

BEFORE THE
GOVERNING BOARD OF THE
SANTA BARBARA SCHOOL DISTRICTS
STATE OF CALIFORNIA

In The Matter of the Accusations against:

OAH No. L2005030494

Dee Carter Brown, Aran Burke, Lynn
Davis, Lauren Thal, Nancy Tobin and
Marilyn Lauer,

Respondents.

PROPOSED DECISION

David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 25, 2005, in Santa Barbara, California.

The Santa Barbara School Districts were represented by Liebert Cassidy Whitmore, by Mary Dowell, attorney at law. Respondents Dee Carter Brown, Aran Burke, Lynn Davis, Lauren Thal, Nancy Tobin and Marilyn Lauer were present and were represented by Hathaway, Perrett, Webster, Powers, Chrisman & Gutierrez, by Paul D. Powers and Alexis Ridenour, attorneys at law.

The request for hearing of Marilyn Lauer was withdrawn, and the Districts dismissed the Accusation against her. Oral and documentary evidence was received, and the parties made oral argument. The matter was submitted on April 25, 2005.

SUMMARY OF PROPOSED DECISION

The Governing Board of the Santa Barbara School Districts determined, for budgetary reasons, to reduce or discontinue particular kinds of services provided by teachers and other certificated employees. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

Districts' staff carried out the Governing Board's decision by using a selection process involving review of credentials and seniority, "bumping," "skipping," and breaking ties between employees with the same first dates of paid service. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. The Santa Barbara School Districts (Districts) operate elementary and secondary schools for students in the Santa Barbara area. Unique to the state, there are two separate school districts with a common school board and administration.

2. J. Brian Sarvis has recently been appointed as the Superintendent of the Districts. Previously, he functioned as the secretary-clerk to the Board of Education of the Districts. Robin Sawaski became the Assistant Superintendent of the elementary school district as of March 7, 2005. Ann Peak became the Interim Coordinator for Certificated Personnel for the Districts as of January 1, 2005, and has worked in the Districts' personnel office for about 13 years. Their actions as set forth below were taken in their official capacities.

3. Before March 15, 2003, the Districts personally served on each Respondent and on other certificated employees a written notice that it had been recommended that notice be given to Respondents pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that the Board had passed Resolutions reducing the certificated staff by 8 full-time equivalent (FTE) positions for elementary librarians and 16 FTE positions for elementary school teachers.

Respondents submitted timely written requests for a hearing to determine if there is cause for not re-employing them for the ensuing school year.

4. The Superintendent made and filed Accusations against each of the employees who requested a hearing. The Accusations, with required accompanying documents and blank Notices of Defense, were timely served on those employees.

5. Notices of Defense were timely filed by some of the employees, who are the Respondents herein.

6. Respondents in this proceeding are probationary or permanent certificated employees of the Districts.

7. On March 8, 2005, at a meeting of the Districts' Board of Education of the Santa Barbara Elementary School District (Governing Board), the Governing Board was given notice of the Superintendent's recommendations that certificated employees holding 8 FTE positions for elementary librarians and 16 FTE positions for elementary school teachers¹ be given notice that their services would not be required for the next school year and stating the reasons for those recommendations.

¹ There was evidence that the number of school teacher positions was established to "include" the librarian positions, in case librarians receiving notice could "bump" teachers who were below them in seniority.

8. Specifically, Governing Board Resolutions Nos. 04/05-21 and 04/05-22, adopted on March 8, 2005, provided for the reduction or elimination of the following particular kinds of services: 16 FTE's Elementary Librarian and 8 FTE's Elementary School Teaching.

9. The Governing Board Resolutions were required by the Districts' fiscal crisis and need to reduce services to balance its budget for the welfare of students. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

10. The Districts maintain a seniority list which contains employees' seniority dates (first date of paid service), current assignments and locations, advanced degrees, credentials, and authorizations. Credential and authorization data are obtained from the Districts' records.

11. Ann Peak and other employees of the Districts were responsible for implementation of the technical aspects of the layoff.

12. The Districts used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. In determining who would be laid off for each kind of affected service, the Districts counted the number of reductions not covered by the known vacancies, and determined the affect on incumbent staff in inverse order of seniority. The Districts then determined whether the least senior employees held credentials in another area and were entitled to "bump" other, more senior, employees such that the less senior employees would be retained and the "bumped" employees would receive lay off notices.

13. Governing Board Resolution 02/03-31 was adopted during the 2002-2003 school year to establish competency and tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. The Districts used information from the seniority list to apply the tie-breaker criteria of Board Resolution 02-16.

14. Respondents contend, among other things, that the Districts: improperly based their decision to eliminate positions on speculation that there would be less money available from the state for the Districts' annual budget; should conduct the reductions later under Education Code section 44955.5² after the Districts are aware of the funding to be received from the state; improperly based its decision to eliminate positions on a decrease in average daily attendance rather than eliminating particular kinds of services; improperly eliminated positions in schools that receive "Title 1" funds which are subject to budgetary recommendations by school site councils; and may be reducing librarian services to the point that there may not be a certificated librarian for the elementary schools, as is required by law.

² All statutory references are to the Education Code.

15. Respondents' contentions are not persuasive, as set forth in these Factual Findings and/or Conclusions of Law and Discussion.

16. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction." The Districts must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Governing Board's decisions were a proper exercise of its discretion.

17. The Governing Board may consider the budgetary affect of a reduction in enrollment in determining whether to reduce particular kinds of services, as was done here. It is not necessary for the Governing Board to proceed with a lay off process under the procedures for a decrease in average daily attendance. Nor is it necessary for the Governing Board to implement reductions under section 44955.5 at a later time. Although these options may be available, the Governing Board is not required to take them.

18. Respondents did not establish that the existence of federal Title 1 funding for two school sites invalidates or affects the lay off process. If the local school site councils wish to recommend funding for librarian services to the Governing Board, they may do so.

19. Respondents did not establish that the Governing Board has a legal requirement to have at least one certificated librarian for the elementary school district. Further, the Districts established that the elementary school libraries would be staffed by classified employees in positions as library technicians, and that the Governing Board was in the process of developing a position of library trainer to train the technicians. It was unknown, as of the time of hearing, what the qualifications and other duties of the library trainer would be and whether it would be a certificated position.

20. The Districts' decisions to reduce librarian and teaching services were not arbitrary and were based upon reasonable considerations.

21. The Districts' employees receiving notices that their services would not be required next year have all rendered valuable services to the Districts.

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LEGAL CONCLUSIONS AND DISCUSSION

1. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met.

2. The services identified in Governing Board Resolutions Nos. 04/05-21 and 04/05-22 are particular kinds of services that could be reduced or discontinued under section 44955. The Governing Board's decisions to reduce or discontinue the identified services were neither arbitrary nor capricious, and were a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the Districts' schools and pupils within the meaning of section 44949.

3. The Districts may reduce services within the meaning of 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.

4. Cause exists to reduce the number of certificated employees of the Districts due to the reduction or discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the Districts' schools and pupils within the meaning of section 44949.

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

6. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent 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.3d 469. Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.

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ORDER

1. The Accusation against Marilyn Lauer is dismissed.
2. Notice may be given to employees of the Districts that their services will not be required for the 2005-2006 school year because of the reduction and discontinuance of particular kinds of services, including the following Respondents: Dee Carter Brown, Aran Burke, Lynn Davis, Lauren Thal and Nancy Tobin.
3. Notice shall be given in inverse order of seniority.

DATED: April 29, 2005.



DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings