

BEFORE THE
GOVERNING BOARD
OF THE
CAJON VALLEY UNION SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2009020878

Certificated Employees Identified in
Attachment A

Respondents.

PROPOSED DECISION

Greer D. Knopf, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in El Cajon, California on April 28, 2009.

Anthony P. De Marco, Atkinson, Andelson, Loya, Ruud & Romo, Attorneys at Law, represented the Cajon Valley Union School District.

Fern M. Steiner, Tosdal, Smith, Steiner & Wax, Attorneys at Law, represented the 85 respondents identified in Attachment B.

No appearance was made by or on behalf of respondents Joseph Barry, Jennifer Chance, Lisa Heiden, Jessica Herold, Janice Humphrey, Jenna Keffer, Renee Kirnan, Elizabeth McGinn, Nona Richard, and Ronald Richards.

The matter was submitted on April 28, 2009.

FACTUAL FINDINGS

1. Kari S. Hull, the Assistant Superintendent of Personnel Services (the Assistant Superintendent) of the Cajon Valley Union School District, made and filed the accusations dated March 18, 2009 in her official capacity as the Assistant Superintendent of the Cajon Valley Union School District. The accusations were filed against the 107 respondents (respondents) identified in Attachment A attached hereto and incorporated herein.

2. The respondents are all certificated employees of the Cajon Valley Union School District (the District).

3. In March 2009, in accordance with Education Code section 44949 and 44955, the Assistant Superintendent, acting on behalf of the Superintendent, notified the Governing Board of the District (the Governing Board) in writing of her recommendation to reduce or discontinue services for the ensuing school year. The Assistant Superintendent stated the reasons for the recommendation. The Assistant Superintendent recommended the reduction of particular kinds of services for the 2009-2010 school year.

4. On March 3, 2009, the Governing Board adopted Resolution to Reduce or Eliminate Certain Certificated Services No. 03-09-810 JC (the Resolution to Reduce Services) determining that it is necessary to reduce particular kinds of services at the end of the current school year. The Governing Board determined that the particular kinds of services that must be reduced for the 2009-2010 school year are the following full time equivalent (FTE) positions:

<u>Particular Kinds of Services</u>	<u>Number of FTE Positions</u>
Administration-Assistant Principal	0.50
Administration – Ed Services Coordinator	1.00
Administration - Principal	1.00
Core-6 th Grade	6.00
Counseling Services	4.70
Early Admission Kindergarten	3.36
Elective Art	1.00
Elective-Associated Student Body	0.40
Elective-AVID	0.60
Elective-Band	0.20
Elective-Drama	0.80
Elective-Engineering Science	0.20
Elective-Geography	0.20
Elective-Intervention	1.60
Elective-Spanish	0.70
Elective-Video Production	0.20
Elective-Woodshop	0.20
English 7	2.00
English 8	1.40
English Language Development	3.00
Facilitator- Bilingual	1.60
Facilitator-Title I	1.00
History 7	0.50
History 8	1.00
Home School-K-8 Instruction	1.00
Hourly Categorical Support	25.00
K-5 Bilingual Instruction	3.00
K-5 Instruction	67.00
Math 7	1.40

Math 8	1.40
Newcomer Program Teacher	6.35
Physical Education	6.91
Program Facilitator	0.50
Psychologist	0.80
Reading 1 st Coach	0.50
School Nurse	1.00
Science 7	2.40
Science 8	0.60
Special Education-Adaptive Physical Ed	0.40
Special Education-Early Childhood	0.20
Special Education-Resource Specialist Program	1.00
Special Education-Special Day Class (M/M)	4.00
Special Education-Special Day Class (M/S)	1.00
Special Education-Speech Language Pathologist	1.00
State Preschool Teachers	2.00
Support Teacher-Art	0.80
Support Teacher-Collaboration Release	1.60
Support Teacher-English Language Arts	1.35
Support Teacher-English Learners	0.45
Support Teacher-High Point	1.85
Support Teacher-Life Lab	0.40
Support Teacher-Music	0.40
Support Teacher-Physical Education	0.40
Support Teacher-REACH	0.45
Support Teacher-Read 180 Teacher	0.85

The reductions adopted by the Governing Board's resolution totaled 169.17 FTE positions.

5. The Governing Board directed the Superintendent or her designee to determine which employees' services would not be required for the 2009-2010 school year as a result of the reduction of these particular kinds of services. The Board further directed the Superintendent or his designee to send the appropriate notices to all certificated employees of the District who would be laid off as a result of the reduction of these particular kinds of services.

6. On or before March 15, 2009, the District timely served, by either personal delivery or by registered mail, a written notice to each of the respondents herein that the Assistant Superintendent had recommended not to re-employ them in the upcoming 2009-2010 school year. The written notice notified respondents that his or her services would not be required for the upcoming 2009-2010 school year. The written notice to respondents set forth the reasons for the recommendation. Each written notice advised respondents of their right to a hearing, that each respondent had to deliver a Request for Hearing in writing to the District by March 13, 2009, and that the failure to deliver a Request a Hearing would

constitute the waiver of the right to a hearing. The recommendation that respondents be terminated from employment was not related in any way to their competency as teachers.

7. Some certificated employees given written notice that they would not be re-employed for the ensuing school year did not file a Request for Hearing. However, each of the 107 respondents named herein timely filed a written Request for Hearing to determine if there is cause for not reemploying them for the 2009-2010 school year.

8. Subsequently, on March 18, 2009, the District filed and then timely served the Accusation, a Notice to Respondent, a blank Notice of Defense form, a Notice of Hearing, and relevant Education Code and Government Code sections, upon each of the 107 respondents listed in Attachment A herein who had timely requested a hearing in this matter. Most, but not all, of the named respondents herein filed a timely Notice of Defense, but at the hearing the District waived any objection based on a failure of any respondent to file a timely Notice of Defense. All pre-hearing jurisdictional requirements were met.

9. The services the Governing Board addressed in the Resolution to Reduce Services are "particular kinds of services" that can be reduced or discontinued within the meaning of Education Code section 44955. The Governing Board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper and reasonable exercise of its discretion. The Board's action was taken after input and evaluation from administrative staff, the public, and the teachers in the District. The Governing Board's decision to make these cuts was the result of deliberation and consideration of the necessary cuts in the District's budget for the ensuing school year. The District is facing an estimated 19 million dollar deficit in the next two years. The Board's action to reduce services is a proper exercise of its discretion to address the need for budget cuts for the 2009-2010 school year.

10. The reduction or discontinuation of particular kinds of services relates solely to the welfare of the District and its pupils. The District clearly recognizes the high level of dedication and service these respondents have given to the District, but it faces extremely difficult financial times due to proposed state budget cuts. While it may not be desirable to cut back staff, if the District does not make these reductions, it is facing a grave financial situation in the coming year. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

11. Some junior employees with specialized training who were hired after other more senior respondents are being retained by the District. However, these junior employees are credentialed in specialized areas such as special education or bilingual education. The District needs personnel to teach special education and bilingual education and the junior employees being retained have the special training and experience necessary to teach those courses of study which others with more seniority do not possess. In addition, the District plans to assign such junior employees with special credentials, training or experience to

assignments in those specialized areas of special education and bilingual education in the next school year.

12. Some of the employees named as respondents were hired on the same date. Between these employees who first rendered paid service to the district on the same date, the governing board determined their order of termination solely on the basis of needs of the district and the students. The specific criteria used to determine the order of termination was set forth by the Governing Board as an exhibit to the Resolution to Reduce Services. The specific criteria to be used were adopted by the Governing Board as the “Criteria to be Applied to Determine Order of Layoff for those Certificated Employees with the Same Date of First Paid Probationary Service” (Tie Breaking Criteria). The District fairly applied the Tie Breaking Criteria to rank those employees hired on the same date. Under these criteria the District properly retained certain employees while the respondents were properly given notice that their services would no longer be required for the ensuing school year.

13. Subsequent to the Board action and filing and service of the accusations, the District continued to evaluate personnel needs in the District. After taking into consideration the positively assured attrition in the District for the upcoming school year and all other relevant factors brought to the attention of the Superintendent’s staff, the District determined it would dismiss the accusations as to the following respondents: Erica Afeman, Rachel Conroy, Choleanne Dilgard, Amanda Flickinger, Heather Hobson, Casey Lange, Candice Lewis, Victoria Oleson, Sarah Olson, Rebecca Rettinger, Nona Richard, Mackenzie Rollins, Daniela Ruiz-Jo, Jacob Ruth, Timothy Staninger, Shauna Stueve, Dawn Tomlin, Lisa Uribe, Brian Valente, and Autumn Welch.

The Board considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

14. No certificated employee junior to any respondent is being retained to perform any services that any respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Cause exists under Education Code section 44949 and 44955 for the Cajon Valley Union School District to reduce particular kinds of services. The cause for the reduction of particular kinds of services is related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the accusations herein. Therefore, cause exists for the Board to give respondents notice before May 15, 2009, that their services will no longer be required by the District for the 2009-2010 school year.

ORDER

1. The accusations served on respondents Erica Afeman, Rachel Conroy, Choleanne Dilgard, Amanda Flickinger, Heather Hobson, Casey Lange, Candice Lewis, Victoria Oleson, Sarah Olson, Rebecca Rettinger, Nona Richard, Mackenzie Rollins, Daniela Ruiz-Jo, Jacob Ruth, Timothy Staninger, Shauna Stueve, Dawn Tomlin, Lisa Uribe, Brian Valente, Autumn Welch are dismissed pursuant to the request of the District.

2. The accusations served on the remaining respondents herein are sustained and notice shall be given to those remaining respondents listed in Attachment A before May 15, 2006 that their services will not be required in the next school year because of the reduction of particular services as indicated.

Dated: _____

GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings

ATTACHMENT A

LIST OF RESPONDENTS

AFEMAN, ERIKA
AHEARN, JACQUELINE
BARRY, JOSEPH
BARTLEY, NATOSHIA
BOBO, NANCY
BOULET, ANNA
BRADSHAW, NICOLE
BROOKS, TIMOTHY
BROWN, RENEE
BURKE, JAMIE
BUSH, ROBERT
CALDERWOOD, MELISSA
CARMONA, SARA
CHANCE, JENNIFER
CHEVALIER, CHELSEA
CLARK, EMILY
CONROY, RACHEL
COULTER, SHANNON
CRAMPTON, NICOLE
CUNNINGHAM, GREGORY
DE LAMARTER, DAVID
DESILVA, ALLISON
DILGARD, CHOLEANNE
DIZON, BETHANY
DOWNS, MIRIAM
DUNCAN, CHRISTINA
DUST, THERESA
DUSTIN, DARCI
FLICKINGER, AMANDA
GILMORE, TERYN
GUMBAYAN, JEFFREY
HACKEU, LIZETTE
HALE, ANN
HARTNETT, PENELOPE
HEIDEN, LISA
HEIMASTER, NIKKI
HEROLD, JESSICA
HILLESHEM, AMANDA
HIRSCHMILLER, LINDA
HOBSON, HEATHER

HOLMES, JOY
HOUSTON, SHARLENE
HUMPHREY, JANICE
HYDE, ALLISON
IRWIN, REBECCA
ISOM, STACEY
JONES, JENNIFER
JONES, LORI
KEFFER, JENNA
KIRNAN, RENEE
LANGE, CASEY
LEE, TRAVIS
LEWIS, CANDICE
LIMTIACO, ELIZABETH
LUCAS, KRISTEN
LUCK, KRISTEN
MALTESE, SARAH
MARTINEZ, KIMBERLY
MCGINN, ELIZABETH
MENKVELD, ANGELA
MONTES, APRIL
NEWLIN, STEPHANIE
NIDA, KATHRYN
NIKOWITZ, ALLISON
ODONOGHUE, KATHERINE
OLESON, VICTORIA
OLSON, SARAH
PETRAGLIA, JENNIFER
PIKE, JACKLYN
RAIMONDO, CHERYLANN
REED, MADALYN
REESE, ROBIN
RETTINGER, REBECCA
RICE, JACLYN
RICHARD, NONA
RICHARDS, RONALD
ROLLINS, MACKENZIE
RUIZ-JO, DANIELA
RUTH, JACOB
SANCHEZ, SANDRA
SAUER, LAUREN
SCHANTZ, LINDSEY
SHACKFORD, KATHLEEN
SOUTHARD, JOANNE
STACK, LAUREY

STANINGER, TIMOTHY
STUEVE, SHAUNA
TAMS, HEIDI
THOMPSON, KELLYN
TILLMAN-HARRIS, AMIE
TOMLIN, DAWN
TORSTROM, ERIN
TSAY, JENNIE
TUBBS, NINA
URIBE, LISA
VALENTE, BRIAN
WADE, ROBERT
WAPPLER, DEBRA
WARREN, JACKIE
WARRINER, DANA
WEBSTER, REGGIE
WELCH, AUTUMN
WILNER, DANIELLE
WRIGHT, KIMBERLEY
YOUNG, PAMELA
ZAMUDIO, JENNIFER
ZIARKO, AMY

ATTACHMENT B

LIST OF RESPONDENTS REPRESENTED BY COUNSEL

AHEARN, JACQUELINE
BARTLEY, NATOSHIA
BOBO, NANCY
BOULET, ANNA
BRADSHAW, NICOLE
BROOKS, TIMOTHY
BROWN, RENEE
BURKE, JAMIE
BUSH, ROBERT
CALDERWOOD, MELISSA
CARMONA, SARA
CHEVALIER, CHELSEA
CLARK, EMILY
CONROY, RACHEL
COULTER, SHANNON
CRAMPTON, NICOLE
CUNNINGHAM, GREGORY
DE LAMARTER, DAVID
DESILVA, ALLISON
DIZON, BETHANY
DOWNS, MIRIAM
DUNCAN, CHRISTINA
DUSTIN, DARCI
DUST, THERESA
FLICKINGER, AMANDA
GILMORE, TERYN
GUMBAYAN, JEFFREY
HACKEU, LIZETTE
HALE, ANN
HARTNETT, PENELOPE
HEIMASTER, NIKKI
HILLESHEM, AMANDA
HIRSCHMILLER, LINDA
HOLMES, JOY
HOUSTON, SHARLENE
HYDE, ALLISON
IRWIN, REBECCA
ISOM, STACEY
JONES, JENNIFER
JONES, LORI

LANGE, CASEY
LEE, TRAVIS
LIMTIACO, ELIZABETH
LUCAS, KRISTEN
LUCK, KRISTEN
MALTESE, SARAH
MARTINEZ, KIMBERLY
MENKVELD, ANGELA
MONTES, APRIL
NEWLIN, STEPHANIE
NIDA, KATHRYN
NIKOWITZ, ALLISON
ODONOGHUE, KATHERINE
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RICE, JACLYN
RUIZ-JO, DANIELA
RUTH, JACOB
SANCHEZ, SANDRA
SAUER, LAUREN
SCHANTZ, LINDSEY
SHACKFORD, KATHLEEN
SOUTHARD, JOANNE
STACK, LAUREY
STANINGER, TIMOTHY
TAMS, HEIDI
THOMPSON, KELLYN
TILLMAN-HARRIS, AMIE
TORSTROM, ERIN
TSAY, JENNIE
TUBBS, NINA
VALENTE, BRIAN
WADE, ROBERT
WAPPLER, DEBRA
WARREN, JACKIE
WARRINER, DANA
WEBSTER, REGGIE
WILNER, DANIELLE
WRIGHT, KIMBERLEY
YOUNG, PAMELA
ZAMUDIO, JENNIFER
ZIARKO, AMY