

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

In the Matter of the Accusation Against:

OAH No. 2011020416

Respondents listed in Appendix A.

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**PROPOSED DECISION**

Roy W. Hewitt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Chino Hills, California on April 1, 2011.

Margaret A. Chidester, Esq. and Alexandria M. Davidson, Esq. of the Law Offices of Margaret A. Chidester & Associates, represented the Chino Valley Unified School District.

Carlos R. Perez, Esq. of Reich, Adell & Cvitan, represented the respondents listed in Appendix A.

The matter was submitted on April 1, 2011.

**FACTUAL FINDINGS**

1. Dr. Norm Enfield, pursuant to delegation of authority from the Superintendent, made and filed the Accusation dated March 8, 2011, while acting in his official capacity as the Assistant Superintendent, Human Resources, Chino Valley Unified School District (the District).

2. Respondents<sup>1</sup> are certificated district employees.

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<sup>1</sup> At the conclusion of the hearing, the 81 respondents listed in Appendix A remained subject to layoff pursuant to the reduction in force (RIF) proceedings.

3. On February 17, 2011, the District’s Board of Education (Board) adopted Resolution No. 2010/2011-31, determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The Board determined that the particular kinds of services that must be reduced for the 2011-2012 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service (PKS)</u>	<u>Full-Time Equivalent (FTE)</u>
K-8 Classroom Teaching Positions	57.00
High School Counselor	.40
Jr. High Band Teacher	.40
High School Biology Teacher	1.00
High School Chemistry Teacher	1.00
High School Earth Science Teacher	1.00
Jr. High Science Teacher	3.00
High School Home Economics Teacher	1.00
Jr. High English Language Arts Teacher	5.00
High School English Teacher	3.00
Jr. High ELD Teacher	1.00
Physical Education Teacher	1.60
Jr. High Math Teacher	6.00
High School Math Teacher	2.00
Jr. High Social Science Teacher	1.00
High School Social Science Teacher	5.00
High School Woodshop Teacher	1.00
TOA BTSA/Special Education	1.00
TOA SETPD	2.00
TOA Technology Trainer	1.00
Elementary Assistant Principal	1.00
Coordinator – Special Education	1.00
Program Specialist	1.00
Jr. High Computer Teacher	<u>1.00</u>
 <u>Total FTE’s</u>	 <u>98.40</u>

The parties do not dispute the fact that the services listed above are particular kinds of services, which may be reduced or discontinued within the meaning of Education Code section 44955.

4. The Board further determined in Resolution No. 2010/2011-31, that pursuant to the resolution and Education Code section 44955, “. . .an exception from the order of layoff will be sought because of the special training and experience of certain certificated employees who are assigned to teach a course of study or to fulfill a particular administrative task which others with more seniority do not possess.”

The Board properly elected to skip those certificated employees due to valid needs of the District and its students.

5. The Board's decision to reduce or discontinue the services listed in Finding 3, above, is neither arbitrary nor capricious; rather, it is due to substantial decreases in the operating budget, and is, therefore, a proper exercise of the Board's discretion. 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. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

6. On March 8, 2011, the Assistant Superintendent, Human Resources, timely notified respondents, pursuant to California Education Code sections 44949 and 44955, of the District's intent not to reemploy them for the upcoming school year. That same date, March 8, 2011, respondents were also served with a copy of the Accusation, Statement to Respondent, the resolution, a blank Notice of Defense and other related materials. Accordingly, all respondents affected by the layoffs received written notice, on or before March 15, 2011, notifying them that the Board had recommended they not be re-employed in the upcoming, 2011-2012, school year.

7. The Superintendent and District considered all positively assured attrition, including resignations, retirements and requests for transfer, in determining the actual number of necessary layoff notices to be delivered to its employees.

8. Each respondent either timely filed Notices of Defense or if not, the Superintendent waived his objections to untimely filings.

9. Each respondent was properly noticed of the date, time and place of the instant hearing.

10. All prehearing jurisdictional requirements have been met.

11. At the commencement of the hearing, counsel for the District announced that due to the non-adoption of the Charter School Resolution, the District could meet the current budget deficit by reducing the K-8 Classroom Teaching FTE's from 57.00 to 42.00. Consequently, the number of respondents was reduced to the 81 named in Appendix "A."

12. The respondents identified in Appendix "A" have been selected for notice of layoff pursuant to the list, which is based on the first day of paid service of each respondent. The respondents were ranked for layoff in the inverse order of their date of employment.

13. "TieBreak Criteria" were created by the Board and were adopted as part of Resolution number 2010/2011-31.

14. One respondent, Brett Jensen, questioned the use of the TieBreak criteria. Mr. Jensen testified that he has a single subject math credential and does not understand why two other math teachers with the same seniority date were retained and he was not. A review of the seniority list reveals that the other two math teachers who share Mr. Jensen's seniority date have a "Found. [Foundational] Math" credential, while Mr. Jensen does not. One of the TieBreak criterion allows "1 point for each current, valid credential." Accordingly, the two math teachers with the same seniority date each have one more point than does Mr. Jensen. Consequently, the TieBreak criteria adopted by the Board were properly utilized and resulted in Mr. Jensen being notified of potential layoff as opposed to the other math teachers who share his seniority date.

### LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were 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 deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Pursuant to section 44995, a senior teacher whose position is discontinued has the right to transfer to a continuing position which he or 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)

The district has an obligation under section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possesses the seniority and qualifications which would entitle him/her to be assigned to another position. (*Bledsoe v. Biggs Unified School Dist.*, *supra.* at 136-137.)

4. The decision to reduce or discontinue a particular kind of service is not tied in with any statistical computation. It is within the governing authority's discretion to determine the amount by which a particular kind of service will be reduced or discontinued as long as the district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.) A school district has wide discretion in setting its budget and a layoff decision will be upheld unless it was fraudulent or so palpably unreasonable and

arbitrary as to indicate an abuse of discretion as a matter of law. (*California Sch. Employees Assn. v. Pasadena Unified Sch. Dist.* (1977) 71 Cal.App.3d 318, 322.)

5. The services listed in Factual Finding 3 are each determined to be a particular kind of service within the meaning of Education Code section 44955.

6. Based on the Factual Findings, considered in their entirety, cause exists to reduce the number of certified employees of the District for budgetary reasons.

7. Cause to reduce or discontinue services relates solely to the welfare of the District and its pupils within the meaning of Education Code section 44949.

8. Respondent Jensen was properly selected for layoff.

9. Cause exists to give the respondent's listed in Appendix "A" that their services are not needed for the ensuing, 2011-2012, school year.

#### ADVISORY DETERMINATION

The following advisory determination is made:

Prior to May 15, 2011, notice shall be given to the respondents listed in Appendix "A" that their services will not be required for the ensuing school year due to the budget deficit and the resulting need to reduce and/or discontinue certain services.

DATED: April 21, 2011

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ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings

## APPENDIX "A"

Chino Valley Unified School District  
Proposed Layoffs  
OAH Number: 2011020416

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|------------------------|-------------------------|
| 1. Ahrens, Michelle    | 22. Digioia, Jennifer   |
| 2. Alvarez, Sherry     | 23. Donohue, Renee      |
| 3. Arvizu, Grace       | 24. Donovan, Cynthia    |
| 4. Atwell, Melissa     | 25. Flum, Kristal       |
| 5. Bader, Lisa         | 26. Gallagher, Brian    |
| 6. Baeza, Art          | 27. Gallegos, Elizabeth |
| 7. Balich, Alecia      | 28. Gamboa, Myra        |
| 8. Beach, Charles      | 29. Gibbons, MaryBeth   |
| 9. Bolton, David       | 30. Gonzales, Amanda    |
| 10. Borgogno, Krista   | 31. Grosso, Dana        |
| 11. Butorac, Christine | 32. Guzman, Alexis      |
| 12. Callaway, Doniella | 33. Hellings, Heather   |
| 13. Campbell, Amy      | 34. Herrera, Marci      |
| 14. Carew, Kimberly    | 35. Hoskins, Kimberly   |
| 15. Chen, Vincent      | 36. Howarth, Stacy      |
| 16. Corrigan, Samuel   | 37. Jankowski, Matthew  |
| 17. Crawford, Julie    | 38. Jensen, Brett       |
| 18. Cummins, Mireya    | 39. Johnson, Traci      |
| 19. Davis, Mary        | 40. Jorgenson, William  |
| 20. De Puzo, Michelle  | 41. Kammer, Sandra      |
| 21. Dennard, Eric      | 42. Kent, Melanie       |

43. King, Alexis
44. Klinkert, Michelle
45. Kuffel, Jill
46. Lagunas, Silvia
47. Larsson, Garrett
48. Lee, May
49. Macias, Tanya
50. McKellip, Robert
51. Milligan, Janine
52. Milversted, Angela
53. Miner, Karen
54. Montelongo, Michael
55. Mounce, Erin
56. Nakamura, Nicholas
57. Nelson, Tracy
58. Peacock, Julia
59. Pedroza, Robert
60. Puente, Jennifer
61. Ragsdale, Tara
62. Reading, Jennifer
63. Reyes, Albert
64. Rivera, Sherri
65. Roberts, Shavon
66. Rogers, Nancy
67. Sellitto, Stephanie
68. Sensat, Pamela
69. Settle, Heather
70. Smart, Gregory
71. Smelser, Audrey
72. Staunton, Marcia
73. Stoops, Bryan
74. Stremiz, Marcela
75. Talley, Roger
76. Thom, Roberta
77. Vasquez, Ernesto
78. Vazquez, Isela
79. Verhulst, Andree
80. Vogt, Christopher
81. Wicker, Tina