

**BEFORE THE
BOARD OF TRUSTEES OF THE
COALINGA-HURON UNIFIED SCHOOL DISTRICT**

In the Matter of the Accusation Against:

**IRENE FERNANDEZ, DEBBIE HYDE,
ANNA JORGENS, KATY LUJAN,
CLAUDIA VOSBURG, and JANINE
WAGNER,**

Respondents.

OAH No. 2009031353

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 21, 2009, in Coalinga, California. The record was closed and the matter was submitted for decision at the conclusion of the hearing.

Robert Piacente, Legal Counsel, Fresno County Office of Education, represented the Coalinga-Huron Unified School District (District).

Joshua F. Richtel, Esq., Tuttle & McCloskey, represented the Respondents, who were each present except for Respondent Katy Lujan.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Dr. Cecelia Greenberg-English, Ed.D., the District's Superintendent, made and filed the Accusation in her official capacity.
2. Respondents were at all times relevant certificated District employees.
3. On March 13, 2009, the Board of Trustees of the District (Board) adopted Resolution No. 30/08-09, which recommended a reduction or discontinuation of particular kinds of services for the 2009-2010 school year.
4. On or before March 15, 2009, the District served Respondents with written notice, pursuant to Education Code sections 44949 and 44955, that Respondents' services will not be required for the following school year.
5. Each Respondent was thereafter timely served with an Accusation and other required materials.

6. Respondents timely submitted a Notice of Defense, which contained a request for the hearing that ensued.

The Board's Layoff Decision

7. Resolution No. 30/08-09 specifically provides for the reduction or elimination of the following particular kinds of services:

<u>Particular Kinds of Service (PKS)</u>	<u>Full-Time Equivalent (FTE) Positions</u>
1 Middle School Tech X	1 FTE
2 Middle School Social Science	2 FTE
3 Middle School Science	1 FTE
4 Middle School P.E.	.5 FTE
5 High School E.L.A.	2 FTE
6 Counselor	2 FTE
7 RSP	2 FTE
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TOTAL	10.5 FTE

8. The services identified in Resolution No. 30/08-09 are particular kinds of services as described in Education Code section 44955.

9. After adoption of Resolution No. 30/08-09, the District has continued to consider all known positively assured attrition, as well as recent transfers and reassignments, which has resulted in only the six Respondents being given notice that their services will not be required for the following school year.

10. The reduction or elimination of the 10.5 FTE positions will not reduce services below mandated levels.

11. The Superintendent and the Board have determined that the reduction or elimination of the 10.5 FTE positions is necessary.

12. The District maintains a Seniority List containing its certificated employees' seniority dates, current assignments and locations, credentials and authorizations. To assure the accuracy of seniority dates and other data, the District made the information from the Seniority List available to employees for review, and they were allowed to request the District to update or revise that information. The District used the Seniority List to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the services being reduced. In determining who would be subject to layoff, 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 determined whether the least senior employees held other credentials entitling them to "bump" other employees.

13. Pursuant to Administrative Regulation (AR) No. 4117.3 (last revised 2/24/09), the Board identified three general areas to be exempted from the order of certificated layoff, due to the special training, experience, or credential that junior certificated employees possess that others with more seniority do not, and on that basis, intended to deviate from the usual order of terminating certificated employees on the basis of seniority (known as “skipping”). The Board’s skipping criteria is not the subject of dispute by the Respondents.

14. AR No. 4117.3 also established tie-breaking criteria to determine the relative seniority of certificated employees who first rendered paid service on the same date. The validity or application of the tie-breaking process is not subject to dispute in this matter.

15. AR No. 4117.3 also established a standard for competency for bumping purposes. Pursuant to AR No. 4117.3, an employee shall be deemed competent for assignment for bumping purposes if:

A. The employee will be “highly qualified” in the new assignment as specified under the No Child Left Behind Act and applicable State law; and

B. The employee has at least one year’s experience within the last 10 years teaching the same subject matter.

16. The Board’s definition of competence for purposes of bumping is reasonable, in that it considers the skills and qualifications of the teachers threatened with layoff and therefore is valid as generally applied.¹

Contentions of Individual Respondents

17. Anna Jorgens. Respondent Jorgens fills one of the two RSP FTEs scheduled for reduction or elimination. She seeks to bump into an elementary school position next school year. She has only taught RSP classes at the District, except for one summer school session in which she taught a fifth grade class (the summer school session lasted approximately four weeks). Although she has a credential allowing her to teach elementary school classes that junior certificated employees are being retained by the District to teach, she does not meet the Board’s definition of competency for purposes of bumping those junior employees because she does not have one full year of teaching elementary school classes within the past ten years. Under these circumstances, the District reasonably applied the Board’s definition of competency for bumping purposes to Respondent Jorgens. Although the District is retaining a certificated employee with less seniority than her, Respondent Jorgens is deemed not competent to render the service that the junior employee is being retained to perform.

¹ A similar definition of competency (one year experience teaching the subject in question within the last ten years) was approved by the court in *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565-567.

18. A. Debbie Hyde. Respondent Hyde fills the other RSP FTE scheduled for reduction or elimination. She also seeks to bump into another position for which a junior certificated employee is being retained to perform next school year. She has a credential allowing her to teach elementary school classes, as well as individual classes in grades K-8. Although she has only taught RSP classes at the District, she previously taught elementary school classes for the Fresno Unified School District from mid-school year 1996 through June of 2000, including the entire 1999-2000 school year.

B. The District intends to retain junior certificated employees to teach elementary school classes instead of Respondent Hyde because District personnel consider Respondent Hyde not competent, within the meaning of the Board's competency definition, to teach such courses next school year. Based on their interpretation of the Board's competency definition, District personnel have concluded that Respondent Hyde has not taught one full year of elementary school classes in the last ten years. By the District's calculation, Respondent Hyde last taught such classes in the 1999-2000 school year, which was 11 school years before she could be reassigned to teach such a class next school year.

C. The District unreasonably applied the Board's competency definition to Respondent Hyde. Under the plain language of the Board's competency definition, Respondent Hyde must have taught one full year of elementary classes within "the last 10 years," which would be the time frame of 1999 through 2009. Respondent Hyde taught such a class during the 1999-2000 school year (i.e. August or September of 1999 through June of 2000), which is within that time frame. Even counting in school years back in time from the 2009-2010 school year, the 1999-2000 school year is still within the last ten school years. The only way in which the District's calculation of the last ten years supports its argument is if the calculation begins at the end of the next school year, i.e. June of 2010. However, using that as a basis to calculate the "last 10 years" is not reasonable, in that it does not properly consider the skills and qualifications of Respondent Hyde at the present time. The calculation of the "last 10 years" should run from the time in which the Board decided to reduce the particular kinds of services in question and made its bumping decisions, i.e. March of 2009, a time frame that is consistent with other deadlines prescribed in layoff cases.² In fact, there is no language in the Board's competency definition that supports the District's interpretation. Respondent Hyde is credentialed and competent to render services that the District is retaining junior certificated employees to render next school year, and for that reason, she is not subject to layoff.³

² For example, positively assured attrition is calculated on or before March 15th (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627); also, school districts need only consider for purposes of competency credentials filed by March 15th (*Degener v. Governing Board of Wiseburn School District* (1977) 67 Cal.App.3d 689).

³ No evidence was presented establishing that the other element of the Board's competency definition, i.e., "highly qualified" status under the No Child Left Behind Act and applicable State law, applies to Respondent Hyde.

19. Claudia Vosburg. Respondent Vosburg is a permanent certificated employee. The District is retaining probationary certificated employees to teach classes that Respondent Vosburg is credentialed and competent to teach because the first date of paid service by those probationary employees precedes Respondent Vosburg's. The District's classification of some probationary employees' as being more senior to permanent certificated employees such as Respondent Vosburg for purposes of layoff is erroneous, because a permanent certificated employee is considered senior to a probationary employee regardless of their first dates of paid service.⁴ Respondent Vosburg is therefore not subject to layoff.

Overall Findings

20. The Board's decision to reduce or discontinue the above-described particular kinds of services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

21. The cause for reducing and/or eliminating the above-described particular kinds of services relates solely to the welfare of the schools in the District and its pupils.

22. Considering the factual findings and legal conclusions regarding Respondents Hyde and Vosburg, no certificated employee with less seniority will be retained to render a service that Respondents are certificated and competent to render.

LEGAL CONCLUSIONS

1. All jurisdictional requirements of Education Code sections 44949 and 44955 were met. (Factual Findings 1-6.)

2. The services identified in Resolution No. 30/08-09 are particular kinds of services that can be reduced or discontinued pursuant to Education Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Services will not be reduced below

⁴ Education Code section 44955, subdivision (b), states, in relevant part, that "[e]xcept as otherwise provided by statute, no permanent employee may be terminated . . . 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." The District cited no other statute that would override section 44955. The District cites to *Bakersfield Elementary Teachers Assn. v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260 as authority for the proposition that probationary employees are entitled to earlier seniority than permanent employees. However, the *Bakersfield* case (and its progeny) held that "temporary" employees working under less than full credentials (such as an emergency permit) and who satisfy other requirements of the Education Code are entitled to classification as probationary employees for purposes of layoffs. No appellate authority is known (including *Bakersfield*) holding that probationary employees are entitled to greater seniority than permanent employees for layoff purposes.

mandated levels. Cause for the reduction or discontinuation of those particular services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949. (Factual Findings 1-21.)

3. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. (Factual Findings 1-21.)

4. It was established that errors were made in determining the status of Respondents Hyde and Vosburg, which would result in the District retaining junior certificated employees to perform services that those Respondents are certificated and competent to perform. The Accusation against Respondents Hyde and Vosburg therefore should be dismissed. (Factual Findings 1-21.)

5. Considering Legal Conclusion 4, no junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render. (Factual Findings 1-22, Legal Conclusion 4.)

ORDER

1. The Accusations are dismissed against Respondents Hyde and Vosburg. Those Respondents shall not be given notice that their services are not required for the 2009-2010 school year.

2. The Accusations are sustained against the remaining Respondents. Notice shall be given to those Respondents that their services will not be required for the 2009-2010 school year, and such notice shall be given in inverse order of seniority.

Dated: April 24, 2009

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings