

BEFORE THE
BOARD OF EDUCATION
SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

DEBBY ACQUAZZINO and Other
Certificated Employees of the Saddleback
Valley Unified School District,

Respondents.

OAH Case No. 2010020070

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge, on April 14, 2010, at Mission Viejo. Complainant Margaret Lewis, Assistant Superintendent, Personnel Services, of the Saddleback Valley Unified School District was represented by David C. Larsen, Attorney at Law.

Respondents named in Exhibit 1 as amended, and each of them, were represented by Marianne Reinhold, Attorney at Law.

Documentary, oral, and stipulated evidence having been received and oral arguments having been made, the Administrative Law Judge submitted this matter for decision on April 14, 2010, and finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on March 22, 2010, the Accusation was made and filed by Margaret Lewis in her official capacity as Assistant Superintendent of Personnel Services of the Saddleback Valley Unified School District, State of California (District).

2. Respondents, and each of them, are employed by the District as permanent or probationary certificated employees.

3. The District is a unified school district comprised of a number of elementary, intermediate, and high schools in Orange County and serves and educates approximately 32,000 pupils. Due to the ongoing state budget crisis and the concomitant loss of revenue

from the state as well as lower enrollment, the District, which historically has had a low reserve, has been experiencing budgetary problems. Last year, the District received federal stimulus monies to help temporarily offset its budget woes. However, the Assistant Superintendent of Business Services prepared a preliminary budget for the District for the 2010-2011 fiscal or school year based upon the Governor's proposed budget for the State of California and determined that the District will receive approximately \$36 million less in revenue than last year and its expenditures will exceed revenues by approximately \$33 million. The Assistant Superintendent has recommended that the District make budget cuts of \$33 to \$34 million for the next fiscal year by, in part, reducing or discontinuing programs and services and laying off certificated personnel in order to help ensure a balanced budget and to maintain the required reserve.

4. (A) On March 9, 2010, the Superintendent gave written notice to the Board of Education of his recommendation that programs and services and related certificated positions be reduced for the 2010-2011 school year in order to maintain a balanced budget and provide essential services. The Superintendent provided the Board of Education with a list of services or programs that he recommended be eliminated or reduced for next fiscal year and a resolution that he recommended be adopted to give notice to certificated employees who may be reassigned or laid off due to the elimination or reduction of programs and services.

(B) On March 9, 2010, in Resolution No. 37:09-10, pursuant to Education Code sections 44949 and 44955 and based upon recommendation of the Superintendent, the Board of Education of the District determined and resolved that the State budget for 2009-2010 will have substantial negative impacts on the District and the District is expected to have a shortfall of \$19.9 billion dollars for the 2010-2011 fiscal year; that the Governor's proposed budget cuts to K-12 public schools for the 2010-2011 fiscal year will require the District to make substantial cuts; that the District must eliminate programs and services for the 2010-2011 fiscal year to maintain a balanced budget and provide for essential services; and that it is necessary to reduce or discontinue particular kinds of services now being rendered by certificated personnel for the 2010-2011 fiscal year.

(C) The Board of Education recognized that the reduction or elimination of services may result in the reassignments and layoffs of certificated employees and that it was necessary to give notice to employees who may be laid off as a result of the reduction in services. The Board of Education thereupon directed the Superintendent to give written notices upon certificated employees in accordance with and in the manner prescribed by Education Code sections 44955 and 44949 in order to reduce certificated positions by a number corresponding to the services reduced or discontinued and positions affected thereby. The Board of Education further resolved that the actual layoff of any employee would be subject to its final review and determination after appropriate hearings and deliberations.

(D) On March 9, 2010, in Resolution No. 37:09-10, the Board of Education also adopted a "Tiebreaker Criteria and Point System to be Applied when Certificated Probationary and Permanent Employees Share the Same First Date of Paid Service in a

Probationary Position.” The Board of Education determined that, as between certificated employees who first rendered paid service in a probationary position to the District on the same date, the order of termination shall be determined by reference to 13 tiebreaking criteria and a point system. The Board of Education further found that its tiebreaking criteria will best serve the needs of the District and its students and will be applied effective 2010-2011.

5. On or about March 11, 2010, pursuant to Resolution No. 37:09-10 of the Board of Education and the provisions of Education Code sections 44949 and 44955, the District’s Assistant Superintendent of Personnel Services as designee of the Superintendent gave written notices by personal service to respondents that the Superintendent had recommended and the Board of Education had resolved that their services will not be required for the ensuing 2010-2011 school year and the reasons for this action (preliminary notice). Respondents were notified that their positions will be eliminated or filled by “regular” employees with more seniority pursuant to Education Code section 44955. The preliminary notices included Resolution No. 37:09-10 to reduce and/or discontinue particular of services or programs performed by certificated employees in the District, the list of particular certificated services or programs to be eliminated or reduced, the tie-breaking criteria, pertinent sections of the California Education Code, and a blank Request for Hearing. Pursuant to instructions of the District, respondents signed certifications that they had received preliminary notices of layoff. Respondents timely requested a hearing to determine if there is cause for not re-employing them for the 2010-2011 school year.

6. The District’s preliminary notice of layoff dated March 11, 2010, was sufficient in providing notice to respondents under Education Code sections 44949 and 44955. Respondents were not prejudiced by errors in the notices, if any, with respect to the spelling of their names, description of their employment status, addresses, or any other matters. No claims were raised in the hearing that the notices or contents thereof or the timing of the notices were deficient in any respect.

7. On or about March 22, 2010, the District properly served respondents, , and each of them, with an Accusation, Statement to Respondent, copies of Government Code sections 11507.5-11507.7, a blank Notice of Defense form, and Notice of Hearing. Respondents, and each of them, certified that they had received the Accusation and accompanying documents and filed timely notices of defenses, requesting a hearing to determine if there is cause not to employ them for the ensuing school year and denying any and all charges contained in the Accusation. All prehearing jurisdictional requirements have been met.

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8. On March 9, 2010, the Superintendent recommended to the Board of Education of the District that it take action to reduce or discontinue certain services or programs offered by the District for the 2010-2011 school year in the following full-time equivalent (FTE) positions:

	<u>Full-Time Equivalent Positions</u>
<u>Administration</u>	
Elementary Principal	2.00
Elementary Assistant Principal	3.00
Intermediate Assistant Principal	2.00
High School Assistant Principal	4.00
Adult Education Dean	1.00
 <u>Special Education and Pupil Services</u>	
RSP	1.00
Special Day Class Non-Severe	1.00
Psychologist	1.60
 <u>Course Offerings/Instructional--Elementary</u>	
Elementary K-6, inc. restructuring Class Size Reduction Program	77.00
Elementary Music	12.00
 <u>Secondary Instruction</u>	
Art	1.20
Math	2.80
English	2.40
Music	.20
Science (Biology)	3.00
Social Science	.60
Spanish	3.20
Physical Education	4.00
Computer Concepts	2.00
Agriculture	.20
 <u>K-12 Instruction</u>	
BTSA/Induction Program	1.00
 <u>Adult Education</u>	
Community-Based English Tutoring Program	1.00
Vocational Visions	3.00

On or about March 9, 2010, the Board of Education determined not to reduce or discontinue, the services or programs of assistant principals (9.00 FTE), and elementary music instruction (12.00 FTE). As a result of retaining these services or programs totaling 21.00 FTE, the

Board of Education determined to reduce or discontinue the remaining services set forth hereinabove which constitute a total of approximately 108.20 FTE positions under Resolution No. 37:09-19. No claims were made that the resolution of the Board of Education to reduce or discontinue services was deficient or arbitrary and capricious in any respect.

9. The services or programs set forth in Finding 8 above are particular kinds of services performed by certificated employees of the District which may be reduced or discontinued within the meaning of Education Code section 44955. The determination of the Board of Education to reduce or discontinue these services is within its sound discretion and is not arbitrary or capricious. The District demonstrated that the reduction or discontinuance of these particular kinds of services is related to the welfare of the District and its pupils and is necessary in order for the District to maintain a balanced budget and sufficient reserve.

10. Further, the District has obviated the need to reduce or discontinue all of the particular kinds of services or programs described in Finding 8 above and to terminate the employment of all respondents given preliminary notice and accusations by taking into account the personnel changes and attrition due to reassignments, retirements, and/or resignations of individual certificated employees within the District, including those certificated employees who resigned or retired the day before the hearing in this matter. As set forth in the list of “2010-2011 Retirements and Resignations” (Ex. 9), there are 65 certificated employees as of April 13, 2010, who have or will resign or retire from their employment with the District before the 2010-2011 school year.¹ As such, the District has reasonably determined and accounted for what will be positively assured attrition among its certificated staff for the ensuing 2010-2011 school year and reduced by corresponding number the number of certificated employees whose employment must be terminated due to the present reduction or discontinuance of particular kinds of services. For example, the District has determined that it does not need to lay off any certificated employees in secondary instruction of English and computer concepts but must lay off certificated employees in other services or programs pursuant to the resolution of the Board of Education to reduce or discontinue particular kinds of services for next school year.

11. (A) The District has prepared and maintains a Seniority List (Exh. 21) which sets forth the names of certificated employees and their seniority dates or dates of first paid service, credentials and/or authorizations, and current assignments and site locations. The District also compiled and reviewed Job Descriptions (Exh. 6) of the services or positions that it was required to reduce or discontinue pursuant to the resolution of the Board of Trustees and applied the tiebreaking criteria to certificated employees who are affected by this layoff and first rendered paid service in a probationary position on the same dates and ranked them in an order of termination.

¹ During the hearing, the footnote on page 2 of the list of 2010-2011 Retirements and Resignations, as marked by an asterisk, was deleted from this list or exhibit.

(B) The District developed staff reduction flow charts of the least senior certificated employees currently assigned in the particular kinds of services that it is seeking to reduce in this layoff proceeding (Exhs. 7, 8, 9, 10, 11, 13, 15, and 19). The District then determined how many of these certificated employees are retiring or resigning; whether the least senior certificated employees in these particular kinds of services hold other credentials, can perform in other service areas, and are entitled to bump other more junior certificated employees; whether certain certificated employees should be skipped and retained; how many certificated employees are bumping into each service area; and how many certificated employees in each service area must be reassigned or laid off. On the Seniority List and staff reduction flow charts, the District designated certificated employees to be reassigned to another service area as “R1” and in the color yellow and certificated employees to be laid off as “R2” and in the color pink. The District also prepared a list of certificated employees who are to be laid off from their employment pursuant to this reduction or discontinuance of particular kinds of services (Exh. 1).

(C) No claims were raised concerning the District’s Seniority List, staff reduction flow charts, or determinations of how many certificated employees and which particular certificated employee must be laid off or reassigned in each service area affected by the present reduction of particular kinds of services, except in the area of secondary art instruction.

12. (A) In the service or program area of elementary instruction, the District plans to facilitate the reduction or discontinuance of 77.00 FTE in elementary instruction by increasing class size in grades one through three and reducing the number of other elementary classrooms or grades that will likewise result in larger class sizes. The District will also eliminate the 1.00 FTE position of BTSA coordinator but continue to provide support to any new teachers through site administrators and District staff.

(B) The District has also received notice that 31 certificated employees in elementary instruction will be resigning or retiring and determined that three certificated employees are entitled to bump into elementary teaching positions. As a result, during the hearing, the District withdrew or dismissed the Accusation against respondent Thomas Hammer and gave notice that it will not be necessary to reassign certificated employees Jill Bennet, Tracy Feller, Kimberly A. Fix, Michelle Gryzanoski, Lisa Johnson, Valerie Lau, Lisa Paisley, Kathleen Roberts, Kristin Thomsen, and Stephanie Crilly to different programs.

(C) The District will terminate the employment of 40 elementary school teachers pursuant to the reduction or discontinuance of the particular kind of service of elementary instruction. Finally, there are 28 certificated employees in elementary instruction who share the same seniority date of September 7, 1999, and are all subject to layoff. The District applied the tie-breaking criteria to these teachers and ranked them in order of their tie-breaking points. In the event that it needs additional elementary teachers for next school year, the District will recall or rehire these 28 teachers in order of this ranking list.

(D) The District has determined not to reduce or discontinue services performed by certificated employees in the Two-Way Language Immersion Program, a charter school in Spanish language immersion for elementary students within the District. Certificated employees assigned to the immersion program must be bilingual and possess either a BCLAD or BCC credential. Certificated employees in the immersion program will be skipped; one immersion teacher, however, respondent Brittany Solapelzel, who has a seniority date of September 4, 2007, is to be bumped out of the program by an elementary grade teacher who holds a BCC credential. Solapelzel is subject to layoff.

13. (A) In the area of secondary instruction, the District will facilitate the reduction or discontinuance of this particular kind of service by reducing both the number of course offerings and sections of classes. The District plans to offer less specialized courses and will eliminate classes with small enrollments.

(B) Pursuant to the resolution of the Board of Education, the District plans to reduce or discontinue services in the Adult Education by a total of 5.00 FTE, including the services of the Adult Education Dean (1.00 FTE), Community-Based English Tutoring Program (1.00 FTE), and the Vocational Visions program (3.00). The Adult Education Dean holds a credential to teach English and will be bumping into and reassigned to an English classroom position. Two certificated employees in the Vocational Visions program will be bumping into and reassigned to positions in elementary instruction and one certificated employee, respondent Jacqueline Huckleberry, remains on the layoff list. The Vocational Visions program, a program for developmentally disabled adults, will be discontinued. Students within the Vocational Visions program will be placed in the special education programs of the District while adults over the age of 22 will have to access other generic resources in the community.

(C) Pursuant to the resolution of the Board of Education, the District plans to reduce or discontinue services in secondary math by 2.80 FTE. The District has received and accounted for two resignations or retirements and four certificated employees will be bumping into secondary math. Consequently, Suzanne Dean will not be reassigned and respondent Viji Janardan will not be laid off. The District withdrew the Accusation against respondent Janardan. Two certificated employees in secondary math, respondents Andrew Hammond and Christine Egge, remain on the layoff list.

(D) Pursuant to the resolution of the Board of Education, the District must reduce or discontinue services in Spanish by 3.20 FTE and will reducing offerings in Spanish by 16 sections. One certificated employee has a credential to teach business and will be bumping into a position in computer concepts. The three most junior Spanish teachers will be laid off: respondent Joel Rubio, Jr., who is being bumped out by an elementary teacher, and respondents Sandra Hanneman and Julia Hastings-Vele. Respondent Hastings-Vele is employed in a 0.80 FTE and teaches one section of German in addition to teaching Spanish. Because she has an authorization to teach German, Hastings-Vele may be recalled to teach German next year if the District needs a teacher to teach an additional section or sections of German.

(E) Pursuant to the resolution of the Board of Education, the District plans to reduce or discontinue services in secondary instruction in biological science by 3.00 FTE. The District has received notices of resignation or retirement from two certificated employees in biological science and one certificated employee is bumping into biological science. Respondents Samantha Le and Kenneth Tse, who are the most junior of biology teachers, are subject to layoff in this proceeding. In addition, the District determined that respondent Gazelle Ghafoori should be accorded an additional point under application of the tie-breaking criteria because she has a subject matter authorization. With the additional tie-breaking point, respondents Ghafoori and Deborah Carlson, who share the same seniority date of September 4, 2007, were still tied with five points a piece. The District conducted a lottery under the tie-breaking criteria, resulting in Ghafoori having a higher standing than Carlson. The District thereupon dismissed the Accusation against respondent Ghafoori and plans to reassign Carlson to another service or program.

14. (A) In the secondary instructional program of art, the District plans to reduce or discontinue services by 1.20 FTE pursuant to the resolution of the Board of Education. The District has determined that there are no certificated employees who are resigning or retiring and one certificated employee who is entitled to bump into art instruction. Following its analysis, the District has determined to retain Judy Baca in the art program and not reassign her to another program. Further, during the hearing, the District withdrew or dismissed the Accusation against respondent Marco Magallanes and proposed the layoff of respondent Maria Nadal, who is being bumped by a more senior elementary teacher, and reduction of the full-time position of respondent Taylor O'Neill by 0.20 FTE. No objections were raised with respect to these proposed actions of the District. Finally, because it will be offering photography in the secondary art program, the District has one remaining position in art. An issue remains whether the District should skip respondent Lydia Neuman as a secondary art teacher and retain her in this position or allow respondent Jon Hartl to bump into this position. No evidence was presented regarding respondent Nadal and whether she can bump into this art position.

(B) Respondent Lydia Neuman is a senior technology education or art teacher at the District's Trabuco Hills High School. Her date of first paid service is September 8, 2009. She has a single subject credential in art. Neuman teaches five periods of art, three of which meet the visual art requirement for admission to the University of California. One of the courses that she teaches is entitled, "Photography as Art," which covers both digital and black and white film photography as well as the history and critical studies of photography. She also teaches two periods of elective courses as follows: Photography I, a one semester, introductory course in digital and film photography and techniques for digital Photoshop and darkroom film development; and Advanced Photography II, an advanced course. Neuman maintains or oversees seven computer monitors and seven film enlargers as well as chemicals for the film darkroom. She is also the advisor for the high school's photography club. Neuman attained her bachelor of art in architecture from Washington University in St. Louis and fulfilled the requirements for her credential at California State University Fullerton. She is taking an advanced photography class at Saddleback College to maintain or

improve her knowledge and/or skills. Prior to joining the District, Neuman was a student teacher in digital photography in the Irvine Unified School District.

(C) Respondent Jon Hartl is a senior art teacher at El Toro High School within the District. He holds a single subject credential in art. His date of first paid service is September 2, 2008, and, as such, has more seniority with the District than respondent Neuman. Hartl teaches six periods of art, each of which are year-long or two semester courses and meet the visual art requirement for admission to the University of California. He teaches Foundations of Art, Drawing and Painting, Advanced Art, and Advanced Placement Art. In Foundations of Art, he teaches students about the use of different mediums, including acrylic and water color, design principles, and art history. In his drawing and painting class, Hartl instructs students how to draw from observation, paint in different mediums, and illustrate and design poster art. In Advanced Art, he teaches students how to create portfolios for admission to art colleges. Hartl obtained a bachelor of art in art education from California State University Fullerton and fulfilled requirements for his credential at National University. He has studied with artists and participated in workshops. Hartl contends that he can teach photography for the District. From 1998 until 2001, he apprenticed with a master photographer who took wedding and family portraits. Subsequently, he has worked as an office manager for a photography studio, designed photography or portrait albums, and worked as a photographer for a Rancho Santa Margarita studio. He has taken classes in beginning photography and history of photography and participated in workshops. He has worked primarily in digital photography and admits that he needs further study in film development and/or darkroom techniques.

(D) Based on Findings 14 (A) – (C), both respondent Neuman and respondent Hartl are credentialed to teach photography for the District based on their both holding single subject credentials in art. However, the preponderance of the evidence demonstrated that respondent Neuman is more qualified than respondent Hartl to teach photography at the secondary level for the District. Unlike Hartl, she has taught courses in both digital and film photography and the history and critical studies of photography. She has experience and knowledge in both digital and film photography as well as in Photoshop and darkroom techniques. In addition, Neuman has been the advisor for her high school's photography club. As such, respondent Neuman should be retained by the District to teach photography and respondent Hartl must be laid off pursuant to the reduction or discontinuance of art by 1.20 FTE.

15. During the hearing in this matter, the District withdrew or dismissed the Accusation against the following respondents: Corrine Avila, Gazelle Ghafoori, Thomas Hammer, Viji Janardan, Marco Magallanes, and Rana Najd.

16. (A) The District may take action against any certificated employee, if any, who was duly served with a preliminary notice of layoff but then did not request a hearing, pursuant to Education Code sections 44944 and 44955.

(B) The District may likewise take action against any certificated employee or respondent, if any, who was duly served with a preliminary notice of layoff and an accusation but then did not file a notice of defense or make an appearance at the hearing after filing a notice of defense, pursuant to Government Code section 11520, subdivision (a), and Education Code sections 44944 and 44955.

17. It was not established there are any certificated employees with less seniority than those respondents or certificated employees who are being retained by the District to provide services that respondents or other certificated employees are certificated and competent to render.

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Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Jurisdiction exists for the subject proceedings pursuant to Education Code sections 44949 and 44955, based on Findings 1 – 17 above. All preliminary notices, accusations, and other related papers and reports required by these Education Code sections have been provided in timely manner and, as such, the parties have complied with the statutory requirements.

2. Cause exists pursuant to Education Code sections 44949 and 44955 to reduce the concomitant number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services, as set forth in Finding 8 above. With respect to those respondents whose employment have been found to be terminable by the District and any other certificated employees who received notices but did not request a hearing, if any, the causes set forth in the Accusation relate solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. Cause does not exist pursuant to Education Code sections 44949 and 44955 to terminate the employment of respondents Corrine Avila, Gazelle Ghafoori, Thomas Hammer, Viji Janardan, Marco Magallanes, and Rana Najd inasmuch as the Accusation against them was dismissed, based on Findings 12, 13(C), 13(E), 14(A), and 15 above.

4. Cause does not exist pursuant to Education Code sections 44949 and 44955 to terminate the employment of respondent Lydia Neuman due to the reduction or discontinuance of particular kinds of services, based on Finding 14 above.

5. Based on Findings 1 – 17 above, there is no certificated probationary or permanent employee with less seniority than any one of respondents or the certificated

employees who is being retained by the District for the 2010-2011 school year to render services which any one of respondents or certificated employees is certificated and competent to render.

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WHEREFORE, the Administrative Law Judge makes the following Order:

ORDER

1. The Accusations issued against respondents Corrine Avila, Gazelle Ghafoori, Thomas Hammer, Viji Janardan, Marco Magallanes, Rana Najd, and Lydia Neuman must be dismissed, based on Conclusion of Law 3 – 4 above, respectively. These respondents will not be given notice that their services are not required for the 2010-2011 school year.

2. The Accusations issued against the remaining respondents, as named in Exhibit 1 as amended, are sustained, based on Conclusions of Law 1 – 2 and 5 above. The District may give notice to these respondents, and each of them, in the inverse order of seniority that their services will not be required for the ensuing 2010-2011 school year because of the reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955.

3 The District may give notice to those certificated employees, if any, who were served with notices and/or accusations that their services will not be needed next year but did not file requests for hearing or did not appear at the hearing, that their services will not be required for the ensuing 2010-2011 school year because of the reduction or discontinuance of particular kinds of services pursuant to Education Code sections 44949 and 44955.

4. Before giving notice to respondents and the other certificated employees who did not request a hearing, if any, the District shall further determine and take into account any additional positively assured attrition among certificated employees in deciding how many and when certificated employees should be terminated before the ensuing 2010-2011 school year.

Dated: May 3, 2010

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings