

BEFORE THE
GOVERNING BOARD OF THE
FRANKLIN-MCKINLEY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LUCRISIA ADAME et al., certificated
employees of the District,

Respondents.

OAH No. 2011030629

CORRECTED PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in San Jose, California, on April 12, 2011.

Alison C. Neufeld and Matthew M. Nakano, Attorneys at Law, Liebert, Cassidy, Whitmore, represented the Franklin-McKinley School District.

Christopher Schumb, Attorney at Law, represented all the respondents.

The matter was submitted on April 12, 2011.

FACTUAL FINDINGS

1. Dr. John R. Porter, Jr., made the accusations in his official capacity as the Superintendent of the Franklin-McKinley School District (District) and not otherwise.

2. Each of the named respondents was at all times mentioned herein, and now is, a certificated employee of the District.¹

3. On March 8, 2011, the Governing Board of the District was given written notice by the Deputy Superintendent Rudy Herrera of his recommendation that notice be given respondents that his/her services will be reduced or terminated at the close of the current school year and stating the reasons for the recommendation.

4. On or before March 15, 2010, respondents were given written notice by the Deputy Superintendent that it was recommended that notice be given respondents that his/her services will not be required for the ensuing school year.

¹ A list of the respondents is attached as Attachment A.

5. Respondents timely requested, in writing, a hearing to determine if there is cause for terminating his/her services for the ensuing school year.

6. On March 8, 2011, the Governing Board adopted Resolution No. 2011-10, directing the Superintendent or his designee to give notices to certificated employees that their services will not be required for the 2010-2011 school year.

7. The programs to be reduced or eliminated include 40.20 FTE²'s as follows:

| | |
|--------------------------------------|-------|
| Principal on Special Assignment | 1.00 |
| Assistant Principal | 0.40 |
| Elementary Teachers | 32.00 |
| Middle School English Teachers | 2.60 |
| Middle School Social Studies Teacher | 0.60 |
| Adaptive P.E. Teacher | 1.00 |
| Independent Study Teacher | 1.00 |
| Nurse | 1.00 |
| TOSA (ELD) | 0.60 |
| Total FTE Reduced: | 40.20 |

The District rescinded a number of notices at the hearing including Julianne Foxworthy (1.0), Robert Flores (1.0), Melissa Barrett³ (1.0), Amanda Woldhuis (.2) and Danielle Thomure Albrecht (1.0). Kellie Gleed requested a hearing. She is a temporary teacher, which she acknowledged, and she withdrew her request for hearing. Charlene Silveria will be reassigned. The Accusation against her was withdrawn.

8. All jurisdictional requirements were met.

9. The Governing Board skipped three teachers who hold multiple subject credentials because they have a BCLAD certificate or an authorization to teach in Spanish or Vietnamese. The Governing Board cannot skip teachers with a BCLAD certificate or an authorization to teach in Spanish or Vietnamese unless the teacher is presently assigned to teach a course or course of study that requires the use of that certificate or authorization. None of the three teachers that were skipped teach in a bilingual or immersion program and no evidence was presented to prove that they teach a specific course or course of study that requires that certificate or authorization (see Education Code section 44955, subdivision (d)).

² Full-time equivalent.

³ At the hearing the .8 FTE notice to Ms. Barrett was rescinded, giving her a full 1.0 FTE.

While these teachers are useful to the District, they do not meet the requirements of the law that would allow them to be skipped. Yvette Gonzalez, Elizabeth Matos, and Maria Pons cannot be skipped. They were not given notice. Therefore the District must retain the three most senior teachers with multiple subject credentials⁴ that are on the list to be terminated.

10. One middle school teacher who teaches in a core program, Christina Cruz, was not given a notice. She was skipped because she has a single subject credential, which was not identified on the seniority list. There are teachers being given notice who are senior to Ms. Cruz and who can teach in her core assignment. The most senior teacher⁵ with the proper multiple subject credential must be retained.

11. Elizabeth Matos was skipped pursuant to her having a BCLAD (see Finding 9). She was not evaluated in the tie-breaking process for August 13, 2008 same date of hire. She was not given a notice. The District can do the tie-breaking evaluation again any time before the March 15th notice is served. That will determine the order of seniority for purposes of rehire.

12. The Governing Board by Resolution No. 2011-09 dated March 8, 2011, has further determined that, as between employees who first rendered paid service on the same date, the order of termination listed on the seniority list has been based solely on the basis of the needs of the District and the students thereof. While there is no legal problem with the tie-breaking criteria; there is a problem with the application.

13. Other than as set forth above, no permanent or probationary certificated employee with less seniority is being retained to render a service, which respondents are certificated and competent to render.

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

LEGAL CONCLUSIONS

1. Cause for the termination or reduction of the particular kinds of service listed in Finding 7 and the corresponding positions exists in accordance with Education Code

⁴ At the hearing they were identified as Amanda Woldhuis (.8, giving her a full 1.0 FTE.), Kathleen Sauer (.2), Lisa Katimbang (1.0), and another teacher, Jessica Roak (1.0) who did not request a hearing.

⁵ At the hearing the next most senior teacher with a multiple subject credential was identified as Kathleen Sauer (.8, giving her a full 1.0 FTE.). The next most senior teacher was identified at the hearing as Katy Hughes. She would be retained with a .2 FTE. The District can choose to retain her as a 1.0 FTE.

sections 44949 and 44955. It is determined that the cause relates solely to the welfare of the schools and their pupils.

2 Pursuant to Education Code section 44955, subdivision (b), only the Governing Board can determine the order of termination for employees who first rendered paid service to the district on the same date. It has done so.

3 Except as set forth in the Factual Findings above, notice shall be given in inverse order of seniority.

ORDER

Notice may not be given to Melissa Barrett, Robert Flores, Lisa Katimbang, Kathleen Sauer, Danielle Thomure Albrecht, and Amanda Woldhuis. Notice may be given to all other respondents⁶ in accordance with the Legal Conclusions that their services will be reduced or eliminated for the 2011-2012 school year.

DATED: _____

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

⁶ Kristin Becker, Lucrisia Adame, Morgen Wulff, and Katy Hughes as set forth in Factual Finding 12, Footnote 5.