

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
ACTING FOR AND ON BEHALF OF THE  
BOARD OF EDUCATION  
OF THE  
BEAUMONT UNIFIED SCHOOL DISTRICT

In the Matter of the Accusation Against:

OAH No. 2009070247

WILLARD E. WILLIAMS,

Respondent.

**PROPOSED DECISION**

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Beaumont, California on July 28, 2009.

Mark W. Thompson, Atkinson, Andelson, Loya, Ruud & Romo, a Professional Corporation, represented the Beaumont Unified School District.

Carl F. Herbold, Lawyer, represented respondent Willard E. Williams.

The matter was submitted on July 28, 2009.

**FACTUAL FINDINGS**

1. Steven Hovey, Assistant Superintendent, Personnel, of the Beaumont Unified School District, made and filed the accusation dated June 24, 2009, in his official capacity as the designee of Dr. Barry Kayrell, district superintendent.

2. Respondent is a certificated district employee.

3. On June 24, 2009, in accordance with Education Code section 44955.5, the superintendent notified the Board of Education of the Beaumont Unified School District in writing of his recommendation to reduce or discontinue particular kinds of services for the upcoming school year. The superintendent stated the reasons for the recommendation. The recommendation that respondent be terminated from employment was not related to his competency as a counselor.

4. On June 23, 2009, the Board of Trustees of the Beaumont Unified School District (board) adopted Resolutions Nos. 2009-55 and 2009-53. The board determined that its total revenue limit per unit of average daily attendance (ADA) for fiscal year 2009-2010 had not increased by at least two percent (2%), and that it was, therefore, necessary to decrease the number of certificated employees in the district. The board determined that it would effectuate this decrease in the number of certificated employees by reducing certain particular kinds of services for the 2009-2010 school year, and that the particular kinds of services that would be so reduced were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Counselors	1.0
Total FTE	1.0

The board also adopted the following notice and hearing schedule:

- Service of preliminary layoff notices, accusations, and related documents (June 24, 2009);
- Receipt of Requests for Hearing and Notices of Defense (12 days after service of preliminary notices);
- Service of Notice of Hearing (ten days prior to hearing date);
- Issuance of Administrative Law Judge’s Proposed Decision (August 6, 2009); and
- Final board action and notice to affected employees (August 14, 2009).

5. The board further determined in Resolution No. 2009-55 that “to maintain the highest level of counseling services for its students, a specific and compelling need exists to employ and retain certificated employees in its counseling positions who have prior experience within the district providing these services, and the special training and experience that comes therewith.” The quoted language constituted the board’s “skipping” criteria for purposes of this layoff proceeding.

The board further determined in Resolution No. 2009-53 that “competency,” for the purposes of “bumping,” necessarily included, *inter alia*, “(1) possession of a valid credential in the relevant subject matter . . . and (4) for counseling positions, at least one year of experience within the last five as a counselor in the District.”

6. On June 24, 2009, the district timely served on respondent a written notice that it had been recommended to the board that respondent’s services would not be required after August 14, 2009. On the same day, the district timely served on respondent the accusation

and required accompanying documents. The preliminary notice set forth the reasons for the district's action. The notice advised respondent of his right to a hearing, that respondent had to deliver a request for a hearing in writing to the district by the date specified in the notice, and that the failure to request a hearing would constitute a waiver of the right to a hearing.

The decision to terminate respondent's employment was not related to his competency as a counselor.

7. Respondent timely filed a written request for hearing to determine if there was cause for not reemploying him for the upcoming school year. Respondent timely filed a notice of defense. The district timely served a notice of hearing. All pre-hearing jurisdictional requirements were met.

8. Respondent is a probationary or permanent certificated employee of the district.

9. The district's total base revenue limit per unit of average daily attendance for fiscal year 2009-2010 has not increased by at least two percent. In fact, it has decreased, by about 3.5 percent.

10. The services the board addressed in Resolution No. 2009-53 were "particular kinds of services" that could be reduced or discontinued within the meaning of Education Code section 44955. The board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious and constituted a proper exercise of discretion.

11. The reduction or discontinuation of particular kinds of services related to the welfare of the district and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the district as determined by the board.

12. No evidence was presented that any known positively assured attrition was not considered.

13. In a spring 2009 layoff proceeding conducted pursuant to Education Code sections 44955 and 44949, the board eliminated 3.5 counselor positions within the district. The board's determination was upheld by the administrative law judge, whose proposed decision the board adopted on May 11, 2009. At no time thereafter did the board change the number of authorized counselor positions.

From July 25, 2007, his seniority date with the district, until June 30, 2009, respondent served as a principal of continuing and alternative education. Effective June 30, 2009, respondent was released from his duties as a principal and reassigned, pursuant to an appropriate credential, as a school counselor. Respondent's release from his position as a principal was effectuated for essentially disciplinary reasons, i.e., what the district perceived

as inadequate job performance of some kind. The district claimed that respondent's release was proper; respondent asserted that he was improperly terminated.<sup>1</sup>

14. The board stated that the reduction of 1 FTE counselor position was necessary because, as determined in the context of the spring layoff proceeding, the district had only a specific number of counselor positions within its budget. Each of those positions was filled, so that when respondent was reassigned as a counselor effective June 30, 2009, the district had one counselor too many, and it therefore became necessary to institute the instant summer layoff proceeding in order to eliminate one counselor position.

15. No certificated employee junior to respondent was retained to perform any services which respondent was certificated and competent to render. Respondent had the second-least seniority of school counselors. However, the counselor with the least seniority, Yolanda Lopez, was properly skipped because she had counseling experience within the district during the preceding five years, while respondent did not. For the same reason, respondent was not competent to bump any less senior certificated employee.

During the spring layoff proceeding, the district adopted skipping and bumping criteria that were "consistent with" those adopted for purposes of the present proceeding. Specifically, for purposes of both skipping and bumping in the spring proceeding, counselors had to have prior counseling experience. The district representative who testified about these matters at the present hearing did not recall whether the prior experience had to be within the district or not. Since no evidence was presented that respondent had any counseling experience within the past five years—either within or outside the district—this potential distinction is of no significance in this proceeding.

## LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 44955, and 44955.5. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Education Code section 44955.5 states in part:

"During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent, and if in the opinion of the governing board it is therefore necessary to

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<sup>1</sup> Respondent's release was effectuated pursuant to board Resolution No. 2009-54, which was purportedly based on section 44955.5. This would seem to suggest the possibility that the district attempted to use the procedures set forth in sections 44955.5 and 44955 improperly as a means of terminating respondent's employment with the district for reasons relating to job performance. However, at the hearing in this matter, the district did not attempt to base its termination of respondent on Resolution No. 2009-54 (indeed, it was respondent who successfully sought, over the objection of the district, to have the resolution received into evidence).

decrease the number of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. The termination shall be pursuant to Sections 44951 and 44955 but, notwithstanding anything to the contrary in Sections 44951 and 44955, in accordance with a schedule of notice and hearing adopted by the governing board.”

3. Based on the statutory language,<sup>2</sup> it appears that when, as in the present case, the total revenue limit per unit of average daily attendance for the fiscal year has not increased by at least two percent, a district’s governing board is granted the discretion to determine the necessity of decreasing the number of permanent employees in the district and to institute lay-off proceedings pursuant to that determination.

Notably, the “necessity” language of section 44955.5 is substantially identical to that contained in section 44955. Accordingly, the determination of the necessity to reduce or discontinue particular kinds of services should, for section 44955.5 layoffs as is the case for those instituted pursuant to section 44955, be reserved to the discretion of the board. The policymaking decisions of a district governing board, an elected legislative body, should not be subject to arguments as to the wisdom of their enactment, the necessity of the resolution, the selection of services, or questions as to the board’s motivation. (*California Teacher’s Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1529; *Horwath v. Local Agency Formation Comm. of San Mateo County* (1983) 143 Cal.App.3d 177, 182.) The board’s action need only be reasonable under the circumstances. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796.)

4. Respondent contended in essence that the district improperly used section 44955.5 to terminate his district employment because of his performance as a principal. He argued in this connection that he was released as a principal and reassigned to a non-existent position. The timing of respondent’s release (e.g., effectuated pursuant to a board resolution dated June 23, 2009, the same date as the board resolutions that gave rise to the present proceeding), as well as the fact that respondent was the only certificated employee who received a layoff notice pursuant in this proceeding, may raise a question as to the district’s actual motivation in this matter. However, the district nonetheless established by a preponderance of the evidence that respondent’s layoff was correctly implemented pursuant to Education Code sections 44955.5, 44955, and 44949, i.e., respondent was the least senior counselor, except for an individual who was properly skipped pursuant to criteria adopted by the board. Further in this regard, the skipping (and bumping) criteria adopted for purposes of the summer layoff proceeding were consistent with those adopted in the spring proceeding. Finally, whether respondent was properly released (or terminated) from his position as a principal is beyond the scope of this proceeding and the jurisdiction of the administrative law judge.

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<sup>2</sup> No judicial authority as to the proper interpretation of section 44955.5 has been found.

Accordingly, it was established that the board and the district acted within the scope of their discretion with regard to the adoption and implementation of Resolution Nos. 2009-53 and 2009-55.

5. A preponderance of the evidence sustained the charges set forth in the accusation. Cause exists under Education Code sections 44949, 44955, and 44955.5 for the district to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. 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. It is recommended that the board give respondent notice before August 14, 2009, that his services are no longer required by the district.

#### ADVISORY DETERMINATION

The following advisory determination is made:

1. The accusation served on respondent Willard E. Williams is sustained. Notice may be given to respondent before August 14, 2009, that his services will not be required because of the reduction or discontinuation of particular services as indicated.

DATED: \_\_\_\_\_

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DONALD P. COLE  
Administrative Law Judge  
Office of Administrative Hearings