

BEFORE THE
GOVERNING BOARD
MAXWELL UNIFIED SCHOOL DISTRICT
COUNTY OF COLUSA
STATE OF CALIFORNIA

In the Matter of the Reduction or Elimination
of Particular Kinds of Services and the
Employment Status of:

SARAH RICHTER,
LISA BECKER, and
ERIC LEAL

Respondents.

OAH No. N2007030808

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter at the Maxwell Unified School District Office, Maxwell, California on April 19, 2007.

Emily LaMoe, Attorney at Law, represented the Maxwell Unified School District (District) Ronald Turner, Superintendent, appeared on behalf of the District.

A. Eugene Huguenin, Jr., Attorney at Law, represented all respondents.

The matter was submitted on April 19, 2007.

FACTUAL FINDINGS

1. Ronald Turner (the Superintendent) made and filed the Accusation in his official capacity as Superintendent, Maxwell Unified School District.

2. Respondents are and at all times relevant to this Decision were certificated employee of the District. Ms. Becker holds a Clear Multiple Subject credential with a CLAD certification. Ms. Richter holds a preliminary Multiple Subject Credential with a CLAD certification. Mr. Leal has a Clear Single Subject Credential in Social Science with a BCLAD certification with an emphasis in Spanish, a Clear Multiple Subject Credential with a BCLAD certification with an emphasis in Spanish and a Clear Reading Certification.

3. On or just before March 8, 2007, in accordance with Education Code section 44949 and 44955, the Superintendent notified the Governing Board of the District (the Board) 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 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.

4. The Board adopted its Resolution 06-07-014 on March 8, 2007. The Board resolved to follow the Superintendent's recommendation to reduce 3.00 full time equivalent ("FTE") particular kinds of services. The Resolution authorized and directed the Superintendent 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 now offered in the District:

Grades K-5 Self-Contained Classroom Teacher	1.00 FTE
Grades 6-8 English Teacher	1.00 FTE
Title 1 Teacher	1.00 FTE

5. The Superintendent caused each of the respondents to be served with a written Notice of Intention to Dismiss (the preliminary notice) on March 14, 2007. The written preliminary notices advised 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.

6. Respondents each timely filed written requests for a hearing to determine if there was cause for not reemploying them for the ensuing year.

7. The District timely served Accusations on each respondent following receipt of their Requests for a Hearing. Each respondent timely filed a Notice of Defense to the Accusation. All prehearing jurisdictional requirements were met.

8. Ms. Richter is a probationary teacher in the District. Her first day of paid service was January 3, 2006. She is tied for the least senior teacher in the District, other than a temporary employee. The employee with whom she is tied holds a single subject credential in mathematics and is teaching mathematics in the District high school. According to the Superintendent's testimony, Ms. Richter has been teaching "out of her credential." It was not clear what she taught.

9. Ms. Becker is the least senior permanent (tenured) employee in the District. Her first day of paid service to the District was August 18, 2004. It was not entirely clear what she has been teaching in the past or present school years. The District's contention that there is no one being retained by the District that she can "bump" was not contested.

10. Mr. Leal is the District's Title I teacher. He has served in that capacity for the past six school years. It was not disputed that the Title I teacher position Mr. Leal holds is and has always been categorically funded. Mr. Leal is bilingual in Spanish. His first two years with the District were spent as a Miller-Unruh reading specialist, a categorically funded program. Since that time, he has provided pull-out support and testing for the District's significant number of English language Learner (ELL) students, primarily at the elementary level. These students are tested by Mr. Leal using the California English Language Development Test (CELDT.) Students showing poor proficiency in English such that they struggle with a core curriculum delivered in English receive Mr. Leal's services. There are 54 students who received some level of language support from Mr. Leal in this school year.

11. It was not disputed that the District is required by the State to provide ELL services to any students who demonstrate need for such assistance on the CELDT. The District has adopted a Master Plan for English Language Learners (Master Plan) for the provision of these services and to demonstrate compliance with the ELL requirements to the State. Mr. Leal has been the primary person in the District to deliver these services in the past several years, and he was a primary contributor to the drafting of the Master Plan. He also wrote a description of the numerous services he provides to the District to assist the District's ELL students.

12. Counsel for Mr. Leal introduced a considerable amount of factual and legal information regarding funding for ELL programs from the State and U.S. Departments of Education. This material included requirements for the programs and administration of funding received. One of the documents from the State revealed that the District has 20.4 percent of students in need of ELL services, which is considerably less than the remainder of schools in Colusa County and in the State generally. This is not to say that Mr. Leal's services are not valuable to the District and the students who receive those services, or that having him present made the delivery of ELL services easier for the District. But there was nothing in this considerable documentation that demonstrated that the District's proposed reorganization of its ELL program for the upcoming school year, eliminating Mr. Leal's contributions, will violate the District's ELL Master Plan or any State or federal mandate.

13. Mr. Leal's first day of paid service to the District is August 21, 1998. Mr. Leal has not taught any classes in a traditional classroom setting, except a Spanish class in a Gate program several years ago. He has been employed by the District under a series of temporary employment contracts to fill the categorically funded Title I position, as he is doing in the current school year. The District's contention that Mr. Leal has not acquired any credit toward permanent status was not disputed.

14. The District is facing multi-faceted financial pressure that has put the District into a projected significant operating deficit for the upcoming school year. An increase in class sizes and reductions in services are the proposed remedies to respond to this projection. The District has experienced a decline in enrollment, particularly at the K-5 elementary level, and some at the middle school level as well. The District is unfortunately operating under several other financial pressures as well. The District is losing its Title I funding, losing some categorical Title III funding and some forest revenue. It carries a "huge" debt due to an adverse judgment in a lawsuit.

15. 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.

16. There was no evidence that the District proposes to eliminate any services that are State or federally mandated. Mr. Leal contended that the service he provides to the District is essential to its compliance with State ELL mandates and the federal No Child Left Behind Act (NCLB). The District did not dispute Mr. Leal's contention that he provides a very important service to the District, and his efforts have been responsible for the District being in compliance with these mandates. However, the District will provide the services Mr. Leal provided in a redesigned program in the upcoming school year, with the exception of the pull-out instruction. That instruction will not be provided in the upcoming school year. The District employs one certificated teacher at the elementary level and two aides, all of whom are bilingual. These bilingual employees will furnish language assistance to ELL students to supplement an English immersion program. Students with poor proficiency in English will pair with students who have better proficiency, with the assistance, when needed, of the three employees with bilingual proficiency. The Superintendent made it clear Mr. Leal's services were valued by the District, but the loss of Title I funding for the position and the District's poor financial position made retention fiscally unfeasible. The District is in need of a high school English teacher for the upcoming school year, but Mr. Leal is not credentialed and competent to teach that subject at that grade level.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in 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 notice of layoff served on respondent is factually and legally appropriate.¹

2. The services the District seeks to eliminate in this matter are "particular kinds of services" that may be reduced or discontinued within the meaning of Education Code

¹ Education Code section 44944.

section 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.

3. Mr. Leal contends that the District is legally obligated to provide the compensatory educational program for ELL students in the District as set forth in its Master Plan. Ms. Leal, in the execution of his regular duties in the District, is the District employee responsible for and has been carrying out those mandates. Mr. Leal acknowledges that the District is afforded some flexibility in carrying out the Master Plan, but that since he is the District employee who has been carrying out the Master Plan's requirements, he must be retained to provide those services again in the upcoming school year. He contends the District may not fail to meet the compensatory education obligations addressed by the Plan in the name of fiscal exigency.

4. The District does not dispute that it is obligated to provide the compensatory services outlined in the Master Plan. The District's contention that it has discretion regarding how those services are to be furnished and by whom they are to be furnished has merit. It was not demonstrated that the District will violate any State or federal mandate or requirement by redesigning the manner in which its ELL compensatory education services are delivered in the upcoming school year.

5. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The District is facing a significant projected deficit related to the loss of both enrollment and several previous sources of funding. The reduction in particular kinds of services proposed is necessary to avert the District operating in a deficit in the upcoming school year.

6. Education Code section 44955 requires layoffs to take place in inverse order of seniority, with some notable exceptions. "Thus, the statute provides that seniority determines the order of dismissals, and that as between employees with the same first date of paid service, the order of termination is determined on the basis of the needs of the district and its students. Senior employees are given "bumping" rights in that they will not be terminated if there are junior employees retained who are rendering services which the senior employee is certificated and competent to render. Conversely, as in this case, a district may move upward from the bottom of the seniority list, "skipping" over and retaining junior employees who are certificated and competent to render services which more senior employees are not."² There was no evidence that any certificated employee of the District is being retained to provide a service any of the respondents are certificated and competent to render. One junior employee is being skipped, but none of the respondents is certificated to teach mathematics at the high school level, where that employee is being retained.

² *Alexander v. Board of Trustees of the Delano Unified School District* (1983) 139 Cal. App. 3d 567, 571-2; *Moreland Teacher's Association v. Kurze* (1980) 109 Cal.App.3d 648, 655.

7. Legal cause exists pursuant to Education Code section 44949 and 44955 for the Maxwell Unified School District to reduce or discontinue 3.0 FTE of particular kinds of services, as set forth in the District's Resolution #06-07-014. 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 Accusation. The Board may give 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 Accusation is SUSTAINED.

The Maxwell Unified School District action to reduce or eliminate 3.0 FTE of particular kinds of services for the 2007-2008 school year is AFFIRMED.

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

DATED: May 04, 2007


STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings