

BEFORE THE
GOVERNING BOARD OF THE
GOLDEN PLAINS UNIFIED SCHOOL DISTRICT

In the Matter of the Reduction/Elimination of
Particular Kinds of Services for the 2011-
2012 School Year:

OAH No. 2011040125

STEPHANIE BIGGERT
ELIZABETH CEJA
PABLO CHAVEZ
DAVID FINNEGAN
HEATHER GLOSIER
EMILY GRAVES
VERONICA JURADO
TABATHA KREBSBACH
VICTOR LEMUS
MARIE SORIA
AMELIA VASQUEZ
BERTHA VELAZQUEZ

Respondents.

PROPOSED DECISION

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 21, 2011, at San Joaquin Elementary School in San Joaquin, California.

James R. Lynch, Attorney at Law, represented Dr. David Austin, Acting Superintendent of the Golden Plains Unified School District (district).

James F. McBrearty, Attorney at Law, represented respondents, Stephanie Biggert, Elizabeth Ceja, Pablo Chavez, David Finnegan, Heather Glosier, Emily Graves, Veronica Jurado, Tabatha Krebsbach, Victor Lemus, Marie Soria, Amelia Vasquez, and Bertha Velazquez.

There were no unrepresented respondents.

Evidence was received, the record was closed, and the matter was submitted for decision on April 21, 2011, based on the stipulations set forth below.

FACTUAL FINDINGS

1. All respondents are and at all times relevant to this Decision were certificated or professional employees of the district.

2. Richard Owen is the Superintendent, and Dr. David Austin is the Acting Superintendent, of the district. Their actions, and those of the district's governing board (board), were taken solely in their official capacities.

3. On March 8, 2011, the board passed two resolutions that were to be implemented if a reduction/elimination of particular kinds of services became necessary: Resolution No. FY10-11-15, entitled "Resolution Regarding the Determination of District Needs in Selected Certificated Positions: Skipping/Competency Standards (Competency Resolution), and Resolution No. FY10-11-16, entitled "Determination of Tie-Breaking Criteria For 2010-2011" (Tie-Breaking Resolution).

Competency Resolution

4. The purpose of the Competency Resolution is to ensure that, if a reduction/elimination of particular kinds of services occurred, the district could make assignments and reassignments of more senior certificated employees in a manner consistent with Education Code section 44955. The Competency Resolution provided various recitals, including: (1) the District may deviate from the order of least seniority when laying off a certificated employee, to fill a demonstrated specific need for fully credentialed personnel and for personnel to teach a specific course or course of study which others with more seniority do not possess; and (2) that bumping or reappointing a certificated employee affected by the layoff, may involve deviation from the order of seniority due to that certificated employee's training and/or experience, and in order to fill a demonstrated specific need for fully credentialed personnel and/or for personnel to teach a specific course or course of study which the teacher affected by the layoff may not possess. Pursuant to this resolution, certificated employees receiving a layoff notice would be competent and qualified to perform certificated service if: (1) they currently hold a preliminary or clear credential; (2) they are assigned to Special Education regardless of credential status; (3) they are fluent in Spanish; and (4) they have one (1) year of district teaching experience within the subject area of the credential or supplemental authorization within the past five (5) years.

Tie-Breaking Resolution

5. The purpose of the Tie-Breaking Resolution is to establish criteria for determining the relative seniority between employees who have the same seniority date (first date of paid service to the district). Seven criteria were to be applied to break ties between employees with the same seniority date who were providing service to the district under equivalent credentials. In sequence, these criteria were: (1) individuals who hold preliminary and clear/life credentials; (2) individuals with credentials and experience to teach or serve in a high-needs service (e.g., special education, math, science); (3) individuals authorized to

teach English learners; (4) individuals with supplemental authorizations; (5) individuals with a number of teaching and/or specialist service credentials in addition to base credentials; (6) individuals with earned degrees beyond the B.A. or B.S. level; and (7) years of teaching experience. Each of these factors were rated according to a point system ranging from one to three points. If, after applying these factors, and adding the points, teachers have identical ranks, “the District will then break ties by utilizing a lottery.”

Reductions/Eliminations of Particular Kinds of Services

6. On or before March 11, 2011, in accordance with Education Code section 44949 and 44955, Superintendent Richard Owen notified the board in writing of his recommendation that certain particular kinds of services would have to be reduced or eliminated for the 2011-2012 school year. The Superintendent’s recommendation 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, 28 full time equivalents (FTE), would have to be laid off to effectuate the reduction or elimination of the particular kinds of services. The Superintendent notified the board that respondents 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 competencies as teachers.

7. The board adopted Resolution No. FY10-11-14 on March 11, 2011. The board resolved to follow the Superintendent’s recommendation to reduce 28 FTE particular kinds of services. The Resolution authorized and directed the Superintendent or his designee to give notice to an equivalent 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:

Service	Full Time Equivalent
Elementary Teachers	19
Physical Education Teachers	2
Social Science	1
ROP Technology/Algebra IP Teacher	1
Algebra Readiness/Geometry Teacher	1
Temporary Teachers	3
Counselor	1

8. The Superintendent served a written Notice of Recommendation that Services Will be Terminated (preliminary notice of layoff) on all respondents on March 11, 2011. The preliminary notice of layoff advised respondents that their services would not be required for the 2011-2012 school year. The preliminary notice of layoff set forth the reasons for the recommendation, and advised respondents of their right to request a hearing. In an abundance of caution, the Superintendent also served preliminary notices of layoff on all temporary teachers in the event these teachers were found to have rights to status or seniority as a result of the layoff proceedings.

Stipulations

9. Each of the respondents was timely served with a preliminary notice of layoff.
10. Each of the respondents timely filed a Request for Hearing in response to receipt of their preliminary notice of layoff.
11. Dr. David Austin made and filed the Accusations in his official capacity as the Acting Superintendent of the district.
12. The district timely served on each respondent who timely filed a Request for a Hearing, the Accusation with accompanying documents, including Resolution No. FY10-11-14; copies of relevant sections of the Education and Government Codes; Statement to Respondent; and a blank form entitled "Notice of Defense."
13. Each of the respondents timely filed a Notice of Defense to the Accusations.
14. The district timely served Notices of Hearing on each respondent who timely filed a Notice of Defense to the Accusation.
15. Stephanie Biggert was properly classified as a temporary employee, and was properly notified that her services would not be required for the 2011-2012 school year.
16. After applying the tie-breaking criteria to determine the relative seniority between employees who have the same seniority date, the district was unable to break the tie between the following groups of employees: (1) employees with a seniority date of 8/6/08 and who each earned a total of seven points (Group #1); (2) employees with a seniority date of 8/6/08 and who each earned a total of five points (Group #2); and (3) employees with a seniority date of 8/6/07 and who each earned a total of five points (Group #3).
17. A lottery was held at the hearing to break the remaining ties after the tie-breaking criteria set forth in the Resolution were applied. Counsel stipulated to place the names of each employee, in their respective groups, in a jar, and to have a volunteer blindly draw the names from the jar. It was agreed that as the names were drawn, the first name selected would be designated as the most senior employee for purposes of seniority, and the

last name selected would be designated as the least senior employee for purposes of seniority.

18. The names of the employees from Group #1 were selected in order of the most senior, and designated as follows: Victor Lemus (8g); Susana Aguilar (8f); and Elizabeth Ceja (8e).

19. The names of the employees from Group #2 were selected in order of the most senior, and designated as follows: David Finnegan (8d); Erica Lopez-Alvarez (8c); Justin Wakefield (8b); and Veronica Jurado (8a).

20. The names of the employees from Group #3 were selected in order of the most senior, and designated as follows: Tabatha Krebsbach (10e); Tom Garcia (10d); Heather Glosier (10c); Annette Raven (10b); and Pablo Chavez (10a).

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists pursuant to Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the board resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

2. The board may reduce, discontinue or eliminate a particular kind of service and then provide the needed services to the students in another manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571; *California Teachers Association v. Board of Trustees of Goleta Union School Dist.* (1982) 132 Cal.App.3d 32.) A school board may reduce services within the meaning of the statute either by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

3. The services identified in Resolution No. FY10-11-14 are particular kinds of services that may be reduced or discontinued under Education Code sections 44949 and 44955. The board's decision to reduce or discontinue these particular kinds of services was not demonstrated to be arbitrary or capricious, but constituted a proper exercise of discretion.

4. The issuance of preliminary notices of layoff to any respondent was not related to any respondent's competence, skill or ability as a certificated employee serving in the district. The cause for issuance of the preliminary notices of layoff was exclusively related to the grounds and causes set forth in Education Code sections 44949 and 44955. All claims and issues raised by the giving of preliminary notices of layoff are resolved here, by the stipulations.

5. There was no evidence that any employee being laid off is entitled to bump into a position held by a junior employee where the employee being laid off has the credentials and competence to take the position of the junior employee being retained. There was no evidence that any senior certificated employee of the district is being retained to provide a service any of the respondents are certificated and competent to render.

6. Legal cause exists pursuant to Education Code sections 44949 and 44955 for the Golden Plains Unified School District to reduce or discontinue 28 FTE of particular kinds of services, as set forth in the district's Resolution FY10-11-14. The cause for the reduction or discontinuation of particular kinds of services relates solely to the welfare of the schools and the pupils thereof. Legal cause therefore exists to sustain the Accusations. The board may give respondents final notices that their services will not be required by the district in the 2011-2012 school year, in inverse order of seniority, as governed by the stipulations.

ORDER

1. The Accusations are SUSTAINED.
2. The Golden Plains Unified School District's action to reduce or eliminate 28 FTE of particular kinds of services for the 2011-2012 school year is AFFIRMED.
3. Final notice may be given by the district to respondents, as governed by the stipulations, that their services will not be required for the 2011-2012 school year. Notice shall be given in inverse order of seniority.

DATED: April 27, 2011

Rebecca M. Westmore
Administrative Law Judge
Office of Administrative Hearings