

NOTICE

**SPECIAL MEETING OF THE GOVERNING BOARD
TRACY UNIFIED SCHOOL DISTRICT**

DATE: WEDNESDAY, MAY 8, 2013

**PLACE: DISTRICT EDUCATION CENTER
BOARD ROOM
1875 WEST LOWELL AVENUE
TRACY, CALIFORNIA**

**TIME: 6:00 PM Closed Session
6:30 PM Open Session**

A G E N D A

1. **Call to Order**
2. **Roll Call – Establish Quorum**
Board: J. Costa, G. Crandall, W. Gouveia, T. Guzman, K. Lewis, G. Silva, J. Vaughn.
Staff: J. Franco, C. Goodall, S. Harrison and B. Etcheverry.
3. **Closed Session:** Opportunity to Address the Board Regarding Closed Session Items which follow. Closed session is limited to consideration of items specifically authorized under the Government Code and/or the Education Codes.
 - 3.1 **Human Resources:**
 - 3.1.1 Consider Public Employee/Employment/Discipline/Dismissal/Release
Action: Motion __; Second __. **Vote:** Yes __; No __; Absent __; Abstain __.
4. **Adjourn to Open Session**
5. **Call to Order and Pledge of Allegiance**
6. **Closed Session Issues:** No action taken.
7. **Hearing of Delegations:** Anyone wishing to address the Governing Board on a non-agenda item may be heard at this time. Presentations shall be held to a reasonable length, normally not to exceed five (5) minutes. If formal action is required, the item will be placed on a future agenda and action will be taken at a future date. If information or a report is requested, the request for it must also be submitted in writing to the superintendent.
(Please complete a yellow speaker's card).
8. **Action Items:** Action items are considered and voted on individually. Trustees receive background information and staff recommendations for each item recommended for action in advance of scheduled meetings and are prepared to vote with knowledge on the action items.

8.1 Human Resources

Pg. No.

8.1.1 Consider and Take Action on Resolution No. 12-23 on the Proposed Decision Related to Certificated Layoff Hearings. Administration Recommends that the Board Adopt the Administrative Law Judge's Proposed Decision and Release the Impacted Certificated Employees for the 2013-2014 School Year.

1-14

Action: Motion__; Second___. **Vote:** Yes __; No__; Absent__; Abstain __.

9. Adjourn.

If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability. To make this request, please telephone the Superintendent's Office at 209/830-3201. If any person with a disability needs a disability-related modification or accommodation, including auxiliary aids or services, he/she should also contact the Superintendent's Office at least 24 hours prior to the meeting.



HUMAN RESOURCES MEMORANDUM

TO: Dr. James Franco, Superintendent
FROM: Dr. Sheila Harrison, Assistant Superintendent of Educational Services & Human Resources
DATE: May 7, 2013
SUBJECT: **Consider and Take Action on Resolution No. 12-23 on the Proposed Decision Related to Certificated Layoff Hearings. Administration Recommends that the Board Adopt the Administrative Law Judge's Proposed Decision and Release the Impacted Certificated Employees for the 2013-2014 School Year.**

BACKGROUND: Earlier this year, the Board adopted Resolution No. 12-17, which ordered the reduction or elimination of 20.8 full time equivalent particular kinds of certificated services and subsequently most of the noticed certificated employees requested a hearing. On or about April 10, 2013, the parties reached a stipulation with regard to most matters and on April 30, 2013 Administrative Law Judge Ann Elizabeth Sarli issued a proposed decision.

Pursuant to Education Code sections 44949, 44955, and 44951, the District Administration is making a recommendation that requires the Board to consider adoption of the proposed decision related to the certificated layoff hearings and release the impacted certificated employees beginning with the 2013-2014 school year. This action item will allow Human Resources to send final Reduction in Force Notices to the certificated employees affected by the layoffs who will not be returning for the 2013-2014 school year.

RATIONALE: Reductions or discontinuance of particular kinds of services are needed as a result of staffing and budget concerns and as needed to balance the budget for the 2013-2014 school year.

RECOMMENDATION: Consider and Take Action on Resolution No. 12-23 on the Proposed Decision Related to Certificated Layoff Hearings. Administration Recommends that the Board Adopt the Administrative Law Judge's Proposed Decision and Release the Impacted Certificated Employees for the 2013-2014 School Year.

Prepared by: Dr. Sheila Harrison, Assistant Superintendent of Educational Services & Human Resources

**TRACY UNIFIED SCHOOL DISTRICT
RESOLUTION NO. 12-23**

**ADOPTION OF ADMINISTRATIVE LAW JUDGE'S PROPOSED
DECISION IN THE MATTER OF THE TEACHER LAYOFF HEARING
OF
TRACY UNIFIED SCHOOL DISTRICT
OAH No. 2013030393 AND TERMINATION OF CERTIFICATED EMPLOYEES FOR
THE 2013-2014 SCHOOL YEAR**

WHEREAS, on February 26, 2013, the Board of Education of Tracy Unified School District ("Board") adopted Resolution No. 12-17, which ordered the reduction or elimination of 20.8 full time equivalent particular kinds of certificated services; and

WHEREAS, on or about March 13, 2013, identified certificated employees of the District were sent notice that their services would be reduced or discontinued commencing with the beginning of the 2013-2014 school year and were offered the right to a hearing; and

WHEREAS, a portion of the noticed certificated employees requested a hearing and filed a Notice of Defense, thus becoming Respondents in OAH Case No. 2013030393; and

WHEREAS, counsel for the District and Counsel for Respondents entered a stipulation; and

WHEREAS, a proposed decision was issued on April 30, 2013, by Administrative Law Judge Ann Elizabeth Sarli; and

WHEREAS, the proposed decision provides in part, "The Stipulation is attached to this Proposed Decision as Attachment A, and incorporated herein"; and

WHEREAS, the proposed decision received by the District did not contain a copy of the stipulation as Attachment A; and

WHEREAS, the District attached a copy of the stipulation to the Proposed Decision as Attachment A; and

WHEREAS, the proposed decision was provided to all members of the Board and to Respondents via service to their attorney, Thomas J. Driscoll, Jr., or to each individually as appropriate, and is attached hereto and incorporated herein as Attachment 1; and

WHEREAS, the members of the Board have had an opportunity to review the proposed decision, and having reviewed it have determined that it should be adopted; and

WHEREAS, three identified certificated employees were sent notices that their services would be reduced or discontinued commencing with the beginning of the 2013-2014 school year did not request a hearing or file a Notice of Defense and did not participate in the layoff hearing and were not subjects of the stipulation or proposed decision

NOW, THEREFORE, BE IT RESOLVED that:

1. The Board of Education of the Tracy Unified School District finds that the Proposed Decision in OAH No. 2013030393 attached hereto as Attachment 1 with includes Attachment A (Stipulation) supports a finding that there is sufficient cause to lay off the employees listed on Attachment 2 which is attached hereto and incorporated herein, and to discontinue those certificated positions; and
2. The Board adopts the Proposed Decision in OAH No. 2013030393(Attachment 1 with Attachment A); and
3. The Board directs the Superintendent or his designated representative(s) to take all action needed, including, prior to May 15, 2013, to send notices to the employees identified in Attachment 2 , including the three employees that did not request a hearing, that their services are terminated effective the 2013-2014 school year.

ADOPTED by the Board of Education of the Tracy Unified School District on May 8, 2013, by the following vote:

AYES:

NOES:

ABSENT:

Clerk of the Board

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

In the Matter of the Accusation/Non-
Reemployment of Certified Employees of the
TRACY UNIFIED SCHOOL DISTRICT:

OAH No. 2013030393

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby
adopted by the Tracy Unified School District as its Decision in the above-entitled matter.

This Decision shall become effective on _____.

IT IS SO ORDERED _____.

Signed By:

Attachment 1
Proposed Decision of the Administrative Law Judge
(Including Attachment A: Stipulation dated 4/10/13)

ATTACHMENT 1

BEFORE THE
BOARD OF EDUCATION OF THE
TRACY UNIFIED SCHOOL DISTRICT
SAN JOAQUIN COUNTY
STATE OF CALIFORNIA

In the Matter of the Accusation against:

OAH No. 2013030393

MARIA LETICIA AYALA,
CHINDA BAN,
ARMINDA CASTELLON,
LETICIA DOMINGUEZ,
DINA GRAVES,
JANIS GREEN,
JANICE HESS,
JOHN HUNTER, II,
AMANDA LIS,
ANNABELLE MOTYKA,
HEATHER NIELSEN,
TINA ORINO,
JESSE RAGAN,
DESI ROSALES,
JORJA RULE,
HEATHER SIRAPONIAN,
BARBARA TAPIA-GUILLEN,
JUSTINE WEBB,
JESSICA WEISS,

Respondents.

PROPOSED DECISION

This matter was assigned to Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, for issuance of a Proposed Decision on the written record, pursuant to the "Stipulation Between the Parties" executed on April 10, 2013 (Stipulation).

Marie A. Nakamura, Attorney at Law, of the law firm of Kronick, Moskovitz, Tiedman & Girard, represents the Tracy Unified School District (District).

Thomas J. Driscoll, Attorney at Law, of the Driscoll Law Firm, represents the respondents.

The Stipulation and Exhibits 1 through 9 are admitted in evidence. The Stipulation is attached to this Proposed Decision as Attachment A, and incorporated herein.

The matter was submitted for decision and the record was closed on April 10, 2013.

FACTUAL FINDINGS

1. James Franco is the Superintendent of the Tracy Unified School District. His actions were taken in his official capacity.
2. On or before February 26, 2013, the Superintendent determined that as a result of staffing and budget concerns and in order to balance the budget, it was necessary to reduce staffing for the 2013-2014 school year, thereby necessitating the reduction or elimination of certain particular kinds of services. The Superintendent recommended to the Board that certain particular kinds of services be reduced or eliminated, affecting employees occupying 20.8 full-time equivalent (FTE) positions. The Superintendent's recommendation to eliminate and reduce teaching services for the fiscal health of the District was made solely for the welfare of students.
3. On February 26, 2013, the Board adopted Resolution No. 12-17, providing for the reduction or elimination of particular kinds of services, resulting in reduction or elimination of 20.8 certificated positions.
4. On March 13, 2013, the Superintendent served a "Recommendation That Services Will Not Be Required" for the ensuing school year, 2013-2014 (Layoff Notice or Notice) on employees affected by the reduction and elimination of particular kinds of services. The Notice stated that the Superintendent had recommended to the Board that notice be given to respondents pursuant to Education Code sections 44949 and 44955, that their services would not be required for the ensuing school year. The Notice advised that the Board had passed a Resolution reducing or discontinuing particular kinds of services which reduced the certificated staff, and enclosed a copy of the Resolution identifying the particular kinds of services to be reduced or eliminated.
5. Respondents timely requested a hearing to determine if there is cause for not re-employing them for the ensuing school year.
6. 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 timely served on those employees.
7. Respondents timely filed Notices of Defense to the Accusations.

8. Prior to hearing, the District and respondents entered into the Stipulation attached hereto. The Stipulation provides in pertinent part:

The Precautionary Layoff Notice issued to Heather Siraponian is rescinded.

The Layoff Notices issued to the following employees are rescinded: Justine Webb, Desi Rosales, Amanda Lis and Heather Nielsen.

9. The Stipulation does not address the Layoff Notices issued to the remaining respondents. There was no evidence or argument challenging the layoff of any of the remaining respondents.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 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 Superintendent's decision to reduce particular kinds of services was a proper exercise of his discretion.

3. The services identified in Board Resolution No.12-17, are particular kinds of services that could be reduced or discontinued under Education Code section 44955. 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 County'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* (1983) 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's 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. Cause exists under Education Code sections 44949 and 44955 to provide final Notice to the following respondents that their services will not be required in the ensuing school year.

Maria Leticia Ayala

Chinda Ban

Arminda Castellon

Leticia Dominguez

Dina Graves

Janis Green

Janice Hess

John Hunter II

Anabelle Mootyka

Tina Orino

Jesse Ragan

Jorja Rule

Barbara Tapia-Guillen


Jessica Weiss

ORDER

1. The District shall rescind Layoff Notices issued to Heather Siraponian, Justine Webb, Desi Rosales, Amanda Lis and Heather Nielsen.

2. The Accusations served on the remaining respondents, who are listed in Legal Conclusion 6, are sustained. Final Notices shall be given to the remaining respondents that their services will not be required for the 2013-2014 school year because of the reduction or discontinuation of particular kinds of services.

DATED: April 30, 2013



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

1 MARIE A. NAKAMURA State Bar No. 216147
2 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
3 A Professional Corporation
4 400 Capitol Mall, 27th Floor
5 Sacramento, California 95814
6 Telephone: (916) 321-4500
7 Facsimile: (916) 321-4555

8 Attorneys for Petitioner
9 TRACY UNIFIED SCHOOL DISTRICT

10 BEFORE THE BOARD OF EDUCATION OF THE
11 TRACY UNIFIED SCHOOL DISTRICT
12 SAN JOAQUIN COUNTY, STATE OF CALIFORNIA

13 In the Matter of the Accusation of:

OAH CASE NO. 2013030383

STIPULATION BETWEEN THE PARTIES

14 MARIA LETICIA AYALA, CHINDA
15 BAN, ARMINDA CASTELLON,
16 LETICIA DOMINGUEZ, DINA
17 GRAVES, JANIS GREEN, JANICE
18 HESS, JOHN HUNTER, II, AMANDA
19 LIS, ANNABELLE MOTYKA,
20 HEATHER NIELSEN, TINA ORINO,
21 JESSE RAGAN, DESI ROSALES,
22 JORJA RULE, HEATHER
23 SIRAPONIAN, BARBARA TAPIA-
24 GUILLEN, JUSTINE WEBB,
25 JESSICA WEISS,

26 Respondents.

27 IT IS HEREBY STIPULATED by and between TRACY UNIFIED SCHOOL DISTRICT
28 (“District” or “Petitioner”) and MARIA LETICIA AYALA, CHINDA BAN, ARMINDA
CASTELLON, LETICIA DOMINGUEZ, DINA GRAVES, JANIS GREEN, JANICE HESS,
JOHN HUNTER, II, AMANDA LIS, ANNABELLE MOTYKA, HEATHER NIELSEN, TINA
ORINO, JESSE RAGAN, DESI ROSALES, JORJA RULE, HEATHER SIRAPONIAN,
BARBARA TAPIA-GUILLEN, JUSTINE WEBB, JESSICA WEISS (“Respondents”), through

1 their respective counsel:

2 1. Petitioner and Respondents agree that the following precautionary layoff notice to
3 the following employee is rescinded by this stipulation:

4 ➤ Heather Siraponian

5 2. Petitioner and Respondents agree that the following layoff notices to the
6 following employees are rescinded by this stipulation:

7 ➤ Justine Webb

8 ➤ Desi Rosales

9 ➤ Amanda Lis

10 ➤ Heather Nielsen

11 3. Petitioner and Respondents agree that Petitioner shall submit the following
12 documents to the Office of Administrative Hearings to fulfill Petitioner's jurisdictional and
13 evidentiary obligations: 1. February 26, 2013 PKS Resolution, 2. February 26, 2013 Tie Break
14 Resolution, 3. February 26, 2013 Competency Criteria, 4. Seniority List Sorted by Seniority Date,
15 5. Seniority List Sorted by Alphabet, 6. March 2013 Bump Chart, 7. Exemplar March 13, 2013
16 Notice & Recommendation that Services Will Not be Required, 8. March 13, 2013 Notice to
17 Board, and 9. Exemplar Accusation Packet.

18 4. Respondents do not object to the submission of these documents.

19 5. Petitioner and Respondents submit this matter to the Administrative Law Judge for
20 determination and decision without a hearing.

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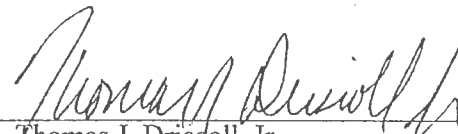
This stipulation reflects the agreement of the parties hereto and is binding upon the signing by legal counsel for both parties.

Executed April 10, 2013 by:

**KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation**

By 
Marie A. Nakamura
Attorneys for Tracy Unified School District

DRISCOLL LAW FIRM

By 
Thomas J. Driscoll, Jr.
Attorney for Respondents

ATTACHMENT 2
List of Certificated Employees
to Receive Final Notice

PERMANENT

1.	BAN	CHINDA	NORTH (K-8)
2.	CASTELLON	ARMINDA	SWP (K-5)
3.	FRASE	JEFFERY	DR/WILLOW (9-12)
4.	GRAVES	DINA	MCKINLEY (K-5)
5.	HESS	JANICE	BOHN (K-5)
6.	HUNTER, II	JOHN	JACOBSON (K-5)
7.	MOTYKA	ANNABELLE	WILLIAMS (6-8)
8.	ORINO	TINA	FREILER (K-8)

PROBATIONARY

1.	AYALA	MARIA LETICIA	VILLALOVOZ (K-5)
2.	DOMINGUEZ	LETICIA	CENTRAL (K-5)
3.	GALE	PETER	KIMBALL (9-12)
4.	GREEN	JANIS	HIRSCH (K-5)
5.	OLSON	LYNDSAY	WEST (9-12)
6.	RAGAN	JESSE	SWP (K-5)
7.	RULE	JORJA	TRACY (9-12)
8.	TAPIA-GUILLEN	BARBARA	SWP (K-5)
9.	WEISS	JESSICA	KIMBALL (9-12)