

BEFORE THE
GOVERNING BOARD
FILLMORE UNIFIED SCHOOL DISTRICT
COUNTY OF VENTURA
STATE OF CALIFORNIA

In the Matter of the Layoff of:

Raina Arellano and other certificated
employees of the Fillmore Unified School
District,

Respondents.

OAH Case No. L2011030382

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 7, 2011, in Fillmore, California.

Margaret A. Chidester, Attorney at Law, represented Todd Schieferle (Schieferle), Director Human Resources, Fillmore Unified School District (District).

Tareq M. Hishmeh and Robert M. Ostrove, Attorneys at Law, represented the certificated employees set forth in legal conclusion number 4, all of whom filed Notices of Defense (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 2011-2012 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Director Schieferle filed the Accusations in his official capacity.
2. Respondents are certificated employees of the District.
3. On March 8, 2011, the Governing Board of the District (Governing Board), following the recommendation of Superintendent Jeff Sweeney and Director Schieferle, adopted Resolution Number 10-11-15, reducing or discontinuing the following services for the 2011-2012 school year:

<u>Service</u>	<u>FTE¹ Reduction</u>
(1.1) 18 K-6 Classroom Teachers	18.0
(1.2) 1 Elementary Music Teacher	1.0
(1.3) 1 Coordinator of Special Projects	1.0
(1.4) 1 Sierra High School Principal	1.0
(1.5) 1 7-12 English Teacher	1.0
(1.6) 1 7-12 Life Science Teacher	1.0
(1.7) 1 High School Health Teacher	1.0
(1.8) 1 7-12 History Teacher	1.0
(1.9) 1 7-12 Math Teacher	1.0
(1.10) 4 Elementary Principals	4.0
(1.11) 1 Elementary Special Education (Mild/Moderate teacher)	1.0
(1.12) 1 7-12 Physical Education Teacher	1.0
(1.13) 2 Career Tech Teachers	0.6
(1.14) 1 School Counselor	1.0
(1.15) 1 Coordinator, Special Student Populations	1.0
(1.16) 2 Assistant Principals, Fillmore High School	2.0
(1.17) 1 Assistant Principal, Fillmore Middle School	1.0
(1.18) 1 Director of Special Projects	1.0
(1.19) 1 Special Education Coordinator	1.0
(1.20) 1 School Psychologist	1.0
(1.21) 1 Principal, Fillmore Middle School	1.0
(1.22) 1 Principal, Fillmore High School	1.0
(1.23) 1 Reading Resource Teacher (San Cayetano)	1.0
(1.24) 3 AVID Teachers, Fillmore High School	0.6
(1.25) 2 Reading Intervention Teachers, Fillmore High School	0.6
(1.26) 1 RTI Coordinator, Fillmore High School	0.2
(1.27) 1 English Learner Coordinator, Fillmore High School	0.2
(1.28) 1 CAHSEE Prep Teacher, Fillmore High School	0.2
(1.29) 1 Art Teacher, Piru	0.2
(1.30) 1 Intervention Teacher, Mountain Vista	0.2
(1.31) 1 Elementary Science Teacher, Sespe	0.2
(1.32) 1 Agriculture Career Tech Teacher	0.2
(1.33) 1 World Geography Teacher	<u>0.2</u>
Total	46.4

¹ Full-time equivalent position.

4. Director Schieferle thereafter provided written notice to the Governing Board and to Respondents that he recommended the termination of Respondents' services for the 2011-2012 school year due to the reduction of particular kinds of services.

5. On March 8 through 11, 2011, the District provided notice to Respondents that their services will not be required for the 2011-2012 school year due to the reduction of particular kinds of services. Respondents filed timely requests for hearing.

6. On or about March 23, 2011, the District filed and served the Accusation and other required documents on Respondents. Respondents thereafter timely filed Notices of Defense, seeking a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

7. All prehearing jurisdictional requirements have been met.

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 44955.²

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 future funding. 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.

10. The reduction of services set forth in factual finding number 3, in the context of potential loss of State funding and the District's needs to remain solvent to serve its students, 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. In determining the number of final layoff notices to issue, the District expects to take into account any retirements and resignations to reduce the number of actual layoff notices.

12. On March 8, 2011, the Governing Board adopted criteria for breaking seniority ties for employees with the same first date of paid service. Points were awarded for meeting the following criteria: bilingual teaching certificates; credentials; "hard to hire credentials (science, math, and special education); supplemental authorizations; and Master's degrees. The tie-breaking criteria are reasonable as they relate to the skills and qualifications of certificated employees. Respondents did not challenge application of the criteria.

² All further references are to the Education Code.

13. a. Respondent Lynda Catalano (Catalano) holds a single subject (art) credential and teaches in Grades Kindergarten to Sixth. She started working for the District in 1978, and served as a substitute until 1987. Starting on September 3, 1987, Respondent Catalano worked on a part-time basis teaching art, science, and intervention. Respondent Catalano testified that she was able to set her own work schedule. In actuality, she worked three days each week, Tuesdays, Wednesday, and Thursdays, a practice that was encouraged by her site principal to better meet the needs of intervention students. In this schedule, Respondent Catalano typically worked about 114 days, less than 75 percent of the days on the school year. During the 2008-2009 school year, Respondent Catalano worked 111 out of 185 days of school, or 60 percent of the instructional school year. Respondent Catalano started teaching on a full-time basis during the 2009-2010 school year.

b. The District has treated Respondent Catalano as a permanent employee for an undetermined period. District evaluations completed at the end of the 2010-2011 school year referred to her as a permanent employee. The seniority list submitted in evidence is consistent with this treatment, as it showed her seniority date as September 3, 1987.

c. In connection with record-review in the implementation of the 2011-2012 layoffs, Director Schieferle concluded that Respondent Catalano had been misclassified as a permanent employee. In March 2011, he informed Respondent that she was actually a probationary employee in her second year. The District considers her proper seniority date August 4, 2008, the date Respondent Catalano commenced her full-time employment.

14. The District did not retain any certificated employee junior to Respondents to render a service which Respondents are 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 7.

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 reduction of 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 14.

4. Respondent Catalano argues that she should not have been laid off because the District assigned her the September 3, 1987, seniority date, which made her a permanent employee and senior to retained certificated employees.

The doctrine of equitable estoppel is available in certain circumstances to those who detrimentally rely on representations made by another. In order for equitable estoppel to apply, the following requirements must be met: “(1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true facts; and (4) he must rely upon the conduct to his injury.” (*Lentz v. McMahon* (1989) 49 Cal.3d 393, 399, quoting *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.) Although the doctrine can be applied against the government “where justice and right require it,” it cannot be applied against the government where to do so would effectively nullify a “strong rule of policy, adopted for the benefit of the public . . .” (*City of Long Beach v. Mansell*, *supra*, 3 Cal.3d at p. 493.) Nor can estoppel be applied where to do so would enlarge the power of a governmental agency or expand the authority of a public official. (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 28.)

Courts have refused to apply the doctrine of equitable estoppel in teacher tenure cases where the application would contravene statutory limitations. In *Smith v. Governing Board of Elk Grove Unified School District* (2004) 120 Cal.App.4th 563 (*Elk Grove*), a teacher retained to work a third year sought classification as a permanent employee. The court declined to apply equitable estoppel because the teacher’s two years of service had been under a provisional credential and a statute prohibited counting such service toward tenure. (See, also, *Fleice v. Chualar Union Elementary School District* (1988) 206 Cal.App.3d 886.)

In this case, section 44918, subdivision (a), provides, in pertinent part, “Any employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year. . . .” As set forth in factual finding number 13, Respondent Catalano worked for less than 75 percent of the time during the 2008-2009 school year, the year preceding her hiring in a probationary capacity, and, as in the *Elk Grove* case, granting permanent status to Respondent Catalano would contravene statutory limitations. Application of equitable estoppel in this case would therefore impermissibly enlarge the District’s authority under the section 44918.

5. Cause exists to terminate the services of Respondents, by reason of factual finding numbers 1 through 13, and legal conclusion numbers 1 through 4.

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ORDER

The Accusation is sustained and the District may notify Raina Arellano, Heather Atwood, Kayce Betzel, Jenny Bortins, Jill Capra, Lynda Catalano, Melanie Chisholm, Claudia Cornejo, Sheila DeMeritt, Kristen Dunst, Veronica Duran, Joseph Fry, Randy Garcia, Jennifer Graves, Amber Henrey, Susan Hersh, Debra Louth, Jeremiah MacMahon, Marisa Martinez, Ashley McCain, Maria Meza, Kevin Molloy, Aide Recendez, Kristina Renelli, Juliette Resor, Erin Sebek, Delia Silva, Kathryn Spore, Matthew Stockton, Lacy Swensen, Cara Waterman, and Jennifer Weir that their services will not be needed during the 2011-2012 school year due to the reduction of particular kinds of services.

DATED:_____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings