

BEFORE THE
GOVERNING BOARD OF THE
FILLMORE UNIFIED SCHOOL DISTRICT
COUNTY OF VENTURA
STATE OF CALIFORNIA

In the Matter of the Accusation against:

Raina Arellano, et al., who are
Certificated Employees of the Fillmore
Unified School District,

Respondents.

OAH Case No. 2010030583

PROPOSED DECISION

Nancy Beezy Micon, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 19, 2009, in Fillmore, California.

Margaret A. Chidester, Attorney at Law, represented Jeff Sweeney (Sweeney), Superintendent of the Fillmore Unified School District (District).

Tareq M. Hishmeh, Attorney at Law, represented Respondents Luana Barajas (Barajas), Melanie Chisholm (Chisholm), Julie Chang (Chang), Andreana DeMoss (DeMoss), Veronica Duran (Duran), Randy Garcia (Garcia), Barbara Leija (Leija), Viviana Magana-Laureano (Magana-Laureano), Julie McKeever-Coert (McKeever-Coert), Marilla Mittan (Mittan), Aide Recendez (Recendez), Kristina Renelli (Renelli), Delia Silva (Silva), Lacy Swensen (Swensen), Christine Villegas (Villegas), and Janelle Williams (Williams).

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2010-2011 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2010-2011 school year.

Prior to the start of the hearing, the District rescinded its notices of non-reemployment issued to, and the Accusation as it pertains to, Respondents Raina Arellano (Arellano), Heather Atwood (Atwood), Raymond Barrera (Barrera), Kathleen Berrington (Berrington), Jill Capra (Capra), Judith Chaffee (Chaffee), Claudia Cornejo (Cornejo), Shelia DeMeritt (DeMeritt), Kristen Dunst (Dunst), Paul Fitzgerald (Fitzgerald), Jennifer Fitzpatrick (Fitzpatrick), Joseph Fry (Fry), Mary Allyn Garcia-Lovett (Garcia-Lovett), Patricia Gradias (Gradias), Carrie Gray (Gray), Amber Henrey (Henrey), Susan Hersh (Hersh), Nancy Kirkpatrick (Kirkpatrick), Kristy Lim (Lim), Jenny Lindemann (Lindemann), Debra Louth (Louth), Marisa Martinez (Martinez),

Theresa Marvel (Marvel), Maria Meza (Meza), Kevin Molloy (Molloy), Norma Perez-Sandford (Perez-Sandford), Valorie Potter (Potter), Martha Ramos (Ramos), Rebecca Raskin (Raskin), Juliette Resor (Resor), Ronda Reyes-Deutsch (Reyes-Deutsch), Brian Ricards (Ricards), Erin Sebek (E. Sebek), Mark Sebek (M. Sebek), Carolyn Shea (Shea), Matthew Stockton (Stockton), Jennifer Weir (Weir), and James White (White).

Before the start of the hearing, Respondent Daniel Vincent (Vincent) resigned from his position for the 2010-2011 school year.

Although Respondent Chang did not submit a notice of defense, she appeared at the hearing and the District did not challenge her status as a Respondent.

Respondents Arellano, Atwood, Barrera, Berrington, Capra, Chaffee, Cornejo, DeMeritt, DeMoss, Dunst, Fitzgerald, Fitzpatrick, Fry, Garcia-Lovett, Gradias, Gray, Henrey, Hersh, Cristina Ibarbia (Ibarbia), Kirkpatrick, Leija, Lim, Lindemann, Louth, Martinez, Marvel, Meza, Mittan, Molloy, Perez-Sandford, Potter, Ramos, Raskin, Resor, Reyes-Deutch, Ricards, E. Sebek, M. Sebek, Shea, Stockton, Villegas, Vincent, Weir, White, and Williams were not present at the hearing.

Evidence was received by way of stipulation, testimony and documents. The record was closed, and the matter submitted for decision on April 19, 2010.

FACTUAL FINDINGS

1. Superintendent Sweeney filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. On March 2, 2010, the Governing Board of the District (Governing Board) adopted Resolution Number 09-10-14, reducing or discontinuing the following services for the 2010-2011 school year:

| <u>Service</u> | <u>FTE¹ Reduction</u> |
|--------------------------------------|----------------------------------|
| Elementary School Classroom Teaching | 20.0 |
| Elementary School Music Teaching | 1.0 |
| School Psychology | 1.0 |
| Categorical Programs Coordinator | 1.0 |
| Sespe School Intervention Teaching | 0.8 |
| Alternative Education Teaching | 3.0 |

¹ Full-time equivalent position.

| | |
|---------------------------------------|------------|
| Sierra High School dean | 1.0 |
| Middle School science teaching | 1.0 |
| Middle School social studies teaching | 1.0 |
| High School English teaching | 1.0 |
| High School science teaching | 1.0 |
| High School health teaching | 1.0 |
| High School social studies teaching | 1.0 |
| Middle School Counseling | 1.0 |
| Middle School English teaching | 1.0 |
| High School math teaching | 1.0 |
| Elementary School principal | 1.0 |
| Independent Study teaching | <u>1.0</u> |
| Total | 38.8 |

4. Superintendent Sweeney thereafter provided written notice to the Governing Board and to Respondents that he recommended the termination of Respondents' services for the 2010-2011 school year due to the reduction of particular kinds of services.

