

**BEFORE THE GOVERNING BOARD OF
THE EL MONTE UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

OAH No. 2009030593

Certain Certificated Employees of the El
Monte Union High School District,

Respondents.

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on April 22, 2009, in El Monte, California.

Candace M. Bandoian, Esq., represented the El Monte Union High School District (District).

Daniel J. Kolodziej, Esq., represented the Respondent teachers (Respondents).

The District served a Notice of Layoff and Accusation packets on Respondents. During the hearing, the parties resolved the majority of the issues by stipulation. The remaining Respondents whose employment remains at-issue are listed on Exhibit H, which is incorporated by reference as if fully set forth herein. The District withdrew the Accusation as to any teacher whose name is crossed out on Exhibit H. The matter was submitted for decision on April 22, 2009.

FACTUAL FINDINGS

1. Dan Morris, Assistant Superintendent of the District, acting in his official capacity, caused all pleadings, notices and other papers to be filed and served upon each Respondent pursuant to the provisions of Education Code sections 44949 and 44955. All pre-hearing jurisdictional requirements were met.

2. Respondents are employed by the District as permanent, probationary, intern, pre-intern, emergency permitted, waiver, and/or temporary certificated employees of the District.

3. On March 11, 2009, pursuant to Education Code sections 44949 and 44955, the Governing Board of the District (Board) issued Resolution number 365, which approved the recommendation by the Assistant Superintendent that notice be

given to Respondents that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

4. Prior to March 15, 2009, Respondents were given written notice of the recommendation that notice be given to Respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

5. It was established that cause exists, within the meaning of Education Code sections 44949 and 44955, for not reemploying Respondents for the ensuing school year for all of the reasons set forth below.

6. The District decided the following:

The following particular kinds of services of the District will be reduced or eliminated no later than the beginning of the 2009-2010 school year:

PARTICULAR KINDS OF SERVICES	NUMBER OF FULL-TIME EQUIVALENT (FTE) POSITIONS
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Secondary Teaching Services

Intervention Program	
a. English	17.0 FTE
b. Math	3.0 FTE
English	2.0 FTE
Social Science	3.0 FTE
Special Education	6.0 FTE
Business	2.0 FTE
French	1.0 FTE
Physical Education	2.0 FTE
Industrial Technology	1.0 FTE
Family Consumer Science	1.0 FTE
Art	2.0 FTE

Certificated Support Staff

Career Guidance Coordinator	2.0 FTE
Career Path Coordinator	1.2 FTE
Teachers on Special Assignment - Beginning Teacher Support and Assessment	1.0 FTE
Nurses	4.0 FTE
Psychologists	2.0 FTE
Counselors	5.0 FTE

TOTAL FTE REDUCTION **55.2 FTE**

7. The Board decided that it is necessary to decrease the number of certificated employees as a result of the reduction in services. These services are “particular kinds of services” that may be reduced or discontinued within the meaning of Education Code section 44955. The Board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but rather, constituted a proper exercise of discretion. The Board is faced with a budget shortfall.

8. The reduction or discontinuation of these particular kinds of services is related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services is necessary to decrease the number of certificated employees of the District as determined by the Board. This reduction is necessary because of budget reductions.

9. The Board properly 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 prior to March 15, 2009. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627 at 636).

10. The District properly created its seniority list by determining the first date of paid service of each certificated employee and properly utilized reasonable “tie-breaker” criteria when necessary. The District “skipped” over certain specified categories of personnel as described in Exhibit A which is hereby incorporated by reference as if fully set forth herein. Respondents did not challenge these “skips.” Respondents did not challenge the lay-off process, as a whole, other than as discussed below.

Respondent Nurses and Psychologists

11. The District provides services at five high schools and one continuation high school and has approximately 10,000 students. The District proposes to lay-off four of the five presently employed nurses. The District also proposes to lay-off two of the six presently employed psychologists. Respondents contended that the District would be unable to perform, or that it would be very difficult to perform, mandated tasks required by state and/or federal law, such as timely evaluations for students with special education needs and performing mandated hearing and vision assessments. The evidence presented was mixed. Assistant Superintendent Dan Morris testified that the District will still be able to meet its mandated obligations after the lay-offs at issue. On the other hand, William Stoskopf (Stoskopf), Director of Pupil Personnel Services and Director of Special Education Services, testified otherwise. Stoskopf testified that only having four remaining psychologists will make compliance with state and federal requirements “challenging.” As to the reduction to only one nurse, he also believes it will be difficult to comply with state and federal requirements. While Respondents established that the reductions will make compliance with state and federal mandates difficult, the preponderance of the evidence established that the reductions in force will not prevent the District from providing mandated services.

12. All other arguments presented by Respondents were unconvincing and were not established by the evidence. Respondents did not establish that the District did not follow the required procedures or that the District acted in an arbitrary and capricious manner.

CONCLUSIONS OF LAW

1. Jurisdiction for these proceedings exists pursuant to Education Code sections 44949 and 44955.

2. Each of the services set forth in Findings 5 and 6 is a particular kind of service which may be reduced or discontinued in accordance with applicable statutes and case law.

3. The District’s decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

4. At issue is whether the District is required, by law, to employ a minimum number of nurses and/or psychologists. The law does not provide any minimum standards regarding the employment of these two types of personnel. How the District will fulfill its obligations under state and federal law in the upcoming school year is properly determined by the District. Courts have permitted districts to discontinue particular kinds of services, including those of school psychologists, as long as the mandated services continue to be performed. (See, e.g., *Gallup v. Alta Loma School District Board of Trustees* (1996) 41 Cal.App.4th 289 (*Gallup*); *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 639-640.)

5. Cause exists to reduce the District's teaching positions as described above and to give notice to the affected teachers pursuant to Education Code section 44955. (*Campbell v. Abbot* (1978) 76 Cal.App.3d 796; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689). Based on the above Findings, including the preamble to this Proposed Decision, the names of the affected teachers, those as to whom final notices of layoff may be given, are as follows:

All Respondents listed in Exhibit H, whose name is not crossed out. Those names are:

Sophia Alexander
Marisol Almaguer
Monica Angulo
Tiffany Applewhite
Anne Bazille
Taleen Chavdarian-Boschetti
Rachel Brotchner
Cristine Butler
Brendan Chua
Theodore Clarke
Amanda Coak
Mim Coombs-Ellison
Ilbea Fedele
Daniel Flores-Huerta
Maria Angelica Gallegos
Keziah Green
Violetta Guzman
Uyen Bao Hoang
Charles Hur
George Jara
Stephanie Luna
Sally Matsubara
Charlene Matsui
Crystal Mojica
Jennifer Montes
Melissa Murata
Tony O'Bryan
Jose Olvera
Arthur Sandoval
Luz Vieyra-Valadez
Jane Vu

ORDER

Because of the reductions of services, the District may give notice to the teachers identified in Legal Conclusion No. 4 that their services will not be required for the 2009-2010 school year.

Dated: April ____, 2009.

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings