

BEFORE THE
GOVERNING BOARD OF THE
SANTA CLARA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

VARIOUS CERTIFICATED EMPLOYEES
of the DISTRICT,

Respondents.

OAH No. 2010021061

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Santa Clara, California, on April 28, 2010.

Richard M. Noack, Attorney at Law, Hopkins & Carley, represented the Santa Clara Unified School District.

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

Submission of the matter was deferred to May 4, 2010, for receipt of final argument and a list of respondents. Final argument was received and was considered. A list of respondents was provided. The matter was submitted on May 4, 2010.

FACTUAL FINDINGS

1. Brad Syth made the accusations in his official capacity as the Assistant Superintendent-Human Resources of the Santa Clara Unified 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 4, 2010, the Governing Board of the District was given written notice by the Superintendent of his recommendation that notice be given respondents that his/her services will be terminated at the close of the current school year and stating the reasons for the recommendation.

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

4. On March 8, 2010, respondents were given written notice by the Assistant Superintendent-Human Resources that it was recommended that notice be given respondents that his/her services will not be required for the ensuing school year.

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 4, 2010, the Governing Board adopted Resolution No. 10-10, 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 81.1 full-time equivalent positions (FTE)² as follows:

Grades Kindergarten - 6 Classroom Teachers	65.50 FTE
Grades 7 through 12 English Classroom Teachers	3.00 FTE
Counselor Positions	2.00 FTE
School Psychologist Positions	1.60 FTE
Special Education Teachers	9.00 <u>FTE</u>
Total FTE:	81.1 FTE

8. All jurisdictional requirements were met. A few teachers who did not return the notice of defense were allowed to participate and were represented by counsel. A few teachers who did not get the correct accusation, but who returned the notice of defense and were present at the hearing and/or represented by counsel were considered part of the hearing.

9. The Governing Board by Resolution No. 10-09 dated March 4, 2010, has further determined the order of termination between employees who first rendered paid service on the same date. The criteria listed are based solely on the basis of the needs of the District and the students thereof. However, the criteria have not been applied.

10. Bonnie Glick has a single subject: English credential. Her first date of paid service is August 17, 2009. She is subject to layoff as a result of the reduction in grades 7-12 classroom teachers. She believes she is able to bump into a position at the continuation high school. However, no position for which a junior teacher is being retained that Ms. Glick is credentialed and competent to teach was identified. Ms. Glick can be laid off.

² The resolution included the reduction of Adult Education services which are not a part of this hearing.

11. Anne McDonough and Katelin Casellini are listed with the first date of paid service as August 18, 2008 and are classified as probationary 2's. They were both part of a part-time internship program at San Jose State University. They both worked the entire school year of 2007/2008 as interns three days a week and were paid as interns. They also both worked as day-to-day substitutes from time to time. They were paid \$60 a day as interns and \$120 a day as substitutes. There is no distinction in the statutes between part-time interns and full-time interns. Both Ms. McDonough and Ms. Casellini are entitled to August 22, 2007 as the first date of paid service and are classified as tenured. Therefore neither Ms. McDonough nor Ms. Casellini can be laid off because the District is not laying off tenured teachers.

12. Su-Lin Winalski has a Multiple Subject credential and a Single Subject: Social Science credential with a seniority date of August 18, 2008. Ms. Winalski is senior to two teachers that have a Single Subject: Social Science credential. Kristina Ravo who has a seniority date of August 25, 2008 and Daniel Galindo who has a seniority date of August 17, 2009. Ms. Winalski cannot be laid off.

13. Michael Hickey holds a .5 FTE position teaching First Grade. He has a BCLAD, but is not teaching in a position that requires a BCLAD, therefore he is not being skipped. Mr. Hickey wants to be able to bump into a full-time position that requires a BCLAD. He cannot bump into a full-time position. All of the positions that require a BCLAD that are being skipped are full-time (1.0 FTE) positions.

14. None of the Multiple Subject teachers can bump into the position held by Emily Chiet. Ms. Chiet has a Single Subject: Music credential which she needs to teach all but one of the periods of her assignment. The District does not have to divide up that position.

15. Brian Dewester holds a Single Subject: Social Science credential. He teaches a Seventh Grade Core class. His seniority date is August 18, 2008. He was not subject to a lay-off notice. Any teacher senior to Mr. Dewester that holds a multiple subject credential can teach in Mr. Dewester's assignment. Jennifer Wynne and Clair Alvies both have a seniority date of August 22, 2007. Either the District must apply the tie-breaking criteria to Ms. Wynne and Ms. Alvies, or Ms. Wynne and Ms. Alvies must both be retained.

16. The reduction in service included 1.6 FTE School Psychologist positions. Rachel Speck has a PPS credential and is being laid off as a result of the reduction of services. She contends that the District cannot meet its mandated services if this reduction is implemented. The District indicated that it could meet its mandated services. The District had a study conducted by an independent consultant, who found that the District could comply with the state mandates with fewer psychologists. The study was criticized by the psychologists. However, the District met its burden of proof for the purposes of this proceeding. The District may layoff 1.6 FTE School Psychologists positions.

17. Noella Pinto has been given a seniority date of January 23, 2008, as a Probationary 1 teacher. She believes her seniority date should be September 17, 2007. However, she was not rehired at the beginning of the next (2008/2009) school year. She was rehired as a temporary teacher on October 28, 2008 to take over a position for a teacher on leave. Ms. Pinto is not entitled to an earlier seniority date.

18. All contentions made by respondents not specifically addressed above are found to be without merit and are rejected.

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

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

2. By reason of the matters set forth in Factual Findings 11 and 12, cause does not exist pursuant to Education Code section 44955 to give notice to respondents Anne McDonough, Katelin Casellini, and Su-Lin Winalski

3. 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. By reason of the matters set forth in Factual Finding 15, there is no cause pursuant to Education Code section 44955 to give notice to the most senior elementary teacher who received a March 15 notice. Either the tie-breaking criteria must be applied to Jennifer Wynne and Clair Alvies and the most senior teacher retained, or neither teacher can be laid off.

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

ORDER

1. The accusations against Anne McDonough, Katelin Casellini, and Su-Lin Winalski are each dismissed.

2. Notice may be given to all other respondents in accordance with the Legal Conclusions that their services will not be required for the 2010-2011 school year.

DATED: _____

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings