

BEFORE THE
GOVERNING BOARD OF THE
BIG OAK FLAT-GROVELAND UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE BIG OAK FLAT-
GROVELAND UNIFIED SCHOOL
DISTRICT,

OAH No. 2010030169

Respondents.

PROPOSED DECISION

Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Groveland, California, on April 14, 2010.

Atkinson, Andelson, Loya, Ruud & Romo, by Janice J. Hein, Attorney at Law, represented the Big Oak Flat-Groveland Unified School District.

Driscoll & Associates, by Eric D. Rouen, Attorney at Law, represented the following respondents (represented respondents): Tim Donovan, Jennifer Smith, Sheri Gempler, Dawnelle Dutton, Lynda Martinez, and Ryan Dutton.

Respondent Linda Kalmeta did not appear at the hearing. Her status was resolved by stipulation, as set forth below.

Timothy King appeared at the hearing, without counsel, and requested to participate in the layoff hearing. His request was denied, for the reasons set forth below.

Evidence was received, and the matter was submitted for decision on April 14, 2010.

FACTUAL FINDINGS

1. Mike King, Superintendent of the Big Oak Flat-Groveland Unified School District (District), State of California, filed the Accusations in his official capacity as a public officer.

2. On March 10, 2010, the Governing Board of the District adopted Resolution No. 2009-2010-13, which reduced and/or discontinued particular kinds of certificated services no later than the beginning of the 2010-2011 school year.

3. The Board further determined that it shall be necessary by reason of the reduction and/or discontinuance of services to decrease the number of permanent and/or probationary certificated employees at the close of the 2009-2010 school year by a corresponding number of full-time equivalent positions, and directed the Superintendent or his designee to proceed accordingly by notifying the appropriate employees to implement the Board's determination.

4. On or before March 15, 2010, the District served the following individuals with written notice, pursuant to Education Code sections 44949 and 44955, that their services would not be required for the next school year: Ryan Dutton; Lynda Martinez; Dawnelle Dutton; Greg Brown; Tim King; Sheri Gempler; Jennifer Smith; Lisa Kalmeta; and Tim Donovan. Each written notice set forth the reasons for the recommendation. The written notice attached and incorporated by reference Resolution No. 2009-2010-13, which listed the services to be reduced or discontinued, resulting in a proposed reduction in the certificated staff by 8.39 full-time equivalent (FTE) positions.

5. Except for Greg Brown, all of the employees listed in Finding 4 made a timely written request for a hearing to determine if there is cause for not reemploying them for the next school year.

6. The Superintendent made and filed Accusations against each of the certificated employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense (Accusation packet) were timely served on those certificated employees.

7. Notices of Defense were timely filed by the represented respondents, and by respondent Kalmeta. Tim King did not file a Notice of Defense.

8. The District objected to Mr. King's attempt to participate in the hearing in light of his failure to file a Notice of Defense. Mr. King testified that he did not receive the Accusation packet until after the deadline for submission of the Notice of Defense.¹ He

¹ The Statement to Respondent served on certificated employees in accordance with Government Code section 11505 stated, in part:

YOU ARE ADDITIONALLY NOTIFIED that unless a written request for a hearing, signed by you or on your behalf, is delivered to the Governing Board of the Big Oak Flat-Groveland Unified School District, **within five (5) days** after this Statement and enclosed Accusation and form Notice of Defense are personally served upon you or mailed to you, the Governing Board of the Big Oak Flat-Groveland Unified School District may proceed upon the Accusation without a hearing. Please note that if the deadline to submit the Notice of Defense expires during the District's Spring Break, your Notice of Defense will be considered timely if received in the

believed that the Accusation packet was left in his mailbox at school. His testimony was contradicted by the testimony of Wynette Marie Hilton, who specifically recalled personally serving Mr. King with the Accusation packet, at the same time that she served other certificated employees. Ms. Hilton's testimony was persuasive.

9. Even if Mr. King's explanation were credited, it does not excuse his complete failure to file a Notice of Defense. Mr. King testified that he intended to raise the issue at the hearing and "figured he would get a continuance."

10. Education Code section 44949, subdivision (c)(1), states:

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

11. Government Code section 11506 governs the filing of notices of defense, and states, in pertinent part:

[¶] . . . [¶]

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. ...

[¶] . . . [¶]

12. By Mr. King's failure to file a Notice of Defense, he has waived his right to a hearing. The District has declined to exercise its discretion to grant a hearing notwithstanding Mr. King's failure to file a Notice of Defense. Therefore, Mr. King was properly excluded as a respondent in this matter.

13. The District entered into a stipulation with the represented respondents, which is attached hereto as Exhibit 1 and incorporated herein by reference. The District withdrew the Accusations against the represented respondents, and the represented respondents withdrew their Notices of Defense and waived their right to a hearing. The parties agreed that respondent Tim Donovan will not receive a layoff notice, and that respondents Jennifer Smith, Sheri Gempler, Dawnelle Dutton, Lynda Martinez and Ryan Dutton may receive final layoff notices.

14. The District entered into a stipulation with respondent Lisa Kalmeta, which is attached hereto as Exhibit 2 and incorporated herein by reference. The District withdrew the Accusation against respondent Kalmeta, and she withdrew her Notice of Defense and waived her right to a hearing.

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.

2. The services identified in Resolution No. 2009-2010-13 are particular kinds of services that could be reduced or discontinued under section Education Code section 44955. Cause exists to reduce the number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. As set forth in Findings 6 through 12, Tim King waived his right to a hearing by his failure to file a Notice of Defense, and he is not a respondent in this matter.

4. Except as set forth in Legal Conclusion 3, there are no legal issues to address, as the parties' stipulations, by their terms, resolve all outstanding issues in this matter.

ORDER

Notice shall be given to the identified respondents that their services will not be required for the 2010-2011 school year because of the reduction and discontinuance of particular kinds of services.

Dated: April 23, 2010.

CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings