

**BEFORE THE
BOARD OF EDUCATION
CYPRESS SCHOOL DISTRICT**

In the Matter of the Accusations Against:

OAH No. 2010020072

WENDY DESSERO, COLLEEN
FERREIRA, JAMIE FOURNIER, ANNA
PARK, MELINDA PFAFFLIN, OLIVIA
SMITH, LISA STALLER PRENOVOST,
ANN STEINBRINK, EUNICE TASSER

Respondents.

PROPOSED DECISION

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 12, 2010, at the district office of the Cypress School District, Cypress, California.

David C. Larsen, Attorney at Law, represented the Cypress School District.

Steven T. Nutter, Attorney at Law, represented the Respondents Wendy Dessero, Colleen Ferreira, Jamie Fournier, Anna Park, Melinda Pfafflin, Olivia Smith, Ann Steinbrink, and Eunice Tasser.

Prior to the hearing, Respondent Lisa Staller Prenovost withdrew her Request for Hearing.

Evidence was received and the matter was submitted for decision.

SUMMARY

The Board of Education (Board) of the Cypress School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2010-2011 school year for budgetary reasons. The decision was not related to the capabilities and dedication of the teachers whose services were proposed to be reduced or eliminated. District staff carried out the Board's decision by using a selection process involving review of seniority, credentials, and criteria for breaking ties between employees with the same first dates of paid service. The selection process complied with Education Code requirements.

FACTUAL FINDINGS

1. Linda Snell, Assistant Superintendent of the District, filed the Accusations in her official capacity.

2. Respondents are certificated employees of the District.

3. On March 11, 2010, the Board adopted Resolution No. 090-11 whereby the Board resolved to discontinue or reduce the particular kinds of services. The Board further determined that based on the discontinuance or reduction of services, it would be necessary to decrease the number of certificated employees at the close of the present school year by a corresponding number of full-time equivalent (FTE) positions as follows:

Principal (K-6)	2.0 FTE
Multiple Subject Self-Contained Instruction	36.0 FTE
Resource Specialist Program	1.0 FTE
Special Day Class (SDC), Early Childhood	1.0 FTE
Speech Therapist	1.0 FTE
Site Program Coordinator	1.5 FTE
Teacher on Special Assignment (Special Education/Title II)	0.4 FTE
Title I Teacher	1.1 FTE

TOTAL CERTIFICATED POSITIONS	44.0 FTE
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4. Pursuant to Resolution 090-11, the Board directed the Superintendent to notify the employees affected by the Board's resolution and give notice to said employees that their services would not be required for the ensuing school year and state the reasons therefore.

5. Resolution No. 090-11, set forth a selection process involving review of credentials and other criteria for breaking ties between employees with the same first dates of paid service. Respondent Colleen Ferreira, Jamie Fournier, Anna Park, Olivia Smith, and Ann Steinbrink asserted that the tie breaking criteria established by the Governing Board was not fair for various reasons stated at the hearing. However, these Respondents did not establish that the Governing Board was arbitrary or capricious in establishing or applying the tie-breaking criteria. The process complied with Education Code requirements.

6. On or about March 12, 2010, Ms. Snell notified Respondents, in writing, that it had been recommended their services would not be required for the next school year. The mailing included the reasons for the notification, a copy of the Accusation and other jurisdictional documents as required by the Education Code.

7. On or prior to March 15, 2010, the Superintendent recommended that the Board give notice that certain services performed by certificated employees, including Respondents, be reduced or eliminated, and that the services of Respondents would not be required for the ensuing school year.

8. The Assistant Superintendent made and filed Accusations against each Respondent on March 22, 2010.

9. Notices of Defense and Requests for Hearing were timely filed by all of the employees who appeared for the hearing. All jurisdictional requirements were met.

10. The Board considered attrition, including resignations, retirements and requests for leave, in determining the necessary layoff notices to be delivered to employees.

11. The District maintains a Seniority List which contains employees' seniority dates, current assignments and locations, advanced degrees, credentials, and authorizations. The District then identified the most junior employees working in a particular kind of service being reduced or discontinued and determined which employees would receive layoff notices.

12. Respondent Eunice Tasser took a leave of absence from her teaching position in the 2006-07 school year to spend a year in Italy. On March 11, 2007, Respondent Tasser informed Assistant Superintendent Snell via email that she would not be returning for the 2007-08 school year and requested another leave of absence. She also stated that "If they [the District] only permit one year, then do I need to mail in my formal resignation or can I just email it?" On March 12, 2007, Ms. Snell informed Respondent Tassel via email that the District would not grant another leave of absence for the 2007-08 school year. She also directed Respondent Tasser to mail an official letter of resignation. Ms. Snell further stated in the email: "When you do return to the area, you will need to reapply, but if hired back within 39 months of your resignation, you retain your permanent status and placement on the salary schedule." After receipt of this email, Respondent Tasser submitted a letter of resignation.

13. The District determined that Respondent Pfafflin's seniority date is September 2, 2005. Respondent Pfafflin disputes her assigned seniority date because she attended staff development training on August 31, and September 1, 2005. Respondent Pfafflin's contention is not persuasive because she was not paid for the days she attended the training. Further, pending receipt of Respondent Pfafflin's California teaching credential, the District filed an "Application for Issuance of a Temporary County Certificate" with the Orange

County Department of Education on September 6, 2005. This document, which was signed by Respondent Pfafflin, states that the “beginning date of employment under this certificate will be 9/2/05.” This supports Ms. Snell’s testimony that Respondent Pfafflin’s first date of paid service is September 2, 2005.

14. The reduction or discontinuation of the particular kinds of services set forth in Factual Finding 3, related to the welfare of the District and its pupils.

15. Respondents are not certificated and competent to render a service being performed by any employee with less seniority who is being retained.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents.

2. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services. The Board’s decisions to reduce or eliminate the identified services were neither arbitrary nor capricious. The decisions relate solely to the welfare of the District’s schools and the pupils within the meaning of Education Code section 44949.

3. Respondent Tasser contends that her original seniority date should be restored because at the time she made her decision to resign, she was not aware that she would lose her seniority date. Respondent Tasser further contends that based on Assistant Superintendent Snell’s March 12, 2006 email, Respondent Tasser believed that her decision to resign would not affect her seniority date if she were to return to the District within 39 months after resigning.

The doctrine of equitable estoppel is available in certain circumstances to those who detrimentally rely on representations made by another. In order for equitable estoppel to apply, the following requirements must be met: “(1) the party to be estopped must be apprised of the facts; (2) she must intend that her conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true facts; and (4) she must rely upon the conduct to her injury.” (*Lentz v. McMahon* (1989) 49 Cal.3d 393, 399, quoting *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.)

Equitable estoppel does not apply in this case. Respondent Tassel had already made up her mind not to return to the District and indicated in her March 11, 2006 email that she would resign if the District would not grant her a second leave of absence. Ms. Snell did not make any statements concerning the effect of a resignation on Respondent Tasser’s employment status until the following day. Further, Ms. Snell’s statements did not contain any representations regarding Respondent Tasser’s seniority date. Therefore, Respondent Tassel did not establish that she based her decision to resign on any statement made by Ms. Snell.

4. The District properly determined the seniority date for Respondent Pfafflin. Education Code section 44845 states: "Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position." Respondent Pfafflin's first date of paid service was September 2, 2005. Respondent Pfafflin was not paid for the training she received before the school year began, so she cannot use the earlier training as a basis for a seniority date. Further, the "Application for Issuance of a Temporary County Certificate," which was signed by Ms. Pfafflin, states that her first day of employment was September 2, 2005.

5. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

ORDER

Notice may be given to Respondents that their services will not be required for the 2010-2011 school year.

Dated: April 15, 2010

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings