

BEFORE THE
BOARD OF EDUCATION
COLTON JOINT UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2009030484

Respondents listed on Exhibit A

Respondents.

PROPOSED DECISION

On April 28, 2009, in Colton, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

John W. Dietrich, Attorney at Law, represented the Colton Joint Unified School District.

Carlos Perez, Attorney at Law, represented the respondents set forth on Exhibit A attached hereto except Eduardo Martinez, who did not appear at the hearing.

During the hearing, the District withdrew the layoff notice for and dismissed the accusation against Paul Dubois.

The matter was submitted on April 28, 2009.

FACTUAL FINDINGS

1. On or about March 12, 2009, Jerry Almendarez, Assistant Superintendent, Human Resources Division of the Colton Joint Unified School District (hereafter, "the District"), made and filed the accusations against respondents in his official capacity.

2. Respondents are certificated employees of the District.

3. Before March 15, 2009, pursuant to Education Code sections 44949 and 44955, James A. Downs, Superintendent of the District, notified the Board of Education of the District of the Superintendent's recommendation that respondents be notified their services will not be required for the ensuing school year. The Superintendent's notification to the Board of Education set forth the reasons for the recommendation.

4. On or before March 15, 2009, each respondent was given written notice that the Superintendent had recommended that notice be given to respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing year. Each written notice set forth the reasons for the recommendation. The notices satisfied the requirements of sections 44949 and 44955. *San Jose Teachers Association, Inc. v. Allen* (1983) 144 Cal.App.3d 627, 632; *Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 803-04, distinguishing *Karbach v. Board of Education* (1974) 39 Cal.App.3d 355, 360-63.

5. Each respondent timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year. Accusations were timely served on respondents, and each respondent except Eduardo Martinez filed a timely Notice of Defense. All pre-hearing jurisdictional requirements have been met.

6. The Board of Education of the District took action in Resolution No. 09-12 to discontinue the following services for the 2009-10 school year:

1.	Counselor. DATE	1.0	F.T.E.
2.	Counselor, Elementary	1.0	F.T.E.
3.	Counselor, High School	3.0	F.T.E.
4.	Counselor, Middle School	1.0	F.T.E.
5.	Curriculum Program Specialist, District Office level	7.0	F.T.E.
6.	Drafting Teacher, High School	1.0	F.T.E.
7.	Elementary Teacher, K-6	20.0	F.T.E.
8.	Health Teacher, Middle School	2.0	F.T.E.
9.	Home Choice Teacher	1.0	F.T.E.
10.	Home Economics Teacher, High School	1.0	F.T.E.
11.	Home Economics Teacher, Middle School	1.0	F.T.E.
12.	Independent Study Teacher	1.0	F.T.E.
13.	Librarian, Middle School	4.0	F.T.E.
14.	P.E. Teacher, High School	2.0	F.T.E.
15.	P.E. Teacher, Middle School	1.0	F.T.E.
16.	Wood Shop Teacher, High School	2.0	F.T.E.
17.	Work Experience Teacher, High School	1.0	F.T.E.
18.	Principal, Elementary	1.0	F.T.E.
19.	Assistant Principal, Middle School	1.0	F.T.E.
	Total	52.0	F.T.E.

The resolution contained the following:

That "competency" as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include: (1) possession of a valid credential in the relevant subject matter area; (2) academic training as evidenced by "highly qualified" status under the No Child Left Behind Act and an appropriate EL

authorization (to the extent required by the position); and (3) one year of full-time experience in the relevant subject matter area.

The services set forth above are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. *California Teachers Association v. Board of Trustees of the Goleta Union School District* (1982) 132 Cal.App.3d 32, 34-37 and cases cited therein. *See also San Jose Teachers Association v. Allen, supra* at 635-38, in which the court specifically rejected the reasoning of *Burgess v. Board of Education* (1974) 41 Cal.App.3d 571; *Zalac v. Governing Board* (2002) 98 Cal.App.4th 838, 853-54.

Furthermore, these services may be reduced because of budgetary difficulties. *Zalac v. Governing Board, supra*, and cases cited therein. The decision to reduce or discontinue the services is neither arbitrary nor capricious but rather a proper exercise of the District's discretion.

7. No certificated employee junior to any respondent is retained to perform services which any respondent is certificated and competent to render.

8. The reduction or 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 of the District as determined by the Governing Board.

9. 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.

10. The Board of Education established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date.

11. The District created a Seniority List which contains employees' seniority dates (first date of paid service), current site, credentials, ELL, and authorizations. The District used the Seniority List to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the two 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.

12. The Board of Education of the District reduced a particular kind of service described as "Curriculum Program Specialist, District Office level" by seven full-time equivalent positions. The "bump analysis" that was prepared by District staff identified eight teachers filling seven full-time equivalent positions who performed this service. Their seniority dates ranged from January 1991 to August 2003. Each of them bumped into

another position, and six of the seven positions were created by attrition. Only one of the curriculum program specialists bumped another teacher, Holly Preston, who was in turn laid off.

Susan Reed from the District's Human Services Division testified that there were some curriculum program specialists employed by the District who were not listed on the bump analysis. She pointed out that the Board of Education in its resolution drew a distinction between curriculum program specialists who worked at the District Office level and those who did not. Those who did not appear on the bump analysis provided pupil personnel services and performed services that served the entire district. She testified that a curriculum program specialist who worked at the District Office level performed services that were different from the curriculum program specialists who provided pupil personnel services.

Ms. Reed did not indicate during her testimony how many curriculum program specialists the District employed who did not work at the District Office level. Two were identified during the hearing, and the seniority list reflects several other curriculum program specialists who were not listed on the bump analysis. All of the curriculum program specialists employed by the District were senior to Ms. Preston.

Kathryn Walck is a curriculum program specialist for special education and has worked for the District in that capacity for four years. She testified her duties included staff development, new teacher support, and providing training for different types of special education teachers. She further testified that there were approximately 20 curriculum program analysts who worked for the District and they all held the same title, but they provided different services. She indicated they all specialized, worked at different sites throughout the District, and had different managers.

13. Nicholas Vidovich has a seniority date of September 19, 1996, and teaches three classes of study hall and two classes of woodshop at Colton High School. He has a clear single subject credential in industrial and technical education. The District reduced woodshop teachers at the high school level by two full-time equivalent positions, resulting in the loss of his two woodshop classes. Consequently, he has been laid off by 0.4 FTE.

Mr. Vidovich testified his credential allowed him to teach computer science and technology, as well as photography and graphic arts. He pointed to several keyboarding or computer literacy classes that he could teach which were taught by teachers with less seniority than he has. He has never taught keyboarding, computer literacy, or any other subject he pointed to for one full year.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter relating to the elimination of 52 full-time equivalent positions exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Respondents challenge the decision of the District to differentiate between curriculum program specialists who work at the District Office level, who were reduced by seven FTE positions, and other curriculum program specialists who were not reduced. The basis for the challenge is unclear and speculative, and seeks to undo the reduction of this service. The District is granted the authority to make decisions regarding the types of services to be reduced, and it exercised that authority here in a reasonable manner. The testimony established curriculum program specialists performed different services, and those employed at the District Office level were different from such specialists who performed pupil personnel services.

Furthermore, there is no evidence to suggest that had the District not differentiated between the two types of curriculum program specialists, there would have been any different result in the lay off process. As a consequence of the reduction of seven FTE positions, no curriculum program specialists of any kind were laid off, and only one teacher, Ms. Preston, who was not a curriculum program specialist, was laid off. She was junior to all the curriculum program specialists listed on the bump analysis who worked at the District Office level as well as other curriculum program specialists listed on the seniority list. Thus, she would have been subject to layoff regardless of how the District decided to reduce the number of curriculum program specialists. Ms. Preston did not testify, and no other evidence was offered, to demonstrate that had the District not made the distinction as to which curriculum program specialists positions to eliminate, Ms. Preston would not have been laid off. Respondents' challenge to the layoff of curriculum program specialists must be rejected.

3. The District defined competency in part as "one year of full-time experience in the relevant subject matter area." Because Mr. Vidovich did not have one year of full-time experience teaching keyboarding, computer literacy, or any other subject permitted by his credential beyond woodshop, he cannot be considered competent for purposes of bumping a more junior teacher. A District is permitted to establish a standard of competency that includes prior teaching experience in the relevant subject area. *Duax v. Kern Community College Dist.*, (1987) 196 Cal.App.3d 555, 562-67. Accordingly, Mr. Vidovich's layoff of 0.4 FTE must be upheld.

4. Cause exists under Education Code sections 44949 and 44955 for the District to discontinue particular kinds of services relating to the 52 full-time equivalent positions. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the Accusation. It is recommended that the Board give respondents notice before May 15, 2009, that their services will no longer be required by the District.

ORDER

1. The accusation served on respondent Paul Dubois is dismissed.

2. The Accusations served on the remaining respondents listed on Exhibit A are sustained. Notice shall be given to each respondent before May 15, 2009 that his or her services will not be required for the 2009-10 school year pursuant to the Governing Board's resolution because of the reduction of particular kinds of services.

Notice shall be given in inverse order of seniority.

DATED: _____

ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A

COLTON JOINT UNIFIED SCHOOL DISTRICT

The following certificated personnel will receive a layoff notice:

1	Carpenter	Monica
2	Castro	Benjamin
3	Coronado	Anthony
4	Emmerson	Katherine
5	Flores	Kirstin
6	Fraijo	Edrina
7	Gaytan	Gabriel
8	Gonzalez	Patricia
9	Gudgeon	Kelli
10	Harworth	Sandra
11	Hepler	Amy
12	Johnston	Amber
13	Jones	Alisha
14	Kappmeyer	Julie
15	Laska	Jennifer
16	Martin	Heather
17	Martinez	Eduardo
18	Matheson	Keri

19	Mezzanatto	Yvette
20	Minjares	Alycia
21	Negrete	Teresa
22	Preston	Holly
23	Ramirez	Xochitl
24	Ruiz	Jesus
25	Sanchez	M. Guadalupe
26	Sandoval	Mark
27	Spencer	Debra
28	Strauss	Tiffany
29	Swanson	Janice
30	Vidovich	Nicholas
31	Viselli	Cassandra
32	Walker	Tim
33	Williams	Coy
34	Yang	Sharon