

BEFORE THE GOVERNING BOARD
OF THE BUENA PARK SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

CERTAIN CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2011030824

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 7, 2011, in Buena Park, California.

Atkinson, Andelson, Loya, Ruud & Romo and Aaron V. O'Donnell, represented the Buena Park School District (BPSD).

Reich, Adell, Crost & Cvitan and Carlos Perez, represented Eva Araujo, Angela Beucler, Mary Biner, Felicia Clark, Katherine Del Re, Catherine Hackett, Deborah Hegstrom, Christine Kai, Leona Kendall, Steven Little, Laura Lucero, Christina Luckey, Andrew Osborn, Tanya Samarin, Kristin Sherman, Rowyna Shiohama, and Andrienne Wood (Respondents).

Respondent Mary Beckelheimer filed a request for hearing; however, and despite being served with the jurisdictional documents, Respondent Beckelheimer failed to appear at hearing. Respondents' counsel did not assert representation of Respondent Beckelheimer.

The matter was deemed submitted for decision on April 7, 2011.

FACTUAL FINDINGS

1(a). The parties stipulated to the allegations in the first five sections of the Accusation. Consequently, that stipulation established the facts set forth in Factual Findings 1(b) through and including 1(e).

1(b). Greg Magnuson, BPSD Superintendent, filed the Accusations in his official capacity.

1(c). Respondents are presently certificated employees of BPSD.

1(d). On March 7, 2011, the BPSD Governing Board (the Governing Board) adopted Resolution 10-14 to reduce and discontinue particular kinds of certificated services no later than the beginning of the 2011-2012 school year. The particular kinds of certificated

services total 32 full time equivalent (FTE) positions. The Governing Board further determined that it was necessary because of those reductions or discontinuances to decrease the number of certificated employees at the close of the present school year by a corresponding number of FTE positions and directed the Superintendent to notify the appropriate employees to implement the Governing Board's determination.

1(e). By March 15, 2011, and pursuant to Education Code sections 44949 and 44955, the Superintendent recommended to the Governing Board that it notify Respondents that Respondents' services will not be required for the ensuing school year, and inform Respondents of the underlying reasons for such notification.

1(f). By March 15, 2011, the Governing Board notified Respondents of its determination to terminate Respondents' services for the ensuing school year and the underlying reasons for termination, in accordance with Education Code sections 44949 and 44955.

2. In response to the written notice, each Respondent timely requested a hearing to determine if there is cause to not reemploy him or her for the 2011-2012 school year.

3. BPSD served the Accusation and other required documents timely on each Respondent.

4. All jurisdictional requirements were met.

5. Resolution number 10-14 reduces or discontinues 32 FTE positions for the 2010-2011 school year.

6. The 32 FTE positions at issue in this matter are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955.

7. The Governing Board's decision to reduce or discontinue the particular kinds of services at issue in this matter was due to the anticipated decline in State funding; the Governing Board's decision was not arbitrary or capricious, but constituted a proper exercise of discretion.

8. The reduction or discontinuation of particular kinds of services related to the welfare of BPSD and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of BPSD, as determined by the Governing Board.

9. BPSD identified the certificated employees providing the particular kinds of services that the Governing Board directed to be reduced or discontinued.

10. The recommendation that Respondents be terminated from employment was not related to their competency as teachers.

11(a). Respondent Christine Kai testified that some of the seniority tie breaking criteria used by the Governing Board was unfair.

11(b). The Governing Board adopted Resolution 10-13 on March 7, 2011. That resolution set forth the seniority tie breaking criteria to be applied when certificated permanent and probationary employees share the same first date of paid service. Criterion 10 of Resolution 10-13 ranked employees in seniority order based on training and experience in a program called “Response to Intervention.” Criterion 11 of Resolution 10-13 gave greater seniority to employees with experience teaching a full inclusion classroom in the last two school years than those without such experience. Full inclusion refers to the inclusion of students with special education needs into regular education classrooms.

11(c). Respondent Kai argued that not all teachers within the BPSD had the opportunity to receive “Response to Intervention” training and only one school within the BPSD contains a full inclusion classroom. Therefore, argued Respondent Kai, not all Respondents could be equitably assessed in the seniority tie breaking analyses when considering criteria 10 and 11 of Resolution 10-13.

12. BPSD argued that its tie breaking criteria were proper and served the function to determine the order of termination when Respondents shared the first date of paid service.

13 The parties agreed to the following amendments to the seniority dates of three Respondents. Respondent Eva Araujo’s seniority date is August 21, 2000, and not August 28, 2000. Respondent Mary Biner’s seniority date is August 21, 2000, and not August 28, 2000. Respondent Laura Lucero’s seniority date is August 19, 2002, and not August 26, 2002.

14. No certificated employee junior to any Respondent was retained to render a service that any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. The parties met all notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955.

2. It is appropriate to amend Respondent Eva Araujo’s seniority date to August 21, 2000, Respondent Mary Biner’s seniority date to August 21, 2000, and Respondent Laura Lucero’s seniority date to August 19, 2002.

3. Respondent Kai’s argument regarding the unfair use of seniority tie breaking criteria 10 and 11 was unpersuasive. Respondent Kai’s testimony was insufficient evidence to establish that not all teachers had the opportunity to receive the “Response to Intervention” training. Further, the evidence did not establish that not all Respondents had the opportunity to receive the “Response to Intervention” training. The evidence was also insufficient to establish that only one school within the BPSD contains a full inclusion classroom. The

evidence did establish that the seniority tie breaking criteria was based on the needs of BPSD and its students.

4. The services identified in the Governing Board's resolution number 10-14 are particular kinds of services that the Governing Board can reduce or discontinue under Education Code section 44955. The Governing Board's decision to reduce or discontinue the identified services was not arbitrary or capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of BPSD's schools and pupils within the meaning of Education Code section 44949.

5. BPSD properly identified the certificated employees providing the particular kinds of services that the Governing Board directed to be reduced or discontinued.

6. A school district may reduce services within the meaning of Education Code section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

7. BPSD established cause to not reemploy Respondents for the 2011-2012 school year.

8. No junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render.

9. Cause exists to sustain BPSD's action to reduce or discontinue the full-time equivalent positions set forth in BPSD's Resolution 10-14 for the 2011-2012 school year, pursuant to Education Code sections 44949 and 44955, as set forth in Factual Findings 1-14, and Legal Conclusions 1-8.

ORDER

1. The Buena Park School District shall amend Respondent Eva Araujo's seniority date to August 21, 2000, Respondent Mary Biner's seniority date to August 21, 2000, and Respondent Laura Lucero's seniority date to August 19, 2002.

2. The Accusations served on Respondents Eva Araujo, Mary Beckelheimer Angela Beucler, Mary Biner, Felicia Clark, Katherine Del Re, Catherine Hackett, Deborah Hegstrom, Christine Kai, Leona Kendall, Steven Little, Laura Lucero, Christina Luckey, Andrew Osborn, Tanya Samarin, Kristin Sherman, Rowyna Shiohama, and Andrienne Wood, providing the particular kinds of services that the Governing Board of the Buena Park School District directed to be reduced or discontinued, are sustained.

3. Notice shall be given to Respondents Eva Araujo, Mary Beckelheimer Angela Beucler, Mary Biner, Felicia Clark, Katherine Del Re, Catherine Hackett, Deborah Hegstrom, Christine Kai, Leona Kendall, Steven Little, Laura Lucero, Christina Luckey, Andrew Osborn, Tanya Samarin, Kristin Sherman, Rowyna Shiohama, and Andrienne Wood, that their services will be terminated at the close of the 2010-2011 school year.

Dated: April 13, 2011

DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings