

**BEFORE THE BOARD OF EDUCATION OF THE
MT. DIABLO UNIFIED SCHOOL DISTRICT
COUNTY OF CONTRA COSTA
STATE OF CALIFORNIA**

**RESOLUTION APPROVING PROPOSED DECISION
OF ADMINISTRATIVE LAW JUDGE AND IMPLEMENTING
CERTIFICATED LAYOFF**

RESOLUTION NO. 09/10 - 60

WHEREAS, on March 9, 2010, this Board of Education of Mt. Diablo Unified School District adopted Resolution No. 09/10-45 to reduce and discontinue particular kinds of certificated services not later than the beginning of the 2010-2011 school year; and

WHEREAS, by letter dated March 12, 2010, the Superintendent and/or his designee served notice to this Board of Education that certain certificated employees listed therein receive notice that their services will not be required for the ensuing 2010-2011 school year, pursuant to Education Code sections 44949 and 44955; and

WHEREAS, by notice dated March 12, 2010, the Superintendent and/or his designee served notices to those certificated employees, including those listed in Attachment A of the Proposed Decision and others, that their services will not be required for the 2010-2011 school year, pursuant to Education Code sections 44949 and 44955; and

WHEREAS, each of those certificated employees was advised that he or she could request a hearing before the Board of Education to determine if there was cause for not reemploying them for the 2010-2011 school year and that failure to request a hearing within the time specified shall constitute a waiver of their right to a hearing and he or she shall accordingly be terminated in accordance with Resolution No. 09/10-45; and

WHEREAS, certain certificated employees did not request a hearing and, therefore, waived their right to a hearing; and

WHEREAS, certain certificated employees requested a hearing and layoff proceedings were held in accordance with sections 44955 and 44949 of the Education Code before an Administrative Law Judge who conducted an evidentiary hearing and submitted a Proposed Decision relating to those proceedings, which decision is attached hereto; and

WHEREAS, the District rescinded a number of layoff notices prior to the commencement of the layoff hearing which occurred on April 27, 2010; and

WHEREAS, pursuant to sections 44955 and 44949 of the Education Code, this Board has received and considered the findings set forth in the Proposed Decision issued on April 29, 2010 by the Honorable Nancy Rasmussen, Administrative Law Judge in the matter of the Teacher Layoff Hearing of Mt. Diablo School District, OAH No. 2010030157; and

WHEREAS, the Proposed Decision contains Judge Rasmussen's determination that sufficient cause exists for the elimination of the remaining 152.30 Full Time Equivalent certificated positions whose layoffs were not rescinded and recommends that notice be given to the employees holding those positions that their services will not be required for the 2010-2011 school year; and

WHEREAS, the particular kinds of services to be discontinued and reduced as referenced in Resolution No. 09/10-45 are each determined to be a particular kind of service within the meaning of Education Code section 44955; and

WHEREAS, with the exception of courses requiring Bilingual Cross-Cultural Language and Development (BCLAD) certificates, the services of no certificated employee are being terminated, in whole or in part, while any probationary or other employee with less seniority is retained to render a service which said certificated employee is certificated and competent to render; the individuals whose employment is being terminated, in whole or in part, are not certificated and competent (within the meaning of Education Code section 44955) to render a service being performed by any employee with less seniority who is being retained; and

WHEREAS, sufficient cause exists for the termination of up to 152.30 Full Time Equivalent certificated positions, and pursuant to and within the meaning of Education Code section 44949, said cause relates to the welfare of the schools and the pupils thereof; and

WHEREAS, rights to reemployment are at times provided to certificated employees whose services were terminated as a result of layoff, however, this current Resolution does not supercede any prior resolution by this Board nor reinstates any right to further employment or reemployment, so that any employee previously notified of non-reelection or non-renewal for the following school year possesses no right to reemployment as a result of adoption of this current Resolution.

WHEREAS, Section 44949 of the Education Code requires the Governing Board to make the final determination as to the sufficiency of the cause and disposition; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Education hereby accepts the Proposed Decision of the Administrative Law Judge and adopts that Proposed Decision as the decision of this Board of Education.

BE IT FURTHER RESOLVED that as a result of the adoption or modification of the Proposed Decision, a maximum of 152.30 Full Time Equivalent positions shall be eliminated.

BE IT FURTHER RESOLVED that the employment of each of the certificated employees listed in Attachment A of the Proposed Decision as well as those who waived their right to hearing is hereby terminated effective June 30, 2010.

BE IT FURTHER RESOLVED that this decision is effective immediately and that the Superintendent or his designee(s) is directed and authorized to give appropriate notice, on or before May 14, 2010 in the manner prescribed in Education Code section 44949, to those employees whose positions will be lost by virtue of this action that their services are terminated, and to take such other actions as are necessary and appropriate to implement this Resolution.

BE IT FURTHER RESOLVED that reemployment rights be afforded in accordance with the Education Code, if and when reemployment is offered and to the extent any reemployment rights are applicable to any of the above-referenced employees, unless this Board has previously determined to not reelect that employee.

BE IT FURTHER RESOLVED that the adoption of the Proposed Decision shall not be considered procedural in the nature or the promulgation of Board of Education policy. Moreover, any and all principles set forth in the decision shall be strictly limited to the current layoffs and to the individuals in the named decision and shall not be interpreted to apply globally to all District employees outside of the current layoff context.

PASSED AND ADOPTED by the following vote of the Board of Education of the Mt. Diablo Unified School District of Contra Costa County, State of California, this 11th day of May 2010.

AYES: _____
NOES _____
ABSTENTIONS: _____
ABSENT: _____

BY: _____
Paul Strange
President of the Board of Education of the
Mt. Diablo Unified School District

Attested to:

Steven Lawrence, Ph.D.
Secretary of the Board of Education of
Mt. Diablo Unified School District

Attachment: Proposed (Adopted) Decision of the Administrative Law Judge

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

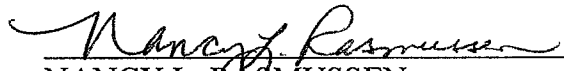
1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955.

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