5. On March 9 through 15, 2010, the District provided notice to Respondents that their services will not be required for the 2010-2011 school year due to the reduction of particular kinds of services. Respondents filed timely requests for hearing.

6. On March 22 through 26, 2010, the District filed and served the Accusation and other required documents on Respondents. Respondents thereafter timely filed notices of defense, seeking a determination of whether cause exists for not reemploying them for the 2010-2011 school year.

7. All prehearing jurisdictional requirements have been met.

8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.²

9. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 primarily because of uncertainty surrounding future funding. The District estimates a revenue shortfall for the 2010-2011 school year. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

² All further references are to the Education Code.

10. After the adoption of Resolution Number 09-10-14, the District and representatives from the California Teachers' Association (CTA) reached an agreement allowing a reduction in the school year, incentives for teacher retirement, and an adjustment in health and welfare benefits. As a result, the number of positions to be reduced was decreased from 38.8 to 16.7, as follows:

| <u>Service</u> | <u>FTE Reduction</u> |
|--------------------------------------|----------------------|
| Elementary School Classroom Teaching | 10.7 |
| School Psychology | 0.4 |
| Categorical Programs Coordinator | 1.0 |
| Sespe School Intervention Teaching | 0.8 |
| Middle School science teaching | 0.8 |
| Middle School English teaching | 1.0 |
| High School math teaching | 1.0 |
| Elementary School principal | <u>1.0</u> |
| Total | 16.7 |

11. The reduction of services set forth in factual finding numbers 3 and 10 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 Governing Board.

12. The Board considered all known attrition, resignations, and retirements in determining the actual number of necessary layoff notices to be delivered to its employees. In determining the number of final layoff notices to issue, the District expects to take into account any retirements and resignations to reduce the number of actual layoff notices.

13. On March 2, 2010, the Governing Board adopted criteria 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. The tie-breaking criteria are reasonable as they relate to the skills and qualifications of certificated employees, and the District properly applied the criteria.

14. At the hearing, the District rescinded the Accusations against Respondents DeMoss, Leija, McKeever-Coert, Mittan, Recendez, Renelli, Silva, Villegas, and Williams. The parties agreed that Mittan and Villegas are temporary teachers who may be released from service for the 2010-2011 school year.

15. The parties agreed that the services of Respondent Chisholm would be reduced from a 1.0 FTE position to a 0.2 FTE position.

16. The District did not retain any certificated employee junior to Respondents Barajas, Chang, Chisholm, Duran, Garcia, Ibarbia, Magana-Laureano, or, Swensen, to render a service which these Respondents are certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 8.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 16.

4. Cause exists to terminate the services of Respondents Luana Barajas, Julie Chang, Veronica Duran, Randy Garcia, Cristina Ibarbia, Viviana Magana-Laureano, and Lacy Swensen, and to reduce the services of Melanie Chisholm from one full time equivalent (FTE) position to a 0.2 FTE position, by reason of factual finding numbers 1 through 16, and legal conclusion numbers 1 through 3.

RECOMMENDATION

1. It is recommended that the Accusation be sustained, and the District may notify Respondents Luana Barajas, Julie Chang, Veronica Duran, Randy Garcia, Cristina Ibarbia, Viviana Magana-Laureano, Lacy Swensen, and Daniel Vincent that their services will not be needed during the 2010-2011 school year, and that Melanie Chisholm's services may be reduced to a 0.2 FTE position, due to the reduction of particular kinds of services.

2. It is recommended that the layoff notice be rescinded, and the Accusation be dismissed as to Respondents Raina Arellano, Heather Atwood, Raymond Barrera, Kathleen Berrington, Jill Capra, Judith Chaffee, Claudia Cornejo, Shelia DeMeritt, Andreana DeMoss, Kristen Dunst, Paul Fitzgerald, Jennifer Fitzpatrick, Joseph Fry, Mary Allyn Garcia-Lovett, Patricia Gradias, Carrie Gray, Amber Henrey, Susan Hersch, Nancy Kirkpatrick, Barbara Leija, Kristy Lim, Jenny Lindemann, Debra Louth, Marisa Martinez, Theresa Marvel, Julie McKeever-Coert, Maria Meza, Marilla C. Mittan, Kevin Molloy, Norma Perez-Sandford, Valoria Potter, Martha Ramos, Rebecca Raskin, Aide Recendez, Kristina Renelli, Juliette

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Resor, Ronda Reyes-Deutsch, Brian Ricards, Erin Sebek, Mark Sebek, Carolyn Shea, Delia Silva, Matthew Stockton, Christine Villegas, Jennifer Weir, James White, and Janelle Williams.

DATED: May 6, 2010

Nancy Beezy Micon
Administrative Law Judge
Office of Administrative Hearings