

BEFORE THE GOVERNING BOARD OF THE
SAN LORENZO UNIFIED SCHOOL DISTRICT
COUNTY OF ALAMEDA, CALIFORNIA

In the Matter of the Non-Reemployment of:

CERTAIN CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2010020865

PROPOSED DECISION

This matter was heard before Diane Schneider, Administrative Law Judge, State of California, Office of Administrative Hearings, in San Lorenzo, California, on April 22, 2010.

Elizabeth B. Mori, Attorney at Law, Fagan, Friedman & Fulfrost LLP, represented the San Lorenzo Unified School District.

Margo Feinberg, Attorney at Law, Schwartz, Steinsapir, Dohrmann & Sommers LLP, represented the respondents listed in Attachment D.

There was no appearance by or on behalf of respondents Maria Bolanos, Venetta Cormier-Walker, Fredy Del Aguila, Julie Edwards, Celeste Fendell, Janeen Jones, Elin Peinado, Jessica Pressley-Alexander, Pheobe Smith and Andrew Vavuris.

FACTUAL FINDINGS

1. Dennis Byas, Ph.D., made and filed the Accusations in his official capacity as Superintendent of the San Lorenzo Unified School District (district).

2. The respondents in this matter are identified in Attachment A. They are certificated employees of the district.

3. On March 2, 2010, the district's Governing Board adopted Resolution No. 3206, which sets forth the board's determination that it will be necessary for the district to reduce or discontinue particular kinds of services in grades K-12 for the 2010-2011 school year, for a total of 109.33 full-time equivalent (FTE) certificated positions. The particular kinds of services to be reduced or discontinued pursuant to Resolution No. 3206 are listed in Attachment B.

4. On March 2, 2010, the district's Governing Board adopted Resolution No. 3209, which sets forth the board's determination that it will be necessary for the district to

discontinue particular kinds of services in adult education for the 2010-2011 school year, for a total of 18.04 FTE certificated positions. The particular kinds of services to be reduced or discontinued pursuant to Resolution No. 3209 are listed in Attachment C.

5. The services set forth in Attachments B and C are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44945. In spite of the reduction or discontinuation of particular kinds of services, the district will continue to provide mandated services to its pupils.

6. All notices and other jurisdictional requirements contained in Education Code sections 44949 and 44955 have been met in this proceeding.

7. Prior to the hearing, the district rescinded the layoff notice issued to Sarah McCarthy. At the hearing, the district rescinded the layoff notices issued to the following respondents: Joanne Abramson, Kristine Bernard, Carmella Bongiorno, Harold Butler, and Janet Llana.¹

8. The district will rescind an additional layoff notice by April 30, 2010, pending application of its “tie breaking” criteria to 17 teachers who possess the same seniority date of August 22, 2005.

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

10. No junior employee is being retained to render a service that any of the respondents are certificated and competent to perform.

11. Any contentions raised by respondents and not discussed above are found to be without merit and are hereby rejected.

LEGAL CONCLUSIONS

1. The services identified in Attachments B and C are particular kinds of services that may be reduced or discontinued under Education Code section 44955. The board’s decision to reduce or discontinue the identified services complied with the guidelines set forth in Education Code section 44955. The board’s decision was neither arbitrary nor capricious, and was a proper exercise of its discretion.

2. With the exception of the most senior respondent in the group who possesses the seniority date of August 22, 2005, and whose layoff notice has been rescinded, cause

¹ The district also rescinded layoff notices issued to the following certificated employees who did not request a hearing: Justin McJilton, Christopher Kerr, and Nicole McGann. The district will rescind an additional layoff notice by April 30, 2010, pending application of its “tie breaking” criteria to 17 teachers who possess the same seniority date of August 22, 2005.

exists because of the reduction or elimination of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents listed in Attachment A that their services will not be required for the 2010-2011 school year. The cause relates to the welfare of the schools and the pupils thereof within the meaning of section 44949.

ORDER

With the exception of the most senior respondent in the group who possesses the seniority date of August 22, 2005, and whose layoff notice has been rescinded, notice may be given to respondents listed in Attachment A that their services will not be required for the 2010-2011 school year because of the reduction or discontinuation of particular kinds of services.

Dated: _____

DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings

List of Attachments

Attachment A: List of Respondents

Attachment B: Board Resolution 3206

Attachment C: Board Resolution 3209

Attachment D: Respondents Represented by Margo Feinberg