

BEFORE THE
GOVERNING BOARD OF THE
MOUNTAIN VIEW SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

ANTONIO BALBUENA, et al.,

Respondents.

OAH No. 2013030804

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on April 18, 2013, in El Monte, California.

Margaret A. Chidester, Attorney at Law, Margaret A. Chidester & Associates, represented complainant Gloria Diaz, Assistant Superintendent, Mountain View School District.

Maria Keegan Myers, Attorney at Law, Rothner, Segall & Greenstone, represented respondents Antonio Balbuena, Debra Bates-Ho, Marcos Bowers, Sandy Cannon, Tammy Capilla, Rachel Chan, Sharon Durall, Hannah Estes, Maria Estevez, Lourdes Fonseca, Olga Gallegos, Maricela Gonzalez, Laura Gorgonio, Christina Correa Grebel, Chad Greene, Patricia Gutierrez-Bowers, Jacqueline Hernandez, Aracely Hernandez-Lopez, Vinh Huynh Kieu, Michele Ivey, Karyn Johnny, Kathy Kurtz, Cecilia Leonin, Rose McGrath, Ryan Namihira, Juan Orellana, Irma Parisi, Diana Rich, Jose Santiago, Tashanda Seiji, Neelam Tandon, Fernando Velasquez, Ricky Villacorte and Maria Villavicencio.

The matter was submitted on April 18, 2013.

FACTUAL FINDINGS

1. Complainant Gloria Diaz issued the accusation in her official capacity as assistant superintendent of the Mountain View School District.
2. Respondents are certificated employees of the district.
3. On March 7, 2013, the district's governing board adopted Resolution #13-267 (the PKS resolution). In that resolution, the board determined that it is necessary to

discontinue certain particular kinds of services at the close of the 2012-2013 school year. It states that the particular kinds of services to be discontinued are as follows:

- (1.1) 10.40 K-8 Multiple Subject Classroom Teaching Positions (10.40 F.T.E.)¹
- (1.2) 1.10 Single Subject Physical Education Teaching Positions (1.10 F.T.E.)
- (1.3) .60 7th Grade Biological Science Teaching Position (.60 F.T.E.)
- (1.4) .60 8th Grade Physical Science Teaching Position (.60 F.T.E.)
- (1.5) .40 Opportunity Room Teaching Position (.40 F.T.E.)
- 13.10 TOTAL F.T.E.

The resolution directs the superintendent to send appropriate notices to all employees whose positions may be reduced or eliminated by virtue of the board's action.

The board took this action because the district faces uncertain and reduced state funding, and because of declining enrollment.

4. The PKS resolution establishes tie-breaking criteria to establish the relative seniority among employees with the same first date of paid service.

5. On or before March 15, 2013, the district gave written notice to respondents of the recommendation that their services will be reduced or eliminated for the 2013-2014 school year. The reasons for the recommendation were set forth in these preliminary layoff notices. Before issuing the preliminary layoff notices, the district took into account all positively assured attrition.

6. Respondents filed timely requests for hearing to determine if there is cause for terminating their services for the 2013-2014 school year. An accusation was served on each respondent, all of whom filed timely notices of defense. All prehearing jurisdictional requirements have been met.

Skip criteria

7. The PKS resolution states that the district will deviate from laying off teachers in inverse order of their seniority by skipping employees in the following categories:

- 1. Certificated personnel who possess administrative credentials, who are currently assigned to administrative positions, and who will be assigned to administrative positions for the 2013-2014 school year.
- 2. Certificated personnel who possess a credential authorizing service in special education with an autism

¹ "F.T.E." means full-time equivalent.

spectrum disorders authorization, who are presently assigned within the scope of that credential, and who will be assigned within the scope of that credential for the 2013-2014 school year.

3. Certificated personnel who possess a credential authorizing service as a Newcomer teacher who are presently assigned to the Newcomer program, and who will be assigned to the Newcomer program for the 2013-2014 school year.
4. Certificated personnel who possess a credential authorizing service in alternative education who are presently assigned at the Magnolia Learning Center within the scope of that credential, and who will be assigned within the scope of that credential for the 2013-2014 school year.
5. Certificated personnel who possess a credential authorizing service as an English Language Development (ELD) Teacher on Special Assignment (TOSA) who are presently assigned within the scope of that credential, and who will be assigned within the scope of that credential for the 2013-2014 school year.
6. Certificated personnel who possess a Certificate in STEM (science, technology, engineering, mathematics) Education and are currently teaching a MESA Science – Math Science Engineering Technology – class, and who will be assigned within the scope of that authorization for the 2013-2014 school year.

Some or all of these skip criteria have been challenged in past layoff proceedings in the district. No evidence or argument against any of the skip criteria, however, was presented in this proceeding.

Rescissions

8. The district has rescinded the preliminary layoff notices it issued to Sandy Cannon, Tammy Capilla, Maria Estevez, Jacqueline Hernandez, Aracely Hernandez-Lopez, Vinh Huynh Kieu, Karyn Johnny, Rose McGrath, Juan Orellana, Jose Santiago, Fernando

Velazquez, and Maria Villavicencio. The accusations against these teachers are dismissed. They are no longer respondents in this proceeding.²

Other matters

9. Neelam Tandon teaches 8th grade science at Madrid Middle School. Her seniority date is August 28, 2002. She has been identified for layoff. Tandon testified that she updated her authorizations two days before the hearing, to add authorizations to teach Introductory English, Literature, and English Composition. She believes that these authorizations will affect her relative seniority among other teachers with the first date of paid service. Even if Tandon were the most senior employee among that group, however, she would still be subject to layoff by virtue of her assignment, and the assignments of the other teachers who share her seniority date.

Tandon's contentions that there are teachers who are "misassigned," and that those misassignments affect the layoff, were not supported by the evidence.

Tandon testified that she is "NCLB compliant" and that other teachers, who are not NCLB compliant, are not being laid off. The evidence established, however, that all district teachers are NCLB compliant.

10. The cause for the reduction in particular kinds of services relates to the welfare of the district's schools and the pupils thereof.

11. Except as otherwise permitted by statute, no permanent employee is being terminated while any probationary employee, or any other employee with less seniority, is being retained to render a service which the permanent employee is certificated and competent to render.

LEGAL CONCLUSION

Cause exists because of the reduction or elimination of particular kinds of services pursuant to Education Code section 44955 to give notice to the remaining respondents in 13.10 F.T.E. positions that their services will not be required for the 2013-2014 school year.

² The district also rescinded the preliminary layoff notices it issued to Steve Brownson, Bellanira Pesina, Edith Sandoval, Haile Ucbagaber, and Michael Yurkas, but these employees did not request a hearing and therefore were not served with an accusation.

RECOMMENDATION

Notice may be given to all remaining respondents in 13.10 F.T.E. positions that their services will not be required for the 2013-2014 school year because of the reduction or elimination of particular kinds of services.

DATED: _____

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings