

**BEFORE THE
GOVERNING BOARD OF THE
BELLFLOWER UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Lauren Allen, et al.,

Respondents.

OAH No. 2010020882

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on April 28, 2010, at the offices of the Bellflower Unified School District (BUSD or District) in Bellflower, California.

Eric Bathen, Attorney at Law, of the Law Offices of Eric Bathen, represented the District.

Carlos R. Perez, Attorney at Law, Reich, Adell & Cvitan, represented all Respondents listed in Appendix I attached hereto.

Respondents not represented by counsel are listed in Appendix II attached hereto. None of the unrepresented Respondents appeared at the hearing.

Oral and documentary evidence was received and the record was closed. The matter was submitted on April 28, 2010.

FACTUAL FINDINGS

1. Complainant, Rick Kemppainen, Superintendent and Secretary to the Board of Education for the District, filed the Accusation while acting in his official capacity.

2. Respondents are certificated employees of the District.

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3. On February 18, 2010, the Governing Board (Board) of the District adopted a resolution to reduce and discontinue, at the end of the 2009-2010 school year, the following particular kinds of services provided by the District (PKS Resolution):

Service	FTE Reduction
Elimination of class size reduction in grades K-3	80.0
Elimination of class size reduction in 9th grade English	4.0
Intensive Learning Center Specialists	4.0
Total	88.0

4. The PKS Resolution further authorized and directed the Superintendent or his or her designee “to initiate and pursue procedures necessary to not reemploy the equivalent of eighty-eight (88) full-time certificated positions because of the reduction or discontinuance of services.”

5. The PKS Resolution further provided that “[i]n accordance with Education Code Section 44955(c) the Governing Board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.”

6. On February 18, 2010, the Board adopted a resolution, entitled “Order of Termination for Certificated Personnel” (Tie-breaker Resolution), establishing tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination shall be based on the needs of the District and its students in accordance with the type and subject matter of credentials, college degrees and credits, and teaching experience.

7. On or before March 15, 2010, the District gave notice to each Respondent of the potential elimination of his or her position for the 2010-2011 school year. On March 25, 2010, the District served the Accusation by certified mail on each Respondent who requested a hearing.

8. All Respondents served with the Accusation timely filed requests for hearing and notices of defense to determine whether there was cause for not reemploying them for the 2010-2011 school year.

9. 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.

10. The District maintains a seniority list that contains employees' seniority dates, titles, credentials, current assignments, and classifications, as well as information related to skipping, bumping, and recall rights.

11. The District used the seniority list to develop a proposed layoff list. The District considered each teacher's credentials and certifications. The District determined that no teacher less senior than Respondents was being retained to render services that Respondents are certificated and competent to render.

12. The District used information from its seniority list to apply the tie-breaker criteria of the Board's Tie-breaker Resolution.

13. The District skipped and retained all special education teachers. The District retained all temporary teachers in categorically funded programs. Respondents raised no issue as to these matters.

14. The District assigned and reassigned teachers with appropriate credentialing to fill positions held by lower seniority teachers or to fill positions vacated by more senior teachers who had been reassigned and for which no more senior teachers with appropriate credentialing were available.

15. At the hearing, the District rescinded the layoff notices and dismissed the Accusations against Respondents Michael Magnera, who was reinstated, and Laurel Molina, who was non-reelected as a probationary employee.

16. At the hearing, the seniority list was amended by stipulation of the parties, as follows:

a. The recall number of Catherine Gredsund, who has a seniority date of August 29, 2008, was amended from "6" to "5."

b. The recall number of Lauren Allen, who has a seniority date of August 29, 2008, was amended from "5" to "6."

c. Lorena Cornejo's seniority date was amended from February 1, 2005, to September 3, 2004.

d. Kevin Gaffney's seniority date was amended from October 4, 2004, to August 27, 2003.

e. The recall number of Teresa Driscoll, who has a seniority date of September 3, 2004, was amended from "22" to "20."

f. The recall number of Kevin Franco, who has a seniority date of September 3, 2004, was amended from "20" to "22."

These changes to the seniority list do not affect Respondents' employment status with the District.

17. Three positions remain unfilled. A math position, appearing on the seniority list with a seniority date of August 29, 2008, remains open because no Respondent has the credentials to fill that position. An art position, appearing on the seniority list with a seniority date of September 3, 2004, is open because of a recent resignation and because no Respondent has the credentials to fill the position. A position appearing on the seniority list with a seniority date of September 7, 1976 is open due to a recent retirement announcement and because no Respondent has the credentials to fill the position. Respondents raised no issue as to these unfilled positions.

LEGAL CONCLUSIONS

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

2. Cause exists to sustain BUSD's action to reduce or discontinue 88.0 full-time-equivalent positions, as set forth in BUSD's PKS Resolution for the 2010-2011 school year, under sections 44949 and 44955, as set forth in Factual Findings 1-16, and Legal Conclusions 1 and 3-9.

3. The services identified in the PKS Resolution are particular kinds of services that may be reduced or discontinued under section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and students within the meaning of section 44949.

4. 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.)

5. Section 44955, subdivision (b), provides, in pertinent part:

[W]henever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . , and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of

¹ All further statutory references are to the Education Code.

not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year.

6. Section 44955, subdivision (c), provides, in pertinent part:

[S]ervices of such employees shall be terminated in the inverse of the order in which they were employed

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.

7. The District identified certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued. The District considered seniority and qualifications, as set forth in Factual Findings 10 and 11, and properly made assignments and reassignments in its discretion in accordance with section 44955, subdivision (c). (See, e.g., *Brough v. Governing Bd. of the El Segundo Unified School Dist.* (1981) 118 Cal.App.3d 702, 716-717.)

8. No junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render.

ORDER

The Accusation served on those Respondents identified as providing the particular kinds of services that the Governing Board directed to be reduced or discontinued, amounting to 88.0 full-time-equivalent positions, is sustained.

The District shall give notice to Respondents, as required by law, that their services will be terminated at the close of the 2009-2010 school year, except as noted below. The District shall give the notice in inverse order of seniority.

The Accusations as to Michael Magnera and Laurel Molina are dismissed.

Dated: May ___, 2010

Howard W. Cohen
Administrative Law Judge
Office of Administrative Hearings

APPENDIX I

RESPONDENTS REPRESENTED BY COUNSEL²

1. Allen, Lauren;
2. Aranda, Blanca;
3. Avalos, Kelly;
4. Bailey, Kristy;
5. Batoon, Tricia;
6. Blackman, Jennifer;
7. Bomgaars, Karen;
8. Callahan, Kathleen;
9. Carlile, Emily;
10. Carson, Diane;
11. Chavez, Christina;
12. Chen-Lester, Wendy;
13. Chung, Kristine;
14. Contreras, Angelica;
15. Cornejo, Lorena;
16. Coughlin, Erin;
17. DaPra-Duncan, Jaime;
18. Driscoll, Teresa;
19. Du Fault, Pamela;
20. Edwards, Melanie;
21. Elliott, Amiko;
22. Evangelista, Evangeline;
23. Fagan, Candice;
24. Fisher, Carol;
25. Franco, Kevin;
26. Frizzelle, Stacy;
27. Gaffney, Kevin;
28. Garcia, Christina;
29. Gehrig, Amy;
30. Gondal, Jaspreet;
31. Gredsund, Catherine;
32. Greenwood, Heather;
33. Halls, Jennifer;
34. Ham, Gloria;
35. Hefferly, Tara;
36. Hensley, Julie;

² Represented Respondents Kevin Franco, Christina Garcia, Amy Gehrig, Tara Hefferly, Anita McKay, Cynthia Nordlander, Jennifer Snyder, Heather Sumlin, and Sylvia Talamantes were not present at the hearing.

37. Hoppes, Kasey;
38. Idstein, Katrina;
39. Kasowski, Colette;
40. La Porte, Paul;
41. Leas, Holly;
42. McKay, Anita;
43. McLaughlin, Charmaine;
44. Miyakawa, Lori Ann;
45. Moak, Leah;
46. Molina, Laurel;
47. Musick, Amber;
48. Myers, Michelle;
49. Nicas, Nicole;
50. Nieves, Melissa;
51. Nishimoto, Jane;
52. Nordlander, Cynthia;
53. Olmedo, Kelli;
54. Raasveld, Richard "Ryan";
55. Ramser, Dean;
56. Reynolds, Linda;
57. Sanchez, Leena;
58. Sanzaro, Laura;
59. Snyder, Jennifer;
60. Stephenson, James;
61. Sumlin, Heather;
62. Talamantes, Sylvia;
63. Teran, Brianne;
64. Trecker, Erin;
65. Van Kampen, Rhonda;
66. Whygle, Lauren;
67. Yakel, Elizabeth

APPENDIX II

RESPONDENTS NOT REPRESENTED BY COUNSEL³

1. Bonoan, Stephanie
2. Courtemarche, Edward
3. Erami, Golbarg
4. Figueroa, Ernesto
5. Garcia, Rogelio
6. Kelly, Erin
7. Lish, Nicole
8. Magnera, Michael
9. Nemec, Kristina
10. Quidwai, Sabba
11. Smith, Alyse

³ None of the unrepresented Respondents appeared at the hearing.