

OAKLAND UNIFIED SCHOOL DISTRICT
Human Resources Services and Support

May 8, 2013

Legislative File

File ID No.: _____ 13-0891 _____
Introduction Date: 05/08/13 _____
Enactment No.: 13-0719 _____
Enactment Date: 5/8/13 _____
By: _____

TO: Board of Education

FROM: Anthony Smith, Ph.D. Superintendent
Brigitte Marshall, Associate Superintendent, Human Resources Services & Support

SUBJECT: Resolution – 1213-0159 - Adopting Proposed Decision of ALJ and Authorizing Final Layoff Notices Relating To Adult Education Certificated Positions

ACTION

Approval by the Board of Education of Resolution 1213-0159, Adopting Proposed Decision of ALJ and Authorizing Final Layoff Notices Relating To Adult Education Certificated Positions

BACKGROUND

Education Code requires that in order to reduce or eliminate certificated positions for the following school year, affected employees must be given a preliminary layoff notice prior to March 15. Employees are entitled to request a hearing before an administrative law judge to determine if the recommended layoff is based on good cause in the welfare of students and schools. The Governing Board then makes a final decision about whether the positions should be reduced or eliminated. In the event that the Governing Board decides to reduce or eliminate the certificated positions, final notices to employees must be sent by May 15.

DISCUSSION

On February 27, 2013, the Governing Board authorized that preliminary layoff notices be sent to Adult Education certificated employees informing them of the recommendation of elimination of their position. The notices were sent to all Adult Education certificated employees on March 7th, and employees had the right to request a hearing to determine if the recommendation was based on good cause relating to the welfare of the District's students and schools. Some employees initially requested a hearing but subsequently entered into an agreement in which they withdrew their hearing requests, agreed not to contest the certificated layoff, and stipulated that their positions would be eliminated effective the last work day of the 2012-13 school year. Other employees did not request a hearing at all. Only one employee ultimately requested a hearing, but she did not appear at the hearing.

An administrative hearing was held on May 1, 2013 before the Honorable Diane Schneider, administrative Law Judge. Judge Schneider issued an advisory proposed opinion on May 2, 2013, which found that the layoffs were based on good cause relating to the general welfare of the District's students and upheld the layoffs in all respects.

The final determination as to whether to adopt, reject, or modify the administrative law judge's advisory decision lies with the Governing Board. In this case, staff believes that the advisory decision of the administrative law judge is well-reasoned and recommends adopting the decision of the administrative law judge and authorizing the sending of final notices by May 15, 2013 to certificated employees whose positions will be eliminated or reduced.

RECOMMENDATION

Approval by the Board of Education of Resolution 1213-0159, Adopting the Proposed Decision of the Administrative Law Judge and Authorizing Final Layoff Notices Relating To Adult Education Certificated Positions

ATTACHMENTS

Resolution Eliminating Particular Kinds of Service
Certificated Layoff Agreement 2012-2013
Proposed Decision

Legislative File

File ID No.: 13-0891
Introduction Date: 05/08/13
Enactment No.: 13-0719
Enactment Date: 5/8/13
By: [Signature]

**RESOLUTION
OF THE
BOARD OF EDUCATION
OF THE
OAKLAND UNIFIED SCHOOL DISTRICT
Resolution No. 1213-0159**

Adopting Proposed Decision of ALJ and Authorizing Final Layoff Notices Relating To Adult Education
Certificated Positions -

WHEREAS, pursuant to Sections 44949 and 44955 of the California Education Code, the District sent preliminary layoff notices to Adult Education certification employees based on Resolution 1213-0094 which set forth good cause for the elimination of positions based on the welfare of students of schools;

WHEREAS, with the exception of one employee, all employees who initially requested a hearing subsequently withdrew their request and entered into an agreement in which they withdrew their hearing requests, agreed not to contest the certificated layoff, and stipulated that their positions would be eliminated effective the last work day of the 2012-13 school year;

WHEREAS, although one employee requested a hearing, instead of appearing at the hearing she submitted a written statement which was considered by the administrative law judge but determined not to constitute a legal basis upon which to challenge the layoff;

WHEREAS, pursuant to Sections 44949 and 44955 of the California Education Code, the Governing Board of the Oakland Unified School District has considered the findings set forth in the proposed decision issued on or about May 2, 2013, by the Honorable Diane Schneider, Administrative Law Judge, in the Matter of Certificated Layoffs of Oakland Unified School District, OAH Case Number 2013040005;

WHEREAS, the proposed decision contains Judge Schneider’s determination that the District’s reduction in certificated employment positions is based on good cause relating to the general welfare of the District and its students. The proposed decision recommends that notice be given to the employees whose positions were eliminated that their services will not be required for the 2013-2014 school year; and

WHEREAS, Section 44949 and 44955 of the California Education Code requires the Governing Board to make the final determination as to whether there is sufficient cause to reduce the positions set forth in the table below, whether the reduction was implemented in accordance with the Governing Board’s resolutions; whether to send final layoff notices to affected employees, and whether to adopt, modify or reject the proposed ALJ decision; and

NOW, THEREFORE, BE IT RESOLVED that the Governing Board of the Oakland Unified School District hereby considers the findings set forth in Honorable Diane Schneider’s proposed decision which finds that sufficient cause, including the general welfare of the District’s students, exists for the elimination and/or reduction of the following positions; the Governing Board also finds that sufficient cause as set forth in Resolution 1213-0094, including financial need and the general welfare of the District’s students, exists for the elimination and/or reduction of the Adult Education positions enumerated in the table below and hereby eliminates such positions at the end of the 2013 school year. The cause for the elimination of positions, includes, without limitation, the following: (1) the District’s financial need for investments to implement Common Core State Standards, Transforming School Culture—Voluntary Resolution Plan and Improving the High School Graduation Rate; (2) the Governor’s proposed budget allocating a funding

stream for adult education to community college districts rather than K-12 districts and (3) the Governor's proposed budget permitting K-12 districts to continue to flex SB 70 Tier III funds (which includes Adult Education funds).

POSITION/ AREA OF SERVICE:	FTE
Adult Education Teachers	8.5
Adult Education Teachers on Special Assignment	6.2
TOTAL FTE REDUCTION	14.7

BE IT FURTHER RESOLVED that the Governing Board of the Oakland Unified School District, having considered the findings in the proposed decision, hereby adopts the proposed decision in all respects; and

BE IT FURTHER RESOLVED that the adoption of the proposed decision and the agreement entered into in connection with the layoff shall not constitute an admission or waiver of any legal arguments on the part of the District. Moreover, any and all principles set forth in the agreement shall be strictly limited to the layoff context and to the individuals named in the agreement and shall not be interpreted to apply globally to all District employees outside of the layoff context; and

BE IT FURTHER RESOLVED that the Superintendent or his designated representative is directed to send appropriate notices in accordance with the provisions of California Education Code Section 44949 and Section 44955 to those employees identified by the Superintendent or his designee whose positions will be lost or reduced by virtue of this action. This decision is effective immediately.

Passed by the following vote:


AYES: James Harris, Christopher Dobbins, Vice President Jumoke Hinton Hodge,
President David Kakishiba

NAYS: Jody London, Roseann Torres

ABSTAINED: None

ABSENT: None

I hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District held May 8, 2013.



Edgar Rakestraw, Jr.
Secretary, Board of Education
Oakland Unified School District

Legislative File	
File ID Number:	13-0326
Introduction Date:	2/27/13
Enactment Number:	13-0370
Enactment Date:	2-27-13
By:	<i>[Signature]</i>

**RESOLUTION
OF THE
BOARD OF EDUCATION
OF THE
OAKLAND UNIFIED SCHOOL DISTRICT
RESOLUTION NO. 1213-0094**

Reduction and/or Elimination of Particular Kinds of Service - Certificated Layoff

WHEREAS, Sections 44949 and 44955 of the California Education Code require action by the Governing Board if the services of certificated staff are to be reduced or eliminated in order to permit the layoff of certificated employees; and

WHEREAS, the Governing Board of the Oakland Unified School District has determined that it shall be necessary to decrease the programs and/or certificated positions set forth in the table below no later than the beginning of the 2013-2014 school year; and

WHEREAS, the Governor's proposed budget for 2013-2014 permits the District to flex the funding that it currently allocates to its Adult Education program to use for any purpose; and

WHEREAS, the District previously maintained a limited Adult Education program in part for the contingency that the State may later require the existence of such a program for specified funding; and

WHEREAS, the Governor's proposed budget identifies a dedicated funding stream to support Adult Education services, but it identifies the Community College system as the preferred service provider and recipient of such funds; and

WHEREAS, to further effectuate the District's strategic plan and Board funding priorities, funds need to be reallocated for implementation of the Common Core, developing infrastructure and capacity for the new Smarter Balanced Assessment system, eliminating disproportionality and supporting Voluntary Resolution Plan (VRP) implementation and improving the high school graduation rate; and

WHEREAS, in light of anticipated funding reductions by the Federal governments to the District, increased costs, and the need to align resources with the District's strategic plan and Board funding priorities, it shall be fiscally necessary to terminate at the end of the 2013 school year the employment of certain certificated employees of the District as a result of the elimination of the programs. If budget circumstances change, layoff notices can be rescinded prior to May 8th.

NOW, THEREFORE, BE IT RESOLVED that the following particular kinds of services shall be reduced or eliminated at the close of the 2013 school year:

POSITION/AREA OF SERVICE:	FTE
Adult Education Teachers	8.5
Adult Education Teachers on Special Assignment	6.2
TOTAL FTE REDUCTION	14.7

BE IT FURTHER RESOLVED that the Governing Board has considered positively accrued and anticipated attrition and that even with the accrued and anticipated attrition, it is necessary to terminate certificated employees equal in number to the positions identified in this resolution; and

BE IT FURTHER RESOLVED that, as between employees who have the same seniority date, the tie in seniority date and the resulting order of layoff shall be that, among the persons that are tied, the position of the person who is lowest on the salary schedule shall be eliminated first; if persons are tied with seniority date and salary schedule placement, then a lottery shall be applied. Numbers shall be drawn with the lowest number drawn winning the tie and continuing until all remaining tied individuals are ranked in order; and

BE IT FURTHER RESOLVED that the Superintendent or his designated representative is directed to send all appropriate notices in accordance with the provisions of Education Code §§ 44949 and 44955 to all employees whose positions will be eliminated by virtue of this action.

Passed by the following vote:


AYES: Jody London, Christopher Dobbins, James Harris,
Vice President Jumoke Hinton Hodge and President David Kakishiba


NAYS: Roseann Torres

ABSTAINED: None

ABSENT: Gary Yee

I hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District held February 27, 2013.


Edgar Rakestraw
Secretary, Board of Education
Oakland Unified School District

Legislative File	
File ID Number:	13-0326
Introduction Date:	2/27/13
Enactment Number:	13-0370
Enactment Date:	2-27-13
By:	

**OAKLAND UNIFIED SCHOOL DISTRICT
CERTIFICATED LAYOFF AGREEMENT
2012-2013**

This Agreement is entered into by and between the employees ("Employees") whose names appear in Exhibit A and who are represented by David Weintraub of Beeson, Tayer and Bodine and the Oakland Unified School District ("District"), collectively referred to as the "parties."

WHEREAS, Employees are each and all certificated employees of the District who are subject to lay off or a reduction in full time equivalent (FTE) position at the end of the 2012-2013 school year and,

WHEREAS, the District and Employees agree that cause exists pursuant to the applicable provisions of the Education Code, including, but not limited to, §§44949 and 44955, to lay off or reduce the FTE of Employees from their employment with the District, effective at the close of the 2012-2013 school year, and notified Employees accordingly; and,

WHEREAS, through their respective counsel, the District and Employees have agreed that the District need not proceed with the hearing specified in §§44955 and 44949 in order to accomplish the layoff or reduction in FTE of the Employees, and that in lieu thereof, this Agreement is being executed.

NOW THEREFORE AND IN CONSIDERATION OF THE ABOVE, IT IS AGREED AS FOLLOWS:

1. District Needs: The District represents that Employees' layoff or reduction in FTE is based solely on the needs of the District on the grounds set forth in Board Resolution 1213-0094, pursuant to Education Code §§44949 and 44955, and in no way relates to the ability or performance of an individual Employee.

2. Withdrawal of Hearing Requests: Employees counsel acknowledges that he has the authority to enter into agreement on their behalf with the District and shall not contest the District's pending certificated layoff proceeding. By entering into this Agreement each Employee through counsel specifically withdraws any and all related requests for hearing that he or she has submitted to the District, and that each declines to exercise his or her right to a hearing as provided by Education Code §§44949 and 44955.

3. Dismissal of OAH Proceeding: Upon execution of this Agreement by the parties, the District shall inform the Office of Administrative Hearings that the parties have reached an Agreement and that the hearing previously scheduled in OAH Case No. 2013040217 should be cancelled.

4. Reemployment List: By no later than June 3, 2013, the District shall prepare and disseminate a copy of a Reemployment List, which includes but is not limited to, the following information: the names of all Employees who will be laid off or reduced in FTE effective the end of the 2012-2013 school year, each Employee's classification as permanent or probationary, seniority date, and credential(s) held. The District shall adhere to the Reemployment List to offer reemployment to laid-off Employees in accordance with their rights under Education Code §§ 44956 and 44957 and paragraphs 5-10 of this Agreement, except as permitted by Education Code §§ 44956(a)(3)(A)-(B) and 44957(b)(1)-(2). Following the layoff, the District shall update the Reemployment List by adding verified information provided by Employees, such as the acquisition of additional credentials and, if necessary, reapply the previously established tie-breaking criteria. Employees shall keep the District advised of their current mailing address and their personal email address during said period of reemployment. The District shall email said Reemployment List and any updates to said List to David Weintraub (DWeintraub@beesontayer.com), counsel for Employees upon their publication.

5. Preferential Reemployment Right: The District shall use the email addresses referenced in #4 above to email all Employees on the Reemployment List notification of open, certificated non-management positions in the Adult School. An Employee with reemployment rights who believes s/he is certificated and competent to fill a position shall contact Human Resources Generalist Nely Gebhardt via email (currently nely.gebhardt@ousd.k12.ca.us) to request reemployment in such position within five (5) District Office work days from the date of email posting. As provided in sections 44956 and 44957 of the Education Code, those Employees on the Reemployment List who are competent and certificated for the posted position and who notify the District of their request for consideration as indicated above shall be given the preferred right to reemployment to such position in order of seniority. The District shall notify the Employee selected to fill the posted position of his/her selection within three (3) District Office work days of the close of the posting period. Once placed in an open position, the Employee shall receive no further email notification of open positions from the District. The District will maintain a record of its email blasts, responses and offers, and will furnish that to the Union or its attorney (or a teacher's attorney) upon request.

6. Acceptance of Temporary, Substitute, and/or Part-time Position: An Employee's acceptance of a temporary, substitute, and/or part-time position shall not cause the Employee to lose his or her place on the Reemployment List, and s/he must be offered, in order of seniority, a regular vacant position equal to or less than the full-time equivalent position from which the Employee was laid off, if one becomes available for which the Employee is credentialed and qualified.

7. Employee's Acceptance of Job in Another District: The parties recognize that after the layoff, an Employee may sign an employment contract with another public school district and subsequently be offered reemployment by the District in a position the Employee prefers. In such case,

the Employee may request the current employer to release him/her from that employment and to contact the District to confirm that the Employee was laid off from and has been offered reemployment by the District. The parties understand and acknowledge that the District has no legal authority to compel the other public school district to release the Employee from a signed contract.

8. No Break in Service: Should reemployment with the District occur, the period of the Employee's absence shall, consistent with Education Code §§44956 and 44957, be treated as a leave of absence and shall not be considered a break in the continuity of service. Employees shall retain the classification and seniority date that they had when their services were terminated, as provided in Education Code §§ 44956 and 44957.

9. Benefits: Pursuant to 24.17.4 of the Collective Bargaining Agreement between the Oakland Unified School District and the Oakland Educators Association/ CTA/NEA, the District will continue Employees' health and dental coverage through June 2013. Thereafter, the District will timely provide to all Employees a notice informing them of their rights regarding continued health insurance, as authorized by any applicable state or federal law.

10. Agreement Constitutes Final Notice: Effective the last work day of the 2012-2013 school year, Employees shall be laid off or reduced in FTE from their employment and their employment with the District shall cease, as set forth in Exhibit A, attached hereto and incorporated herewith. This Agreement constitutes the final notice required by Education Code §§44949 and 44955 that the services of the Employees will not be required or will be reduced for the ensuing school year, 2013-2014. No further notice of layoff, notice of non-reemployment, or other notice is required to complete the layoff of Employees.

12. Seniority Date Change: The Seniority Date for Maryellen Wolf in Adult Education shall be May 16, 1999

13. Counterparts and Copies: This Agreement may be executed in counterparts such that signatures appear on separate signature pages and shall be valid and binding as if all parties signed the same copy. A copy, facsimile, or original of this document with all signature pages appended together shall be deemed a fully executed and valid agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date on which it is signed below, by a party or party representative.

Dated: 5/9/13


OAKLAND UNIFIED SCHOOL DISTRICT



DAVID KAKISHIBA
PRESIDENT, BOARD OF EDUCATION

Dated: 5/9/13

OAKLAND UNIFIED SCHOOL DISTRICT




EDGAR RAKESTRAW
SECRETARY, BOARD OF EDUCATION
OAKLAND UNIFIED SCHOOL DISTRICT

Agreed as to form:

Dated: 4/24/13

OFFICE OF THE GENERAL COUNSEL



Marion McWilliams, Deputy General Counsel
Oakland Unified School District

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date on which it is signed below, by a party of party representative.

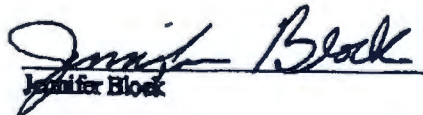
DISTRICT

Dated: 4/24/13 
Marion McWilliams
Counsel for Oakland Unified School District

Dated: _____
David Kalcishiba, President

Dated: _____
Edgar Rakastraw, Secretary of the Board

EMPLOYEES:


Dated: 4/29/13  jenwblock@aol.com
Jennifer Block
Current e-mail address

Dated: _____
Yitzhak Chalala
Current e-mail address

Dated: _____
Carolyn Chin
Current e-mail address

Dated: _____
Don Curtis
Current e-mail address

Dated: _____
Maria Elmudi
Current e-mail address

Dated: 4/24/13  jkcaloit@gmail.com
Justin Kimball
Current e-mail address

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date on which it is signed below, by a party of party representative.

DISTRICT

Dated: _____
Marion McWilliams
Counsel for Oakland Unified School District

Dated: _____
David Kakishiba, President

Dated: _____
Edgar Rakestraw, Secretary of the Board

EMPLOYEES:

Dated: _____
Jennifer Block
Current e-mail address

Dated: 4-26-13

Yitzhak (Chalale)
Current e-mail address yitzhak.chalale@yahoo.com

Dated: _____
Carolyn Chin
Current e-mail address

Dated: _____
Don Curtis
Current e-mail address

Dated: _____
Maria Einaudi
Current e-mail address

Dated: _____
Justin Kimball
Current e-mail address

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date on which it is signed below, by a party of party representative.

DISTRICT

Dated: _____
Marion McWilliams
Counsel for Oakland Unified School District

Dated: _____
David Kakishiba, President

Dated: _____
Edgar Rakestraw, Secretary of the Board

EMPLOYEES:

Dated: _____
Jennifer Block
Current e-mail address

Dated: _____
Yitzhak Chalale
Current e-mail address

Dated: 4/25/2013
Carolyn Chin
Carolyn Chin
Current e-mail address cchin50@yahoo.com

Dated: _____
Don Curtis
Current e-mail address

Dated: _____
Maria Einaudi
Current e-mail address

Dated: _____
Justin Kimball
Current e-mail address

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date on which it is signed below, by a party of party representative.

DISTRICT

Dated: _____
Marion McWilliams
Counsel for Oakland Unified School District

Dated: _____
David Kakishiba, President

Dated: _____
Edgar Rakestraw, Secretary of the Board

EMPLOYEES:

Dated: _____
Jennifer Block
Current e-mail address

Dated: _____
Yitzhak Chalale
Current e-mail address

Dated: _____
Carolyn Chin
Current e-mail address

Dated: 4/29/13
Don Curtis
Current e-mail address: curtisdojr@yahoo.com

Dated: _____
Maria Einaudi
Current e-mail address

Dated: 4/24/13
Justin Kimball
Current e-mail address: jkeslcit@gmail.com

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date on which it is signed below, by a party of party representative.

DISTRICT

Dated: _____
Marion McWilliams
Counsel for Oakland Unified School District

Dated: _____
David Kakishiba, President

Dated: _____
Edgar Rakestraw, Secretary of the Board

EMPLOYEES:

Dated: _____
Jennifer Block
Current e-mail address

Dated: _____
Yitzhak Chalale
Current e-mail address

Dated: _____
Carolyn Chin
Current e-mail address

Dated: _____
Don Curtis
Current e-mail address


Dated: _____
Maria Einaudi
Current e-mail address

Dated: 4/24/13
Justin Kimball
Justin Kimball
jkeslcit@gmail.com
Current e-mail address

Dated: 4/30/13  P.J.Jackson@aok.com
 Patricia Jackson Current e-mail address

Dated: _____ Maryellen Wolfe _____
 Current e-mail address

APPROVED AS TO FORM:

Dated: 4/20/13 
 David Weinstaub
 Counsel for Employees

EMPLOYEES:

On behalf of

Jennifer Block
Yitzhak Chalale
Carolyn Chin
Don Curtis
Maria Einaudi
Justin Kimball
Patricia Jackson
Mayellen Wolfe

Dated: _____

David Weintraub
Beeson Tayer and Bodine

EXHIBIT A

Final Reduction in FTE for Certificated Staff

Name

Jennifer Block

Yitzhak Chalale

Carolyn Chin

Don Curtis

Maria Einaudi

Justin Kimball

Patricia Jackson

Mayellen Wolfe

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

In the Matter of the Non-Reemployment of:

MARIA EINAUDI,

Respondent.¹

OAH No. 2013040005

PROPOSED DECISION

This matter was heard before Diane Schneider, Administrative Law Judge, State of California, Office of Administrative Hearings, on May 1, 2013, in Oakland, California.

Marion McWilliams, Deputy General Counsel, and Seth Eckstein, Attorney at Law, Office of General Counsel, Oakland Unified School District, represented complainant Anthony Smith, Superintendent, Oakland Unified School District.

There was no appearance by or on behalf of respondent Maria Einaudi.²

The record closed and the matter was submitted for decision on May 1, 2013.

FACTUAL FINDINGS

1. Anthony Smith made and filed the Accusation in his official capacity as Superintendent of the Oakland Unified School District (district).

2. On February 27, 2013, the district's governing board adopted Resolution No. 1213-0094, which sets forth the board's determination that it will be necessary for the district

¹ Prior to hearing, additional certificated employees who were noticed for layoff and represented by David Weintraub, Attorney at Law, Beeson, Tayer and Bodine, entered into a "Certificated Layoff Agreement" with the District in which they withdrew their requests for hearing. Maria Einaudi is the sole respondent.

² Respondent was represented by Mr. Weintraub until one day before the hearing, when she terminated his representation.

to reduce or discontinue particular kinds of services (PKS) for the 2013-2014 school year, by a total of 14.7 full-time equivalent (FTE) certificated positions in Adult Education, as follows: 8.5 FTE Adult Education teachers and 6.2 FTE Adult Education Teachers on Special Assignment. The resolution directs the superintendent or his designee to send appropriate notices, in accordance with Education Code sections 44949 and 44955, to all employees whose positions will be eliminated by virtue of the board's action.

3. All jurisdictional requirements contained in Education Code sections 44949 and 44955 have been met.

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

5. No junior employee is being retained to render a service that respondent is certificated and competent to perform.

6. Respondent submitted a letter in which she expresses her heartfelt dismay regarding the loss of Adult Education in Oakland and the negative impact that she believes it will have on the Oakland community. Respondent's concern for the well-being of Adult Education students and the community at large is commendable, but it does not, however, constitute a legal basis upon which to challenge her layoff.

LEGAL CONCLUSION

1. Cause exists because of the reduction or elimination of particular kinds of services pursuant to Education Code section 44955 to give notice to respondent that her services will not be required for the 2013-2014 school year. The cause relates to the welfare of the schools and the pupils thereof within the meaning of section 44949.

RECOMMENDATION

Notice may be given to respondent Maria Einaudi that her services will not be required for the 2013-2014 school year because of the reduction or elimination of particular kinds of services.

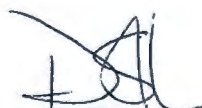
Dated: May 2, 2013

File ID Number: 13-0891
Introduction Date: 5/8/13
Enactment Number: 13-0719
Enactment Date: 5/8/13
By:

Certified *approved*:



Edgar Rakestraw, Jr., Secretary
Board of Education


DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings

Education Code EC 44949

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefore. Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefore shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply: (1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation. (2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefore within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate. (3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds. The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section.

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(e) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

Education Code EC 44955

(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, 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. In computing a decline in average daily attendance for purposes of this section for a newly formed or reorganized school district, each school of the district shall be deemed to have been a school of the newly formed or reorganized district for both of the two previous school years. As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year. The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons: (1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess. (2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

1 **PROOF OF SERVICE**

2 In the Matter of the Non-reemployment Of 14.7 Full Time Equivalent Certificated
3 Employees

4 I, Nely Gebhardt, say that I am a citizen of the United States, over the age of eighteen years,
5 whose business address is 1011 Union Street, Oakland, CA, in the County of Alameda, State of
6 California, and I am not a party to the within action.

7 On March 7, 2013, I served a copy of the following document(s):

8 **Notice Of Recommendation That Services Will Not Be Required**

9 x By certified mail (return receipt) and regular U.S. mail by enclosing the above
10 documents in an envelope and placing the envelope for collection and mailing on the date and
11 at the place shown, following our ordinary business practices. I am readily familiar with this
12 business's practice for collecting and processing correspondence for mailing. On the same day
13 that correspondence is placed for collection and mailing, it is deposited in the ordinary course of
14 business with the United States Postal Service in a sealed envelope with postage fully
15 prepared. The envelope was addressed to the individual(s) identified below:

16 By facsimile: At a.m./p.m., by use of facsimile machine telephone
17 number (510) , I caused a true and correct copy(ies) of the above-referenced
18 document(s) on the below mentioned party at the telephone number below. The facsimile
19 machine I used complied with California Rules of court, rule 2003 and no error was reported by
20 the machine. Pursuant to California Rules of Court, rule 2006(d), I caused the machine to print
21 a transmission record of the transmission.

22 By personally delivering a true copy thereof to the person(s) at the address(es)
23 set forth below:

24 By causing to be personally delivered a true copy thereof to the person(s) at the
25 address(es) set forth below:

26 JENNIFER BLOCK
3210 BRUNELL DRIVE
OAKLAND, CA 94602

I declare under penalty of perjury that the foregoing is true and correct. Executed on
March 7, 2013, at Oakland, California.



Nely Gebhardt, Generalist
Human Resources Services & Support