

BEFORE THE
BOARD OF TRUSTEES OF THE
HAPPY VALLEY UNION ELEMENTARY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Non-Reemployment of:

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE HAPPY VALLEY
UNION ELEMENTARY SCHOOL
DISTRICT,

OAH No. 2009030970

Respondents.

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on April 23, 2009, in Anderson, California.

Thomas E. Gauthier, Attorney at Law, appeared on behalf of the Happy Valley Union Elementary School District.

Donald A. Selke, Jr., Attorney at Law, appeared on behalf of respondents Rebecca Goodson, Sherry Morgan and Richard Zeller. There was no appearance by, or on behalf of respondent Cynthia Hogue.

The case was submitted for decision on April 23, 2009.

FACTUAL FINDINGS

1. Larry Robins, Ed.D., is the Superintendent of the Happy Valley Union Elementary School District (District). He made and filed the Accusation in his official capacity.

2. Respondents are permanent or probationary certificated employees of the District. On or about February 18, 2009, the District served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education Code sections 44949 and 44955 that their services would be reduced or would not be required for the 2009-2010 school year. Each written notice set forth the reasons for the recommendation and noted that the District's Board of Trustees had passed a Resolution (No. 09-04) reducing the certificated staff by 13.0 full-time equivalent (FTE) positions.

Respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

3. The Superintendent made and filed Accusations against respondents. The Accusations with required accompanying documents and blank Notices of Defense were timely served on respondents. Respondents timely filed Notices of Defense to the Accusations. All pre-hearing jurisdictional requirements were satisfied. The District served a Notice of Hearing on all respondents on April 9, 2009. As to non-appearing respondents, this case proceeded by way of default under Government Code section 11520.¹

4. On February 17, 2009, at a regular meeting, the District's Board of Trustees was given notice of the Superintendent's recommendation that certificated employees holding 13.0 FTE positions be given notice that their services would be reduced or not required for the next school year, and stating the reasons for that recommendation.

5. On February 17, 2009, the District's Board of Trustees determined that it was necessary to decrease programs and services and thus it was necessary to reduce teaching and other certificated services affecting employment of 13.0 FTE positions. The District's Board of Trustees adopted Resolution No. 09-04 providing for the reduction or elimination of the following particular kinds of services (PKS):

	<u>Services</u>	<u>FTE</u>
a.	Elementary School Teaching Services	9.0
b.	Physical Education Teaching Services (7th/8th)	1.0
c.	Elementary Community Day Services	1.0
d.	Reading Specialist Teaching Services	1.0
e.	GEAR UP Coordinator Services	1.0
	Total Full-Time Equivalent Reduction	13.0

In determining the extent by which to reduce or discontinue particular kinds of services, the District's Board of Trustees considered all positively assured attrition up to and including the date of the resolution. The total number of positions to be reduced or discontinued under this resolution is 13.0 FTE certificated positions. The Board has determined that the services of a corresponding number of certificated employees shall be terminated at the close of the current 2008-2009 school year.

6. The District maintains a Certificated Seniority List which contains employees' seniority dates (first date of paid service), credentials and authorizations. The list was sent to

¹ On the day of hearing, respondent Cynthia Hogue was contacted by District employee Kellie Dunham. Ms. Hogue indicated that she did not intend to appear at the hearing.

union representatives and presumably all certificated employees were provided access to this list and asked to correct their seniority date and any information related to their credentials/authorizations. The District also went to the online site maintained by the Commission on Teacher Credentialing to verify the information on the seniority list. The District used the seniority list to develop a proposed layoff list of the least senior employees assigned in the various services being reduced.

7. In determining the ten teachers to be laid off, the District skipped one teacher believed necessary to teach a specific course or course of study. Brian Scott Gaddy has a District seniority date of August 15, 2007. He holds clear single subject teaching credentials in science (physics) and introductory mathematics. He will be assigned next year to teach seventh and eighth grade mathematics, as well as a few science classes. No one more senior to Mr. Gaddy was noticed and who also is certificated and competent to teach these classes.

8. Except as provided by statute, no permanent or probationary certificated employee with less seniority is being retained to render a service which respondents, or any of them, are certificated and competent to render. As between employees who first rendered paid service to the District on the same date, the order of termination will be based solely on the needs of the District and the students thereof. The District was not required to apply tie-break criteria as part of the layoff process.

9. The reduction or discontinuation of the particular kinds of services set forth in Resolution No. 09-04 are related to the welfare of the schools and the students thereof within the meaning of Education Code sections 44949 and 44955. The decision to reduce or discontinue these services is neither arbitrary nor capricious, but rather a proper exercise of discretion of the District.

LEGAL CONCLUSIONS

1. The District employees receiving notices that their services would not be required next year have rendered valuable services to the District.

2. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

3. The services identified in Board Resolution No. 09-04 are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The

District Board of Trustee's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

4. Cause exists to reduce the number of certificated employees of the Happy Valley Union Elementary School District due to the reduction and discontinuation of particular kinds of services. Cause for reduction or discontinuation of services relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

5. As set forth in the Factual Finding 7, the District skipped a single certificated employee. It demonstrated that Mr. Gaddy could teach a specific course or course of study (mathematics and science) in which he had special training and experience, and which others with more seniority did not possess. (Ed. Code, § 44955, subd. (d)(1).)

ORDER

Notice shall be given to respondents occupying up to 13.00 FTE that their services will not be required for the 2009-2010 school year because of the reduction or discontinuation of particular kinds of services.

DATED: April 28, 2009

JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings