

BEFORE THE
GOVERNING BOARD OF THE
CUPERTINO UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

VARIOUS CERTIFICATED TEACHERS
OF THE CUPERTINO UNION SCHOOL
DISTRICT,

Respondents.

OAH No. 2010030669

PROPOSED DECISION

Ruth S. Astle, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 7, 2010, in Cupertino, California.

Jonathan A. Pearl, Attorney at Law, represented the Cupertino Union School District.

Christopher Schumb, Attorney at Law, represented respondents.

Submission of the matter was deferred to April 12, 2010, for receipt of final argument, which was received and considered. The matter was submitted on April 12, 2010.

SUMMARY

The Superintendent of Cupertino Union School District determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency or dedication of the individuals whose services are proposed to be reduced or eliminated.

A list of employees who were served with an accusation packet is attached.

FACTUAL FINDINGS

1. Phil Quon made the accusation in his official capacity as the Superintendent of the Cupertino Union School District (District).

2. At the hearing the District rescinded March 15 Notices for Chris Taheri, Judy Peng, Sarah Winn, Todd Morgan, Jennifer Lu, and Rohini Tambe, because these employees can be skipped. The District rescinded March 15 notices for Matthew Wycoff, Nicole Scott, Morgan McGill and Brandon Kwas because the District will not eliminate Middle School Physical Education. The District rescinded the March 15 Notice for the most senior counselor, Chieh-Chi Lee, due to a counselor vacancy for the 2010/2011 school year.

3. On February 23, 2010, the District adopted Resolution No. 09-10-12 directing notices be given to certificated employees that their services will not be required for the 2010/2011 school year. A copy of the resolution is attached.

4. On March 15, 2010, pursuant to Education Code sections 44949 and 44955 the Superintendent gave written notice to the respondents, of his recommendation that notice be given to them that their services would not be required for the ensuing school year. The written notice set forth the reasons for the recommendation.

5. All respondents filed timely requests for a hearing. The Superintendent or his designee filed and served the Accusation against respondents, who requested a hearing. The Accusation with required accompanying documents and a blank Notice of Defense were timely served on respondents. All respondents who were served with an Accusation and appeared at the hearing either personally or through their attorney participated in the hearing.

6. All prehearing jurisdictional requirements have been met.

7. Subsequent to adoption of the Board's Resolution, the District identified vacancies in school year 2010-2011 due to retirements, release of temporary teachers, and resignations. In consideration of such attrition the District will rescind a corresponding number of notices.

8. On February 23, 2010, the Governing Board of the District adopted Resolution No. 09-10-13, as the criteria for establishing the order of termination among respondents who have the same first date of paid service for the District. This resolution complies with the requirements of Education Code section 44955, subdivision (b).

9. The tie-breaking criteria referred to in Finding 8, were applied to the employees who first rendered paid service to the District on the same date. The order of termination has been based solely on the needs of the District and the students therein. The respondents have criticized the criteria as actually breaking very few ties. The fact that not all the ties were broken does not invalidate the criteria. The District applied the criteria in good faith. The tie breaking criteria may need to be reapplied after the District accounts for the three teachers that were incorrectly classified as temporary as set forth in Finding 11, subdivisions a, b, and c.

10. The District hires temporary teachers. In general, the District has fewer temporary employees than it has employees on leave. Some of the employees are on leave

because they are assigned to categorically funded positions. It is acceptable for the District to hire temporary teachers to replace those employees who are on leave from their regular positions because they are assigned to categorically funded positions.

11. A temporary employee is specifically defined in Education Code section 44920 as a certificated teacher who is employed for up to one school year to replace a certificated employee on leave. If that temporary employee is reemployed for the following school year to fill a vacant position, that teacher is no longer temporary.

a. Jacqueline Ince was hired January 3, 2005, as a temporary employee to replace a teacher who resigned January 2, 2005. She was rehired the next year in the same position. She does not meet the definition of a temporary teacher. The District must reclassify her and give her a seniority date that reflects her first date of paid service with the District.

b. Kimberly Stinson was hired on November 20, 2006, to replace a certificated employee who resigned on November 9, 2006. She was also rehired for the following year in a vacant certificated position. She does not meet the definition of a temporary teacher. The District must reclassify her and give her a seniority date that reflects her first date of paid service with the District.

c. Ashley D'Haenens was hired on January 5, 2009, to replace a teacher who resigned December 20, 2008. She was rehired for the following school year in a vacant position. She does not meet the definition of a temporary teacher. The District must reclassify her and give her a seniority date that reflects her first date of paid service with the District.

d. Lizabeth Nastari was hired part-time to fill a position for a certificated employee on leave for part of her position. She was rehired under the same circumstances. She meets the definition of temporary teacher.

e. Cheryl Zepp was hired as a temporary teacher in August of 2003. She shared a position with a teacher who was on leave for part of that teacher's position until June of 2007. She was then hired as a temporary teacher to share a position with another teacher who was on leave for part of her position. She applied for a vacant position in July 2008. It is claimed that she should have been given preference in filling the vacant position. There is nothing to suggest that the District is required to fill a vacant position with a temporary teacher. Ms. Zepp did not establish that she should not be classified as a temporary teacher.

12. Sarah Schwinge, Patrick Casey and Jamie Butcher claim that their first date of paid service should be changed to August 14, 2007, since they were expected to attend a "step-up to writing" class prior to the start of the semester. They were paid a stipend to attend. Attending this class does not constitute the first date of paid service for the District. Each will retain the August 20, 2007 date as the first date of paid service for the District.

13. It was stipulated by the parties that Debra Henry's first date of paid service for the District was August 18, 2008.

14. All other teachers not specifically noted here were correctly categorized as temporary or have the proper seniority date.

15. The District proposed to skip teachers with a BCLAD certificate in Hebrew, Japanese, Mandarin¹, or Spanish, based on a specific need for "special training, experience or competency or combination thereof, necessary to teach specific courses or courses of study or provide specific services, which others with more seniority do not possess." This is an incorrect statement of the law. Education Code section 44955, subdivision (d)(1), states in pertinent part: "... demonstrates a specific need for personnel to teach a specific course or course of study, ... and that the certificated employee has special training and experience necessary to teach that course of course of study ...". The part of that code section that goes on to state "or to provide those services" refers to pupil personnel services or health for a school nurse. The District has stated that a BCLAD is not required to teach in the assignment² in which the two skipped teachers³ teach. While it might be desirable, it is not a proper criterion to use to skip a junior employee. The District must retain two senior multiple subject credentialed employees to compensate for the two skipped teachers.

16. Other than set forth in the Findings above, no certificated employee junior to respondents will be retained to perform the services that a more senior employee is certificated and competent to render.

17. The reduction or discontinuance of services is related to the welfare of the District and its pupils.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. Cause exists to reduce the number of certificated employees at the Cupertino Union School District due to the reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

¹ All the certificated employees who have BCLAD and teach in the Mandarin Immersion Program can be skipped because they teach a course or course of study for which a BCLAD is required.

² The two skipped teachers have multiple subject credentials and teach in a regular classroom.

³ Elaine Shtein and Leah Quenelle were skipped because they have BCLAD certificates. They were not given notice.

3. Except as noted in Finding 15, no junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

ORDER

1. Notice may be given to employees occupying up to 135.3 full-time equivalent certificated positions in accordance with the Legal Conclusions above, that their services will not be required for the 2010-2011 school year because of the reduction and discontinuance of particular kinds of services.

2. Notice shall be given in inverse order of seniority.

Dated: _____

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings