

BEFORE THE GOVERNING BOARD
SANTA BARBARA SCHOOL DISTRICTS
COUNTY OF SANTA BARBARA
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Certificated Employees of the Santa Barbara
School Districts,

Respondents.

OAH Case No. L2011040161

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 3, 2011, in Santa Barbara, California.

Mary L. Dowell and Meredith G. Karash, Attorneys at Law, represented J. Brian Sarvis, Ed.D. (Sarvis), Superintendent of the Santa Barbara School Districts (District).¹

Robert A. Bartosh, Attorney at Law, represented Sarah Ashton, John Bailey, J. Daniel Barnett, Marsha Barr, Rick Ceriale, Elizabeth Checketts, Kayleen Chilton, Elizabeth Christen, Marcelo Cruz, Shannon Curtis, Jill Dixon, Ursula Ferrall, Jennifer Flick (Flick), Magda Flores, Beth Fuste, Crystal Gabel-Peterson, Hozby Galindo, Michael Gerken, Kathleen Glenn, Janet Goode, Lisa Howard-Hoffman, Heather John (John), Veronica Johnson, Valerie lent, Brian Malcheski, Ramona Marten, Nancy Mathison, Magdeline Mikhail, Lauren Minadeo, Matt Moran, Helen Murdoch, David O'Donnell, Casandra Ornelas, Rebecca Penrose, Deborah Pentland (Pentland), Marcy Porter, Genevieve Quinn, Bilha Raygoza, Athena Sims, Jennifer Slep, Kelly Thasher, Amy Wolfslau, and Laura Wooster, who are collectively referred to as Respondents.

Jeremy Vaa (Respondent Vaa, who is included in collective references to Respondents) represented himself.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2011-2012 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

¹ The District is composed of two separate districts, an elementary school district and a secondary school district, which have consolidated certain administrative and operating functions.

The hearing in this matter was initially scheduled for April 25, 2011. On April 12, 2011, Presiding Administrative Law Judge Michael A. Scarlett granted a continuance, thereby extending by eight days the deadlines set forth in Education Code² sections 44949, subdivision (c), and 44955, subdivision (c). (Ed. Code, § 44949, subd. (e).)

Oral and documentary evidence, and evidence by written stipulation, was received at the hearing. The record was left open for the submission of closing briefs. On May 9, 2011, the District and Respondents submitted their briefs, which have been marked as Exhibits 19 and B, respectively. Respondent Vaa did not submit a closing brief. The matter was submitted for decision on May 9, 2011.

FACTUAL FINDINGS

1. Superintendent Sarvis filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. a. On March 1, 2011, the Governing Board of the District (Governing Board), following the recommendation of Superintendent Sarvis, adopted Resolution Number 2010/11-43, reducing or discontinuing the following services for the 2011-2012 school year:

<u>Service</u>	<u>FTE³ Reduction</u>
English/Theatre	8.6
Math	5.3
Health	.2
Life Science	.6
Physical Science	.8
PE	1.0
Social Science	1.4
Music	1.0
Art	4.0
Technology	.6
French	.8
Latin	.6
Spanish	2.0
Nurses	5.0
Counselors	9.2

² All further statutory references are to the Education Code.

³ Full-time equivalent position.

Secondary Librarians	2.1
Elementary Librarian Trainer	1.0
Assistant Principals	2.8
Elementary	20.0
Special Education Site Based Specialists	2.0
Elementary Music	1.0
Child Development (225-day schedule)	6.5
Child Development (185-day schedule)	<u>3.0</u>
Total	79.5

b. On March 22, 2011, the Governing Board, following the decision by Superintendent Sarvis on March 8, 2011, revised Resolution Number 2010/11-43, by making the following, additional, service reductions for the 2011-2012 school year:

<u>Service</u>	<u>FTE Reduction</u>
English	1.4
Math	1.2
Health	.4
Life Science	.4
Physical Science	.4
PE	.4
Social Science	1.2
Art	.4
French	.2
Spanish	<u>.4</u>
Total	6.4

c. The District and Respondents, with the exception of Respondent Vaa, stipulated that the foregoing are particular kinds of services that may be reduced or discontinued within the meaning of section 44955 and that the Governing Board timely amended and adopted resolution 2011/11-43. Respondent Vaa did not offer any contrary evidence or argument.

4. Superintendent Sarvis thereafter notified the Governing Board that he had recommended that notice be provided to Respondents that their services will not be required for the 2011-2012 school year due to the reduction of particular kinds of services.

5. On March 4, March 14, and March 15, 2011, the District provided notice to Respondents that their services will not be required for the 2011-2012 school year due to the reduction or discontinuation of particular kinds of services.

6. Respondents thereafter timely requested a hearing to determine if there is cause for not reemploying them for the 2011-2012 school year.

7. On April 18, 2011, the District issued the Accusation, and served it on Respondents.

8. On April 20, 2011, Respondents filed timely notices of defense.

9. All prehearing jurisdictional requirements have been met.

10. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.

11. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 because of the uncertainty surrounding future funding. The District estimates a revenue shortfall anywhere from \$10,000,000 to \$17,000,000, depending on the actions taken to reduce the State budget deficit. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

12. The reduction of services set forth in factual finding number 3 is related to the welfare of the District's schools and its pupils, in the context of the potential loss of revenue and the need to continue providing services to students in the District, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

13. On March 1, 2011, the Governing Board adopted criteria for breaking seniority ties for employees with the same first date of paid service. The following criteria were used: experience in the discipline, clear credential, preliminary credential, and emergency/intern credential. A lottery was employed to break any remaining ties. The tie-breaking criteria are reasonable in that they relate to the skills and qualifications of certificated employees. Respondents did not challenge the application of the criteria.

14. a. The District skipped certain employees in the following special, hard-to-staff programs or services: Speech/Language Pathologists; Deaf and Hard of Hearing Teachers; Orientation and Mobility Specialist; Visually Impaired Teachers; Computer Science (DPEA) Teachers; Preschool IB-Trained Teachers; Pre-K Core Knowledge Program; LaCuesta Continuation/Alta Vista/Middle College Teachers; Home and Hospital Planner; and CORE

Knowledge Content Teachers. Respondents did not dispute the District's needs in these areas or the retention of any of the individuals expected to provide the foregoing services.

b. Respondents Flick and John teach in one of the areas selected for skipping, CORE Knowledge Content. They received notices because they are the most junior employees teaching the subject, and the District was concerned that the budget shortfall might necessitate increase in the class size in the CORE classes, which would lead to Respondents' actual layoff.

15. The District plans to layoff five full-time nurses. It has retained one full-time nurse, the "Lead District Nurse" (LDN), and plans to offer mandated nursing services under the overall supervision of the LDN, using classified health assistants, contract nurses, and volunteers. In the past, it has relied on qualified contract nurses and volunteers to provide services. Superintendent Sarvis testified that the District plans to meet State mandates using qualified personnel.

16. The LDN position was created in 2010, following the recommendation of a statewide special education advisory group. A job description was created, and the job was advertised for competitive bidding. The position required specifically-identified knowledge of health services and procedures, skills in nursing, communication, and management, a minimum of a Bachelor of Science degree in Nursing, a valid school nurse credential, and five years of experience in the nursing field. After a selection process that included interviews, District officials chose the incumbent head nurse. The effective date of the assignment was July 1, 2010.

17. The position description lists the LDN's assignment as, "Under the direction of the Executive Director or Director(s), Special Education the Lead School Nurse develop and implement program policies and procedures related to health services and will oversee and coordinate the comprehensive health services program and the delivery of services across all district schools." (Exhibit 18, at p. 1.) The "Primary Function" of the LDN is listed as follows: "While not an administrative position, in collaboration with the Executive Director, or Director(s) of Special Education, the Lead School Nurse will plan, organize, monitor and direct the Health Services program for the District, assess program effectiveness and compliance with all relevant laws, ensure effective and efficient program functioning and work closely with the School Nurses to ensure appropriate delivery of services." (*Ibid.*) "Major Duties and Responsibilities" include serving as a consultant to school nurses, administrators and other health related positions regarding school health information and programs; assigning, arranging, and monitoring the work schedule of school nurses; providing training; coordinating, monitoring, and overseeing mandated screening programs; preparing compliance and other reports; and visiting sites to monitor and participate in health-related activities. Direct provision of health services does not appear to constitute a primary or significant function of the LDN position.

18. Respondent Pentland testified that State-mandated health functions cannot be performed with only one certificated nurse. Based on her understanding of the State requirements, the recommendations of various statewide bodies, the number of students in the District, and the time it takes her to perform the particular task(s), she presented figures to support her testimony. Respondent Pentland concluded that a minimum of seven nurses would be required to fulfill the State mandates.

19. No certificated employee junior to any Respondent was retained to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 9.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 10.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 19.

4. Respondents argue that the District may not layoff five nurses and continue to provide mandated State services. They cite the following provisions as creating mandates for health services: section 49452 (sight assessments); sections 49452 and 49454 (hearing assessments); section 49452.5 (scoliosis screening); 49403 (immunization compliance); 56324, subdivision (b) (health assessments); 44923.5 (specialized health care services, including catheterization, gastric tube feeding, suctioning, and other services); and 49427 (districts to maintain health services at levels adequate to preserve a pupil's ability to learn). However, these statutes do not require that the mandated services be provided exclusively by certificated nurses. For instance, section 49403 permits the following health care practitioners to provide immunizations under the supervision of a physician and surgeon: physician assistants; nurse practitioners; registered nurses; licensed vocational nurses; and nursing students acting under the supervision of registered nurses. Respondents have not cited any provision of law that mandates employment of nurses. On the contrary, as the District notes, districts "may" employ properly certificated persons to provide for the health and physical development of pupils. (Ed. Code, § 49400.)

As set forth in factual finding number 15, the District plans to provide all mandated services under the supervision or coordination of the LDN. While all the specifics of the plan were not yet in place at the time of the hearing, provision of services is contemplated with the use of classified employees, volunteers, and contract employees. Superintendent Sarvis testified that the District plans to meet required State mandates using qualified personnel. Respondents may be correct in their assertion that the same level of services now being provided cannot be provided with five fewer certificated employees, but it does not follow that mandated services will not be provided during the 2011-2012 school year, albeit in a different manner by different qualified individuals. Accordingly, the District has established that it will provide mandated health services for the 2011-2012 school year.

5. Cause exists to terminate the services of Respondents Sarah Ashton, John Bailey, J. Daniel Barnett, Marsha Barr, Rick Ceriale, Elizabeth Checketts, Kayleen Chilton, Elizabeth Christen, Marcelo Cruz, Shannon Curtis, Jill Dixon, Ursula Ferrall, Jennifer Flick, Magda Flores, Beth Fuste, Crystal Gabel-Peterson, Hozby Galindo, Michael Gerken, Kathleen Glenn, Janet Goode, Lisa Howard-Hoffman, Heather John, Veronica Johnson, Valerie lent, Brian Malcheski, Ramona Marten, Nancy Mathison, Magdeline Mikhail, Lauren Minadeo, Matt Moran, Helen Murdoch, David O'Donnell, Casandra Ornelas, Rebecca Penrose, Deborah Pentland, Marcy Porter, Genevieve Quinn, Bilha Raygoza, Athena Sims, Jennifer Slempe, Kelly Thasher, Amy Wolfslau, and Laura Wooster, by reason of factual finding numbers 1 through 19, and legal conclusion numbers 1 through 4.

ORDER

The Accusation is sustained and the District may notify Respondents Sarah Ashton, John Bailey, J. Daniel Barnett, Marsha Barr, Rick Ceriale, Elizabeth Checketts, Kayleen Chilton, Elizabeth Christen, Marcelo Cruz, Shannon Curtis, Jill Dixon, Ursula Ferrall, Jennifer Flick, Magda Flores, Beth Fuste, Crystal Gabel-Peterson, Hozby Galindo, Michael Gerken, Kathleen Glenn, Janet Goode, Lisa Howard-Hoffman, Heather John, Veronica Johnson, Valerie lent, Brian Malcheski, Ramona Marten, Nancy Mathison, Magdeline Mikhail, Lauren Minadeo, Matt Moran, Helen Murdoch, David O'Donnell, Casandra Ornelas, Rebecca Penrose, Deborah Pentland, Marcy Porter, Genevieve Quinn, Bilha Raygoza, Athena Sims, Jennifer Slempe, Kelly Thasher, Amy Wolfslau, and Laura Wooster, that their services will not be needed during the 2011-2012 school year due to the reduction of particular kinds of services.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings