

BEFORE THE  
GOVERNING BOARD OF THE  
SAN FRANCISCO UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Non-Reemployment of  
161.8 Full Time Equivalent Certificated  
Employees

OAH No. N2005020720

**PROPOSED DECISION**

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in San Francisco, California on April 19, 2005.

Melanie Petersen, Attorney at Law, Lozano Smith, represented the Governing Board of the San Francisco Unified School District.

Stewart Weinberg, Attorney at Law, Weinberg, Roger & Rosenfeld, represented all the respondents.

The matter was submitted on April 19, 2005.

**FACTUAL FINDINGS**

1. Michele Modena, Chief Administrative Officer of the San Francisco Unified School District (District), made this accusation in her official capacity and not otherwise.
2. Each of the named respondents was at all times mentioned herein, and now is, a certificated employee of the District.
3. On March 8, 2005, the Governing Board of the District adopted the criteria for establishing the order of termination among respondents who have the same date of first rendering paid service to the District and the order of termination among respondents.
4. On March 8, 2005, the Governing Board of the District adopted Resolution No. 53-8S02, directing the Chief Administrative Officer or her designee to give notices to certificated employees that their services will not be required for the 2005-2006 school year.

The programs to be reduced or eliminated are set forth in Exhibit A attached to the Accusation in this matter. The reductions include Administrative Services for 75 F.T.E.,

Elementary School Programs for 51 F.T.E.<sup>1</sup>, Middle School Programs for 16.8 F.T.E., High School Programs for 20 F.T.E. for a total reduction of 163.8 F.T.E. That was reduced to 161.8 F.T.E. At the hearing, the District stated that this hearing concerned only 112.8 F.T.E.<sup>2</sup> since a number of administrators would be reassigned.

5. On March 15, 2005, the Chief Administrative Officer gave written notice to the Governing Board of the Superintendent's recommendation that notice be given to respondents that their services would not be required for the ensuing school year, 2005-2006, and stating the reasons therefore.

6. On March 15, 2005, respondents were served in the manner prescribed by law, with written notice that it has been recommended that notice be given respondents pursuant to Education Code sections 44949 and 44955 that their services will not be required for the ensuing school year and setting forth the reasons therefore.

7. Pursuant to Education Code section 44949, respondents, in writing, duly required a hearing to determine if there is cause for not reemploying them for the ensuing school year.

8. Cause exists within the meaning of Education Code sections 44949 and 44955 for not reemploying respondents for the ensuing school year, except as noted in Findings 12 and 13, below. In the opinion of the Governing Board, it will be necessary to decrease the number of certificated employees in the District on account of the above reduction or discontinuance of services. As a consequence, the Board has determined that the services of a corresponding number or less of the certificated employees of the District shall be terminated at the close of the current 2004-2005 school year.

9. The Governing Board 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 and will be based solely on the basis of the needs of the District and the students thereof, and that a lottery is authorized to be used when the tie-breaking criteria results in more than one employee with the same date of hire being found to have the same number of points under the tie-breaking criteria. This occurred for a number of employees who were hired August 25, 2004. The District did not apply the lottery as of the date of the hearing pending a decision on whether or not they can skip a number of teachers as set forth below in Finding 12.

Education Code section 44955, subdivision (b), allows the board to determine the order of termination solely on the basis of needs of the District. After stating a number of

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<sup>1</sup> Two elementary instruction F.T.Es. were restored.

<sup>2</sup> At the hearing the representative of the teachers was concerned about how that number was derived. How the number was derived is irrelevant provided that they represent particular kinds of services that can be reduced and are set forth in the Governing Board's resolution, which they are.

criteria, the board allows for a lottery. That is an acceptable means of tie-breaking after other criteria are applied. The District can hold the lottery post hearing to determine the final order of seniority as to which employee will receive a final layoff notice.<sup>3</sup>

10. 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 except as noted below in Findings 12 and 13.

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

12. The District has proposed to skip 27 teachers who are employed in three schools in the Bayview-Hunter's Point area of San Francisco designated the "Dream Schools". These schools were "reconstituted" pursuant to a consent decree dated October 29, 1992 and a Stipulation and Order entered into in United States District Court on October 14, 2004. All of the teachers employed in those schools were subject to transfer and were required to apply for positions at the dream schools under an open application process. The only additional requirement for employment at those schools is that the teacher have three years of demonstrated success with under achieving students. Some training was provided for the teachers.

The District did not meet its burden to establish that there is a "specific need for personnel to teach a specific course or course of study, . . . and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess." It is the last part of that statement in Education Code section 44955, subdivision (d)(1) that the District failed to establish. The District must demonstrate pursuant to the Education Code that others with more seniority do not possess the training and experience necessary to teach in those schools. At a minimum, the District is required to give those senior teachers with the required experience and proper credentials the opportunity to bump into those positions. Since the District did not meet the requirements for skipping the 27 teachers, these teachers cannot be skipped.

13. There were two individuals who requested credit for previous service. Ms. Josephine Ho was a preschool teacher for the District prior to becoming an elementary school teacher for the District. The District has agreed to look into this matter. No evidence was presented at the hearing to demonstrate that she is entitled to an earlier seniority date. This does not foreclose the Board from granting Ms. Ho additional service credit after investigating the matter.

Ms. Dawnell Boylan was an employee of a district charter school for the previous school year. She is designated as a probationary one employee. The District contends that employment at the charter school does not constitute paid service for the District because the

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<sup>3</sup> No one requested the criteria application process for ranking employees prior to the hearing.

District gives the funds to the charter school and the charter school pays their employees directly. Also, the District contends that they do not control the hiring and firing of the teachers at the charter school. The District presented insufficient evidence to show that Ms. Boylan's first date of paid service should not extend to her first date of paid service with the District's charter school. She was paid with District funds. Ms. Boylan must be classified as a probationary 2 employee and ranked accordingly.

### LEGAL CONCLUSIONS

1. Except as set forth in Finding 12<sup>4</sup> and 13<sup>5</sup>, cause for the termination of the particular kinds of service listed in Finding 3 and the corresponding positions exists in accordance with Education Code section 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 Finding 9, 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. A lottery can be instituted post hearing to determine the final order of seniority.

### ORDER

Except as set forth above, and in accordance with the final seniority list, notice may be given to respondents, that their services will not be required for the 2005-2006 school year.

DATED: April 29, 2005

Ruth S. Astle

RUTH S. ASTLE  
Administrative Law Judge  
Office of Administrative Hearings

<sup>4</sup> The 27 "Dream School" teachers cannot be skipped.

<sup>5</sup> D. Boylan had a first date of paid service in August 2003