

BEFORE THE GOVERNING BOARD
FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT
COUNTY OF SACRAMENTO
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE FOLSOM
CORDOVA UNIFIED SCHOOL
DISTRICT,

Respondents.

OAH No. 2008020650

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter in Folsom, California on April 11, 2008.

Kim Kingsley Bogard, Attorney at Law, of Kingsley Bogard Thompson, L.L.P., Attorneys at Law, and Larry Brubaker, Assistant Superintendent, Human Resources, and Cathy Runnels, Director of Human Resources, represented the Folsom Cordova Unified School District (District).

Andrea Price, Attorney at Law, of Langenkamp and Curtis, L.L.P., Attorneys, represented all but those otherwise named respondents, certificated District employees receiving notice that their services would not be required for the upcoming school year.

Nichole Garcia is a certificated employee of the District who received a preliminary notice that her services would not be required for the upcoming school year. She appeared in pro per.

Rhianna Brunolli, Carolee Davis, Kimberly Keck, Donita London, Ola Oliynyk, Heidi Rounds, Jennifer Silvers, Juliene Smith, Lauri Trabish, Kimberly Triguero, and Robyn Van Winkle are respondent certificated employees of the District receiving a preliminary notice that their services would not be required for the upcoming school year not represented by counsel above. None of these certificated employee respondents appeared at the evidentiary hearing.

FACTUAL FINDINGS

1. Patrick Godwin (the Superintendent) is the Superintendent of the Folsom Cordova Unified School District (District). At all times relevant to this Decision, Larry Brubaker, Assistant Superintendent for Human Resources, (the Assistant Superintendent) was duly delegated and authorized to act for the Superintendent. The Assistant Superintendent made and filed the Accusation and issued the preliminary notices set forth below in his official capacity only.

2. Respondents are and at all times relevant to this Decision were certificated employees of the District.

3. On or just before March 7, 2008, in accordance with Education Code sections 44949 and 44955, the Superintendent notified the Governing Board of the District in writing of the Superintendent's recommendation that certain particular kinds of services would have to be reduced or eliminated for the upcoming school year. The Superintendent's notice specified the particular kinds of services to be reduced or eliminated, as set forth below. The Superintendent also notified the Board that a corresponding number of certificated employees of the District would have to be laid off to effectuate the reduction or elimination of the particular kinds of services. The Superintendent notified the Board that the respondents were among those who had been identified as persons to whom notice should be given that their services would not be required for the ensuing school year. The recommendation that respondents' services for the District would not be required for the upcoming school year was not related to their skills, abilities or performance as teachers.

4. The Board adopted its Resolution 03-05-08-28 on March 5, 2008. The Board resolved to follow the Superintendent's recommendation to reduce 75.15 full time equivalent (FTE) particular kinds of services. The Resolution authorized and directed the Superintendent to give notice to a corresponding number of certificated employees of the District that their services would not be required for the upcoming school year in order to effectuate the reduction. The Resolution authorized the elimination of the following services now offered in the District:

Service	Grade Level	Full Time Equivalent	FTE Totals
Elementary K-6			
Teachers K-6	K-6	15.0	
PE Elementary Prep	K-6	1.0	
3d Grade CSR	3	25.0	
		Sub-total	41.0
Secondary 6-12			
Art	6-12	1.0	
Career Tech/Business	6-12	2.0	
Counselors	6-12	5.4	
English	6-12	3.0	
Home Ec	6-12	2.0	

Math	6-12	4.0	
Music	6-12	1.0	
PE	6-12	4.0	
Science (Life)	6-12	1.0	
Science (Physical)	6-12	1.0	
Social Studies	6-12	5.0	
Special Education (SDC)	6-12	3.0	
		Sub-total	32.4
District			
Nurse		1.0	
Psychologist		0.75	
		Sub-total	1.75
		Total FTE	75.15

5. The Superintendent caused each of the respondents identified in ATTACHMENT A to this Decision to be served with a written Notice of Intention to Dismiss (preliminary notice) on or before March 15, 2008. The written preliminary notices advised the respondents of the Superintendent's recommendation to the Board that their services would not be required for the upcoming school year. The preliminary notice set forth the reasons for the recommendation and for the reductions and eliminations of the particular kinds of services.

6. The respondents identified by name in ATTACHMENT B to this Decision each timely filed a written Request for Hearing to determine if there was cause for not reemploying them for the ensuing year.

