

3. On or before March 14, 2009, the Superintendent of the District recommended that the Board give notice that certain services performed by certificated employees be reduced or eliminated for the 2009-2010 school year. The Superintendent also recommended that the Board adopt a resolution to reduce or discontinue particular kinds of services for the 2009-2010 school year. Specifically, the Superintendent recommended the reduction and/or elimination of 81 full-time-equivalent (FTE) certificated employees as follows:

Kindergarten – 5th grade Elementary Teacher	30.00 FTE
Math	9.00 FTE
English	9.00 FTE
Middle School English language Arts/Social Science Core	5.00 FTE
Middle School Math/Science Core	5.00 FTE
Social Science	5.00 FTE
Biological Science	2.00 FTE
Chemistry	1.00 FTE
Physical Education	4.00 FTE
Music	1.00 FTE
Art	2.00 FTE
Health	1.00 FTE
Elementary Vice Principal	1.60 FTE
Counselor	2.00 FTE
Associate Superintendent	1.00 FTE
Psychologist	.19 FTE
Adult School Supervisor	.08 FTE
<hr/>	
Total	78.87 FTE

4. On March 3, 2009, the Board adopted Resolution No. 3170 to discontinue or reduce the particular kinds of services set forth in Factual Finding 3. The Board further determined that, based on the discontinuance or reduction of services, it would be necessary to decrease the number of certificated employees at the close of the present school year by a corresponding number of full-time equivalent positions. The Board also directed the Superintendent to notify the employees affected by the Board's resolution.

5. In Resolution No. 3123, adopted March 4, 2009, the Board established tie-breaking criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination and reemployment would be based on the needs of the District and its students in accordance with the specific criteria set forth in the resolution.

6. On or about March 4, 2009, the Superintendent notified certificated employees, including Respondents, in writing that it had been recommended their services would not be required for the next school year. The mailing included the reasons for the notification. Respondents made timely requests for hearing.

7. On March 25, 2009, the Superintendent of the District made and filed Accusations against Respondents.

8. Notices of Defense were timely filed by Respondents. All prehearing jurisdictional requirements were met.

9. The District rescinded the layoff notices previously issued to Christopher T. Marley, Dora Rios, Juliet Spear, and Jennifer Benitez.

10. The District expects a budget shortfall of at least 3.5 million dollars for the 2009-10 school year. Lowell Shira, Assistant Superintendent, Business Services, testified at length regarding the preparation of the 2009-10 interim budget. Mr. Shira testified that the various budget items will change before the final budget is adopted on June 1, 2009. For example, the passage or rejection of revenue-related propositions on the May 19, 2009 Special Election would affect the budget (Exhibit B), as well as an expectation by the District of a decline in enrollment for the middle and high schools for the next school year.

11. In order to carry out the Board resolution, Sharon Lampel, the Assistant Superintendent of Personnel Services considered the budget for the 2009-10 school year, the collective bargaining agreement with certificated employees, and positively assured attrition for the 2009-10 school year. In addition, Ms. Lampel spoke with the principal at each school site to determine how best to implement the layoff resolution.

12. The reduction or discontinuation of the particular kinds of services set forth in Factual Finding 3 relates to the welfare of the District and its pupils.

13. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid service in a probationary position), current assignments and locations, advanced degrees, credentials, and authorizations.

14. The District used the Seniority List to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. The District properly discharged its discretionary duties in determining which employees would be subject to layoff.

15. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents.

2. 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.)

3. Cause was established as required by Education Code sections 44949 and 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services. The Board's decisions to reduce or eliminate the identified services were neither arbitrary nor capricious. The decisions relate solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949.

4. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

ORDER

Notice may be given to Respondents whose notices have not been rescinded, that their services will not be required for the 2009-2010 school year.

Dated: April 30, 2009

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings