

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

In the Matter of the Layoff/Accusation  
Against:

138 CERTIFICATED EMPLOYEES,  
  
Respondents.

OAH No. 2009020840

**PROPOSED DECISION**

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge, at Jurupa, California on April 16, 2009.

Kerrie E. Taylor, Esq. of Fagen, Friedman & Fulfroost, LLP, represented the Jurupa Unified School District (the district).

During the course of the hearing, the district rescinded the preliminary notices pertaining to Lisa Rodriguez and Leticia Range.

Of the 206 certificated employees served with Notices of "Recommendation that Services Will Be Terminated," the 136 certificated employees (respondents) listed in Appendix A, Lisa Rodriguez and Leticia Range filed Notices of Defense.

Richa Amar, Esq. of Rothner, Segall & Greenstone, represented 127 of the 138 respondents. None of the 11 unrepresented respondents attended the hearing.

Oral and documentary evidence was received and the matter was submitted on April 16, 2009.

**FACTUAL FINDINGS**

1. Sometime prior to February 17, 2009, the Superintendent of the district recommended, with regard to the ensuing school year, that the Governing Board of the district (the board) reduce or eliminate particular kinds of services (PKS) provided by the district for the 2009-2010 school year.

2. On February 17, 2009, the board adopted Resolution number 2009/22, determining that it would be necessary to reduce or discontinue PKS at the end of the current school year. The board determined that the PKS that must be reduced for the 2009-2010 school year were the following full time equivalent (FTE) positions:

<u>PKS</u>	<u>FTE</u>
Elementary Teaching	135.0
Teachers on Special Assignment	24.0
Elementary Music	3.2
Counselors	7.0
Guidance Coordinators	1.0
Art	1.0
Social Studies	6.0
Math	6.6
English	10.0
Science	2.8
Physical Education	3.0
Foreign Language	4.0
Independent Study	1.0
Total FTE positions to be reduced or eliminated	204.6

The parties do not dispute the fact that the services listed above are PKS, which may be reduced or discontinued within the meaning of Education Code section 44955.

3. The district's recommendation and the board's decision to reduce or discontinue the services listed in Finding 2, above, were neither arbitrary nor capricious; rather, the recommendation and decision were based on the projected, \$18.5 million dollar, budget deficit. Thus the board's decision represents a proper exercise of its discretion.

4. The reduction and discontinuation of services is related to the welfare of the district and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the board.

5. The Superintendent designated the respondents, permanent or probationary teachers employed by the district, by creating a seniority list, first selecting teachers to be laid off in the inverse of the order in which they were employed, then assigning and reassigning employment in such a manner that all employees to be retained will be retained so as to render any service which their seniority and qualifications entitle them to render.

6. On or before March 6, 2009, all respondents affected by the layoffs received written notice notifying them that pursuant to Education Code sections 44949 and 44955, their services would "be terminated at the close of the current school year." (Exh. 3.) Along with the written layoff notices respondents were also served with a copy of the Board's resolution number 2009/22, a list of the tie-breaking criteria, copies of Education Code

sections 44949 and 44955, and a blank “Request for Hearing.” Additionally, the layoff notices advised respondents that they must file their requests for hearing with the district on or before a specified cut-off date<sup>1</sup> and that, “If you Fail to request a hearing on or before this date, your failure to do so will constitute a waiver of your right to a hearing.” (Exh. 3.)

7. On March 17, 2009, the Superintendent of the district made and filed an accusation in his official capacity. That same date, the accusation, a blank notice of defense, a notice of hearing and copies of Education Code sections 44949 and 44955, and Government Code sections 11506, 11507.5, 11507.6, and 11507.7 were served on respondents.

8. One hundred thirty-eight (138) respondents timely submitted their notices of defense requesting a hearing to determine if cause exists for not re-employing them for the ensuing year.

9. Each respondent who requested a hearing and filed a Notice of Defense was properly noticed of the date, time and place of the instant hearing.

10. All prehearing jurisdictional requirements were met.

11. Respondents are certificated employees of the district.

12. The following concerns were raised during the hearing:

a. Certain respondents contend that they should have received seniority credit for staff development training classes they attended the summer before they began teaching their classes. In other words, their first date of paid service should be the date they attended the staff development training, not the date they first began teaching in the classroom;

b. Certain respondents contend that a district Guidance Coordinator was improperly “skipped” and the skipping resulted in Counselors with more seniority being laid off; and,

c. Certain respondents contend that district Dual Immersion Program employees were improperly “skipped” because there were other bilingual certificated employees who had the necessary credentials to teach the Dual Immersion Program.

In connection with these concerns the uncontroverted testimony established the following:

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<sup>1</sup> The superintendent and assistant superintendent personally met with each of the certificated employees between February 18 and March 6, 2009. During the meetings the certificated employees were given their preliminary lay off notices and any questions posed by the employees were addressed. Each notice contained a “cut-off” date to submit a request for hearing. The cut-off dates varied depending on when each meeting occurred.

a. Although the staff development training was mandatory training, it was not mandatory for the respondents to take it during the summer. The training was offered during the summer to accommodate those certificated employees who wished to take the training while they were not actively involved in teaching during the regular school year. In other words, although the training was mandatory, and had to be taken at some time during employment, attending summer training was voluntary. In fact, those certificated employees who elected to attend summer training were paid extra (above the amount of their employment contracts) for attending the training. Those certificated employees who attended the training during the academic year were given administrative time off to attend the training and their time attending the training was paid for as part of their employment contract. Consequently, the district correctly credited the respondents with their first date of paid service being the date they commenced working, not the date they attended the voluntary summer training session(s).

b. Guidance Coordinators and Counselors are two distinct employment positions. Although the credentials are the same for both, the experience gained working in the respective positions differs in significant respects. Guidance Coordinators work in the high schools (grades 9-12) while Counselors work in middle school. Consequently, Guidance Coordinators gain specialized experience dealing with the high school population. For example, they learn about the college preparatory curriculum, they interface and build relationships with college recruiters and counselors, they develop expertise in reviewing transcripts and knowing what high school course work will be accepted by which colleges, and they develop special skill sets for dealing with high school disciplinary problems. Guidance Coordinator and Counselor positions have different job descriptions, pay scales, job duties and require different skill sets. Consequently, the district properly skipped a Coordinator even though there were Counselors with more seniority because the Counselors, although more senior, were not qualified/competent to perform the job functions of the more junior Coordinator.

c. As with the Guidance Coordinators, the certificated employees teaching the Dual Immersion Program develop specialized knowledge and skill sets that are necessary to competently teach the program. The Dual Immersion Program was developed by the district to teach English speaking and Spanish speaking students to become bilingual. Certificated employees who teach the program receive specialized training both “in-house” and “outside.” It is important for the district to retain dual immersion teachers with experience and training specific to the program so the district can “grow the program.” Although some more senior respondents may have the credentials necessary to teach Spanish or English, they have not necessarily developed the practical skill sets necessary to competently teach the Dual Immersion Program. For example, one of the respondents who testified during the hearing testified that she had actually applied for, and interviewed for, the Dual Immersion Program and she was not accepted. Given this testimony, it is evident that the district considered the position to require special skill sets long before the “skipping criteria” were developed. Consequently, the certificated employees with experience actually teaching the Dual Immersion Program were properly “skipped” because no employee with more seniority who could competently teach the program was laid off.

13. The services of no permanent employee are being terminated while any probationary employee, or any permanent employee with less seniority, is being retained to render services which such permanent employee is certificated and competent to render.

## LEGAL CONCLUSIONS

1. Jurisdiction for the instant proceedings exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided, as required.

2. The services listed in Factual Finding 2 are PKS that can be reduced or discontinued under Education Code section 44955. The board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

3. Based on the Factual Findings, considered in their entirety, cause exists to reduce the number of certificated employees of the District by 204.6 FTE positions, due to the budget crisis described in Factual Finding 3.

4. Cause to reduce or discontinue services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

5. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

6. As set forth in the introductory portion of this proposed decision, the district rescinded the preliminary notices pertaining to Lisa Rodriguez and Leticia Range. Accordingly, the accusation is dismissed as to those two respondents.

7. Based on the modification set forth in Legal Conclusion 6, above, cause exists to notify the remaining respondents that their services will not be needed during the 2009-2010 school year due to reduction or discontinuance of PKS.

## ADVISORY DETERMINATION

WHEREFORE, THE FOLLOWING ADVISORY DETERMINATION is hereby made:

1. The Accusation is sustained, in part. The district shall notify the 136 respondents listed in Appendix A that their services will not be needed during the 2009-2010 school year due to lack of funds and the resulting need to reduce or discontinue PKS:

2. The Accusation is dismissed as to respondents Lisa Rodriguez and Leticia Range, and the district may not notify them that their services will not be needed during the 2009-2010 school year.

DATED: April \_\_\_\_, 2009

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ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings

## APPENDIX

### A

1. Arias, Chloe
2. Arvayo, Norma
3. Atkins, Scott
4. Avila, Socorro
5. Balbuena da la Sancha, Monica
6. Baptista, Nicole
7. Barbosa, Luis
8. Benitez, Jennifer
9. Bidart, Anita
10. Biddle, Tracy
11. Blackburn, Linda
12. Brandon, Shawn
13. Brooks, Daniel
14. Brooks, Jennifer
15. Brown, Lori
16. Bryan, LeAnn
17. Bullock, Richard
18. Calderon, Stasia
19. Carson, Caaroline
20. Castelo, Diana
21. Castillo, Rosio
22. Chann, Amanda
23. Conlee, Tara
24. Cornett, Jacqueline
25. Cortez, Claudia
26. Coss Gamboa, Norma
27. Cunningham, Ashley
28. DaCasas, Amanda
29. Dallas, Alicia
30. Demerath, Laura
31. Dirkswager, Sofia
32. Dou, Barbara
33. Dunzweiler, Karla
34. Espinoza, Irene
35. Farone, Beatriz
36. Felix, Evelina
37. Ferreira, Melissa
38. Flores, Christian
39. Forward, Allison
40. Fowler, Erica
41. Fox, Melissa
42. Frei, Linda
43. Garcia, Jesica
44. Gomez, Anthony
45. Gonzalez, Jocelyn
46. Gonzalez, Veronica
47. Gordon-Ross, Heather
48. Gotoski, Heather
49. Greer, Geoffrey
50. Guzman, Pam
51. Hill, Erin
52. Hinojosa, Veronica
53. Jacobs, David
54. Johnson, Julia
55. Kendall, Giselle
56. Kincaid, Amy
57. Kinnersly, Heather
58. Kong, Steve
59. Krause, Erica
60. Kruckenberg, Heidi
61. Landrus, Tasha
62. Lara, Adrienne
63. Ledesma, Lidia
64. Lester, Jennifer
65. Livolsi, Donna
66. Lopez, Shelia
67. Magallanes, Carol
68. Magana, Nancy
69. Marti, Joann
70. Martinez Lantz, Melissa
71. Martinez, Esteban
72. Martinez, Philip
73. Mata, Leticia
74. Maturino, Susan
75. May, Jessica
76. McCarty, Carly
77. McClure, Jonathan
78. Mena, Conie
79. Mendoza, Rosa
80. Mercurius, Neil
81. Monefeldt, Lisa
82. Morales, Karen
83. Morales, Magaly
84. Mortenson, Tara
85. Ness, Janelle
130. Watanabe, Victoria

86. Ochoa, Carolina
87. Ochoa, Jesica
88. Olivera, Tanya
89. O'Rafferty, David
90. Owens, Chiere
91. Owens, Harold
92. Pallares, Maria
93. Patey, Shane
94. Patton, Karianne
95. Payne, David
96. Pearce, Maylee
97. Pegg, Jessica
98. Pizana, Sylvia
99. Powell, Casie
100. Preciado, Victoria
101. Provenzano, Deborah
102. Ramirez, Deborah
103. Reed Riggle, Robin
104. Reza, Christina
105. Rosario, Rachel
106. Ruffin, Christi
107. Santana, Magdalena
108. Sawhill, Erica
109. Schaefer, Heather
110. Schanz, Katarina
111. Schwendener, Lucienne
112. Shows, Paul
113. Skwarczynski, Elizabeth
114. Snider, Nanci
115. Snuffin-Medeiros, Dana
116. Starling, Tracey
117. Taylor, Tiffani
118. Thompson, Rebecca
119. Tukua, Cheryl
120. Tyer, Barbara
121. Ury, Jennifer
122. Valeriano, Kelly
123. Vargas, Miguel
124. Vasquez, Lillia
125. Vela, Angela
126. Villasenor, Julie
127. Vo, Thu Huyen
128. Wangerin, Hayley
129. Warner, Thomas
131. Watt, Kelly
132. Wayland, Greer
133. Whitehead, Maria Carmen
134. Williams, Otis
135. Wilson, Courtney
136. Wood, Michael