

BEFORE THE
GOVERNING BOARD OF THE
ORCUTT UNION SCHOOL DISTRICT

In The Matter of the Layoffs Of:

OAH No.: 2009030115

Thomas Brown and other Certificated
Employees of the Orcutt Union District,

Respondent.

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Orcutt, California, on April 29, 2009.

David Larsen, Attorney at Law, represented the Complainant.

Alexis Ridenour, Attorney at Law, represented the Respondents.

Oral and documentary evidence and evidence by way of official notice was received and the matter then argued.

The Administrative Law Judge now finds, concludes and orders as follows:

SUMMARY OF PROPOSED DECISION

The Governing Board (Board) of the Orcutt Union School District (District) determined to reduce or discontinue particular kinds of services provided by certificated employees totaling 45.5 full-time equivalent positions. The decision was not related to the competency and dedication of the individuals whose services are to be reduced or eliminated. The process of selecting the less senior certificated employees for layoff was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

Parties

1. Complainant, Sharon McHolland, is the Superintendent of the District, and filed the Accusations¹ in that official capacity.

2. Twenty-five teachers received notice of layoff and, of those, twenty four requested a hearing. The District rescinded eleven of the notices prior to the hearing, leaving thirteen certificated positions at issue. The thirteen certificated employees, the Respondents herein, are as follows:

LAST NAME	FIRST NAME
Brandt	Micaela
Brennan	Jennifer
Brown	Janet
Brown	Thomas
Cofield	Amy
Cummings	Karen
Degner	Susan
Dickson	Colleen
Openshaw	Jennie
Provost	Janell
Raymond	Karen
Schmid	John
Streeper	Rodney

Reduction of Services

3. On March 11, 2009, the Governing Board adopted Resolution No. 10 (Resolution) to reduce or discontinue the following particular kinds of certificated services no later than the beginning of the 2009/2010 school year:

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¹ The term "accusation" refers to a pleading utilized under the Administrative Procedure Act, Government Code section 11503. Respondents are not "accused" in the every-day sense of that word, unless it can be said they are accused of not having enough seniority to retain their positions with the District in the face of a resolution to reduce positions.

<u>Services</u>	<u>Number of Full-Time Equivalent Positions</u>
Regular Classroom (Instructors (39)	
K-6 Teachers	32 FTE
7-8 Teachers	7 FTE
Psychologists	1 FTE
Counselor	1 FTE
Vice Principals	3.5 FTE
Principal	1 FTE
District Total	45.5 FTE

The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.

4. The Board determined to reduce or eliminate the services set forth in Finding 3 because of the financial constraints resulting from revenue projected for the 2009/2010 school year.

5. With regard to services provided by the District Exhibit A attached to the Resolution and incorporated therein details the criteria to be applied to determine the order of layoff for those certificated employees with the same date of first paid probationary service.

6. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District's discretion given the budgetary constraints, other factors considered by the Board, and the manner in which the decision to reduce or discontinue services was reached.

7. 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.

Notice and Process

8. On March 11, 2009, pursuant to Education Code sections 44949 and 44955, the Board was given written notice of recommendation by the Complainant that notice be given to Respondents that their services will not be required for the ensuing 2009/2010 school year, and stating the reasons therefore.

9. The Board determined that it shall be necessary by reason of the reductions or discontinuances of 45.5 FTEs set forth in Finding 3 to decrease the number of certificated employees at the close of the present school year by a corresponding number of full-time equivalent (FTE) positions and directed the Complainant to proceed accordingly by notifying the appropriate employees to implement the Board's determination.

10. On or before March 15, 2009, Respondents were given various written notices that it had been recommended that notice be given them pursuant to Education Code sections 44949 and 44955 that their services will not be required for the ensuing 2009/2010 school year, and stating the reasons therefore.

11. Each Respondent timely requested a hearing. Thereafter, an Accusation was served upon each Respondent, and each Respondent filed a notice of defense, which was timely, or was accepted by the District without objection.

Seniority

12. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid service), current assignments and locations, credentials, authorizations and employment status. For purposes of Education Code section 44955, "competent" and qualifications are based upon credentials and scope of credentials of the Respondents. District staff carried out the Board's directive in the Resolution by using a selection process involving review of credentials and seniority. The District did not include the teachers of a charter school (Orcutt Academy) affiliated with the District in its selection process in that the charter school is a separate entity with at-will employees. The selection process complied with Education Code requirements.

13. 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 notice and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents by reason of Findings 8, 9, 10 and 11.

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2. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services by reason of Findings 3, 4 and 5. The Board's decision to reduce or eliminate the identified services was neither arbitrary nor capricious in that the decisions relate solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949 by reason of Findings 6 and 7.

3. No permanent or probationary employee with less seniority is being retained to render a service for which Respondent are certificated and competent by reason of Findings 12 and 13.

4. Cause exists to give notice to Respondents, pursuant to Education Code sections 44949 and 44955 that their services will not be required for the 2009/2010 school year by reason of the whole of the Findings herein.

ORDER

Notice may be given to Respondents that their services will not be required for the 2009/2010 school year.

Dated: _____

RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:rfm