

BEFORE THE
GOVERNING BOARD
CALEXICO UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2009030656

CERTIFICATED LAYOFFS FOR THE
CALEXICO UNIFIED SCHOOL
DISTRICT DUE TO REDUCTION OR
DISCONTINUATION OF PARTICULAR
KINDS OF SERVICES EFFECTIVE
JULY 1, 2009,

Respondents.

PROPOSED DECISION

On May 8, 2009, in Calexico, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Darren C. Kameya, Attorney at Law, represented the Calexico Unified School District.

John W. Breeze, Attorney at Law, represented all respondents listed on Exhibit A.

Prior to the hearing, the District withdrew layoff notices for Francisco Padilla, Juan Ramirez, Maria Elena Sanchez Romero, Ana Marie Carrillo, Adriana Y. Magana, and Carolina Munguia, and dismissed the accusations.

The matter was submitted on May 8, 2009.

FACTUAL FINDINGS

1. On or about April 9, 2009, David Groesbeck, Superintendent, of the Calexico 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. Groesbeck notified the Governing Board 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 Governing Board 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 Governing Board of the District took action in Resolution No. 23-03-09 to discontinue the following services for the 2009-10 school year:

<u>Services</u>	<u>F.T.E.</u>
1. Elementary School Instruction	49.0
2. Secondary Math Instruction	7.0
3. Secondary Math (CAHSEE)	1.0
4. Secondary English Instruction	6.0
5. Secondary English (CAHSEE)	1.0
6. Secondary Social Science	4.0
7. Secondary Spanish	1.0
8. Secondary Physical Education	1.0
9. AB 1802 Counselor	6.0

10.	Counselors	2.0
11.	Work Experience Counselor	1.0
12.	Reading First Academic Coach	7.0
13.	English Language Coach (K-6 th Grade)	7.0
14.	English Language Coach (7 th -9 th Grade)	3.0
15.	HPSG Coordinator of Academics & Instruction	1.0
16.	HPSG Resource Teachers	2.5
17.	Continuation High School Instruction	1.0
18.	Reading Support Teacher	1.0
19.	After School Education and Safety Coordinator	1.0
20.	Migrant Program Coordinator	1.0
21.	Special Education Mild/Moderate	1.0
	Total	104.5

The Governing Board thereafter took administrative action to revise the PKS reductions to the following:

<u>Services</u>	<u>F.T.E.</u>
1. Elementary School Instruction	30.0
2. Secondary Math Instruction	5.0
3. Secondary Math (CAHSEE)	1.0
4. Secondary English Instruction	4.0
5. Secondary English (CAHSEE)	1.0
6. AB 1802 Counselor	6.0
7. Work Experience Counselor	1.0
8. Reading First Academic Coach	7.0
9. English Language Coach (K-6 th Grade)	7.0

10.	English Language Coach (7 th -9 th Grade)	3.0
11.	HPSG Coordinator of Academics & Instruction	1.0
12.	HPSG Resource Teachers	2.5
13.	Continuation High School Instruction	1.0
14.	Reading Support Teacher	1.0
15.	After School Education and Safety Coordinator	1.0
	Total	71.5

The District will not lay off any certificated employee for the 2009-10 school year related to the following service: Secondary Social Science, Secondary Spanish, Secondary Physical Education, Counselors, Migrant Program Coordinator, and Special Education Mild/Moderate.

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 Governing 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 Governing Board established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. The Governing Board provided the order of termination shall be based on the needs of the

District and its students. The criteria were to be applied based on information on file as of February 24, 2009.

11. The District created a Seniority List which contains employees' seniority dates (first date of paid service), current assignments and site, status, and credentials 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. Prior to the hearing, counsel for the District and respondents entered into a series of stipulations. Based upon the stipulations, the Accusations served on all the remaining respondents set forth in Exhibit A, below, are sustained. Notice shall be given to each respondent before May 26, 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.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter relating to the elimination of 71.50 full-time equivalent positions exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Cause exists under Education Code sections 44949 and 44955 for the District to discontinue particular kinds of services relating to 71.50 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 26, 2009, that their services will no longer be required by the District.

ORDER

1. The accusations served on respondents Francisco Padilla, Juan Ramirez, Maria Elena Sanchez Romero, Ana Marie Carrillo, Adriana Y. Magana, and Carolina Munguia, are dismissed.

2. The Accusations served on all the remaining respondents set forth in Exhibit A, below, are sustained. Notice shall be given to each respondent before May 26, 2009 that his or her services will not be required for the 2009-10 school year pursuant to the Board of Education'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

1. Argulles, Iliana
2. Bustamante, Anel E.
3. Cabrera, Hector Joshua
4. Coronel, Nelly
5. Costa, Kristina
6. Cuesta, Lourdes
7. De La Fuente, Mariela
8. De La O, Gisela
9. Dominguez, Guaduape R.
10. Drake, Thomas S.
11. Espinoza, Uriel
12. Figueroa, Rodrigo
13. Hernandez, Zeltzin
14. Ibarra, Fabiola
15. Jackson-Lopez, Liliana
16. Lara, Norma
17. Leon, Rocio R.
18. Luevano, Esmeralda
19. Manzanedo, Maria T.
20. Marquez, Janet
21. Mercado Cortez, Josefina
22. Moncada, Carmen
23. Montano, Maritza
24. Nunez, Franco
25. Ojeda, Guadalupe
26. Padilla, Juan Carlos
27. Perez, Maura
28. Quezada, Sughey
29. Rangel, Alejandrina
30. Romo, Suzethe
31. Salgado, Cynthia
32. Sanchez, Laura
33. Santillanes, Jesus Manuel
34. Santoyo-Trevino, Angelica
35. Sobampo, Sonia
36. Stone III, Robert L.
37. Torres, Clara
38. Valenzuela, Ciriam
39. Vasquez, Christina
40. Villanueva, Christina
41. Villegas, Juan
42. Zepeda, Viviana