

BEFORE THE
GOVERNING BOARD
BISHOP JOINT UNION HIGH SCHOOL DISTRICT
COUNTY OF INYO
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Julie Castaneda, Natalie D'Angelo,
Adrian Sears, and Gail Wallace,

Respondents.

OAH Case No.: L2007040056

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 30, 2007, in Bishop, California.

Sarah Levitan Kaatz, Attorney at Law, represented Maggie Kingsbury, Superintendent of the Bishop Joint Union High School District (District).

Carlos R. Perez, Attorney at Law, represented respondents Adrian Sears (Sears) and Gail Wallace (Wallace).

District has decided to reduce certain educational services and has given respondents notice of its intent not to reemploy them for the 2007-2008 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2007-2008 school year.

Oral and documentary evidence was presented at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. The Superintendent filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.
3. The Superintendent has recommended to the Board of Trustees of the District (Governing Board) the reduction of services set forth in factual finding number 4.

4. On January 29, 2007, the Governing Board approved the Superintendent's recommendation and adopted Resolution 06-07-09, reducing the following services for the 2007-2008 school year:

<u>Service</u>	<u>Full-Time-Equivalent Positions</u>
English	1.6
Math	.8
Social Science	.6
Health	.2
Science	.8
Spanish	.4
Physical Education	.2
Resource	.2
Choir	.2
Non Departmentalized Programs	
Title I Reading	.2
AVID	.2
WASC	.2
ELD Tutorial	.4
PGHS (Continuation High School)	<u>.3</u>
Total	6.3

5. On March 14, 2007, the Superintendent notified the Governing Board and provided written notice, via personal service, to respondents that their services will not be required for the 2007-2008 school year due to the reduction of particular kinds of services.

6. Respondents thereafter requested a hearing to determine if there is cause for not reemploying them for the 2007-2008 school year.

7. The District filed the Accusation on April 9, 2007, and served it by certified mail on each respondent.

8. Respondents Julie Castaneda and Natalie D'Angelo subsequently filed a notice withdrawing their request for hearing, thereby waiving their right to a hearing to determine if there is cause for not reemploying them for the 2007-2008 school year.

9. Respondent Sears did not file a notice of defense, but appeared at the hearing. Respondent Wallace filed a notice of defense on April 24, 2007, seven days after receiving the Accusation. Inasmuch as it was not shown that the District or other employees will be prejudiced, respondents Sears and Wallace are deemed to have filed timely notices of defense.

10. All prehearing jurisdictional requirements have been met.

11. The services set forth in factual finding number 4 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.¹

12. The Governing Board took action to reduce the services set forth in factual finding number 4 based on anticipated loss of student enrollment. The decision to reduce the services is neither arbitrary nor capricious, but is rather a proper exercise of the District's discretion.

13. The reduction of services set forth in factual finding number 4 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.

14. Respondent Wallace is a permanent employee of the District with a seniority date of August 22, 2002. She holds several special education credentials and teaches two periods of special education resource classes and three periods of remedial reading. The District proposes to reduce her teaching load by two classes. Respondent Wallace argued that she can teach entry-level English classes, but does not hold the required credential. Respondent Wallace is the sole supporter of her family and will face significant financial hardship if her teaching assignment is reduced. However, the teacher retained to teach special education has greater seniority than respondent Wallace.

15. No certificated employee junior to any respondent was retained to render a service which 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 10.

2. The services listed in factual finding number 4 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 4 and 11.

3. Cause exists under sections 44949 and 44955 for the District to reduce the particular kinds of services set forth in factual finding number 4, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 15.

¹ All further references are to the Education Code.

4. Section 44955 directs that certificated permanent and probationary employees are to be laid off by seniority, consistent with their qualifications and status. Thus, subsection (c) provides, in pertinent part: "[t]he governing board shall make assignments and reassignments in such manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render." The statute, in subsection (b), gives preference to permanent employees: "Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render." District complied with section 144955, as no certificated employee junior to any respondent was retained to render a service which respondents are certificated and competent to render.

5. Cause exists to reduce or terminate the services of respondents Julie Castaneda, Natalie D'Angelo, Adrian Sears, and Gail Wallace for the 2007-2008 school year due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 15, and legal conclusion numbers 1 through 4.

ORDER

1. The Accusation is sustained.
2. The District may notify respondents Julie Castaneda, Natalie D'Angelo, Adrian Sears, and Gail Wallace that their full-time services will not be needed during the 2007-2008 school year due to the reduction of particular kinds of services.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings