

**BEFORE THE  
GOVERNING BOARD  
BUENA PARK SCHOOL DISTRICT**

IN THE MATTER OF THE ACCUSATIONS     )     OAH NO. 2009031138  
AGAINST:                                     )  
   )  
Respondents and Precautionary         )  
Respondents Listed on Exhibit "A"     )  
\_\_\_\_\_ )

**PROPOSED DECISION**

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 1, 2009, in Buena Park, California.

Aaron V. O'Donnell, Attorney at Law, represented the Buena Park School District.

Jesus E. Quinones, Attorney at Law, represented certain Respondents who appeared at the hearing. Mr. Quinones did not represent Respondents Sarah Conlin, Julie Woo, Georgina Bacchus, Sarah Boer, Diane Cavenee, Patricia Chun, Roya Ghanea, Seri Lee, Ana Ngo, and Carrie Trupp. These named Respondents represented themselves.

Evidence was received, and the matter was submitted for decision.

**SUMMARY**

The Governing Board (Board) of the Buena Park School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2009-2010 school year for budgetary reasons.

District staff carried out the Board's decision by using a selection process involving review of credentials, seniority, skipping, bumping and breaking ties between employees with the same first dates of paid service. The selection process complied with Education Code requirements.

**FACTUAL FINDINGS**

1. Greg Magnuson, Superintendent of the District, filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.

3. On February 23, 2009, the Board adopted Resolution No. 08-12, to discontinue or reduce the particular kinds of services for the 2009-10 school year. The Board further determined that based on the discontinuance or reduction of services, it would be necessary to decrease the number of certificated employees at the close of the present school year by a corresponding number of full-time equivalent (FTE) positions as follows:

K-6 Elementary Classroom Instruction	41.0 FTE
Music Instruction	1.0 FTE
Elementary Physical Education Instruction	1.0 FTE
Registered Nurse Services	2.0 FTE
Assistant Principals/Administrator Interns	4.0 FTE
School Site Coordinator, Special Education	1.0 FTE
School Readiness Coordinator	1.0 FTE
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Total	51.0 FTE

4. On February 23, 2009, the Board adopted Resolution No. 08-19, rescinding certain reductions or discontinuances previously approved in Resolution 08-12 as follows:

Assistant Principals/Administrator Interns	3.0 FTE
K-6 Elementary Classroom Instruction	1.0 FTE

5. Through Resolutions 08-12 and 08-19, the Board voted to reduce or discontinue services and to decrease a corresponding of certificated employees for the 2009/2010 school year by the following FTEs:

K-6 Elementary Classroom Instruction	40.0 FTE
Music Instruction	1.0 FTE
Elementary Physical Education Instruction	1.0 FTE
Registered Nurse Services	2.0 FTE
Assistant Principals/Administrator Interns	1.0 FTE
School Site Coordinator, Special Education	1.0 FTE
School Readiness Coordinator	1.0 FTE
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Total	47.0 FTE

6. On February 23, 2009, the Board adopted Resolution No.08-13, which established tie-breaking 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 and reemployment would be based on the needs of the District and its students in accordance with the specific criteria set forth in the resolution. The District properly exercised its discretion in applying the tie-breaking criteria.

7. On March 13, 2009, the Superintendent recommended to the Board that notice be given to Respondents and Precautionary Respondents, pursuant to Education Code sections 44949 and 44955, that their services would not be required for the ensuing school year and stating the reasons therefore.

8. Prior to March 15, 2009, Respondents and Precautionary Respondents were given notice of the Superintendent's recommendation to the Board as set forth in Factual Finding 7. Respondents and Precautionary Respondents filed timely requests for hearing.

9. On April 2, 2009, the Superintendent made and filed Accusations against each Respondent.

10. Notices of Defense were timely filed by Respondents. All prehearing jurisdictional requirements were met.

11. Various certificated employees were given notices as a precaution, and to allow them the opportunity to participate in the hearing process. However, the District has released or non-reelected these employees for the 2009/2010 school year.

12. The reduction or discontinuation of the particular kinds of services set forth in Factual Finding 5 is related to the welfare of the District and its pupils.

13. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid service in a probationary position), current assignments and locations, advanced degrees, credentials, and authorizations.

14. 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. 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 considered attrition, including resignations, retirements and requests for leave, in determining the necessary layoff notices to be delivered to employees.

15. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

## **LEGAL CONCLUSIONS**

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents.

2. 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.)

3. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services. The Board’s decisions to reduce or eliminate the identified services were neither arbitrary nor capricious. The decisions relate solely to the welfare of the District’s schools and the pupils within the meaning of Education Code section 44949.

4. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

### **ORDER**

Notice may be given to Respondents and Precautionary Respondents that their services will not be required for the 2009-2010 school year.

Dated: May 6, 2009

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HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings