

BEFORE THE GOVERNING BOARD OF THE
LOS NIETOS SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

Dulce Alvarado and Other Certificated
Employees of the Los Nietos School District,

Respondents.

OAH Case No. 2010030763

PROPOSED DECISION

Administrative Law Judge, Sophie C. Agopian, Office of Administrative Hearings, heard this matter on April 14, 2010, in Whittier, California.

Aaron V. O'Donnell, Esq. represented Jonathan Vasquez (Vasquez), the Superintendent of the Los Nietos School District (District).

Kent Morizawa, Esq. represented 26 certificated employees of the District. Two other certificated employees, Teri Applebaum and Rita Morales, did not appear at the hearing and were not represented by counsel. The hearing proceeded in their absence. All 28 employees are respondents in this matter (Respondents).¹

The parties stipulated to the following: (1) the factual allegations contained in paragraphs 1 through 6 of the Accusation are true and correct; and (2) the Accusations against Respondents, Gabriela Garcia, Rosa Mercado, Monica Quiroz, Flormirella Trujillo, Olivia Vinas, and Charlyn Fijan are dismissed.

Testimonial and documentary evidence was received and the matter was submitted for decision on April 14, 2010.

¹ Dulce Alvarado, Anne Anderson, Teri Applebaum, Cynthia Avena, Elsa Avina, Christina Ayala, Hanh Bui, Christine Cuellar, Charlyn Fijan, Don Fulton, Gabriela Garcia, Monica Goco, Jennifer Gomez, Kelly Kidwell-Collazo, Marion Lam, Julie Little, Rosa Mercado, Richard Mireles, Rita Morales, Stacey Moody, Carlee Ann Moyer, Renee Pacheco, Monica Quiroz, Steven Risser, Jessica Sullivan, Flormirella Trujillo, Olivia Vinas, and Stacy Wolf.

FACTUAL FINDINGS

1. Superintendent Vasquez filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. On February 24, 2010, the Governing Board of the District (Board) adopted Resolution No. 9/09-10 (Resolution) and determined to reduce or discontinue particular kinds of certificated services for the 2010-2011 school year, as follows:

<u>Certificated Services</u>	<u>Full-Time Equivalent Positions</u>
K-6 Elementary Teaching Services	17.0 FTE
Middle School Self-Contained/History- Language Arts Teaching Services	1.0 FTE
Middle School Self-Contained/Math- Science Teaching Services	1.0 FTE
Elementary P.E. Teaching Services	2.0 FTE
School Nurse Services	1.0 FTE
Middle School Counselor Services	1.0 FTE
Teacher on Special Assignment (TOSA) Services	3.0 FTE
Middle School Vice Principal Services	<u>1.0 FTE</u>
Total Services Reduced	27.0 FTE

4. The Board further determined that the reduction of such services made it necessary to decrease the number of certificated employees of the District by a corresponding number of full-time equivalent (FTE) positions prior to the ensuing school year. The Board directed the Superintendent to implement the procedures required for a reduction in force.

5. Superintendent Vasquez timely provided written notice to the Board and to Respondents of his recommendation to notify Respondents that their services will not be required for the 2010-2011 school year, and stating the reasons therefor. The notice recommending Respondents' nonreemployment is hereinafter referred to as a "lay-off" notice.

6. Respondents timely requested a hearing and filed a notice of defense in response to the Accusation.²

² Factual Findings 1 through 6 are established by reason of the parties' stipulation to paragraphs 1 through 6 in the Accusation.

7. Some certificated employees who received notice pursuant to Factual Finding 5 did not request a hearing and waived their right to contest the District's recommendation for their non-reemployment.³

8. All pre-hearing jurisdictional requirements have been met.

9. The Board's decision to reduce or discontinue the services set forth in Factual Finding 3 was not arbitrary or capricious and constitutes a proper exercise of the Board's discretion. The certificated services identified in Factual Finding 3 are "particular kinds of services" that may be reduced or discontinued within the meaning of Education Code section 44955.⁴

10. The Board's decision to reduce or discontinue such services was related to the needs and welfare of the District and its pupils, including the need of the District to remain solvent in view of a budget deficit of \$1.6 million. The reductions set forth in Factual Finding 3 are necessary to decrease the number of certificated employees as determined by the Board. The proposed teacher lay-offs are expected to result in a cost-savings of approximately \$1 million to the District.

11. 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.

12. In determining the number of lay-off notices to issue, the District properly considered all assured and/or known attrition, including resignations and retirements.

13. To determine the order of termination or lay-off, the District properly created a seniority list by determining the first date of paid service of each certificated employee and applying "tie-breaking" criteria when necessary.

Certificated employees' "first date of paid service" was based upon information obtained from the employees, on file with the county office of education, contained in personnel files, and verified with the California Commission on Teacher Credentialing.

If more than one employee shared a "first date of paid service," the District applied the tie-breaking criteria adopted by the Board. The tie-breaking criteria were based on the needs of the District and its students, and were correctly applied to determine the order of lay-off.

³ The employees who did not request a hearing and waived their right to contest the Accusation are John Bustamante, Christopher Flores, Araceli Flanagan, Laurie Hidy-Watkins and George Martinez.

⁴ All further statutory references are to the Education Code.

14. The District did not retain any certificated employee junior to Respondents to render a service which Respondents are certificated and competent to render. In determining the order of lay-off, the District 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.

15. The parties stipulated to the following amendments to the seniority list: Respondent Richard Mireles’ correct “first date of paid service” is September 6, 2006, establishing that he has less seniority than Respondent Monica Goco, whose first date of paid service is October 24, 2005. Respondent Renee Pacheco has a Clear Multiple Subject credential, plus “supplemental authorization in English and Social Science.” These amendments do not affect the lay-offs of Richard Mireles, Monica Goco and Renee Pacheco. Respondents offered no other evidence to challenge the seniority list developed by the District.

LEGAL CONCLUSIONS

1. Jurisdiction for this matter was established pursuant to sections 44949 and 44955, by reason of Finding Findings 1 through 8.

2. Cause exists under sections 44949 and 44955 to reduce the number of certificated employees in the District due to the reduction and discontinuation of particular kinds of services, by reason of Factual Findings 9 and 10.

3. Section 44955, subdivision (b), provides, in relevant 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. By reason of Factual Findings 11 through 15, and Legal Conclusions 1 through 3, cause exists to terminate the services of 22 Respondents Dulce Alvarado, Anne Anderson, Teri Applebaum, Cynthia Avena, Elsa Avina, Christina Ayala, Hanh Bui, Christine Cuellar, Don Fulton, Monica Goco, Jennifer Gomez, Kelly Kidwell-Collazo, Marion Lam, Julie Little, Richard Mireles, Rita Morales, Stacey Moody, Carlee Ann Moyer, Renee Pacheco, Steven Risser, Jessica Sullivan, and Stacy Wolf.

ORDER

Notice may be given to the 22 Respondents identified in Legal Conclusion 4 that their services will not be required for the 2010-2011 school year.

The Accusations against Respondents Gabriela Garcia, Rosa Mercado, Monica Quiroz, Flormirella Trujillo, Olivia Vinas, and Charlyn Fijan are dismissed pursuant to the parties' stipulation.

DATED: April 21, 2010

SOPHIE C. AGOPIAN
Administrative Law Judge
Office of Administrative Hearings