

BEFORE THE GOVERNING BOARD OF THE
SOUTH PASADENA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

Kristina Biederman and Other Certificated
Employees of the Pasadena Unified School
District,

Respondents.

OAH Case No. 2010030090

PROPOSED DECISION

Administrative Law Judge, Sophie C. Agopian, Office of Administrative Hearings, heard this matter on April 19, 2010, in South Pasadena, California.

Candace M. Bandoian, Attorney at Law, represented Julie Jennings (Jennings), the Assistant Superintendent, Personnel Services, of the South Pasadena Unified School District (District).

Richa Amar, Attorney at Law, represented 34 certificated employees of the District, who were present at the hearing. Two other certificated employees, Cassandra Caskey and Natasha Prime, did not appear at the hearing and were not represented by counsel. The hearing proceeded in their absence. All 36 employees are respondents in this matter (Respondents).¹

Prior to the hearing, the District agreed to dismiss the Accusation against Annalee Pearson, and retain her for the 2010-2011 school year. Ms. Pearson is not a Respondent in this case.

Evidence was received and the matter was submitted for decision on April 19, 2010.

¹ Kristina Biederman, Albert Chung, Lilia Cuervo, Belinda Diaz, Richard Fiedler, Noelle Fong, Susan Gendreau, Christina Hansen, Kim Hernandez, Paul Hugasian, Kathryn Hutto, Kristen Kato, Tammy Lai, Janet Lim, Allen Lin, Melissa Moon-Burke, Maggie Moore, Melissa Muntz, Nan Ng, Valerie Nishikubo, Diana Olivarez, Katherine Perry, Sharon Reed, Denise Romano-Tanaka, David Speck, Marcile Vadell-Strickland, Laura Vaden, Kristen Kludt, Gigi Leung, Maria Long, Sella Simonian, Soomin Zee, Bethany Budde, Cassandra Caskey, Natasha Prime, and Landis Airo.

FACTUAL FINDINGS

1. Assistant Superintendent Jennings filed the Accusation in her official capacity.

2. Respondents are certificated employees of the District.

3. On March 1, 2010, the District's Governing Board (Board) adopted Resolution No. 2009-2010-30 (Resolution) by which it determined that it will be necessary for the District to reduce or discontinue particular kinds of services (PKS) for the 2010-2011 school year for a total of 40.97 certificated full-time equivalent (FTE) positions, as follows:

Particular Kinds of Programs or Services	No. of Full-Time Equivalent (FTE) Positions
Counseling Services	
DIS ² Counselor	1.0
Elementary	.5
Middle School	1.0
High School	2.0
Elementary Services	
K-5 Teachers	19.0
Art	.8
Middle School Services	
Special Education Teacher	.67
Art	1.0
Physical Education	2.0
6th Grade Science	1.0
6th Grade Social Studies	1.0
6th Grade English	1.0
High School Services	
Band	.4
Advance Placement Spanish	.2
Special Education Teacher	1.0
English (including Teacher Specialist (.6), ELD ³ (.2), Eng. Prep. (.2))	3.0

² "DIS" is an acronym for "designated instruction and services," which is a "related service" available to children with disabilities under the Individuals with Disabilities Education Act (20 U.S.C. § 1401). In this case, a "DIS" counselor is one who provides specialized counseling to assist children with special needs to benefit from their educational program. (Educ. Code § 56363, subd. (a).)

³ "ELD" refers to English Language Development.

Math	1.4
Science	.4
Art	.4
U.S. History	.4
Physical Education	1.0

Regional Occupational Program (ROP)	
Animation (.2), Graphic Design (.8), Computer Application (.4)	1.4
Virtual Business (.4), Small Business (.4), Careers in Education (.4)	1.2
Multi-Media Production (.2)	.2
Total FTE Reduction - All Programs	40.97

4. The Board also determined that the reduction or elimination of the PKS made it necessary to terminate the employment of certain certificated employees prior to the beginning of the 2010-2011 school year. The Board directed the Superintendent to send appropriate notices to all employees whose positions may be lost or reduced by the Board's action.

5. All notices and jurisdictional documents were timely and properly served upon Respondents. All other procedural requirements of Education Code⁴ sections 44949 and 44955, and applicable Government Code provisions have been met.⁵

6. The certificated services identified in Factual Finding 3 are "particular kinds of services" that may be reduced or discontinued within the meaning of section 44955.

7. The Board's decision to reduce or eliminate the PKS set forth in Factual Finding 3 was not arbitrary or capricious and constitutes a proper exercise of the Board's discretion. The Board's decision to reduce or discontinue such services was related to the needs and welfare of the District and its pupils.⁶

⁴ All further statutory references are to the Education Code.

⁵ Factual Findings 3 through 5 were established by way of a stipulation between the District and Respondents who appeared at the hearing and were represented by counsel. Respondent Kristina Biederman did not file a timely Notice of Defense, but did not waive her right to a hearing based on Government Code section 11506, subdivision (c). participation in the hearing

⁶ Although the Board's Resolution did not assert that the PKS was related to the needs and welfare of the District and its students, Assistant Superintendent Jennings established that the reduction in force related to fiscal uncertainties that impact the manner in which the District will provide services to its students.

8. District personnel complied with the Board's directive to reduce the number of certificated employees by implementing the procedures set forth in sections 44949 and 44955.

9. In determining the number of lay-off notices to issue, the District considered all assured and/or known attrition, including resignations and retirements, as of March 19, 2010. The District considered attrition after the March 15 deadline to notify affected employees of the proposed lay-off in order to determine if any notices could be rescinded. It was not established whether there was any further attrition that would have resulted in the rescission of any lay-off notices.

10. To determine the order of termination or lay-off, the District properly created a seniority list by determining the date in which each certificated employee first rendered paid service to the District in a probationary position, and applying "tie-breaking" criteria when necessary. The parties stipulated that the District properly applied the "tie-breaking" criteria set forth in Resolution No. 2009-2010-25, adopted by the Board on February 23, 2010, to Respondents. It was undisputed that the tie-breaking criteria was based on the needs of the District and its students, and was correctly applied to determine the order of lay-off.

11. Pursuant to the parties' stipulation, no permanent or probationary employee with less seniority is being retained to render a service which any senior Respondent is certificated and competent to render. The District properly permitted senior employees, whose positions are subject to lay-off, to "bump" into positions held by junior employees as long as the senior employee is certificated and competent to render such service.

12. At the hearing, the parties stipulated to the following amendments to the seniority list, some of which resulted in the dismissal of certain Accusations by the District:

Respondent Sharon Reed's seniority date is changed to August 29, 2005, thereby resulting in the dismissal of the Accusation against Ms. Reed.

Respondent Valerie Nishikubo's seniority date is changed to March 6, 2006. This change does not affect Ms. Nishikubo's lay-off, but may impact her potential reemployment.⁷

The Accusations against Respondents Gigi Leung and Susan Gendreau are dismissed.

⁷ Although Respondents' reemployment rights are not subject to this proceeding, part of the stipulation between the parties included the District's agreement to "honor the reemployment rights guaranteed under Education Code sections 44956 and 44957 for those certificated employees who are laid off."

LEGAL CONCLUSIONS

1. Jurisdiction for this matter was established pursuant to sections 44949 and 44955, by reason of Finding Findings 1 through 5.

2. A school district may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App. 3d 167, 178-179.)

3. Cause exists to reduce the number of certificated employees of the District under sections 44949 and 44955 because the services identified in the Board’s Resolution are particular kinds of services that can be reduced or eliminated within the meaning of section 44955, and because the District established that the reduction of such services is related to the welfare of its schools and students pursuant to section 44949, subdivision (c)(3). (Factual Findings 6 and 7.)

4. Section 44955, subdivision (b), further provides that:

[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.

5. Cause exists to sustain the Accusations against 33 Respondents because the District complied with the requirements of section 44955, subdivision (b), with respect to such Respondents, as set forth in Factual Findings 8 through 11, in that:

The District properly developed and applied tie-breaking criteria to determine the correct order of termination among employees with the same seniority date; and

The District ensured that no junior certificated employee will be retained to render a service which a more senior Respondent is certificated and competent to render.

6. Cause, therefore, exists to terminate the services of Kristina Biederman, Albert Chung, Lilia Cuervo, Belinda Diaz, Richard Fiedler, Noelle Fong, Christina Hansen, Kim Hernandez, Paul Hugasian, Kathryn Hutto, Kristen Kato, Tammy Lai, Janet Lim, Allen Lin, Melissa Moon-Burke, Maggie Moore, Melissa Muntz, Nan Ng, Valerie Nishikubo, Diana Olivarez, Katherine Perry, Denise Romano-Tanaka, David Speck, Marcile Vadell-Strickland, Laura Vaden, Kristen Kludt, Maria Long, Sella Simonian, Soomin Zee, Bethany Budde, Cassandra Caskey, Natasha Prime, and Landis Airo.

7. By reason of Factual Finding 12, cause exists to dismiss the Accusations against remaining Respondents Sharon Reed, Gigi Leung and Susan Gendreau, and retain them for the ensuing school year.

ORDER

Notice may be given to the 33 Respondents identified in Legal Conclusion 6 that their services will not be required for the 2010-2011 school year. Notice shall be given in inverse order of seniority.

The Accusations against Respondents Sharon Reed, Gigi Leung and Susan Gendreau are dismissed pursuant to the parties' stipulation.

DATED: May 4, 2010

SOPHIE C. AGOPIAN
Administrative Law Judge
Office of Administrative Hearings