

**BEFORE THE
GOVERNING BOARD OF THE
SIMI VALLEY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In The Matter of the Layoff of:

**CERTIFICATED TEACHERS OF THE
SIMI VALLEY UNIFIED SCHOOL
DISTRICT**

OAH No. 2009020842

Respondents.

PROPOSED DECISION

H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 29, 2009, at the Simi Valley City Hall, City Council Chambers, Simi Valley, California.

Jacqueline S. McHaney, Attorney at Law, represented the Simi Valley Unified School District (District).

Paul D. Powers and Jeffrey J. Stinnett, Attorneys at Law, represented the respondents.

The matter was submitted on April 29, 2009.

SUMMARY OF PROPOSED DECISION

The Governing Board of the Simi Valley Unified School District (Board) determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

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District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, "bumping," and breaking ties between employees with the same first dates of paid service. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. Kathryn Scroggin, Ed.D., is the Superintendent of the District.
2. On or about March 12, 2009, the District served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that 231.0 full time equivalent (FTE) positions would be reduced and/or discontinued.
3. Notice was served by certified mail, return receipt requested. Certificated employees timely requested, in writing, a hearing to determine if there is cause for not reemploying them for the ensuing school year.
4. The Superintendent made and filed Accusations against each of the certificated employees who requested a hearing. The Accusations, with required accompanying documents and blank Notices of Defense, were timely served on those certificated employees.
5. Timely Notices of Defense were filed by or on behalf of the respondents.
6. Respondents in this proceeding are probationary or permanent certificated employees of the District.
7. On or before March 3, 2009, the Governing Board of the District was given notice of the Superintendent's recommendation that 231.0 FTE employees be given notice that their services would not be required for the next school year and stating valid reasons for that recommendation.

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8. The Board took action to reduce or discontinue the following particular kinds of services for the 2009-2010 school year:

| <u>SERVICES</u> | <u>NUMBER OF FULL TIME EQUIVALENT POSITIONS</u> |
|---|---|
| Counselor, Student Support | 1.0 |
| Counselor | 4.0 |
| District Office, Teachers on Special Assignment | 6.0 |
| Elementary, multiple subject | 125.0 |
| Elementary, 4-6 science | 12.0 |
| Elementary, Literacy Coaches | 4.0 |
| School Nurse | 2.0 |
| Secondary, English/language arts | 17.0 |
| Secondary, history/social sciences | 12.0 |
| Secondary, mathematics | 12.0 |
| Secondary, physical education | 3.0 |
| Secondary, science | 21.0 |
| Secondary, Spanish | 4.0 |
| Secondary, elective | |
| Art/graphic arts | 1.0 |
| Choral music | 1.0 |
| Computer technology | 2.0 |
| Dance | 1.0 |
| Home economics | 1.0 |
| Industrial technology | 1.0 |
| Movie production | 1.0 |
| | 231.0 |
| Total Full Time Equivalent Reduction: | 231.0 |

9. Subsequent to adoption of the Board’s Resolution, the District identified vacancies in School Year 2009-2010 due to retirements, release of temporary teachers, and resignations. In consideration of such attrition, the District concluded that the number of certificated employees required to be terminated pursuant to this proceeding is 143.0 FTE.

10. Board Resolution 56-08/09 established tie-breaker 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 shall be based on the needs of the District.

11. The District maintains a seniority list which contains employees’ seniority dates (first date of paid service), current assignments and locations, advanced degrees, credentials, and authorizations. Credential and authorization data are obtained from the records of the County Office of Education, at which certificated employees must register such documents. Except as referenced below, Respondents did not challenge the accuracy of the seniority list.

12. 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. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could “bump” other employees.

13. The District used information from its seniority list to apply the tie-breaker criteria of Board Resolution No. 56-08/09.

14. During the hearing, the District noted that respondent Carol Carlson-Smith had not been given appropriate credit for the number of days worked during the school year before which she became a probationary employee. Therefore, the District agreed to adjust her seniority date.

15. As of the hearing date, the District had not yet completed its review to determine which, if any, other certificated employees had worked at least 75 percent of the school year prior to the school year in which they became probationary employees of the District. The District agreed to make that information available to respondents’ representative(s), and to make appropriate adjustments to the seniority list.¹

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. All of the identified services are particular kinds of services that could 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. Cause for the reduction or discontinuation of services relates solely to the welfare of the District’s schools and pupils within the meaning of Education Code section 44949.

3. 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.)

¹ According to the District’s Assistant Superintendent for Personnel Services, Don Gaudioso, any such adjustments will affect only rehire rights. They will have no effect on the order in which certificated employees will be laid off.

4. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

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. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

7. The seniority date for respondent Carol Carlson-Smith was miscalculated. Her seniority date shall be appropriately adjusted.

8. The District shall complete, forthwith, its review of which, if any, other certificated employees worked at least 75 percent of the school year prior to the school year in which they became probationary employees of the District. That information shall be made available to respondents’ representative(s), and the District shall make appropriate adjustments to the seniority list forthwith.

9. All other contentions and claims not specifically mentioned were considered and are denied.

ORDER

1. The District shall comply with Legal Conclusions 7 and 8.

2. Except as noted above, notices shall be given to respondents that their services will not be required for the 2009-2010 school year because of the reduction or discontinuation of particular kinds of services. Notice shall be given to respondents in inverse order of seniority.

DATED: May 1, 2009

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings