

BEFORE THE GOVERNING BOARD
OF THE
EVERGREEN SCHOOL DISTRICT

In the Matter of the Non-Reemployment of:

CERTAIN CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2010030775

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in San Jose, California, on April 22 and 23, and May 4, 2010.

Ingrid A. Meyers, Dannis Woliver Kelley, represented Clif Black, Superintendent, Evergreen School District.

Christopher Schumb, Attorney at Law, represented the respondents, who are listed in Attachment A.

The matter was submitted on May 4, 2010.

FACTUAL FINDINGS

1. Clif Black, Superintendent, Evergreen School District (District), issued the accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. The District's past practice was to hire virtually all its teachers as "temporary" teachers and to list their status as such. Will Ector, Director of Human Resources, acknowledged at hearing that this practice was not in compliance with the requirements of the Education Code. Ector attempted to rectify this practice, but as late as fall 2009 the District did not have an accurate seniority list. In an attempt to create an accurate seniority list, the District in December 2009 gave each respondent written notice of his/her employment status, seniority date and credentials and asked each respondent to verify his/her credentials and hire date. The District continued to make corrections to its seniority list through the last day of hearing in this matter.

4. The parties stipulated that all of the jurisdictional requirements of Education Code sections 44949 and 44955 have been met in this proceeding.

5. On March 4, 2010, the Governing Board of the District (Board) adopted Resolution #11/09-10, setting forth criteria for establishing the order of termination among employees who have the same date of first rendering paid service (“tie-breaking criteria”).

The tie-breaking criteria assign points as follows:

A. Credentials and/or Degrees Held

Preliminary Credential	+1
Professional Clear Credential	+2
Masters or Doctorate (one award per degree)	+2
Additional Credentials or Supplementary authorizations	+2

B. Credentials to Provide Services in the Following Areas

ELL Certification (other than BCLAD)	+2
BCLAD	+3
Special Education	+3

C. Highly Qualified Teacher

NCLB Compliant in Current Assignment	+2
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D. Teaching Experience

1 – 5 Years	+1
6 – 10 Years	+2
11 or more Years	+3

E. Extra Duty Teaching Assignment

Current school year after school enrichment assignment or intervention program	+1
Current school year assignment includes a head coaching position	+1

6. On March 4, 2010, the Board adopted Resolution #11/09-10-a, in which it determined that it shall be necessary to reduce the following particular kinds of service no later than the beginning of the 2010 – 2011 school year:

PARTICULAR KINDS OF SERVICES	FTE¹ POSITIONS
Elementary Assistant Principals	1.5
Middle School Academic Counselors	1.8
English Language Specialists	4.0
Categorical Funded Support Teachers	2.1
Elementary Prep Teachers Grades 4-6	6.6
Class Size Reduction Instruction (K-3)	105.0
Middle School Teachers (Subject Areas including but not limited to: English, Social Science, Mathematics, Life Science, Physical Science, and Electives)	3.0
GATE Specialists	1.8
Resource Teachers	1.1
Total FTE	126.9

The Board further determined that the District may deviate from terminating (“skip”) certificated employees in order of seniority, based on a specific need for personnel who possess special training and/or experience, or competency, necessary to teach specific courses or courses of study or to provide specific services, which others with more seniority do not possess, as follows:

1. Resource Specialist
2. Special Day Class
3. Pre-K Special Day Class
4. Speech
5. Psychologist
6. Adaptive PE
7. Mathematics
8. Science
9. Music

The Board directed Superintendent Black or his designated representative to give notices to certificated employees that their services would not be needed for the 2010 – 2011 school year.

7. By April 21, 2010, the District had revised the particular kinds of services it sought to reduce to:

PARTICULAR KINDS OF SERVICES	FTE POSITIONS
Elementary Assistant Principals	1.5

¹ Full-Time Equivalent.

Middle School Counselors	1.8
English Language Specialists	4.0
Categorically Funded Support Teachers	0.5
Class Size Reduction Instruction (K-3)	54.0
GATE Specialists	1.8
Resource Teachers	1.0
Total FTE	64.6

The services set forth above are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44945. None of the reductions is for a mandated service.

8. At the April 23, 2010, hearing, the District rescinded the accusations of the following respondents:

James Grassi
 Andrea Alvarez
 Theresa Nunez
 Ryan Hansen
 Marena Doxie
 Chong Vue
 Jackie Honma
 Natalia Hawthorne
 Shawn Green
 Alan Marshall
 Susan Diaz
 Leane Hopper
 George Gemelos
 Scott Stevens
 Julie Nomura
 Florence Lee
 Pamela Price
 George LaPena
 Priya Menon
 Merriam Perez
 Katharine Jenkins
 Suzanne Zamora

9. By May 4, 2010, the District had created an updated seniority list that included employees proposed to be laid off and retained. (Exhibit 12.) The list took into account the tie-breaking criteria, skipping of employees providing certain services (such as math, science, and special education), “bumping” of certain employees into positions for which they are credentialed and competent, positively-assured attrition, and non-reelections of

temporary employees. The list also corrected errors in the seniority dates and status of various employees.

At the May 4, 2010, hearing, the District acknowledged that the following employees were mistakenly listed as having probationary status on the updated seniority list and should have been listed as having permanent status:

Suzy Woodley
Allison Espejo
Jackie Honma
Leanne Hopper
Scott Stevens
Chong Vue
Suzanne Zamora
Ruth Hambley
Tam Huynh
Holly Taylor
Ashley Hubert
Judy DeRama
Lindsey Elrite
Kristen Green

The District is committed to meeting and conferring with its employees to ensure that its employees are credited with the correct credentials, status, and seniority date. The District is further committed to meeting and conferring with its employees regarding the application of tie-breaking criteria for employees with the same seniority date.

10. At the May 4, 2010, hearing, the District rescinded the accusations of the following respondents:

Alison Espejo
Virginia George
Debbie Oliva
Brittany Syu
Allicyn Brengard
Kristin Reyes
Mamata Shende
Liza Arreola
Jacqueline Orozco
Ranjani Rallapalli
Loann Bell
Rachael Fickes
Katherine Clemmensen
Kathleen Ray
Phil Noteware

Kira Gardin
Kevin Olson
Nicole Alcala
Irene Blancaflor

11. By the close of hearing, the District again reduced the number of respondents to be terminated. The District sought the authority to layoff respondents comprising 44 FTE positions. No permanent or probationary certificated employee with less seniority than a respondent is being retained to provide a service for which a respondent is credentialed and competent to render.

12. The reduction or discontinuation of services is related to the welfare of the district and of its pupils.

LEGAL CONCLUSIONS

1. Cause exists to dismiss the accusations against the respondents identified in Factual Findings 8 and 10.

2. Because of the reduction of particular kinds of services set forth in Factual Findings 6 and 7, as revised by District's request at hearing for authority to terminate respondents comprising 44 FTE positions (Factual Finding 11), cause exists pursuant to Education Code section 44955 to give notice to the remaining respondents comprising 44 FTE positions that their services will not be required for the 2010 – 2011 school year. This cause solely relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

1. The accusations against the respondents identified in Factual Findings 8 and 10 are dismissed.

2. Notice may be given to the remaining respondents, comprising up to 44 FTE positions, that their services will not be required for the 2010 – 2011 school year.

DATED:

STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings