

BEFORE THE  
BOARD OF EDUCATION  
OF THE  
MOUNTAIN VIEW SCHOOL DISTRICT

In the Matter of the Reduction of Force of  
the Mountain View School Districts:

Respondents listed on Exhibit "A"

OAH No. 2010030128

**PROPOSED DECISION**

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in Ontario, California on April 7, 2010.

Mark W. Thompson, Esq. Atkinson, Andelson, Loya, Ruud & Romo, represented David Creswell, Assistant Superintendent, Personnel & Administrative Services.

Henry R. Willis, Esq., Schwartz, Steinsapir, Dohrmann & Sommers LLP, represented Respondents listed on Exhibit "A"<sup>1</sup>.

The matter was submitted on April 12, 2010.<sup>2</sup>

**SUMMARY OF PROPOSED DECISION**

The Board of Education of the Mountain View School District determined to reduce or discontinue particular kinds of services provided by teachers 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.

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<sup>1</sup> Renee Dives (Dives) and Brandy Hurt (Hurt) received layoff notices but did not request a hearing; Hurt has resigned.

<sup>2</sup> The record remained open for receipt of briefs that were filed simultaneously on April 12, 2010. The District's Post-Hearing Brief was marked as Exhibit 19, and Respondents' Post-Hearing Brief was marked as Exhibit A.

On April 12, 2010, the record was closed, and the matter was submitted.

District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, "bumping," "skipping" and breaking ties between/among 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. Respondents listed on Exhibit "A" (Respondents) are probationary or permanent certificated employees of the Mountain View School District (District).
2. On February 11, 2010, Dr. Rick Carr, the District's Superintendent (Superintendent) notified the District's Board of Trustees (Board) of his recommendation to reduce or discontinue services for the ensuing school year due to financial conditions.
3. On February 16, 2010, based on recommendation from the District's Superintendent, the Board adopted a resolution reducing or eliminating particular kinds of services (PKS) and identifying "competency" criteria for purposes of bumping for the 2010-2011 school year. Further, the Board directed the Superintendent to initiate layoff procedures and give appropriate notice pursuant to Education Code sections 44955 and 44949.
4. On March 9, 2010, David Creswell, Assistant Superintendent, Personnel & Administrative Services (Assistant Superintendent), served Respondents with written notice that he recommended not to re-employ them in the 2010-2011 school year and stated the reasons therefor. In addition, the notice advised Respondents of the right to hearing, that the request for hearing must be delivered to the District's office no later than March 24, 2010, and that the failure to request a hearing would constitute waiver of the right to a hearing.
5. On March 9, 2010, the Assistant Superintendent made and filed an Accusation against Respondents. He served each individual who submitted a Request for Hearing with an Accusation, Notice of Defense, Notice of Hearing and related materials in a timely manner.
6. Each Respondent submitted a timely Request for Hearing and/or Notice of Defense.
7. All prehearing jurisdictional requirements were satisfied.
8. On February 16, 2010, the Board adopted Resolution number 2009-10-07 and thereby took action to reduce or eliminate the following particular kinds of services commencing the 2010-2011 school year:

General Education Elementary Classroom Teaching Positions	23	F.T.E.
Middle School Physical Education Teaching Position	1	F.T.E.
Middle School Science Teaching Position	1	F.T.E.
<b>TOTAL CERTIFICATED POSITIONS</b>	<b>25</b>	<b>F.T.E.</b>

The proposed reductions totaled 25.0 full-time equivalent (FTE) positions.

9. The District considered all known attrition in determining the actual number of final layoff notices to be delivered to its certificated employees.

10. The Assistant Superintendent was responsible for implementing the technical aspects of the layoff. The District developed a seniority list that contained, among other things, the teacher’s name, status, seniority date, site, assignment, credentials, supplemental authorizations and application of tie-breaker criteria.

The seniority date was based on the first date of paid service rendered in a probationary position.<sup>3</sup>

11. In reducing or eliminating particular kinds of services, the services of no permanent employee may be terminated while retaining any employee with less seniority to render a service which said permanent employee is certificated and competent to render.

12. The District used the seniority list for permanent and probationary certificated employees to develop a proposed order of layoff and a “bumping” list to determine the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area that would entitle them to “bump” other junior employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could “bump” other employees. In doing so, the District considered the “competency” criteria established by the Board in its resolution, which states, in pertinent part:

“...That the ‘competency’ as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include possession of: (1) a valid credential in the relevant subject matter area; and (2) ‘highly qualified’ status under No Child Left Behind Act in the position to be assumed....”

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<sup>3</sup> Education Code section 44845.

After reviewing each Respondent's credentials and competency, the Assistant Superintendent determined that no Respondent was credentialed and competent to bump any employee being retained.

13. Respondents argued that Claudia Villavicencio (Villavicencio) was improperly retained because she is not highly qualified in her position to teach English Language Arts teacher; therefore Villavicencio is subject to bumping by any Respondent who is more senior and is credentialed to perform the duties she is being retained to render.

Villavicencio has a seniority date of August 30, 2001 and holds a clear multiple subjects credential. During the current school year, she is assigned to Grace Yokley Middle School and teaches English Language Arts. The Assistant Superintendent testified that she has achieved highly qualified status under the No Child Left Behind Act (NCLB). She did not receive a layoff notice.

On June 12, 2006, Terry Weatherby, the District's former Assistant Superintendent (Weatherby) executed a form certifying Villavicencio as highly qualified in English Language Arts using the "HOUSSE" (High Objective Uniform State Standard of Evaluation) method (Exhibit 17). Weatherby assigned points for prior experience, advanced degrees and successful observations. In order to be certified, a teacher must achieve 100 points. Before issuance of the certification, Weatherby was obligated to verify the information provided by Villavicencio. She received 110 points (30 points for three years experience in the area of assignment, 60 points for having a master's degree and 20 points for a successful observation), exceeding the number of points required to achieve highly qualified status.

Respondents questioned whether the District properly gave her 30 points for three years prior experience because, on the form, under "Core Academic Subject Area Assignment", it states "ESL & Culture/Eng-LA"<sup>4</sup>. Given the foregoing, Respondents argued that insufficient evidence was offered to establish that Villavicencio had three years experience teaching English Language Arts because her duties were divided between the subject areas.

On June 12, 2006, Weatherby created and executed the form (Exhibit 17) in his capacity as the District's Assistant Superintendent, and the form was contained in the District's personnel files. Therefore, pursuant to Evidence Code section 664, it is presumed that Weatherby properly and correctly carried out his duty to make the determination. Respondents offered no testimonial or documentary evidence to rebut the District's evidence.

Respondents acknowledge that NCLB highly qualified status in the position to be assumed is a valid competency criterion. The District established Villavicencio was properly certified by the District under NCLB. There is no evidence to the contrary. Finally, there is

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<sup>4</sup> "Eng-LA" means English Language Arts

no evidence that there is a more senior teacher in the District who is credentialed and competent to displace Villavicencio.

Given the foregoing facts, the District's bumping determination was proper.

14. By the terms of its Resolution reducing or eliminating particular kinds of services (Finding 5)<sup>5</sup>, the District will terminate the services of one FTE position physical education (PE) middle school teacher. As a result, the District will have only one female PE teacher in the 2010-2011 school year. During the current school year, there are two or more teachers which results in sufficient staff to provide for safety and other needs of students. The District plans to provide sufficient staff to meet the needs of the students, despite having only one female PE teacher in the ensuing school year.

15. Between the employees who first rendered paid service to the District on the same date, the Board determined their order of termination solely on the basis of needs of the District and the students. The Board adopted specific criteria and provided clear instructions for implementation of the criteria. The order of termination was based on the needs of the District and its students. According to the evidence in the record, the tie-breaker criteria were fairly applied to rank those employees hired on the same date.

16. The services that the District proposes to reduce were "particular kinds of services" that can 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 constituted a proper exercise of discretion.

17. The reduction or discontinuation of particular kinds of services relates 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.

18. No certificated employee junior to any Respondent is retained to perform any services which any Respondent is certificated and competent to render.

## LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in these sections are satisfied.

2. 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

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<sup>5</sup> Exhibit 3

deal with the pupils involved.” (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Cause exists under Education Code sections 44949 and 44955 for the Mountain View School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuance of particular kinds of services is related solely to the welfare of the schools and the pupils thereof.

4. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he/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)

5. No employee with less seniority than any Respondent is being retained to render a service which any Respondent is certificated and competent to render.

6. All arguments not addressed herein are not supported by the evidence and/or the law and therefore rejected.

#### ORDER

1. The Accusation served on Respondents listed on Exhibit “A” is sustained. Notice shall be given to each Respondent listed on Exhibit “B”<sup>6</sup> before May 15, 2010 that his/her services will not be required for the 2010-2011 school year because of the reduction or discontinuance of particular kinds of services.

2. Notice shall be given in inverse order of seniority.

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

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VALLERA J. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>6</sup> Notice is not required to be given to Brandy Hurt because she resigned.