



OAKLAND UNIFIED SCHOOL DISTRICT
Office of the Superintendent of Schools
February 27, 2013

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

TO: Board of Education

FROM: Anthony Smith, Ph.D. Superintendent
Vernon Hal, Deputy Superintendent, Business and Operations *WRB*
Brigitte Marshall, Associate Superintendent, Human Resources Services & Support 

SUBJECT: Reduction and/or Elimination of Particular Kinds of Service - Certificated Layoff,
Resolution No. 12-13-0094

ACTION REQUESTED

Approval by the Board of Education of Resolution No. 12-13-0094 to reduce or eliminate particular kinds of services of the District based upon the needs of the District, per Education Code sections 44949 and 44955.

DISCUSSION

Although the State's and District's budgets are not finalized, California Education Code requires notice be provided by March 15th to certificated employees whose positions may be reduced or eliminated. This year, the District anticipates that federal funding of the District will be reduced by an estimated \$14 million. The District is working to absorb the majority of those cuts through reductions and reorganization of central office departments, and is striving to keep funding for Pre-K-12 schools flat.

At the same time, the District intends to allocate resources to support key aspects of the strategic plan and the Board's priorities, including 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.

The anticipated reduction in funding and focus on funding priorities require that the District analyze programs in which funding may be reallocated to support core functions. Currently, the funds that the District uses for its Adult Education program may be "flexed" to be used for any purpose. Two years ago, the District significantly reduced the Adult Ed program to reach fiscal solvency. The District maintained a small Adult Education program in the event that shifts in flexibility rules might require the District to have an infrastructure in place to secure new Adult Education revenues. The Governor's proposed budget permits the District to continue to flex the funds that it currently allocates to Adult Education. Although the Governor's proposed budget identifies a dedicated funding stream to support adult education services, it identifies the Community College system as the preferred service provider.

The proposed reductions eliminate all of the teaching, teacher on special assignment, and certificated administrator positions in the current Adult Education program. The related cost savings is approximately \$1 million.

If budget circumstances change, layoff notices can be rescinded prior to May 8th. Employees who are in the limited areas that are being reduced are entitled to re-employment in vacancies for a period of 39 months if they are permanent employees or 24 months if they are probationary employees.

BUDGET IMPACT

Approximately \$1 million.

RECOMMENDATION

Approval by the Board of Education of Resolution No. 1213-0094 to reduce or eliminate particular kinds of services of the District based up on the needs of the District, per Education Code sections 44949 and 44955.

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**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:

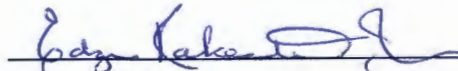
AYES: **Jody London, Christopher Dobbins, James Harris,
Vice President Jumoke Hinton Hodge and President David Kakishiba**

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

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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.

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.