

BEFORE THE
BOARD OF TRUSTEES
BEAUMONT UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2009030532

CERTIFICATED EMPLOYEES OF THE
BEAUMONT UNIFIED SCHOOL
DISTRICT LISTED ON EXHIBIT A,

Respondents.

PROPOSED DECISION

On April 17, 2009, in Beaumont, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Sherry Gordon, Attorney at Law, represented the Beaumont Unified School District.

Ronald G. Skipper, Attorney at Law, represented the respondents set forth on Exhibit A attached hereto.

During the hearing, the District withdrew the accusation against Steven Kok.

The matter was submitted on April 17, 2009.

FACTUAL FINDINGS

1. On or about March 13, 2009, Steve Hovey, Assistant Superintendent, Personnel Services of the Beaumont 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, Mr. Hovey, pursuant to a delegation of authority, notified the Board of Trustees of the District of his 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 filed a timely Notice of Defense. All pre-hearing jurisdictional requirements have been met.

6. The Board of Trustees of the District took action in Resolution No. 2009-32 to discontinue the following services for the 2009-10 school year:

K-6 Classroom Teachers	(32 F.T.E.)
Special Education Teachers	(3 F.T.E.)
Elementary/Middle School/Special Education Counselors	(3.5 F.T.E.)
School Nurses	(1 F.T.E.)
Middle School Opportunity/Intervention Teachers	(2 F.T.E.)
High School Assistant Principal	(1 F.T.E.)
Coordinator-Special Projects	(1 F.T.E.)

The resolution proposed elimination of a total of 43.5 full-time equivalent positions.

The resolution provided in part:

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) “highly qualified” status under the No Child Left Behind Act; (3) appropriate EL authorization (if required by the position); (4) with regard to Counselors, special training and/or experience to be considered bilingual and, with regard to High School Counselors, prior experience as a High School Counselor for at least one school year in the previous five; and (5) any training and experience necessary to meet the job requirements of specialized positions (such as Dual Immersion Teachers or Opportunity Teachers) as indicated in the relevant job descriptions.

That, as between certificated employees with the same seniority date, the order of termination shall be determined solely by Board-adopted criteria.

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 Board of Trustees.

9. The Board of Trustees 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 Trustees established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date by Resolution 2009-03 adopted on February 10, 2009.

11. The District created a Seniority List which contains employees' seniority dates (first date of paid service), current assignments and locations, advanced degrees, credentials, and authorizations. Mr. Hovey was responsible for creating the seniority list. 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.

12. The District proposes to skip Maria Strawter and lay off Andrew Chase. Both have clear PPS: school counseling credentials. Ms. Strawter's seniority date is February 9, 2007, and her present assignment is middle school counselor. Mr. Chase's seniority date is March 2, 2006 and his present assignment is head counselor at the elementary school level. Ms. Strawter has experience counseling at the high school level while Mr. Chase does not.

Mr. Hovey testified that counselors who have worked at the high school level have responsibilities, training, experience and knowledge that middle and elementary school counselors do not have. He pointed out that high school counselors are familiar with the requirements necessary for graduation and can prepare students for graduation, evaluate credits for college, are familiar with career technical pathways, college and military testing, college scholarships and financial aid and know how to complete the applications for college financial aid, the AVID program, and so forth. He testified that this training, knowledge and experience would necessarily be acquired by counselors who have worked at the high school level, and would not be acquired by counselors working at the elementary or middle school level. He testified the District needed its high school counselors to have this knowledge and experience in order to serve the needs of its students. Accordingly, the District defined competency in the area of counseling to require one year's experience at the high school level.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter relating to the elimination of 43.5 full time equivalent positions exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Education Code section 44955 provides in part:

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

The District established it may deviate from the order of seniority with respect to respondent Chase and Ms. Strawter under the authority of Education Code section 44955, subdivision (d). The District demonstrated it had a specific need for personnel to provide a specific service to its students and that a junior certificated employee had special training and experience to provide that service while a senior certificated employee did not possess such training and experience. *Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 138-43; *Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567, 571.

3. Cause exists under Education Code sections 44949 and 44955 for the District to discontinue particular kinds of services relating to the 43.5 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 Steven Kok is dismissed.
2. The Accusations served on 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 because of the reduction of particular kinds of services.
3. Notice shall be given in inverse order of seniority.

DATED: _____

ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

BEAUMONT UNIFIED SCHOOL DISTRICT
EXHIBIT "A"

The following certificated personnel will receive a layoff notice:

	Last Name	First Name	FTE
1	Arreola	Tammy	1.0
2	Bennecke	Tammy	1.0
3	Benson	Kuuipo	1.0
4	Calderon	Amelia	1.0
5	Chase	Andrew	1.0
6	Gonzales	Gabriele	1.0
7	Horta	Jackie	1.0
8	Kenyon	Genelle	1.0
9	Kok	Steven	1.0
10	Kuennen	Erin	1.0
11	Latzke	Jennifer	1.0
12	Lau-Vaca	Tina	0.5
13	Lin	Eugene	1.0
14	Lusk	Meghan	1.0
15	Martin	Jennifer	1.0
16	Martinez	Martha	1.0
17	McGill	Lynda	1.0
	Last Name	First Name	FTE
18	McNeely	Kathryn	1.0
19	Medlen	Tammi	1.0
20	Moore	Alison	1.0
21	Newmeyer	Elizabeth	1.0
22	Orozco	Olivia	1.0
23	Poe	Kim	1.0
24	Poyneer	Patricia	1.0
25	Roman	Lora	1.0
26	Sersaw	Jaimi	1.0
27	Simmons	Nicole	1.0
28	Smith	Emily	1.0
29	Solis	Annabel	1.0
30	Turner	Alyssa	1.0
31	Uphold	Monica	1.0
32	Walker	Debbie	1.0
33	Wiedlin	Patrick	1.0

The following certificated personnel will receive a precautionary layoff notice:

	Last Name	First Name	FTE
34	Chavez	Beatriz	1.0
35	Chavez	Livier	1.0
36	Coen	Margie	1.0
37	Jimenez	Zenaida	1.0
38	Kay	Lorraine	1.0
39	Lopez	Yolanda	1.0
40	Peterson	Valerie	1.0
41	Reyes-Rizo	Maria	1.0
42	Salas	April	1.0
43	Strawter	Maria	1.0
44	Taboada	Marcela	1.0