

BEFORE THE GOVERNING BOARD
OF THE HUENEME SCHOOL DISTRICT
COUNTY OF VENTURA, STATE OF CALIFORNIA

In the Matter of the Layoff of

CERTIFICATED EMPLOYEES OF THE
HUENEME SCHOOL DISTRICT,

Respondents

OAH No. 2009040251

PROPOSED DECISION

This matter came on regularly for hearing before Janis S. Rovner, Administrative Law Judge of the Office of Administrative Hearings, State of California, in Port Hueneme, California, on April 23, 2009.

James R. Lynch, Attorney at Law, represented the Hueneme School District (District).

Adam A. Acevedo, Attorney at Law, represented Sergio Alvarez, Kimberly Lewis, and Maria Ortiz (Respondents), who were present during the entire hearing.

Oral and documentary evidence, and evidence by way stipulation, was presented and received. The matter was submitted for decision on April 23, 2009.

SUMMARY OF PROPOSED DECISION

The Governing Board of the Hueneme School District (Board) determined to reduce or discontinue particular kinds of services provided by certificated employees for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

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

FACTUAL FINDINGS

1. On February 23, 2009, the Governing Board of the District (Board) adopted Resolution No. 08-09-12, in which it resolved to reduce or discontinue the following particular kinds of services for the 2009-2010 school year:

<u>Kind of Service</u>	<u>Full-Time Equivalent (FTE) Positions Eliminated</u>
School Psychologist	1.0
Counselor	1.6
Special Day Class Teacher	1.0
Program Specialist	1.0
Orientation & Mobility	1.0
7-8 Language Arts	1.0
7-8 History-Social Science	2.0
7-8 Math	1.0
7-8 Science	1.0
7-8 P.E.	1.0
CBET	1.0
ELD Teacher	1.0
Special Projects Teacher	1.0
Literacy Coach	3.0
Math Coach	2.0
SIOP Coach	1.1
Technology Resource	3.5

School Nurse	1.0
K-6 Classroom Teacher	<u>19.5</u>
Total Full Time Equivalent Reduction:	44.7

2. Jerry Dannenberg is the Superintendent of the District.

3. Before March 15, 2009, Superintendent Dannenberg gave written notice to the Board, and to certificated employees of the District (including Respondents), recommending that notice be given to the certificated employees informing them their services would not be required for the 2009-2010 school year due to the reduction or elimination of particular kinds of services. The written notice included the reasons for the recommendation.

4. Five certificated employees of the District, including Respondents, timely filed a written request for hearing to determine if there is cause for not reemploying them for the 2009-2010 school year.

5. Deborah DeSmeth, Assistant Superintendent of the Hueneme School District, filed the Accusation in her official capacity. The Accusation was timely and properly served on the five certificated employees who had requested a hearing.

6. Respondents filed a notice of defense, and were notified of the hearing date.¹ This proceeding ensued. All prehearing jurisdictional requirements have been satisfied.

7. Respondents are certificated employees of the District.

8. The Board considered all known attrition, including resignations and retirements, in reducing the services and determining the actual number of necessary layoff notices to be delivered to its employees.

9. The District's seniority list contains certificated employees' seniority dates (first date of paid service), current assignments and locations, status as probationary or permanent employees, credentials, and authorizations. 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 known vacancies, and determined the impact on incumbent staff in inverse order of seniority.

¹ Although it was not shown that he filed a notice of defense, Respondent Sergio Alvarez appeared at the hearing and was treated as if he had filed a notice of defense.

10. The Board's Resolution No. 08-09-12 established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. The District used information from the District's seniority list to apply the tie-breaker criteria of Board Resolution No. 09-047. The tie-breaker criteria were reasonably conceived and applied based on the needs of the District and its students.

11. The seniority list reflected Respondent Alvarez' first day of paid service with the District as August 27, 2007. He contends that his first day of paid service was August 24, 2007, a date he would share with five other employees. The other five employees were given an earlier date because they attended a mandatory new teacher training for which they were paid. Respondent Alvarez asserts that the District invited him to attend the new teacher training. The District disputes this fact. Assuming the District did invite him to the training, it was not shown that his attendance was mandatory or that he was paid for the training. Under the circumstances, the District properly listed Respondent Alvarez' first date of paid service as August 27, 2007. Even if his seniority date is changed to August 24, 2007, it would not affect his status in this proceeding.

12. No permanent or probationary certificated employees with less seniority than Respondents are being retained to render a service that respondents are certificated and competent to render.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The services identified in Board Resolution No. 08-09-12 are particular kinds of services that may be reduced or discontinued under 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. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. 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.)

4. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

5. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

6. No junior certificated employee is scheduled to be retained to perform services which Respondents are certificated and competent to render.

ORDER

The Accusation is sustained as to Respondents Alvarez, Lewis and Ortiz. The District may notify all Respondents that their services will not be required for the 2009-2010 school year because of the reduction or elimination of particular kinds of services.

Dated: April 28, 2009

Janis S. Rovner
Administrative Law Judge
Office of Administrative Hearings