

BEFORE THE GOVERNING BOARD OF THE
METROPOLITAN EDUCATION DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation of:

REZA BEHVAND, RICHARD HENSON,
AND JAMES WALKER,

Respondents.

OAH No. 2010030930

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in San Jose, California, on April 18, 2011.

Attorney Adam J. Fiss, Littler Mendelson PC, represented the Metropolitan Education District.

Attorney Christopher E. Schumb represented respondents Reza Behvand, Richard Henson and James Walker.

By agreement of the parties, the matter was bifurcated. The accusation against respondent Reza Behvand will be considered separately and the hearing in his case has been continued until May 11, 2011. The hearing regarding respondents Richard Henson and James Walker proceeded on April 18, 2011, and the matter was submitted on that date.

FACTUAL FINDINGS

1. Paul Hay, Superintendent, Metropolitan Education District, issued the accusation in his official capacity.
2. Respondents Richard Henson and James Walker are certificated employees of the District.
3. The parties have stipulated that they have complied with all jurisdictional requirements of the Education Code.
4. On March 9, 2011, the Governing Board of the Metropolitan Education District adopted Resolution 08-03-09-11 in which it determined to reduce or discontinue the

following particular kinds of services of the District, beginning no later than the commencement of the 2011-2012 school year:

<u>PARTICULAR KINDS OF SERVICES</u>	<u>FTE POSITIONS</u>	
Adult Basic Education teachers	2.10	FTE
Adults with Disabilities teachers	0.91	FTE
Adult Career Technical Education teachers	4.05	FTE
English As a Second Language (ESL) teachers	7.63	FTE
Adult High School Diploma teachers	6.34	FTE
Older Adult teachers	0.80	FTE
Curriculum Specialists	3.17	FTE
Capitol High School teachers	1.00	FTE
Animation Day CCOC teacher	0.50	FTE
Computer Aided Drafting (CAD) CCOC teacher	1.00	FTE
Graphic Design CCOC teacher	0.60	FTE
Metals Technology/Welding CCOC teacher	1.00	FTE
Multimedia CCOC teacher	1.00	FTE
Truck Mechanics CCOC teacher	1.00	FTE
Director/MAEP	1.00	FTE
Assistant Principal MAEP	3.00	FTE
Program Coordinator	0.50	FTE
Site Program Supervisors	2.30	FTE
CalWORKS Site Representative	7.88	FTE

5. Respondent Walker's Auto Mechanics position will be taken by Michael Vincent Cortese, an employee whose regular position as a Truck Mechanics CCOC teacher is being discontinued as a result of the elimination of particular kinds of services. Although Cortese has not previously taught Auto Mechanics, he is certificated and competent to render Walker's duties, and has greater seniority than Walker. Walker is therefore subject to layoff.

6. Respondent Henson's Multimedia CCOC position is being discontinued as a result of the elimination of particular kinds of services. Henson is subject to layoff. He is the least senior teacher in the District. He moved his family from Fresno to San Jose last year so that he could take his job with the District. He had no indication at the time that the position would be eliminated after the school year. The elimination of his position has caused Henson personal, familial, and financial distress.

7. The District will not retain any probationary employee or any other certificated employee with less seniority than respondents during the 2011-2012 school year to render a service for which they are certificated and competent to perform.

8. The cause for not reemploying respondents relates solely to the welfare of the District and the pupils thereof.

LEGAL CONCLUSIONS

1. Cause exists pursuant to Education Code section 44955 to give notice to respondents Richard Henson and James Walker that their services will not be required for the 2011-2012 school year.

2. The cause for not reemploying respondents Henson and Walker solely relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notice may be given to respondents Richard Henson and James Walker that their services will not be required for the 2011-2012 school year.

DATED: _____

STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings