

BEFORE THE  
GOVERNING BOARD OF THE  
SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

OAH No. L2009030742

Certificated Employees of the Saddleback  
Valley Unified School District,

Respondents.

**PROPOSED DECISION**

David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 14, 2009, at the Saddleback Valley Unified School District, Mission Viejo, California.

Rutan & Tucker, by David C. Larsen, Attorney at Law, represented the Saddleback Valley Unified School District (District).

Reich, Adell & Cvitan, by Marianne Reinhold, Attorney at Law, represented Respondent teachers, except for Robert Frith. A list of Respondents is attached as Attachment A. An explanation of the notes on that list, including the Respondents who were present at the hearing, is found in Factual Finding 7, below, and on the attachment.

Evidence was received by way of stipulation, testimony and documents. The record was closed and the matter was submitted on April 14, 2009.

**SUMMARY OF PROPOSED DECISION**

The Governing Board of the District determined to reduce or discontinue particular kinds of services provided by certificated teachers for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

District staff carried out the Board's decision by using a selection process involving review of credentials and seniority. The selection process was in accordance with the requirements of the Education Code. The Board may proceed as indicated herein.

## FACTUAL FINDINGS

### *Jurisdiction and Parties*

1. The District provides educational services for students in grades kindergarten through 12. The District employs certificated staff in permanent or probationary positions.

2. Steven L. Fish is the Superintendent of the District and Margaret Lewis is the Assistant Superintendent of Personnel Services of the District. Their actions were taken in those official capacities. Ms. Lewis and her staff were responsible for implementation of the technical aspects of the layoff.

3. Before March 15, 2008, the District served 47 teachers, including Respondents, by personal service and/or certified mail, with a written notice (notice) that it had been recommended that notice be given to them pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each notice set forth the reasons for the recommendation and noted that the Board had passed a Resolution reducing the certificated staff by 81.27 full-time equivalent (FTE) positions.

4. Thirty five certificated employees, referred to as Respondents, submitted timely written requests for a hearing to determine if there is cause for not reemploying them for the ensuing school year.

5. The Superintendent made and filed Accusations against each of the Respondents. On March 23, 2009, the District served the Respondents either in person or by certified mail with an Accusation along with required accompanying documents and blank Notices of Defense.

6. Several Respondents completed Notices of Defense that were served on the District.

7. Attachment A is incorporated by reference. The 35 names listed and numbered are Respondents who served requests for hearing with the District. The letter "a" indicates Respondents who submitted a Notice of Defense after being served with the Accusation package. The District did not object to including as Respondents those who submitted a Request for Hearing but had not submitted a Notice of Defense. The letter "b" indicates Respondents who withdrew their requests for hearing.<sup>1</sup> The District stipulated that its notices and Accusations were rescinded as to all names with the designation "c." The letter "d" indicates Respondents who were present at the hearing.

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<sup>1</sup> Although Exhibit 2 indicates that Respondent Mari Scott withdrew her request for a hearing, Ms. Scott, who was unable to attend, submitted a declaration contending that her seniority date is incorrect. Such action is incompatible with withdrawal and, therefore, Ms. Scott is considered as an active Respondent in this matter.

8. Respondents in this proceeding are probationary or permanent certificated employees of the District.

The Governing Board and the Lay Off Resolution

9. On March 10, 2009, the Governing Board of the District (Board) was given notice of the Superintendent’s recommendation that 81.27 FTE employees be given notice that their services would not be required for the next school year and stating the reasons therefore.

10. Board Resolution number 48:08-09, adopted on March 10, 2009, proposed a layoff of 81.27 FTE certificated employees (Resolution). Specifically, the Resolution provided for the reduction or elimination of the following particular kinds of services:

| <b>SERVICES OR PROGRAMS TO BE ELIMINATED OR REDUCED</b> | <b>POSITIONS (FTE)</b> |
|---|------------------------|
| <b><u>Administration</u></b>                            |                        |
| High School Activity Director                           | 4.00                   |
| High School Principal II (Special Assignment)           | 1.00                   |
| <b><u>Administrative Support Services</u></b>           |                        |
| High School Librarian                                   | 2.00                   |
| <b><u>Special Education and Pupil Services</u></b>      |                        |
| Guidance Specialist/Counselor                           | 13.20                  |
| Psychologist  | 1.00                   |
| Autism Specialist                                       | 1.00                   |
| RSP Teacher   | 1.00                   |
| <b><u>Course Offerings/Instructional Program</u></b>    |                        |
| <b><u>Elementary:</u></b>                               |                        |
| Language Arts Assistance Program                        | 1.00                   |
| Field Studies Program                                   | 1.00                   |
| Restructure Class Size Reduction Program, Grades K-3    | 33.00                  |
| PE Program  | 3.00                   |
| GATES Charter Program                                   | 4.37                   |
| <b><u>Secondary:</u></b>                                |                        |
| English   | 2.20                   |
| Social Science  | 2.60                   |
| Health  | 1.00                   |
| Spanish   | 1.60                   |
| PE  | 2.00                   |
| Science   | 3.20                   |
| Agriculture   | 0.40                   |

**K-12 Instruction:**

BTSA/Induction Program 2.20

**Adult Ed:**

Community Based English Tutoring Program 1.00

11. The Resolution also established tie-breaker 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 shall be based on the needs of the District and the students in accordance with the criteria stated therein. More specifically, the tie-breaker criteria provide for points to be awarded for, among other things, certain evaluations, degrees, credentials, certificates, positions and services. The more points awarded to a teacher, the higher the seniority within the shared date of first paid service. In the event of a tie after reference to all listed criteria, a lottery would be held.

12. The Resolution was required by the District's fiscal crisis and need to reduce services to balance its budget for the welfare of students, as well as a projected reduction in enrollment. More specifically, the Board received information about the next state budget leading the Board to believe that, for school year 2009-2010, it needed to reduce the budget by \$11.8 million, and there would be reduced enrollment of approximately 400 students.

13. The decision to reduce services was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

*The Seniority List and the Lay Offs*

14. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), current assignments and credentials.

15. The District used the seniority list to develop a proposed layoff 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 displace, or "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.

16. The District seeks exemption from the layoff for certain employees because of their special training, experience or credential that others with more seniority did not possess. The exemptions sought by the District are for personnel currently in the assignment of classroom teacher in the Two Way Language Immersion Program at the GATES Charter School who will serve in the same assignments for the 2009-2010 school year. The exemptions are necessary because these classroom teachers must have a BCLAD credential and be fluent in Spanish.

17. The District used information from the seniority list and personnel files to apply the tie-breaker criteria of the Resolution.

18. The services identified in the Resolution are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Board's decisions to reduce or discontinue the identified services were neither arbitrary nor capricious, and were a proper exercise of its discretion. The decisions were based on the welfare of the District and its pupils.

19. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

Respondents' Contentions

20. Respondents contend that the seniority list contains an error, that the tie-breaking criteria are not fair, and that there will be insufficient personnel to cover certain course offerings.

21. In support of these contentions, the following evidence was submitted.

(a) Mari Scott was assigned a seniority date of August 21, 2006. She submitted evidence that she was asked to start earlier, was on site on August 17, and saw students and parents as a guidance counselor during senior registration on August 18, 2006. Ms. Scott's contract was signed August 21, 2006.

(b) Tom McCluskey and Heidi Cascardo contend that the tie-breaking criteria are unfair in that there are points given for some positions that they do not have available to them at their school sites and because other important services to the District are not included in the tie-breaking criteria.

(c) Kenneth Tse testified that there will be insufficient teachers to maintain the present course offerings in chemistry at his school site if he is laid off.

(f) Maria Nadal testified that, if she is bumped by another teacher to teach art, that same teacher could not teach the one period per day of Computer Awareness taught by Ms. Nadal because a special teaching certificate is needed for such service.

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## LEGAL CONCLUSIONS AND DISCUSSION

1. Education Code<sup>2</sup> section 44944, subdivision (a), states in pertinent part:

“No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor.”

2. Section 44955 provides, in pertinent part:

“(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

“(b) Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

“As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. . . .

“(c) . . . [S]ervices of such employees shall be shall be terminated in the reverse order in which they were employed, as determined by the board in accordance with Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

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<sup>2</sup> All citations are to the Education Code.

“The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. . . .

“(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 . . . 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.”

3. Sections 44949 and 44955 establish jurisdiction for this proceeding. The notice and jurisdictional requirements set forth in sections 44944 and 44945 were met. (Factual Findings 3 through 8.)

4. 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.)

5. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District’s schools and pupils within the meaning of section 44949. (Factual Findings 9 through 13.)

6. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.)

7. Although Mari Scott submitted evidence of her presence and activities at her school site prior to her contract date of August 21, 2006, she submitted no evidence that these were dates of paid service. The District submitted her contract, with a start date of August 21, 2006, and an indication that Ms. Scott would have 198 days of service for the school year. This is insufficient evidence from which to conclude that Ms. Scott was paid for any days prior to August 21, 2006. In the absence of that proof, no change to her seniority date is justified by the evidence.

8. The contentions relating to the tie-breaking criteria, although perhaps true, are unavailing. Respondents did not prove that the District acted arbitrarily or for any reason other than the benefit of the District and its students by the adoption and use of the tie-breaking criteria used by the District.

9. The contentions relating to the affect of lay offs on the District's ability to staff certain sections of course offerings are also unavailing. There was no evidence that the District is required to provide the same sections of courses next year as were provided this year, or that courses must be offered in the same way each year.

10. A school district may deviate from strict seniority in layoffs and skip employees if it can demonstrate a "specific need" and that the employees have "special training and experience . . . which others with more seniority do not possess." (Section 44955, subdivision (d)(1), set out in more detail in Legal Conclusion 2.) The District established a specific need and submitted evidence of the special training and experience of the teachers for which it seeks exemption from layoff, and Respondents did not provide any evidence to the contrary. (Factual Findings 16 through 19.)

11. The District rescinded its notices to Respondents on Attachment A designated with the letter "c" and, therefore, those Respondents must have the Accusations against them dismissed.

### ORDER

1. Notice may be given to employees occupying 81.27 full-time equivalent certificated positions that their services will not be required for the 2009-2010 school year because of the reduction and discontinuance of particular kinds of services. Such notices may be given to the all Respondents on Attachment A except for those designated with the letter "c" which are instances wherein the District has rescinded its notice of intent of non-reemployment.

2. Notice shall be given in inverse order of seniority. Each Respondent shall receive such a notice.

3. The Accusations are dismissed as to the Respondents on Attachment A designated with the letter "c" for whom the District has rescinded its notice of intent of non-reemployment, and no final layoff notices may be sent to them:

DATED: April 17, 2009.

DAVID B. ROSENMAN  
Administrative Law Judge  
Office of Administrative Hearings

Saddleback Valley Unified School District  
OAH No. 2009030742

| <b><u>Last Name</u></b> | <b><u>First Name</u></b> | <b><u>KEY:</u></b>                |
|-------------------------|--------------------------|-----------------------------------|
| 1.a,d Adragna (Defries) | Erin                     | a = submitted Notice of Defense   |
| 2.a,d Avila             | Corrine                  | b = withdrew Request for Hearing  |
| 3.d Bean                | Tamara                   | c = District rescinded Accusation |
| 4.a,b,d Bills           | Lynnette                 | d = present at the hearing        |
| 5.c Boss                | Margaret                 |                                   |
| 6.d Brick               | Alison                   |                                   |
| 7.a,d Carlson           | Deborah                  |                                   |
| 8.d Carpenter           | Rya                      |                                   |
| 9.a,d Cascardo          | Heidi                    |                                   |
| 10.a,d Chappell         | Lindsay                  |                                   |
| 11.a,d Chen             | Henry                    |                                   |
| 12.a,d Cheon            | Michelle                 |                                   |
| 13.a,c Clark            | Elisa                    |                                   |
| 14.d Felix              | Elisa                    |                                   |
| 15.b Florin-Smith       | Nikole                   |                                   |
| 16. Frith               | Robert                   |                                   |
| 17.b Fritze             | Jason                    |                                   |
| 18.d Hastings-Velez     | Julia                    |                                   |
| 19.d Heppenstall        | Andrew                   |                                   |
| 20.a,d Janardan         | Viji                     |                                   |
| 21.a,d Julianel         | Christy                  |                                   |
| 22.a,d Marshall         | Robyn                    |                                   |
| 23.d McCluskey          | Thomas                   |                                   |
| 24. Minekime            | Julie                    |                                   |
| 25.d Nadal              | Maria                    |                                   |
| 26.a,d Nahas            | Kerry                    |                                   |
| 27.a,d Najd             | Rana                     |                                   |
| 28.a,d Rajadhyaksha     | Rajesh                   |                                   |
| 29.d Rubio Jr           | Joel                     |                                   |
| 30.d Sango Jr           | Murle                    |                                   |
| 31. Scott               | Mari                     |                                   |
| 32.d Tombleson          | Kelly                    |                                   |
| 33.d Tse                | Kenneth                  |                                   |
| 34. Yessian             | Monique                  |                                   |
| 35.a,d Zangl            | Peter                    |                                   |

**ATTACHMENT A**