



2. Respondents are certificated employees of the District.

3. On February 25, 2009, the Board adopted Resolution No. 089-30 to discontinue or reduce particular kinds of services. 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. Specifically, the Board decided to reduce or eliminate 32 full-time-equivalent (FTE) certificated employees as follows:

Reduce K-6 Classroom Teaching Services	16.00 FTE
Discontinue K-6 Reading Specialist Teaching Services	1.50 FTE
Reduce Middle School Computer Application Teaching Services	1.00 FTE
Reduce Secondary English Teaching Services	3.00 FTE
Reduce Secondary Math Teaching Services	2.00 FTE
Reduce Secondary Life Science Teaching Services	2.00 FTE
Reduce Secondary Social Studies Teaching Services	2.00 FTE
Reduce Special Ed Recourse Specialist Teaching Services	.50 FTE
Reduce Curriculum Coordinator Teaching Services	2.00 FTE
Reduce Elementary School Assistant Principal Services	1.00 FTE
Discontinue "Assistant Superintendent Ed Services"	1.00 FTE
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Total	32.00 FTE

4. On March 6, 2009, the Superintendent of the District recommended that the Board give notice to Respondents that their services would not be required for the ensuing 2009-2010 school year, based on the Board's resolution to reduce or discontinue particular kinds of services for the 2009-2010 school year.

5. Resolution No. 089-30 also 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 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 March 9, 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.

7. On March 6, 2009, the Superintendent of the District made and filed Accusations against Respondents.

8. Requests for hearing/Notices of Defense were timely filed by Respondents.

9. The procedure followed by the District differed somewhat from that specified in Education Code sections 44949 and 44955,<sup>1</sup> in that the District followed a one-step process whereby the District served Respondents with all jurisdictional documents, including the Accusation on or before March 12, 2009. Respondents perfected their rights to a hearing by submitting a combined Request for Hearing/Notice of Defense before March 25, 2009. Although this process deviated from the Education Code, it did not prejudice any of the employees, including Respondents, who were subject to layoff. All prehearing jurisdictional requirements were met.

10. In order to carry out the Board resolution, the District considered an expected shortfall in the budget for the 2009-10 school year, and positively assured attrition, including retirements, resignations, and other expected vacancies for the 2009-10 school year. Karen Reed, Assistant Superintendent, testified that the District expected a serious budget shortfall in the 2009-10 school year. She served on the budget committee for the District and has helped prepare budget presentations to the Board. In addition, she has attended and/or participated in every Board meeting where budget items, revenue and expenditures, and budget cuts were considered by the Board. The District estimated that it will incur a \$2.4 million dollar deficit over the next two years.

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

12. 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.

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<sup>1</sup> The Education Code sets forth a two-step process whereby certificated employees subject to layoff are served prior to March 15, with a Notice of Recommendation That Services Will Not be Required, a Request for Hearing form, and copies of Education Code sections 44949 and 44955. If an employee files a Request for Hearing with the District within seven days after receiving the above documents, the District is required to serve on each employee a Notice of Accusation, a copy of the Accusation, a blank Notice of Defense, and copies of relevant Government Code sections that set forth hearing procedures. The employee must then file a Notice of Defense within five days to perfect his/her right to a hearing.

13. The District assigned a seniority date of October 17, 2005, for Andrea Saldana. The parties stipulated at the hearing that Ms. Saldana was hired to fill in for teacher Colin Walz from March 25, 2005, until June 17, 2005. Ms. Saldana was then hired as a temporary teacher from October 17, 2005 and taught a full year. She was given probationary status at the beginning of the 2006-2007 school year. Under these facts, the District was correct in assigning a seniority date of October 17, 2005, for Respondent Saldana.

14. The District assigned a seniority date of November 14, 2005, for Erin Wahbe. The parties stipulated at the hearing that Respondent Wahbe was hired to fill in for teacher Amy Riker from September 1, 2005, until November 4, 2005. Respondent Wahbe was then assigned to a classroom vacated by teacher Danielle Lange from November 7, 2005 to the present. Prior to commencing her employment on September 1, 2005, Respondent Wahbe was not provided a contract which specified her status. Under these stipulated facts, and pursuant to Education Code section 44918, respondent Wahbe's seniority date should be September 1, 2005. The parties did not specify how a change in Respondent Wahbe's seniority date would affect the proposed layoff.

15. 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, and which employees should fill expected vacancies.<sup>2</sup>

16. The District applied the tie-breaking criteria set forth in Resolution 089-30 to determine seniority for certificated employees with the same first date of paid service. This included the utilization of a lottery for employees who remained tied after the application of the tie-breaking criteria. The District properly discharged its discretionary duties in applying the criteria for breaking ties. Further, it was not arbitrary or capricious for the District to determine seniority by lottery when the application of the tie-breaker criteria did not resolve ties. The District has assigned a seniority date of August 29, 2005, to Respondents Amanda Paulson, Natasha Neumann, and Clarice Acosta. Based on the tie-breaking criteria, the District expects to rescind the layoff notice issued to Respondent Paulson. The specific application of the tie-breaking criteria regarding Respondents Paulson, Neumann and Acosta was a proper exercise of the District's discretion.

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

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<sup>2</sup> This finding includes a determination by the District that Respondent Amanda Paulson should fill an expected vacancy due to the retirement or resignation of Melanie Wooler.

## 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.

5. Cause exists to change the seniority date for Respondent Erin Wahbe to September 1, 2005, based on Factual Finding 14.

## ORDER

1. The District shall change the seniority date of Respondent Erin Wahbe to September 1, 2005.

2. 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

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HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings