

BEFORE THE
GOVERNING BOARD OF THE
SAN BENITO HIGH SCHOOL DISTRICT

In the Matter of the Non-Reemployment of
Certificated Employees:

LINDA BIGNAN, SUSAN CARROLL,
SANDRA PATRI, AND RENEE REED,

Respondents.

OAH No. 2010030116

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, State of California, Office of Administrative Hearings, heard this matter in Hollister, California, on April 13, 2010.

Lawrence M. Schoenke, Attorney at Law, Dannis Woliver Kelly, represented the San Benito High School District.

Michelle A. Welsh, Attorney at Law, Stoner, Welsh & Schmidt, represented all of the Respondents.

The record closed on April 13, 2010.

SUMMARY

The Board of Trustees of the San Benito High School District decided to discontinue particular kinds of services provided by teachers in the 2010-2011 school year for budgetary reasons. The decision was not related to the competency and dedication of those whose services were proposed to be eliminated. The process complied with Education Code requirements.

FACTUAL FINDINGS

1. Stan Rose filed the Accusation in his official capacity as Superintendent of the San Benito High School District (District).

2. Linda Bignan, Susan Carroll, Sandra Patri, and Renee Reed (Respondents) are certificated employees of the District.

3. On March 8, 2010, the Board of Trustees of the San Benito High School District adopted Resolution No. 02-30, in which the Board resolved to reduce or eliminate particular kinds of services no later than the beginning of the 2010-2011 school year, as follows:

PARTICULAR KINDS OF SERVICE	NUMBER OF FULL TIME EQUIVALENT (FTE) POSITIONS (including preparation and travel periods where applicable)
1. School Counseling	2.0 FTE
2. Special Education (RSP Program)	1.0 FTE
3. Library Media Specialist Position	0.6 FTE
4. English	1.0 FTE
5. AVID	1.0 FTE
6. Physical Education	0.2 FTE
7. Physical Education	0.6 FTE – Teaching Services
8. Science, Chemistry	0.2 FTE
9. Science, Anatomy/Physiology	0.2 FTE
10. Science, Earth Science	0.2 FTE
11. Mathematics	1.0 FTE
12. Mathematics	1.0 FTE - Teaching Services
13. Foreign Language: Spanish	0.4 FTE
14. Foreign Language: French	0.2 FTE – Teaching Services
15. Long Term Independent Study	1.8 FTE
16. Social Science	0.4 FTE
17. Graduation Coordinator	0.2 FTE
18. AVID Coordinator	1 Stipend Position
19. Technology Mentor	1 Stipend Position
20. Assistant Music Director	<u>3 Stipend Position(s)</u>
	12.0 FTE Total

4. The District's Seniority List is updated annually and was used to determine who would receive notices. On March 9, 2010, written notice of the recommendation that their services will not be required for the 2010-2011 school year was served personally on all of the Respondents. Each notice contained the reasons for it.

Each Respondent filed a timely request for hearing. Accordingly, an Accusation was filed and served. Each Respondent filed a timely notice of defense and this hearing followed.

5. Shawn Tennenbaum, the District's Director of Human Resources, explained that due to an anticipated shortage of funds, the District was required to look at areas to

reduce. The District consists of one high school site serving approximately 2,787 students in grades nine through twelve. It is facing an expected loss of \$1.8 million.

6. The Board's decision to reduce or discontinue the identified services was made solely on the basis of the needs of the District and its pupils.

Linda Bignan

7. Respondent Linda Bignan teaches French and is subject to layoff because of the proposed reduction of .2 FTE French teaching services. Her French position will be reduced from .6 to .4 FTE. Because of her seniority, Bignan was offered a .6 FTE position as a long-term independent study teacher, but she does not feel qualified for that assignment, which requires knowledge of many subjects she has never taught.

8. The District's other French teacher, M.L.¹, has more seniority than Bignan. She was previously also credentialed in Spanish, and taught one-half time in each language. Sometime in the last year, M.L. applied to the California Commission on Teacher Credentialing to revoke her Spanish credential. After a period of months, the application was granted. The District first learned of this action sometime after it happened and was not involved in any way. After receiving the information about M.L.'s credential, Tennenbaum met with her twice. He reported that M.L. chooses to teach French full-time and the District has no authority to order her to do otherwise. There is no evidence in the record concerning the reason that M.L. caused her Spanish credential to be revoked; the result, however, was to leave the District with fewer options.

9. Bignan believes that M.L. has been "acting behind the scenes" over the years they have worked together to prejudice Bignan's reputation and employability. According to Bignan, M.L.'s credential action was directed against her and is the latest in a continuing pattern of harassment. She filed a formal complaint against M.L. in 2008, and does not feel District staff did enough to address the situation. On March 29, 2010, Bignan wrote to Tennenbaum asserting "wrongful lay-off from my employment due to retaliation after complaint of harassment by fellow employee, [M.L.]." At hearing, Bignan argued that the District is prevented from laying her off because it failed to act on her complaints and that to lay her off would constitute illegal retaliation for her complaints against M.L. No legal authority was presented in support of these theories. The situation is truly unfortunate; however, no grounds exist to exempt Bignan from layoff.

Susan Carroll

10. Respondent Susan Carroll teaches long-term independent study in a .6 FTE position. She is the least senior teacher in that position and is subject to layoff because of the proposed reduction of 1.8 FTE long-term independent study positions.

¹ Initials are used at the District's request to protect this teacher's privacy.

Sandra Patri

11. Respondent Sandra Patri teaches long-term independent study in a .6 FTE position. She is subject to layoff because of the proposed reduction of 1.8 FTE long-term independent study positions. She holds a Clear Multiple Subject Teaching Credential, a CLAD, a supplementary authorization in art, and has a bachelor's degree in interior design.

12. The District has advertised a position as a Family and Consumer Science Teacher for the 2010-2011 school year and Patri has applied. She acknowledges that she is not yet qualified for two reasons. She needs to take and pass the CSET test in Home Economics (she holds a ticket to take it on May 8, 2010) and she needs to complete a one-semester course in methodology. Patri testified that she would have to find out where she could take such a course, whether at San Jose State, Cal State Monterey Bay or online.

13. Patri notes that she will have taken the CSET prior to the May 15th final notice date, but even if she passes the test, she will still need to complete coursework. In some instances districts will employ such teachers under a short-term staff permit while they earn the required credential, but districts are not required to do so. Districts are only required to place teachers facing layoff in positions they are qualified for. As Patri is not currently qualified for this new position, the District is not obliged to offer it to her. No grounds exist to exempt Patri from layoff.

Renee Reed

14. Respondent Renee Reed has received notice that her layoff notice is rescinded. The District has decided that she will be retained for the 2010-2011 school year.

15. No permanent or probationary employee with less seniority is being retained to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 have been provided as required. The District established jurisdiction for this proceeding as to each Respondent.

2. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services.

3. All contentions made by Respondents not specifically addressed herein are found to be without merit and are rejected.

ORDER

1. Notice may be given to Respondents Linda Bignan, Susan Carroll, and Sandra Patri that their services will not be required for the 2010-2011 school year because of the reduction or discontinuation of particular kinds of services.

2. The Accusation against Renee Reed is dismissed.

DATED: _____

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings