

BEFORE THE
GOVERNING BOARD OF THE
MAXWELL UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter of the Accusations against:

LISA BECKER, SUZANNE BOGGS,
ELENA GOMES, ERIC LEAL, SARAH
RICHTER and VICTORIA WILSON,

Respondents.

OAH No. N2008030629

PROPOSED DECISION

Trevor Skarda, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 22, 2008, in Maxwell, California.

Diana D. Halpenny, Attorney at Law, of Kronick Moskowitz Tiedemann & Girard, represented the Maxwell Unified School District.

A Eugene Huguenin, Jr., Attorney at Law, of Huguenin Law Office, represented all of the respondents to the extent that their interests did not conflict.

The matter proceeded in respect to the Lay Off Notices issued to Lisa Becker, Suzanne Boggs, Elena Gomes, Eric Leal, Sarah Richter and Victoria Wilson, as these employees had filed Requests For Hearing, been issued Accusations, and had filed through their attorney Notices of Defense to the Accusation.

The matter was submitted and the record closed on April 22, 2008.

FACTUAL FINDINGS

1. The Maxwell Unified School District (District) operates three schools, Maxwell Elementary School, Maxwell High School and Enid Prine Continuation School. Maxwell High School is a "necessary small high school" with enrollment of just over 100 students.

2. Ron Turner is the Superintendent of the District. He has held that position for almost eight years. Mr. Turner is also the principal of the High School. His actions, and the actions of the Board, were taken in their official capacities.

3. Before March 15, 2008, the District properly served on each respondent 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 5.43 full-time equivalent (FTE) positions.

4. Respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

5. 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 served on those employees.

6. Respondents timely filed Notices of Defense.

7. Respondents in this proceeding are permanent or probationary certificated employees of the District.¹

8. On March 6, 2008, at a meeting of the District's Board of Trustees (Governing Board), the Governing Board of the District was given notice of the Superintendent's recommendations that certificated employees holding 5.43 FTE positions be given notice that their services would not be required for the next school year and stating the reasons for that recommendation.

9. On March 6, 2008, the Board adopted Resolution No. 07-08-005, providing for the reduction or elimination of the following particular kinds of services, and to decrease a corresponding number of certificated employees in the District, as follows:

- A. Reduce 2.0 FTE K-5 Classrooms
- B. Eliminate .33 FTE Music, Grades K-5
- C. Reduce .17 FTE Science (1 class), Grades 6-8
- D. Reduce .34 .0 FTE History (2 Classes) Grades 6-8.
- E. Reduce .17 FTE Math (1 Class), Grades 6-8.
- F. Reduce .34 FTE Language (2 Classes), Grades 6-8.
- G. Reduce .51 FTE Literature (3 Classes), Grades 6-8.
- H. Eliminate .17 FTE Band (1 Class), Grades 6-8.
- I. Eliminate 1.0 FTE English Language Development Class, Grades K-8.

¹ It was stipulated that Eric Leal is a probationary employee with an initial hire date of August 21, 1998. Mr. Leal was initially identified as a "temporary" employee.

J. Reduce .40 FTE Counseling Services, Grades 9-12.

10. On March 6, 2007, the Board also adopted Resolution No. 07-08-007, in which the Governing Board established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. The criteria include credentialing, experience (including experience in other districts or previous experience with Maxwell before the current date of hire), education, and performance.

11. On March 6, 2007, the Board also adopted Resolution No. 07-08-006, in which the Governing Board established competency criteria for determining whether certificated employees could displace more junior employees. The competency criteria require that, in order to displace a more junior employee, a certificated employee must have either previous experience teaching the same subject area at the same grade level, or academic training in the subject area.

12. The District is experiencing financial difficulties caused by a settlement with the teachers union, declining enrollment and the likelihood of reduced State funding in the upcoming year. Regarding enrollment, the District anticipates that multiple students who currently attend schools in the District on inter-district transfers will likely return to their districts-of-residence for the 2008-2009 school year. Thus, the Governing Board resolved to reduce teaching services and counseling services, affecting employment of 5.43 FTE teaching positions and a total of seven employees.² The Board's resolution to eliminate and reduce teaching services was made in order to balance its budget for the welfare of students.

13. Superintendent Turner and other District employees, in particular Fiscal Personnel Officer Danielle Wilson, were responsible for implementation of the technical aspects of the layoff.

14. The District maintains a Certificated Employee Hire List which contains employees' seniority dates (first date of service), status as tenured, probationary or temporary, credentials and other authorizations. Status, credential and authorization data are obtained from the District's records. The District circulated a seniority list in anticipation of issuing layoff notices. The District amended the credential and authorization information on the seniority list based on input received from the teachers after the list had been circulated.

15. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees and developed a "bumping chart." In determining who would be laid off for each kind of affected service, the District determined the impact on staff in inverse order of seniority. The District checked the credentials of

² One teacher who received a layoff notice, Leanna Glander, did not request a hearing. Because she did not request a hearing, the District is entitled to reduce Ms. Glander's counseling services .40 FTE.

affected individuals to determine whether they could "bump" other employees who were junior to them.

16. The District then looked at employee "competence" for certain positions as opposed to other positions. Specifically, the District looked at proposed class schedules for the upcoming year at District schools and determined if the affected employees were competent to teach any subject currently taught by a more junior employee. Because Maxwell High School is a "necessary small school," the District is permitted by law to allow any teacher, as long as he or she holds a credential, consents and meets the District's competency criteria, to teach any subject matter at the High School. Since all of the teachers affected by the layoff have teaching credentials, the District considered whether any of them were "competent" to teach any class at the High School.

MAY THE DISTRICT LAY OFF SENIOR TEACHER SUZANNE BOGGS, WHILE RETAINING LESS SENIOR TEACHERS WHO TEACH MATH AT MAXWELL HIGH SCHOOL?

17. Katie Mathis and Chongruk Lewis are probationary teachers currently assigned to teach math at Maxwell High School. The District did not serve either Ms. Mathis or Mr. Lewis with a layoff notices. Ms. Mathis holds a preliminary single subject credential in math and Mr. Lewis holds a professional clear single subject credential in math.

18. Respondents argued that the District should have utilized one of two alternative "bumping" chains whereby either Lewis or Mathis would have received layoff notices and, ultimately, Boggs would have been retained. Under either alternative "bumping" chain, a fourth teacher named Eric Lay, who has the same hire date as Ms. Boggs, would need to: (1) consent to teaching math at Maxwell High School, and (2) meet the competency criteria adopted by the Governing Board.

19. It was not established that Mr. Lay consented to teaching Math at Maxwell High School. The only evidence presented relating to Mr. Lay's consent was inadmissible hearsay testimony from the District's superintendent, and that evidence was far less than unequivocal. Superintendent Turner testified that last summer he approached Mr. Lay, and that Mr. Lay was not interested in teaching Math at the high school. This spring, in a brief conversation, Mr. Lay relayed to Mr. Turner that he would teach Math at the high school, essentially, only if he had to.

20. It was also not established that Mr. Lay is competent to teach math at the High School. As discussed above, the District's competency criteria require Mr. Lay to have a credential or experience teaching the subject of Math at the High School level. There was no evidence that Mr. Lay has a credential in the area of math. He has applied for one, but his application is pending. Mr. Lay has never taught math at the High School level.

21. The District need not use either alternative "bumping" chain proposed by the respondents. The District may retain Mathis and Lewis, the current High School Math teachers, and layoff Boggs.

MAY THE DISTRICT ELIMINATE THE PULL-OUT ENGLISH LANGUAGE LEARNER (ELL) CLASS?

22. Eric Leal teaches a pull-out model ELL class. He has a professional clear single-subject credential in Spanish, a Bilingual, Crosscultural, Language and Academic (BCLAD) certificate, a multi-subject credential, and a clear reading certificate. In addition to his pull-out ELL class, Mr. Leal has other duties, including, in relevant part, consultation with classroom teachers and administration of tests of English fluency to ELL students.

23. The District seeks to eliminate Mr. Leal's class. Superintendent Turner testified that the District will switch to a different model to teach ELL students next year and as a result, a pull-out model, whereby ELL students are brought to Mr. Leal's class, will not be necessary. The District will rely on teachers with Crosscultural, Language and Academic (CLAD) certificates to provide some of the services previously provided by Mr. Leal in their classrooms. Additionally, the District will likely utilize the services of the Spanish teacher at the High School, who also has a BCLAD, to absorb some of Mr. Leal's duties, including administering tests and consultation services. According to Mr. Turner, the District will provide the same level of services to its ELL students next year, but in a different manner. The District is not eliminating ELL services, which the District conceded are mandated services.

24. There was no evidence that the Governing Board's decision to eliminate the particular kinds of services of the pull-out ELL class was arbitrary or capricious.

25. There was no evidence that the Governing Board's decision to reduce the particular kinds of services of pull-out ELL class will cause it to reduce its offerings in code mandated courses below the level required by law.

OTHER MATTERS

26. Respondents' attorney argued that the proposed reduction of particular kinds of services, including 2.0 FTE of Grades K-5 classrooms and 1.5 FTE of Grades 6-8 classrooms (excluding the .17 FTE of Band for Grades 6-8), may cause the District to exceed the number of students allowable by law in each classroom. Respondents' contention not supported by any admissible evidence.

27. There was no evidence that the Governing Board's decision to eliminate the particular kinds of services listed in Factual Finding 9 was arbitrary or capricious or that its decision will cause it to reduce course offerings in code mandated courses below the level required by law.

LEGAL CONCLUSIONS AND DISCUSSION

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

2. 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 District 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.

3. The services identified in Resolution No. 07-08-005 are particular kinds of services that could be reduced or discontinued under section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

4. A District 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.)

5. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen*, supra, 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838; see, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

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

7. 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*, supra, 116 Cal.App.3d 831.)

8. Services reduced below the level mandated by law are not "particular kinds of services" under Education Code section 44955. So long as a school district does not reduce its offerings in a code mandated course below the level required by law, that reduction should be considered a reduction of a particular kind of service. (*Degener v. Governing Board*, supra, 67 Cal.App.3d 689.)

9. Education Code section 305 states that all children in California public schools shall be taught English by being taught in English, and that children who are English learners shall be educated "through sheltered English immersion during a temporary transition period not normally intended to exceed one year." Schools are permitted, but not required, to segregate ELL children from mainstream-English classrooms. In short, nothing in Education Code section 305 requires schools to utilize a pull-out model for educating ELL children.

10. It was not established that the District will reduce its course offerings below mandated levels by reducing 1.0 FTE English Language Development Class, Grades K-8.

ORDER

Notice shall be given to employees occupying 5.43 full-time equivalent certificated positions that their services will not be required for the 2008-2009 school year because of the reduction and discontinuance of particular kinds of services, including the following respondents: Lisa Becker, Suzanne Boggs, Elena Gomes, Eric Leal, Sarah Richter, and Victoria Wilson.

DATED: April 29, 2008



TREVOR SKARDA

Administrative Law Judge

Office of Administrative Hearings