7. The District timely served Accusations on each respondent who timely filed a Request for Hearing. Along with being served the Accusation, each respondent also received a copy of the Board's Resolution and copy of the detail identifying each particular kind of service slated by the District for reduction or elimination.

8. Each respondent identified in ATTACHMENT C to this Decision timely filed a Notice of Defense to the Accusation, either in person or through counsel.

9. Notice of the date, time and place of the evidentiary hearing to determine whether there exists cause to not reemploy respondents receiving a preliminary notice of layoff was duly given by the District to all respondents who timely filed Requests for Hearing and Notices of Defense. The date and time of the evidentiary hearing was changed upon mutual request of counsel for the District and counsel for most of the respondents. Counsel advised represented respondents of the changes. Satisfactory proof was made that notice of the changes in the date and time of the evidentiary hearing was given to the unrepresented respondents in a fashion that would permit their appearance, should they elect to do so. One such unrepresented respondent, Ms. Garcia, did appear. She confirmed the District made the change of date and time abundantly clear, and that four other unrepresented

respondents work with her and were aware of the changes. The District served each unrepresented respondent who filed a Notice of Defense with a notice that the date and time of the evidentiary hearing had been changed, and advised of the new time and date (Exhibit 2). Service of the Notices of Hearing and the notice changing the time and date of the hearing to the unrepresented respondents was reviewed by the Administrative Law Judge on the record and was found to have met the requirements of Government Code sections 11505 and 11509. As to those unrepresented respondents who failed to appear, as identified in the Preamble, the matter was conducted as a default, pursuant to Government Code section 11520.

10. The represented respondents, through counsel, the District, through counsel, and Ms. Garcia, on her own behalf, each stipulated and agreed to the following:

- A. The Decision and Order set forth here may be entered, without the need for further evidentiary hearing;
- B. The agreements reduced to writing in Exhibit 1 shall form the basis for the Factual Findings of this Decision;
- C. That, based on the stipulation, the represented respondents and those failing to appear for the evidentiary hearing after having received a Notice of Hearing, withdraw their requests for hearing and Notices of Defense; and
- D. That all represented respondents and those unrepresented respondents receiving a Notice of Hearing but who failed to appear for the evidentiary hearing stipulate and agree that:
 - 1. Each respondent is the proper subject of receipt of a preliminary notice of layoff, except as otherwise set forth in this Decision;
 - 2. That factual and legal cause exists to lay off each respondent, except as set forth in this Decision; and
 - 3. Each respondent, except as otherwise set forth in this Decision, waives and relinquishes his or her right to an evidentiary hearing as set forth in Education Code sections 44949 and 44955, and Government Code section 11500, et.seq.
- E. Legal cause for actions set forth in the agreements of the parties set forth in Exhibit 1, and those agreements shall form the basis for the Decision; and that the final Order in this matter, to be submitted to the Board for adoption, shall be as the parties have set forth in Exhibit 1.
- F. All prehearing jurisdictional requirements for the evidentiary hearing and the layoff process were met.

Each of the parties freely and voluntarily entered into the stipulation, and each thereupon waived the right to any additional evidentiary hearing on any of the matters raised by this action. Ms. Garcia, as the only unrepresented respondent appearing at the evidentiary hearing, joined in all of the stipulations and waivers made by the represented respondents set forth above.

12. The Superintendent, on behalf of 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.

13. District will not eliminate any services that are State or federally mandated.

14. It was stipulated and agreed between the parties that preliminary notices and Accusations served upon the following certificated employees shall be rescinded:

Alexander, Erin;
Alexander-Moore, Lori;
Allen, Leah;
Appleby, Tara;
Bergsten, Amy;
Bjork, Kari;
Blake, Lynsey;
Boggs, Christy;
Burpo, Kristin;
Cain, Kimberly;
Carter, Jeffrey;
Chilcutt, Peter;
Davis, Tamara;
Duncan, Kendra;
Evans, Donna;
Feiner, Jennifer;
Fields, Terese;
Ford, Gail;
Goss, Virginia;
Greco, Lynnette;
Hillel, Benjamin;
Holton, Jenine;
Hyde, Edward;
Keith, Deborah;
Kyle, Debra;
Kuzmich, Alexander;
Lawson, Melissa;
Lockhart, Stephanie;
MacDonald, Michelle;
MacTaggart, Keri;

Matsumura, Michelle;
Mayhugh, Jessica;
Morgan, Shannon;
Olivarria-Mattson, Debra;
Olson, Martin;
Rome, Penny;
Sanders, Patrick;
Shepard, Elizabeth;
Treviso, Carmen;
Turner, Angela; and
Young, Adele.

15. It was stipulated and agreed between the parties that the seniority dates of the following certificated employees shall be modified as follows:

Barajas, F.	8/6/07;
Bergsten, A.	6/5/07;
Boggs, C.	8/7/06;
Cain, A.	8/7/06;
Chicca, G.	8/6/07;
Chilcott, P.	8/7/06;
Dalton, D.	6/5/07;
Davis, T.	7/8/05;
Evans, D.	9/9/05;
Ford, G.	8/6/07;
Gayman, S.	8/6/07;
Gray, D.	8/6/07;
Hillel, B.	8/7/06;
Holton, J.	8/6/07;
Lawson, M.	8/7/06;
Lockhart, S.	8/7/06;
MacDonald, M.	8/7/06;
MacTaggart, K.	8/7/06;
Mayhugh, J.	8/7/06;
Osgood, R.	8/9/07;
Ortega, C.	6/4/07;
Renner, E.	8/6/07;
Reynolds, C.	8/6/07;
Rounds, H.	8/6/07;
Sandfort, J.	8/6/07;
Thornquest, G.	8/6/07;
Trenary, L.	8/9/06;
Tyo, J.	8/6/07;
Vaughan, N.	1/8/07; and
Wallace, E.	8/6/07

16. The parties stipulated and agreed that the employment status of the following certificated employees shall be modified as follows:

Barajas, F.	P1;
Chicca, G.	P1;
Garcia, K.	P1;
Ortega, C.	P1; and
Treviso, C.	P2.

17. The parties stipulated and agreed that the certificated Seniority List of the District shall be modified to reflect the possession of the following credentials/certificates and/or NCLB qualifications of the following certificated employees:

Bergsten, A.	Introductory English (NCLB compliant English K-9 curriculum level);
Lawson, M.	Multiple subject (NCLB compliant);
Lee, N.	Multiple subject (NCLB compliant);
Sanders, P.	Multiple subject (NCLB compliant);
Turner, A.	Multiple subject (NCLB compliant) and emergency CLAD;
Olson, M.	CLAD; and
Steinhardt-Salgatto, S.	CLAD

18. The parties stipulated and agreed the following certificated employees of the District shall be laid off from employment with the District as of the close of the 2007/2008 school year, in the amount of the FTE set forth below, with the employee's confirmed seniority date, as follows:

Tiffany Atwood	1.0 FTE	09/06/06;
Flavia Barajas	1.0 FTE	08/06/07;
Stephanie Bruins	1.0 FTE	08/08/06;
Rhianna Brunolli	1.0 FTE	08/07/07;
Gloria Chicca	1.0 FTE	08/06/07;
Danielle Dalton	1.0 FTE	06/05/07;
Carolle Daynes	1.0 FTE	10/09/07;
Julie De Vore	1.0 FTE	08/08/06;
Barbara Eklund	1.0 FTE	08/03/06;
Jennifer Galvin	1.0 FTE	08/21/06;

Angelica Garcia	1.0 FTE	08/07/07;
Nichole Garcia	1.0 FTE	11/26/07;
John Green	1.0 FTE	08/09/07;
David Gray	1.0 FTE	08/06/07;
Melissa Groshong	1.0 FTE	08/10/06;
Kerry Kaye	0.1 FTE	08/23/07;
Kimberly Keck	1.0 FTE	11/26/07;
Kimberly Knecht	1.0 FTE	08/08/06;
Katherine Lamb	1.0 FTE	08/13/06;
Nancy Lee	1.0 FTE	08/10/06;
Tricia Leu	0.4 FTE	12/03/07;
Leann Linares	1.0 FTE	08/07/07;
Robert Lobese	1.0 FTE	08/28/06;
Donnita London	0.5 FTE	09/08/06;
Timothy Mancini	1.0 FTE	08/02/07;
Ola Oliynyk	0.5 FTE	08/14/06;
Courtney Ortega	1.0 FTE	06/04/07;
Rebecca Osgood	1.0 FTE	08/09/07;
Stephanie Perlstein	1.0 FTE	08/08/06;
Alice Phillips	0.5 FTE	09/12/06;
Michelle Phillips	1.0 FTE	08/09/07;
Heather Quintrall	1.0 FTE	08/10/06;
J. Radulovich	1.0 FTE	08/13/07;
Heidi Rounds	1.0 FTE	08/06/07;
Tara Runnels	1.0 FTE	08/27/07;
Tricia Saito	0.4 FTE	10/09/07;
Jennifer Sandfort	1.0 FTE	08/06/07;
Jill Sieber	0.5 FTE	08/10/06;
Jennifer Silvers	1.0 FTE	08/06/07;
Rennie Simpson	1.0 FTE	08/02/07;
Joanna Slaughter	1.0 FTE	08/09/07;
Jennifer Smith	1.0 FTE	12/04/06;
Julene Smith	0.4 FTE	08/09/07;
Stephanie Steinhart-Salgado	1.0 FTE	08/07/07;
Nicole Thompson	1.0 FTE	08/08/06;
Gregory Thornquest	1.0 FTE	08/06/07;
Lauri Trabish	1.0 FTE	08/09/07;
Lisa Trenary	1.0 FTE	08/09/06;
Kimberly Trigueiro	0.5 FTE	08/09/07;
Nikka Vaughan	1.0 FTE	01/08/07;
Robyn Van Winkle	0.4 FTE	08/25/07;
Mark Volz	1.0 FTE	08/09/05;
Kelly Weske	1.0 FTE	08/10/06;
Wendy Weston	0.6 FTE	08/09/05; and
Jill Whitmire	0.4 FTE	08/07/07.

19. The total number of FTE to be laid off due to the reduction or elimination of the particular kinds of services is 48.2 FTE.

20. Certificated employees of the District receiving final notice of layoff shall be entitled to all of the protections set forth in Education Code section 44957, including, but not limited to, placement (as appropriate) on either the 39 month or 24 month rehire list.

21. The parties stipulated and agreed that the District need not take any further action as required in Education Code sections 44955 and 44949 with respect to the employees set forth in Paragraph 18 above in order to accomplish the layoff of those employees. The parties stipulate and agree that final notice of layoff may be given to those employees set forth in Paragraph 18.

22. During the 24 or 39 month reemployment period the parties agree that the following shall apply:

a. Provided the employee is credentialed and competent to render the service, the District shall offer any vacant probationary or permanent positions to laid-off employees in order of original hire date (with same day of hire ties broken as shown on the District's Seniority List),

1. Should any employee be reappointed to a probationary or permanent position, the period of the employee's absence shall be treated as a leave of absence and shall not be treated as a break in the continuity of service.

2. Except as otherwise provided in the Education Code, the employee shall retain the classification and order of employment he or she had when his or her services were terminated, as provided in Education Code section 44957.

b. The District shall offer any substitute positions of employment (for which a laid-off employee it is credentialed and competent to render service) to laid-off employees in order of original hire date (most senior first).

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists pursuant to Education Code sections 44949 and 44955. All notices and jurisdictional prerequisites required by those sections were satisfied. The District has the burden of proving by a preponderance of the evidence that the proposed reduction or elimination of particular kinds of services and the preliminary notices of layoff served on respondents are factually and legally appropriate.¹

¹ Education Code section 44944.

2. The services the District seeks to eliminate in this matter, as set forth in Resolution No. 03-05-08-28, are "particular kinds of services" that may be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper exercise of the Board's discretion. Legal cause exists pursuant to Education Code sections 44949 and 44955 for the Folsom-Cordova Unified School District to reduce or discontinue 75.15 FTE of particular kinds of services, as set forth in the District's Resolution and identified in Factual Finding 4. The reduction or discontinuation of these identified particular kinds of services relates solely to the welfare of the District and its pupils.

3. Legal cause exists pursuant to Education Code sections 44949 and 44955 to give the respondents identified in Paragraph 18 of the Factual Findings final notice that their services will not be required for school year 2008/2009. Legal cause exists to sustain the Accusations. The Board may give the Paragraph 18 respondents final notices that their services will not be required by the District in the upcoming school year, in inverse order of seniority.

ORDER


The Accusations with respect to those respondent certificated employees of the Folsom-Cordova Unified School District identified in paragraph 14 of the Factual Findings above are DISMISSED.

The Accusations with respect to those respondent certificated employees of the Folsom-Cordova Unified School District identified in paragraph 18 of the Factual Findings above are SUSTAINED.

The Folsom-Cordova Unified School District action to reduce or eliminate 75.15 FTE of particular kinds of services for the 2008/2009 school year is AFFIRMED.

Final notice may by the District to the respondents identified in Paragraph 18 that their services will not be required for the upcoming school year. Notice shall be given in inverse order of seniority.

DATED: April 29, 2008


STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings