

BEFORE THE  
BOARD OF TRUSTEES OF THE  
COTTONWOOD UNION ELEMENTARY SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Non-Reemployment of:

CERTAIN CERTIFICATED PERSONNEL  
EMPLOYED BY THE COTTONWOOD  
UNION ELEMENTARY SCHOOL  
DISTRICT,

OAH No. 2009031352

Respondents.

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on April 20, 2009, in Cottonwood, California.

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

Donald A. Selke, Jr., Attorney at Law, appeared on behalf of respondents Jeffrey Stevens and Kelly Boles. Respondents Carri Longnecker and Donald Dooley appeared on their own behalf.

The case was submitted for decision on April 20, 2009.

**FACTUAL FINDINGS**

1. Robert Lowden is the Superintendent of the Cottonwood 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 March 10, 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 (#2009-5) reducing the certificated staff by 10.0 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.<sup>1</sup>

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. Appearing respondents timely filed Notices of Defense to the Accusations. All pre-hearing jurisdictional requirements were satisfied.

4. On March 9, 2009, at a regular meeting, the District's Board of Trustees was given notice of the Superintendent's recommendation that certificated employees holding 10.0 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 March 9, 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 10.0 FTE positions. The District's Board of Trustees adopted Resolution No. 2009-5 providing for the reduction or elimination of the following particular kinds of services (PKS):

	<u>Services</u>	<u>FTE</u>
a.	Mathematics Teaching Services	2.0
b.	English Teaching Services	1.0
c.	Physical Education Teaching Services	1.0
d.	Reading Specialist Services	1.0
e.	Elementary/Multiple Subject Teaching Services	5.0
	Total Full-Time Equivalent Reduction	10.0

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 10.0 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 employs 59 certificated teachers. The District's 2009-2010 budget is approximately \$9.5 million, out of which \$900,000.00 in cuts must be made. The District anticipates receiving substantially less money next year, prompting these cuts. The District also plans on using \$240,000.00 from a reserve fund that it has maintained. Mr.

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<sup>1</sup> Superintendent Robert Lowden personally served nine teachers, and served a tenth teacher via certified mail, with a "Notice of Recommendation that Services Will Be Terminated." Six teachers filed a Request For Hearing. The District served all six with an Accusation, to which the four named respondents filed a Notice of Defense. Respondents Christine Harbert and Stella Prudhomme did not file a Notice of Defense.

Lowden described the proposed cuts as “catastrophic” to school programs in what has been a very difficult year. However, he remains optimistic that there may be other funds that the District will receive to help meet this shortfall.

7. The District maintains a Certificated Seniority List which contains employees’ seniority dates (first date of paid service), credentials and authorizations. 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 used the seniority list to develop a proposed layoff list of the least senior employees assigned in the various services being reduced.

8. In determining the ten teachers to be laid off, the District skipped five teachers believed necessary to teach a specific course or course of study. They include:

- a. Ms. Hill. She has a District seniority date of August 18, 2005, and holds an “Ed Spec – Mild/Moderate Disabilities.” This credential is needed in her current position. No one senior to her holds this particular special education credential.
- b. Ms. Powers. She has a District seniority date of August 21, 2002. She holds a clear multiple subject credential with a supplemental English authorization. Her authorization allows her to teach English in a departmentalized setting. She was skipped because she is currently teaching English and no one senior to her is credentialed to teach English in this same setting.
- c. Ms. Soares-Brown. She has a District seniority date of August 15, 2001. She holds a Speech credential. No one senior to her holds this credential. Ms. Soares-Brown’s credential authorizes her to participate in the development of District IEPs and section 504 planning under the Americans with Disabilities Act.
- d. Ms. Scullion. She has a District seniority date of August 15, 2001. She holds a clear multiple subject credential, and a clear single subject credential – English. No one senior to her is credentialed to teach English.
- e. Ms. Melhase. She has a District seniority date of August 17, 2000. She is a special education teacher and holds a clear Mild/Moderate credential. No one senior to her is credentialed to teach special education classes.

9. Respondent Jeffrey Stevens has a District seniority date of August 17, 2000. He holds a clear multiple subject credential, with a supplemental authorization in Physical Education. He currently teaches sixth grade. This is a self-contained assignment, but he does so by teaching three periods of reading, three periods of English and one period of social science. His spouse also teaches in the District. Mrs. Stevens holds a clear multiple subject credential, with a supplemental English authorization. Her seniority date is August 19, 1999. She was not noticed by the District in these proceedings. Mrs. Stevens is currently assigned to a third grade classroom.

Mr. Stevens notes that Mrs. Stevens is willing to transfer into any one of the positions occupied by one of the English teachers who was skipped. Mrs. Stevens essentially wishes to be reassigned to an English class, and bump a junior teacher. Mr. Stevens would then like to be assigned to his wife's current third grade class or, at the very least, move up the seniority list as a result of the above reassignment.

10. Mr. Stevens approached the principal of West Cottonwood Elementary School, and also Mr. Lowden about this proposal. Mr. Stevens was advised that such reassignment was not in the best interest of students, and that the District did not intend to make assignments and reassignments among those senior teachers "above the line" as it would create disruption in the layoff process.<sup>2</sup>

Under Education Code section 44955, subdivision (c), "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." Assignments and reassignments are discretionary decisions the district is entitled to make. (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555; *Martin v. Kentfield School District* (1983) 35 Cal.3d 167; *King v. Berkeley Unified School District* (1979) 89 Cal.App.3d 1016.) Here, Education Code section 44955, subdivision (c) does not require the District to make assignments or reassignments among certificated employees not being laid off. The District chose to focus only upon certificated employees junior to Mr. Stevens to see if any were being retained in positions for which he is certificated and competent to render a service. As a practical matter, the District noted that it would be cumbersome and unworkable to embark upon making above the line assignments and reassignments of the type proposed by Mr. Stevens, as it believes many other certificated employees could propose such moves as well.

11. Respondent Carri Longnecker has concerns about how the physical education services to District students will be provided next year. She noted that it would be a disservice to students and to the program for it not to continue to build upon the successful foundation she has laid. Ms. Longnecker coaches girls' basketball and cross country, in addition to her regular teaching assignments.

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<sup>2</sup> The "above the line" reference is to more senior teachers above line 45 on the District Certificated Seniority List.

The District expressed appreciation for Ms. Longnecker's work as a physical education teacher. Resolution No. 2009-5 calls for the reduction of 1.0 FTE physical education teaching service. Ms. Longnecker is the most junior employee providing this service. The District will continue to provide the required amount of instruction in physical education. Mr. Lowden noted that the District may yet receive stimulus money, and also a grant to help after school programs. In addition, classroom teachers may be asked to teach physical education as part of their classroom instruction.

12. 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.

The reduction or discontinuation of the particular kinds of services set forth in Resolution No. 2009-5 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. 2009-5 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.

Cause exists to reduce the number of certificated employees of the Cottonwood 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.

4. As set forth in the Factual Findings, the District applied skipping rules with consistency and care. It allowed skipping only after demonstrating that the skipped teachers could teach a specific course or course of study in which they had special training and experience, and which others with more seniority did not possess. (Ed. Code, § 44955, subd. (d)(1).)

5. The District has discretion in making assignments and reassignments, and was not required to make the reassignment proposed by respondent Jeffrey Stevens. (See Factual Finding 10.)

#### ORDER

Notice shall be given to respondents occupying up to 10.00 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

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JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings