

BEFORE THE
BOARD OF EDUCATION
MOUNT DIABLO UNIFIED SCHOOL DISTRICT

In the Matter of the Proposed Layoff of:

Certificated Employees,

Respondents.

OAH No. 2010030157

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on April 27, 2010, in Concord, California.

Deborah Cooksey, Associate General Counsel, and Joshua A. Stevens, of Fagen Friedman & Fulfroost LLP, represented the Mount Diablo Unified School District.

Ernest M. Tuttle III, of Tuttle & McCloskey, represented all respondents except for Jessica Hjort.

There was no appearance by or on behalf of respondent Jessica Hjort.

The matter was submitted for decision on April 27, 2010. On April 28, 2010, the record was reopened upon receipt from the district of an updated list of respondents. That list was marked as Exhibit 9 and admitted in evidence. (Mr. Tuttle stipulated to admission of the list.) On April 28, 2010, the record was closed and the matter deemed submitted for decision.

FACTUAL FINDINGS

1. Dr. Steven Lawrence made and filed the accusation in his official capacity as Superintendent of the Mount Diablo Unified School District.
2. Respondents are listed on Appendix A, attached hereto and by this reference incorporated herein. Each respondent is a certificated employee of the district.
3. On March 9, 2010, the Board of Education adopted Resolution No. 09/10-45, reducing or discontinuing particular kinds of services for the 2010-2011 school year and directing the Superintendent or his designee to give appropriate notices to certificated employees whose positions will be affected by the action.

4. On or before March 15, 2010, Superintendent Lawrence gave written notice to respondents and other certificated employees of the recommendation that their services will not be required for the 2010-2011 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

5. Respondents and other certificated employees filed timely requests for hearing to determine if there is cause for terminating their services for the 2009-2010 school year. An accusation was served on respondents and others, and all respondents are deemed to have filed timely notices of defense. All prehearing jurisdictional requirements have been met.

6. On March 9, 2010, in order to address a projected budget deficit, the board took action to reduce or discontinue the following particular kinds of services for the 2010-2011 school year:

District Wide	
Special Education Administrator, DIS	1.00 FTE ¹
Student Services Coordinators	3.00 FTE
DIS Teacher	1.00 FTE
Special Day Class Teacher	1.00 FTE
School Psychologists	2.00 FTE
Resource Specialists	24.50 FTE
Instrumental Music – 5 th grade	7.33 FTE
Vocal Music – Elementary	15.00 FTE
Library Media Teachers	23.00 FTE
Adult Education Teacher	10.00 FTE
Elementary Teaching Positions	
K-5 Classroom Teachers	34.00 FTE
Reading/Language Arts/Math Intervention Teacher	6.53 FTE
Middle School Teaching Positions	
Core	10.34 FTE
Science	1.85 FTE
Spanish	.68 FTE
AIMS	1.17 FTE
Mathematics	1.74 FTE
English	2.28 FTE
Reading	.37 FTE
PE	1.77 FTE
History	1.74 FTE
Academic Literacy	.56 FTE
Hands on Technology (HOT)	.14 FTE

¹ Full-time equivalent positions.

French	.14 FTE
Woodshop	.14 FTE
Academic Success	1.34 FTE
Chorus/Music	.37 FTE
Band	.37 FTE
High School Teaching Positions	
Commercial Art (ROP)	.20 FTE
Advanced Photography (ROP)	.80 FTE
Computerized Accounting and Computer Applications (ROP)	.60 FTE
Biotechnology (ROP)	1.00 FTE
Robotics (ROP)	.40 FTE
Advanced Automotive Technology (ROP)	.60 FTE
Commercial Baking (ROP)	.40 FTE
Restaurant Occupations (ROP)	.40 FTE
AP Environmental Science (ROP)	.20 FTE
Construction Technology (ROP)	.20 FTE
Computer Programming (ROP)	.20 FTE
Journalism Productions (ROP)	.40 FTE
Careers in Teaching and Careers in Teaching Internships (ROP)	.60 FTE
Photography and Art and Animation (ROP)	.40 FTE
Sports Medicine (ROP)	.80 FTE
Creative Writing (ROP)	.20 FTE
Radio Station Broadcasting (ROP)	.40 FTE
Computer Graphics and Web Page Design (ROP)	.40 FTE
Analytical Forensic Science (ROP)	.20 FTE
Sports Medicine and Advanced Sports Medicine (ROP)	.40 FTE
Developmental Psychology of Children (ROP)	.20 FTE
Intro to Law (ROP)	.40 FTE
Art of Video Productions and Computer Art and Animation (ROP)	.40 FTE
Mathematics	2.60 FTE
English	3.60 FTE
Spanish	2.80 FTE
History	2.80 FTE
Sociology	1.20 FTE
Earth Science	1.40 FTE
Chemistry	1.70 FTE
Biology	2.10 FTE
Physics	1.80 FTE
AIMS	.60 FTE

PE	1.40 FTE
Weights	.20 FTE
Work Experience (WEE)	.20 FTE
Foods	.20 FTE
Art	1.40 FTE
Photography	.40 FTE
German	.20 FTE
Zoology	.80 FTE
Ceramics	.80 FTE
Drama	.60 FTE
Auto Shop	.20 FTE
Psychology	1.60 FTE
Science	.80 FTE
Computers	1.20 FTE
Economics	1.80 FTE
Government	1.20 FTE
Athletic Director	.20 FTE
WASC	.20 FTE
Intervention Teacher	.20 FTE
Multiple Subjects (Horizons CIS)	3.00 FTE
Total:	199.36 FTE

7. Before issuing the preliminary layoff notices, the district took into account all positively assured attrition. Additional attrition which became known before the hearing enabled the district to rescind many of the notices. As of the time of the hearing, the district was planning to lay off 171 certificated employees in 152.30 full-time equivalent positions. The district must issue the final layoff notices before May 15, and when it does so the district will take into account any additional attrition that has occurred.

8. Pursuant to the board's resolution, the district intends to retain regardless of seniority (i.e., "skip" in the layoff process) certificated employees who possess a BCLAD² certificate and bilingual school psychologists. All employees with a BCLAD certificate will be assigned next year to positions requiring such certification.

9. Under Education Code section 44955, subdivision (b), "the services of no *permanent* employee may be terminated under the provisions of this section while any *probationary* employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render." (Italics added.) To comply with this provision in determining which employees will be laid off in a particular subject area, the district has given preference to permanent employees over probationary employees, even when a probationary employee has an earlier seniority date than a permanent employee. Except in this unusual circumstance, no certificated employee

² Bilingual, Cross-Cultural, Language and Academic Development.

junior in seniority to any respondent is being retained by the district to perform services that any respondent is certificated and competent to render.

LEGAL CONCLUSIONS

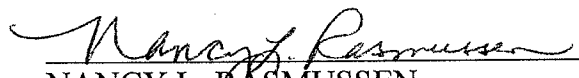
1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955.

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

ORDER

Notice may be given to respondents that their services will not be required for the 2010-2011 school year because of the reduction or elimination of particular kinds of services.

DATED: April 29, 2010


NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings

Appendix A – Respondents

Abdullah, Bashar	Diamond, Eric	Kennedy, Jane
Abella, Rachel	Didion, Deirdre	Klaas, Karin
Aguilera, Claudia	Diestler, Jenna	Koontz, Kathleen
Alcaide Tubio, Francisco	Dillon, Paula	Krause, Emily
Almond, Josh	Dolley, Corey	Kriel, Travis
Alumbaugh, Arlan	Doster, Dennis	Liebow, Cheri
Amodio, Kathleen	Edwards, John	Louie, Mamie
Anderson, Kimberly	Emigh, Christian	Lowande, Karen
Andrade, Jacqueline	Evans, Robin	Lowell, Justin
Andrews, Emily	Evans, Sandra	Luebke, Christopher
Archangelo, Karen	Ferris, Danielle	Luthra, Vandana
Ayon, Gina	Fierros, Carlota	Marek, Andrea
Ayres, Sherry	Filipinia, Maria Teresita	Mares, Michael
Azevedo, Katherine	Fisher, Adam	Martin, Juan
Ballard, Benjamin	Gamblin, Lori Ann	Martini, Nancy
Barabak, Marianne	Gamez, Sarah	McCollum, Bryan
Barambani, Stephanie	Garcia, Vanessa	McCurdy, Briannon
Batson, Jennifer	Gilford, Spencer	Medina, Amanda
Bautista, Jan	Graham, Emily	Mikuni, Ronald
Beerbaum, Jessica	Greenblatt, Laura	Miller, Robert
Benbrook, Ross	Grewe, Kimberly	Mills, Virginia
Berry, Meghan	Gundelfinger, Paul	Mimbs, Kristin
Blubaugh, Erin	Hatch, Suzanne	Minglana, Ernesto
Bond, Alyssa	Hatcher, Rose Mary	Montgomery, Ruth
Breashears, Barbara	Herald, Nicholas	Moore, Carolyn
Bromley, Josephine	Hernandez, Simone	Moore, Sherrie
Brooks, Ryann	Hile, Gregory	Moseley, Brendan
Brown, Gregory	Hjort, Jessica	Moseley, Jane
Brown, Stella	Hoelle, Allison	Moser, Michael
Bullard, Deborah	Hood, Denise	Moses, Jonathan
Calderon, Marie	Hood, James	Murphy, Megan
Campopiano, Benjamin	Husen Collins, Kathy	Nassrallah, Zoila
Carney, Bridget	Iglesias, Ninfa	Nesbeth, Keya
Chevial, Matthew	Jaquez, Magic	Nichols, Sandra
Coartney, Gary	Johnson, Janelle	Nnaji, Carolyn
Cook, Julie	Johnson, Ollie	Okimura, Shelley
Crandell, Kathryn	Kahrer, Martha	Opsahl, Cynthia
Crisp, Jennifer	Kamal, Raj	Patton, Emilie
DeAngelis, Jennifer	Kaput, Susan	Perona, Linette
Delaney, Jamie	Kaur, Ramanpreet	Phan, Khoa
DeMaggio, Sarah	Kellersberger, Nicole	Piotrasch, Michael
Dewes, Nicole	Kelly, Matt	Pratt, Erica

Prodoehl, Daniel
Ravin, Monica
Richards, Emily
Rogers, James
Roy, Bradley
Runge, Virginia
Sabatier Lacher, Celine
Sain, Timotny
Shaw, Bryan
Shumate, Ruth
Sierra, Jade
Sikorski, Janet
Sinquefield, Danielle
Smith, Susanne
Smythe, Amanda
Snyder, Linda
Solinger, Carol
Sparks, Thomas
Spink, Patricia
Stevens, Nancy
Stoyer, Nancy
Sugden, Carissa
Tafoya, Monique
Taylor, Tracy
Tessandori, Iris
Thomas, Marcus
Thompson, Eric
Torres, Barbara
Townsend, Danya
Trujillo, Erin
Tsuruda, Shannon
Valerio, Elizabeth
Villars, Nikolas
Walker, Achilles
Weaver, Lauren
Welch, Jacqueline
Wharton, Michael
Wieland, Elizabeth
Willner, Stephen
Wilson, Elijah
Winterich, Anne
With, M. Lynn
Wright, David
Xiromamos, Pamela