

**BEFORE THE  
GOVERNING BOARD  
OF THE WESTMINSTER SCHOOL DISTRICT**

In the Matter of the Reduction in Force of the  
Certificated Staff of the Westminster School  
District,

OAH Case No. 2010030755

Respondents.

**PROPOSED DECISION**

The hearing in the above-captioned matter was held on April 27, 2010, at Westminster, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided. Complainant was represented by Joshua E. Morrison, Atkinson, Andelson, Loya, Ruud & Romo. Respondents were represented by Michael D. Hersh.

Oral and documentary evidence was received, and argument was heard, but the record was held open until April 30, 2010, so that the Complainant could file a revised layoff implementation chart. That document was timely received, and will be received as Exhibit 21, along with Mr. Morrison's cover letter. The District's Pre-hearing brief is identified as Exhibit 22, and its Supplemental Brief is identified as Exhibit 23.

On April 29, Mr. Hersh wrote to the ALJ regarding the scope of a stipulation made near the end of the hearing. Mr. Morrison's cover letter that is part of Exhibit 21 responded, in advance, to the issues raised by Mr. Hersh. Mr. Hersh's letter will be received as Exhibit D. The issues raised in the correspondence will be resolved hereafter.

The case was submitted for decision on April 30, 2010. The Administrative Law Judge hereby makes his factual findings, legal conclusions, and order, as follows.

**FACTUAL FINDINGS**

1. Complainant Sharon Nordheim filed and maintained the Accusation<sup>1</sup> in the above-captioned matter while acting in her official capacity as Superintendent of the Westminster School District (District).

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<sup>1</sup> The term "accusation" refers to a type of pleading utilized under the Administrative Procedure Act, Government Code sections 11500 and 11503; that statutory scheme governs the hearing procedures in this case. The Respondents are not "accused" in the everyday sense of that word; they have done nothing wrong, and all appear to be dedicated

2. The following persons are certificated employees of the District and are the Respondents in this case:

Michelle Branch, Stephanie Carlson, Leticia Flores, Adrianna Glazener, Marisa Kanemaki, Linda Kawabata, Nicole Lagmay, Francis Landman, Raquel Martinez, Leanne Mondt, Rita Neumann, Miki Okura-Schooley, Keturah Prom, Kim Julia Thach, Quynh-Tram, Jessica Ash, Kim Besancon, Ann Bui, Juliann Dodash, Erin Gordon, Hanh Huynh, Linda Lam, Jaime LeBlanc, Valerie Rusiecki, Sandra Steele, and Monica Zamudio.

3. (A) On March 8, 2010, the Governing Board of the District (Board) adopted Resolution number 09-10-19, entitled “Reduction or Discontinuance of Particular Kinds of Service” (Reduction Resolution). The purpose of the Reduction Resolution was to reduce and discontinue particular kinds of certificated services no later than the beginning of the 2010-2011 school year. Specifically, the resolution requires the reductions of 110.3 “FTE”—Full Time Equivalents—by reducing various types of services. This decision was based on financial concerns as the District faces a budget shortfall.

(B) The FTEs that the Board determined to reduce are described in the Reduction Resolution, as follows:

K-6 Classroom Teaching	81.0
Counseling Services	8.0
Nursing Services	1.7
K-6 Reading	5.5
K-6 Physical Education	3.0
K-6 Music	2.0
Middle School Pre-Algebra/Algebra	2.0
Middle School Band	1.0
Middle School 6th Grade Math	1.0
Middle School Language Arts/Reading	2.9
Middle School Physical Education	.9
Middle School Leadership	.1
Middle School Social Studies	1.2
Total FTE to be reduced:	110.3

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professionals. It might be said that they are simply accused of not having enough seniority or other qualifications to retain their positions with the District in the face of a resolution to reduce positions.

4. On March 8, 2010, the Board adopted resolution 09-10-21, which established “tie breaking” criteria for determining seniority in cases where two or more certificated employees share the same seniority date. The tie-breaking criteria were based solely on the needs of the District.

5. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.<sup>2</sup>

6. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District’s discretion given the uncertainty regarding the state budget and the District’s financial resources.

7. (A) The reduction and discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board.

(B) It was not established, as alleged, that the failure to maintain counseling services in the District violates the laws governing the education of children in California. Nor was it established that any detriment that might occur because counselors are not available outweighs the detriment that would be suffered by the District if its budgetary shortfall is not addressed and eliminated.

8. The Board, in an effort to meet the need to reduce 110.3 FTE, adopted a resolution on March 8, 2010, to give notice of non-reelection and release of employment to 85 temporary certificated employees.

9. (A) On or about March 10, 2010, each Respondent and other certificated teachers were given written notice that pursuant to sections 44949 and 44955, their services would not be required in the 2010-2011 school year (hereafter the preliminary notices). Thereafter, Respondents requested a hearing, and then each was served with an Accusation and other documents pertaining to the hearing process. Each Respondent filed a notice of defense, although Respondent Erin Gordon filed her notice of defense after the statutory deadline. No evidence was provided as to why her notice of defense was late.

(B) Following the service of the preliminary notices, and prior to the hearing, the District rescinded preliminary notices to 52 certificated employees. Thus, at the time of the hearing, the District had accounted for all but 14 FTE to reduce, so that it was required to reduce 4 FTE of counseling services and 10 FTE of K-6 classroom teaching services. This left 15 respondents at the time of the hearing, including Ms. Gordon, who had filed a late notice of defense.

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<sup>2</sup> All further statutory references are to the Education Code.

(C) The District served a number of preliminary notices to persons the District believed to be temporary employees, but who nonetheless might have rights as permanent or probationary employees. It also served precautionary notices on persons who are not temporary employees, in order that it could meet the goal of eliminating all 110.3 FTE called for in the Reduction Resolution. By the time the hearing commenced, the teachers who received precautionary notices and who remained in the proceeding were respondents Jessica Ash, Kim Besancon, Ann Bui, Juliann Dodash, Erin Gordon, Hanh Huynh, Linda Lam, Jaime LeBlanc, Valerie Rusiecki, Sandra Steele, and Monica Zamudio.

(D) All jurisdictional requirements have been met.

10. (A) To implement the reduction in force, the District created a seniority list. That seniority list took into account a number of factors, including first date of paid service and the tie-breaking criteria. However, in the course of the hearing, evidence was presented to the District to the effect that the seniority dates of some respondents were incorrect, that two respondents were not, asserted by the District, temporary employees, and that in some cases inaccurate information had been utilized in determining tie-breaking criteria.

(B) Based on information obtained from some Respondents during the hearing, the parties stipulated that Jessica Ash and Juliann Dodash are not temporary employees, but are permanent or probationary employees, of sufficient seniority that the preliminary notices to them must be rescinded. It was further stipulated that respondents Quynh-Tram Vu, Kim Thach, and Linda Kawabata, who had received precautionary notices although not temporary employees, were of such seniority that the preliminary notices to them would be rescinded. Finally, it was determined that the preliminary notices to Stephanie Carlson, Leticia Flores, and Adrianna Glazener would have to be rescinded, based on their seniority. Therefore, those eight respondents are to be dismissed from the proceeding.

(C) As a result of the modifications to the seniority list, Respondent Miki Okura-Schooley may bump Alicia Nelson from her .5 FTE position, such that Ms. Okura-Schooley shall be laid off .5 FTE, leaving her with .5 of her position.

11. As a result of the foregoing, no junior certificated employee is being retained in a position which a senior employee is certificated and competent to fill.

### **LEGAL CONCLUSIONS**

1. Jurisdiction was established to proceed in this matter, pursuant to sections 44949 and 44955, based on Factual Findings 1 through 9(D).

2. (A) A District may reduce particular kind of services (PKS) 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.) The Court of Appeal has made clear that a PKS reduction does not have to lead to fewer classrooms or classes; laying off some teachers amounts to a proper reduction. (*Zalac v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 853-85; see also *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631, 637 [reduction of classroom teaching can be a reduction of a PKS; as long as there is a change in the method of teaching or in a particular kind of service in teaching a particular subject any amount in excess of the statutory minimum may be reduced]; *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32.)

(B) The services to be discontinued are particular kinds of services within the meaning of 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 section 44949. This Legal Conclusion is based on Factual Findings 3, 5, 6, 7, and 8 and the foregoing authorities.

3. (A) A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated 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.) At the same time, a junior teacher may be given retention priority over one or more senior teachers—may be “skipped” in favor of senior employees—if the junior teacher possesses superior skills or capabilities not possessed by more senior colleagues which must be utilized a course or course of study that is specifically needed in the District. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Bd. of Santa Clara Unified School Dist.* (1981) 116 Cal.App.3d 831.)

(B) No Respondent established that he or she had the right to bump a junior employee or that he or she should have been skipped, based on the foregoing rules, and Factual Findings 10 and 11.

4. Counsel entered into a stipulation regarding the effect of the documents and other information tendered by respondents, as described in Factual Finding 10(B). No other respondents offered evidence that would affect the outcome as proposed by Complainant’s counsel when he offered the stipulation, which appeared unambiguous. The stipulation stands as placed in the record, and given the reliance of Complainant and the ALJ on the stipulation, the respondents should be estopped to avoid its effect.

## **ORDER**

1. The following Respondents may receive final layoff notices: Rita Neumann, Leanne Mondt, Michelle Branch, Kimberly Kensy, Miki Okura-Schooley as to .5 FTE,

Nicole Lagmay, Alicia Nelson as to .5 FTE, William Wohlgezogen, Raquel Martinez, Ashley Cope, Keturah Prom, Francis Landman, Marisa Kanemaki, and Catherine Fitzpatrick.

2. Respondents Jessica Ash, Juliann Dodash, Quynh-Tram Vu, Kim Thach, Linda Kawabata, Stephanie Carlson, Leticia Flores, and Adrianna Glazener are dismissed as Respondents and they shall not receive a final layoff notice.

April \_\_\_\_, 2010

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Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings