

**BEFORE THE GOVERNING BOARD OF
THE CAPISTRANO UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

OAH No. 2010030097

Certificated Employees of the Capistrano
Unified School District,

Respondents.

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on April 23, 2010, in San Juan Capistrano, California.

Anthony P. DeMarco and Cathie L. Fields, Esqs., represented the Capistrano Unified School District (District).

Marianne Reinhold, Esq., represented most of the Respondent teachers (Respondents). All Respondents represented by Ms. Reinhold are listed in Exhibit A, which is hereby incorporated by reference as if fully set forth herein.

Craig Cunningham, a Respondent, represented himself.

The District served a Notice of Layoff on each of the Respondent teachers. 104 permanent/probationary teachers and 61 “temporary” teachers requested a hearing. At hearing, Bonny Pitkinmeyer was added as a Respondent. Exhibit 6 contains a column entitled “Request Hearing Due.” When an “X” appears in that column, it indicates that the corresponding teacher is a Respondent. Exhibit 6 is hereby incorporated by reference as if fully set forth herein as it indicates the 166 Respondent’s at issue.

FACTUAL FINDINGS

1. Jodee Brentlinger (Brentlinger), Assistant Superintendent of the District, acting in her official capacity, caused all pleadings, notices and other papers to be filed and served upon each Respondent pursuant to the provisions of Education Code sections 44949 and 44955. All pre-hearing jurisdictional requirements were met.

2. Respondents are employed by the District as permanent, probationary, intern, pre-intern, emergency permitted, waiver, and/or temporary certificated employees of the District.

3. On March 9, 2010, pursuant to Education Code sections 44949 and 44955, the Governing Board of the District (Board) issued Resolution numbers 0910-57 and 0910-59 which approved the recommendation by the Superintendent that notice be given to Respondents that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

4. Prior to March 15, 2009, Respondents were given written notice of the recommendation that notice be given to Respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

5. It was established that cause exists, within the meaning of Education Code sections 44949 and 44955, for not reemploying Respondents, except for Sarah Smith) for the ensuing school year for all of the reasons set forth below.

6. The District decided the following:

The following particular kinds of services of the District will be reduced or eliminated no later than the beginning of the 2009-10 school year:

Grades 4 – 6	25	FTE ¹
Grades 7 – 12:		
English	16	FTE
Social Science	10	FTE
Math	10	FTE
Life Science	3	FTE
Physical Science	3	FTE
Spanish	2	FTE
French	2	FTE
German	2	FTE

¹ Full- Time Equivalent position(s).

Japanese	1	FTE
PE	4	FTE
Art	4	FTE
Nurses	2	FTE
SETPD – Teachers on Special Assignment	2	FTE
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TOTAL CERTIFICATED POSITIONS	84	FTE

7. The Board decided that it is necessary to decrease the number of certificated employees as a result of the reduction in services. These services are “particular kinds of services” that may 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, but rather, constituted a proper exercise of discretion. The Board is faced with a budget shortfall and pending contract negotiations with the teachers’ union.

8. The reduction or discontinuation of these particular kinds of services is related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services is necessary to decrease the number of certificated employees of the District as determined by the Board. This reduction is necessary because of budget reductions.

9. The District properly created its seniority list by determining the first date of paid service of each certificated employee and the District will properly utilize reasonable “tie-breaker” criteria when necessary. The District has not yet performed the “tie-breaking” calculations. However, Respondents did not contend that the District’s failure to do so was improper. Further, it was not established that if the tie-breaking calculations had been performed it would have resulted in any Respondent not being subject to layoff. The District also “skipped” over some categories of personnel. Respondents did not challenge these “skips” except as discussed below.

10. The District’s seniority list, Exhibit 25, is hereby incorporated by reference as if fully set forth herein.

Respondents Sarah Smith and Josephine Val Logie

11. The District wishes to retain Sarah Smith because she teaches “Culinary Arts Academy” at Aliso Viejo High School. Smith holds a “preliminary; designated subjects vocational education teaching credential” and her credential list six subject areas which involve the food industry and hotel and lodging occupations. Smith’s seniority date is February 26, 2007. Josephine Val Logie (Logie), seniority date December 8, 2003, believes she should “bump” the more junior Smith. Logie holds four credentials, but the two at issue

are: “life; standard designated subjects adult education teaching credential; subject: home economics;” and a “life; standard secondary teaching credential; major: home economics (academic).” Logie also established that California State University, Long Beach, has recommended her to the California Commission on Teacher Credentialing (CCTC) for a “5-year Preliminary Career Technical Education: Full-time; subject authorization: hospitality, tourism, and recreation.” Credential. If this credential was required to be considered, it potentially could allow Logie to bump Smith. However, this credential need not be considered by the District because it has not yet been issued and it was not in effect at the time notice was given to Logie that her services will not be needed for the 2010-2011 school year.

12. The issue then becomes whether Logie’s currently held credential’s allow her to “bump” Smith. This issue was already litigated and the undersigned agrees with Administrative Law Judge Daniel Juarez’s decision in Office of Administrative Hearings case number L2008020611 wherein he concluded:

Respondent Josephine Logie, a teacher at Ladera Ranch Middle School, with a seniority date of December 8, 2003, argued that she should “bump” another teacher, with a seniority date of February 26, 2007, who teaches the Culinary Arts Academy at Aliso Niguel High School. Logie argued that with a single subject home arts (home economics) credential, she could teach the culinary arts classes. However, the Culinary Academy classes involve the teaching of food industry subject matter, emphasizing the business aspects of the food industry, including the restaurant and hotel businesses. As a vocational education program, the Culinary Academy prepares students to move from school into the work arena. In support of her position, Logie asserted that she has taught home economics, food and nutrition, and hospitality services when engaged with the Los Angeles Unified School District at an earlier time. Respondent Logie failed to provide sufficient evidence that her experience and credential qualify her to teach the Culinary Arts Academy at Aliso Niguel High School.

While Logie offered some additional evidence of her work experience in the food services industry, she did not establish that her presently held credentials qualify her to teach the Culinary Arts Academy. The District may skip Sarah Smith.

Respondent Craig Cunningham

13. Craig Cunningham (Cunningham) teaches “College and Career Planning” and “Academic Intervention” at Tesoro High School. Cunningham holds a single subject credential in business. He contended that his classes require certain expertise and that he does not believe he should be “bumped” by the more senior Jonathan Pierce (Pierce). However, Pierce hold a multiple subject teaching credential, with an authorization in business. Thus, Pierce holds the required credential to “bump” the more junior Cunningham.

Respondent Jennifer Todd

14 Jennifer Todd (Todd) was chosen “Middle School Teacher of the Year.” She was also recently nominated by Brentlinger for Orange County “Teacher of the Year.” As part of the process, Brentlinger verified that Todd “will be in the classroom for the 2010-2011 school year.” Brentlinger’s verification is dated March 12, 2010, two days after the District sent Todd a notice that her services will not be necessary for the 2010-2011 school year. Todd contended that the “Nominee Verification Form” amounts to a contract between herself and the District. While this is an unusual situation, Brentlinger’s statement can not override the Board’s decision to reduce particular kinds of services. Brentlinger’s statement does not establish a contract between the parties.

Respondent Amal Khalil

15. Amal Khalil (Khalil) is a high school French teacher and she established that she is an outstanding teacher. She is being “bumped” by a more senior French teacher. However, Khalil did not establish that she is being replaced by a junior teacher and/or that the teacher does not hold the required credential to teach French.

Respondent Ann Roche

16. Ann Roche (Roche) is a school nurse. The District presently employees eight nurses to provide care to approximately 57,000 students. The District proposes to lay off two nurses, one of whom is Roche. Roche contended that the safety of the students will be negatively affected if the two nursing positions are eliminated. However, the District is responsible for complying with its obligations under the law and there was no evidence that a specific nurse-to-student ration must be maintained. The District has the discretion to choose how provide nursing care to its student.

Attrition

17. Susan Carlisle, Human Resources specialist, testified regarding attrition. On March 9, 2010, the date the two resolutions were adopted by the Board, there were approximately 10 resignations known to the District. When the lay off notices were sent, the District took this attrition into account “as much as possible.” For example, some of the resignations were from Spanish teachers. Thus, the two FTE Spanish positions sought be eliminated under the resolutions became unnecessary. As to the remaining attrition, it was not established that the attrition occurred in areas where the District seeks reduction, nor was it established that any teacher’s position would be saved based on the attrition that occurred prior to March 15, 2010. Further, the District has remedied any possible defect by agreeing to account for all attrition prior to issuing final layoff notices. (Exhibit 26, p. 20, line 20.) The Board therefore properly considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be

delivered to its employees prior to March 15, 2009. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App. 3d 627, 636).

18. All other arguments presented by Respondents were unconvincing and were not established by the evidence. Respondents' did not establish that the District did not follow the required procedures or that the District acted in an arbitrary and capricious manner.

CONCLUSIONS OF LAW

1. Jurisdiction for these proceedings exists pursuant to Education Code sections 44949 and 44955.

2. Each of the services set forth in Finding 6 is a particular kind of service which may be reduced or discontinued in accordance with applicable statutes and case law.

3. The District's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

4. Cause exists to reduce the District's teaching positions as described above and to give notice to the affected teachers pursuant to Education Code section 44955. (*Campbell v. Abbot* (1978) 76 Cal.App.3d 796; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689). Based on the above Findings, including the preamble to this Proposed Decision, the names of the affected teachers, those as to whom final notices of layoff may be given, are as follows: All Respondent teachers listed in Exhibit 6 with an "X" in the column entitled "Request Hearing Due" except for Sarah Smith as to whom the Accusation is dismissed.

ORDER

Because of the reductions of services, the District may give notice to the teachers identified in Legal Conclusion Number. 4 that their services will not be required for the 2010-2011 school year. The Accusation is dismissed as to Sarah Smith. The District is also ordered to account for any further attrition prior to issuing final layoff notices.

Dated: April ___, 2009.

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

