

BEFORE THE GOVERNING BOARD OF THE  
BUELLTON SCHOOL DISTRICT

In the Matter of the Layoff of:

OAH No.: 2009040032

Ron Zell, a Certificated Employee of the  
Buellton School District,

Respondent.

PROPOSED DECISION

This matter came on for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at Santa Ynez, California, on April 28, 2009.

Tareq M. Hishmeh, Attorney at Law, represented the Complainant.

Michael C. Blacher, Attorney at Law, represented Respondent Ron Zell.

Oral and documentary evidence and evidence by way of stipulation and official notice was received.

The Administrative Law Judge now finds, concludes and orders as follows:

SUMMARY

The Board of Education (Board) of the Buellton 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. The decision was not related to the competency and dedication of the teachers whose services were proposed to be reduced or eliminated.

## FACTUAL FINDINGS

### *Parties*

1. Complainant Tom Cooper filed the accusation<sup>1</sup> in this proceeding in his official capacity as Superintendent of the District.
2. Ron Zell, the Respondent herein, is a certificated employee of the District.

### *Reduction of Services*

3. On March 11, 2009, the Governing Board adopted and issued resolution number 09-13 (Resolution) to reduce or discontinue particular kinds of certificated services no later than the beginning of the 2009/2010 school year, because of the financial constraints resulting from revenue being insufficient to maintain the current levels of programs, and necessary program changes resulting therefrom. The District faces a monetary shortfall of approximately one-half million dollars.

4. The Resolution specified the Reduction or Elimination of Particular Certificated Services as follows:

<u>TYPE OF PROGRAM</u>	<u>FTE (Full-Time Equivalent)</u>
Elementary Teaching	2.0 FTE
Music	1.0 FTE

The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under section 44955.

5. With regard to services provided by the District the Board, by policy, detailed the criteria to be applied to determine the order of layoff for those certificated employees with the same date of first paid probationary service.

6. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District's discretion given the budgetary constraints, other factors considered by the Board, and the manner in which the decision to reduce or discontinue services was reached.

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<sup>1</sup> The term "accusation" refers to a pleading utilized under the Administrative Procedure Act, Government Code section 11503. Respondent is not "accused" in the every-day sense of that word, unless it can be said he is accused of not having enough seniority to retain his position with the District in the face of a resolution to reduce positions.

7. The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board.

*Notice and Process*

8. On March 6, 2009, the Complainant gave written notice to the Board of his recommendation that notice be given to the three certificated employees that their services would not be required the ensuing year, 2009/2010, and stating the reasons therefore.

9. On March 11, 2009, the Board directed the Complainant to give notices to three certificated employees that their services would not be needed of the 2009/2010 school year. Two of the three certificated employees did not request a hearing.

10. On March 12, 2009, Respondent was served in the manner prescribed by law with written notice that it had been recommended that notice be given to him that his services would not be required for the ensuing school year, 2009/2010, and stating the reasons therefore.

11. Respondent, within the time limited specified in Education Code section 44949, subdivision (b), requested a hearing to determine if there is cause for not re-employing the Respondent for the ensuing school year.

*Findings Re: Ron Zell*

12. Respondent Ron Zell, an employee of the District since 2000 is a competent and credentialed music teacher. He possesses a single subject credential which allows him to teach music. At present, he competently teaches music seven periods a day, ranging from kindergarten children to eighth grade pupils. Approximately 500 students per week are under his tutelage.

13. The Board resolved – as is set forth in Finding 4 – to eliminate music instruction in the District, thus eliminating the need for Mr. Zell’s services.

*Seniority*

14. The District maintains an accurate Seniority List which contains employees’ seniority dates (the first date of paid service) current assignments and locations, credentials, authorizations and employment status (permanent, probationary or temporary). No junior certificated employee is being retained to perform services which Respondent Ron Zell 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 Respondent by reason of Findings 8, 9, 10 and 11.

2. 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 by reason of Findings 3, 4 and 5. The Board's decision to reduce or eliminate the identified services set forth in Finding 4 was neither arbitrary nor capricious in that the decision relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949, by reason of Findings 6 and 7.

3. No permanent or probationary employee with less seniority is being retained to render a service for which Respondent is certificated and competent to render, by reason of Finding 14.

4. Cause exists pursuant to Education Code sections 44949 and 44955 to give notice to Respondent that his service will not be required for the 2009/2010 school year by reason of the whole of the Findings herein.

## ORDER

Notice may be given to Respondent that his service will not be required for the 2009/2010 school year.

Dated: \_\_\_\_\_

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RICHARD J. LOPEZ  
Administrative Law Judge  
Office of Administrative Hearings

RJL:rfm