The Matter Of The Accusations Against:

OAH No. L2010011288

Traci Mauricio, Megan Marshall, Krystle Hatton-Grover, Alonna Van Scoy, Grace Villagomez, Danielle Motruk, Dianne Digalbo, Sabrina LaRosa, Dulce Aguilar, Susan Sieng, Erin Dunroe, Frances Heinselman, Soraya Espinoza, Maria Mesa, Christina Ball, Maclovio Garcia, Nicole Gutierrez, Denisse Frenes-Gomez, Peggy Chong, Eva Sanchez, Lisa Jones, Gregory Kaufman, Jennifer Santley, Christopher Pilato, Jennifer Lam, Nathan Poole, Jaclyn Reed, Andrea Hannibal, Susie Luu Hoang, and Maria Martinez,

Respondents.

PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 13, 2010, at the Little Lake City School District Offices in Santa Fe Springs, California.

Eric Bathen, Esq., of the Law Offices of Eric Bathen, represented the Little Lake City School District (District). Kent Morizawa, Esq., of Reich, Adell & Cvitan, represented all Respondents.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on April 13, 2010.

FACTUAL FINDINGS

1. Complainant, Phillip Perez, Ed.D., Superintendent, filed the Accusation while acting in his official capacity as the Superintendent of the District.
2. Respondents are certificated employees of the District.

3. On February 23, 2010, the Governing Board (Board) of the District adopted a resolution (Resolution 10-036) to reduce and discontinue the following particular kinds of services provided by the District no later than the beginning of the 2010-2011 school year:

<u>Services</u>	<u>Number of Full-Time Equivalent Positions</u>
Multiple Subject Credentialed Teachers	32.0 FTE
Elementary Music Teachers	2.0 FTE
Middle School Language Arts Teacher	1.0 FTE
Teacher on Special Assignment (Math)	1.0 FTE
Middle School Science Teacher	1.0 FTE
Total Full Time Equivalent [FTE] Reduction:	37.0 FTE

4. The Board further determined that the reduction in services necessitated a decrease in the number of certificated employees at the close of the 2009-2010 school year by a corresponding number of FTE positions, and directed the Superintendent to notify the appropriate employees to implement the Board's determination.

5. Following the adoption of the Resolution 10-036, the District determined that the following terminated FTEs would be addressed by way of attrition: 4.0 Multiple Subject Credential Teacher FTEs, 1.0 Middle School Language Arts Teacher FTE, 1.0 Teacher on Special Assignment (Math) FTE, and 1.0 Middle School Science Teacher FTE. Consequently, the District concluded that the number of certificated employees required to be terminated pursuant to this proceeding is 30.

6. On March 5, 2010, the District gave notice to each Respondent of the potential elimination of his/her position for the 2010-2011 school year. On March 19, 2010, the District served the Accusation on each Respondent who requested a hearing.

7. All Respondents served with the Accusation timely filed requests for hearing and Notices of Defense to determine if there was cause for not reemploying them for the 2010-2011 school year.

8. The services set forth in Factual Finding 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue the identified particular kinds of services was neither arbitrary nor capricious, and constituted a proper exercise of discretion.

9. The reduction or discontinuation of particular kinds of services was related solely to the needs and welfare of the District and its pupils.

10. The Board 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.

11. On February 23, 2010, the Board adopted a resolution (Resolution 10-035) which established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. According to Resolution 10-035, the order of termination shall be based on the needs of the District and its students in accordance with the following:

4. As between certificated employees with a professional clear or preliminary credential (or equivalent) possessing the same seniority date, the following criteria shall be utilized to resolve ties between employees having the same seniority date in priority order:
 - a. Meet the criteria to be NCLB Compliant for current assignment
 - b. Possession of a Bilingual Cross-Cultural Language Academic Development (BCLAD) Certificate (or equivalent)
 - c. Possession of a Cross-Cultural Language Academic Development (CLAD) Certificate (or equivalent)
 - d. Issuance of a Temporary County Certificate (TCC) for a BCLAD or CLAD (or equivalent)
 - e. National Board Certification
 - f. Hold credential for the longest period of time
 - g. Total number of years of teaching experience in the District
 - h. Total number of years of teaching experience in education

12. The District maintains a Seniority List which contains employees' seniority dates, current assignments, and credential and certificate information.

13. The District used the Seniority List with seniority dates to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District also considered each teacher's credentials and certifications.

14. The District used information from the District's Seniority List to apply the tie breaking criteria of Board Resolution 10-035.

15. The District determined that nobody less senior than Respondents was being retained to render services which Respondents are certificated and competent to render.

16. One of the revenue-saving changes the Board made for the 2010-2011 school year was the increase in class size from a 20:1 ratio to a 26:1 ratio, thus resulting in less classrooms/teachers at each site. In implementing the class size increase, the District determined what positions would be terminated at each site and the employees affected by it. Although the District's witness, Toni Traster, testified that the more senior employees whose positions at each site were being cut would "bump" the less senior employees receiving layoff notices, this was a mischaracterization. This situation did not involve "bumping," where a senior employee, subject to layoff in his/her PKS, is allowed to "bump" a junior employee, not subject to layoff, after the District determines that the senior employee is certificated and competent to render the services which the junior employee is performing. After further testimony by Ms. Traster, and as substantiated by the Seniority List, the District demonstrated that only the least senior employees in each PKS, the Respondents, were issued layoff notices.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. Cause exists to reduce the number of certificated employees in the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code sections 44955.

3. Education Code section 44955, subdivision (b), provides, in pertinent part:

[T]he services of no permanent employee may be terminated . . . 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.

[¶] . . . [¶]

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.

4. No certificated employee junior to any Respondent is being retained to perform any services which any Respondent is certificated and competent to render.

5. Cause exists within the meaning of Education Code section 44955 for terminating or reducing Respondents' employment for the 2010-2011 school year, as set forth in Factual Findings 1 through 15 and Legal Conclusions 1 through 4.

ORDERS

1. The Accusations served on Respondents are sustained. Notice may be given to Respondents that their services will be reduced or terminated for the 2010-2011 school year because of the reduction or discontinuation of particular services as indicated.
2. Notice shall be given in inverse order of seniority.

Dated: April 23, 2010

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings