

**BEFORE THE GOVERNING BOARD
OF THE
CULVER CITY UNIFIED SCHOOL DISTRICT**

In the Matter of the Accusations Against:) OAH No. L2004020552
)
Holly Angel, Dr. Josephine Basel,)
Marshanne Kendrick, Adrienne Lockwood,)
Judy Nahman-Stouffer, Scott Spector,)
Andrew Sotelo, Lynda Tomlinson,)
)
Respondents.)
_____)

PROPOSED DECISION

The hearing in the above-captioned matter was held on April 13, 2004, at Culver City, California. Joseph D. Montoya, Administrative Law Judge, Office of Administrative Hearings, presided. The Complainant was represented by Aaron V. O'Donnell, Atkinson, Andelson, Loya, Rudd & Romo. Respondent were represented by Mr. Lawrence Rosenzweig.

At the outset of the hearing Complainant's counsel confirmed that the layoff notice previously issued to Respondent Scott Spector had been withdrawn. There was no appearance by Respondent Josephine Basel, who had failed also to request a hearing; Respondent Addrienne Lockwood was unable to attend, but was represented by Mr. Rosenzweig. To clarify the record, the District's written discovery responses are received as Exhibit 13, and the District's trial brief is identified as Exhibit 14.

Oral and documentary evidence was received at the hearing, and the matter submitted on the hearing date. The Administrative Law Judge hereby makes his factual findings, legal conclusions, and orders, as follow.

FACTUAL FINDINGS

1. Dr. Laura McGaughey filed the accusation¹ in this proceeding in her official capacity as Superintendent of the Culver City Unified School District ("the District").

¹ The term "accusation" refers to a type of pleading utilized under the Administrative Procedure Act, Government Code 11503. It should be made clear that the Respondents are not "accused" in the every-day sense of that word, unless it can be said they are accused of not having enough seniority to retain their positions with the district in the face of a resolution to reduce positions.

2. Each of the Respondents identified in the caption are certificated employees of the District.

3. On March 2, 2004, the Governing Board of the District adopted resolution number #23-2003-2004(HR), to reduce and discontinue particular kinds of certificated services no later than the beginning of the 2004-2005 school year. Specifically, the resolution requires the reductions of 9.0 "FTE"—full time equivalents—as follows:

- (A) To reduce K-5 Classroom Teaching Services by 4 FTE;
- (B) To reduce High School Physical Science Teacher Services by 2 FTE;
- (C) To reduce District Librarian Services by 1 FTE;
- (D) To reduce Teacher on Special Assignment Services by 2 FTE.

4. The District further resolved to decrease the number of certificated employees at the close of the 2003-2004 school year by a corresponding number of full-time equivalent positions due to the reductions or discontinuance of the services. The Governing Board directed the Superintendent to implement the determination to reduce services by nine FTE.

5. Superintendent McGaughey recommended to the Governing Board, in writing, that the Respondents be notified that their services will not be required for the 2004-2005 school year due to the reduction or elimination of particular kinds of services. Thereafter, on March 11, 2004, the Respondents, and each of them, were personally served with written notice that their services would not be needed in the 2004-2005 school year, and the reasons therefore, *i.e.*, the reduction or elimination of particular kinds of services, and they were served with an accusation, as well as other documents relevant to this proceeding.

6. Respondents Angel, Kendrick, Lockwood, Nahman-Stouffer, Spector, Sotelo, and Tomlinson all requested hearings, in a timely manner. As noted above, Respondent Basel did not request a hearing, and has waived her rights to contest the matter, while the notice and accusation has been withdrawn as to Respondent Spector.² All jurisdictional requirements have been met.

7. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.³

8. The decision by the Governing Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District's discretion.

² The notice of defense, filed on behalf of all Respondent's *except* Dr. Basel, also refers to a Respondent Jason Risher. However, there is no evidence in the record that the District was proceeding as to that person, who the District identified as a temporary employee. Instead, Mr. Risher received a notice to the effect that his temporary position would not be renewed.

³ All further statutory references are to the Education Code unless otherwise noted.

9. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board.

10. On March 2, 2004, the Governing Board adopted Resolution #24-2003-2004 (HR), which established tie-breaking criteria to be used for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination shall be based on the needs of the District and its students in accordance with specifically-designed and stated factors, such as the nature of the teachers' credentials and the nature of the teachers' experience.

11. The District has generated a seniority list of all teachers. As to the Respondents herein, it accurately states their date of hire, or seniority date, and is otherwise based on school records and other reliable information. This finding includes Respondent Angel, whose date of hire was October 8, 2003, and Respondent Kendrick, who was hired November 10, 2003.

12. Respondent Holly Angel has a child development permit on file with the District, along with her Professional Clear Multiple Subject credential. She has taught in the child development area, and did so for much of the 2002-2003 school year. Ms. Angel asserts this should allow her to "bump"—displace—a more junior teacher or teachers who hold child development permits. However, the teachers she sought to bump—Cruz, Rico, and Lopez—are full time teachers in the Child Development Program and not subject to displacement by Ms. Angel.

13. Ms. Marshanne Kendrick provided evidence that she holds a CLAD certificate. However, it was not established that such has been registered with the County Office of Education. As no other teacher has her date of hire, it appears irrelevant, as there is no tie that would be broken by her possession of the certificate.

14. The District applied its tie-breaking criteria to teachers whose seniority date was August 25, 2003. This included, among others, Respondents Sotelo and Spector. The tie breaking criteria was appropriately applied to the sixteen teachers listed thereon.

15. No certificated employee junior to any Respondent was retained by the District to render a service for which a Respondent was certificated and qualified to render.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to Code sections 44949 and 44955, based on Factual Findings 1 through 7.

2. The services listed in Factual Finding 3 are particular kinds of services within the meaning of Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949. (See also *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179; *Zalec v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal. App. 4th 838, 853-854. This Conclusion is based on Factual Findings 3-9.

3. Cause for reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

4. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render, based on Factual Findings 10 through 15.

5. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal. 3rd 469.) Junior teachers may be given retention priority over senior teachers—may "skip" that senior employee—if the junior teacher possesses superior skills or capabilities not possessed by their more senior colleagues. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal. App. 3rd 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Bd. of Santa Clara Unified School Dist.* (1981) 116 Cal. App. 3rd 831.) No Respondent established the right to bump a junior employee, and no Respondent established the right to displace or "skip" a senior employee.

6. Ms. Angel may not displace her more junior co-workers assigned as child development teachers, based on *Santa Clara Federation of Teachers, supra*, 116 Cal. App. 3rd at 849-850.

ORDER

1. The Accusation(s) is sustained.

2. Notice shall be given to employees occupying 9 full-time equivalent certificated positions that their services will not be required for the 2004-2005 school year because of the reduction and discontinuance of particular kinds of services, as identified in Finding 3.

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3. Notice shall be given to Respondents in inverse order of seniority based on the seniority list established by the District in this proceeding.

April 30, 2003

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings