

**BEFORE THE GOVERNING BOARD OF
THE SANTA ANA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

OAH No. 2009010387

Certificated Employees of the Santa Ana
Unified School District,

Respondents.

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on April 2, 2009, in Santa Ana, California.

Eric Bathen, Esq., and Marcia Brady, Esq., represented the Santa Ana Unified School District (District).

Ernest F. Ching, Jr., Esq., represented Respondents Richard Lorentzen, Rosa Marino, Danny Martinez, and George Reta (collectively, Respondent counselors).

Carlos Perez, Esq., represented all other Respondents (collectively, all other Respondents).

The District served a Notice of Layoff on each of the 538 Respondent teachers. The Respondent teachers are listed, in order of seniority, in exhibit 6. Exhibit 6 is hereby incorporated by reference as if fully set forth herein. At the hearing, the District initially withdrew the Accusation as to the 25 Respondents listed in exhibit 7. Exhibit 7 is hereby incorporated by reference as if fully set forth herein. Additionally, at the hearing, the District withdrew the Accusation as to Respondent Gregory Boyer and his name was added, by interlineation by the ALJ, to exhibit 7. Therefore, exhibit 7 lists a total of 26 teachers.

The issues in this case are clear. The Respondent counselors generally contended that the District did not properly evaluate the needs of the District and the students before deciding to layoff 30 counselors. As to the remaining Respondents, they generally contended that the District would seriously impair its ability to provide quality services to its students given the large amount of teachers being laid off.

FACTUAL FINDINGS

1. Jane A. Russo, 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 February 11, 2009, pursuant to Education Code sections 44949 and 44955, the Governing Board of the District (Board) issued Resolution number 08/09-2770 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. On March 13, 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 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:

Categorical Programs	192	FTE ¹
Music Elementary Program	14	FTE
School Nurses	2	FTE
Counselors	30	FTE
Class Size Reduction Grades 1-3	232	FTE
Quality Education Investment Act Reduction	75	FTE

¹ Full- Time Employee position(s).

Class Size Reduction Grade 9

36 FTE

TOTAL CERTIFICATED POSITIONS

581 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 with the potential loss of additional State funding.

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 Board 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 as of March 13, 2009. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App. 3d 627 at 636). The District further stated its intent to withdraw layoff notices to the most senior teachers if additional attrition occurs.

10. The District properly created its seniority list by determining the first date of paid service of each certificated employee and properly utilized reasonable “tie-breaker” criteria when necessary. The District “skipped” over math, science, and special education teachers, as well as speech and learning specialists. Respondents did not challenge these “skips.”

Respondent Counselors

11. The District decided to reduce the total number of employed counselors from 62 to 30. Under current law, the District is not required to employ a minimum number of counselors. In other words, the District is mandated to employ teachers, but not counselors. The District’s decision, while difficult, was not arbitrary or capricious.

Respondent Danny R. Martinez

12. Respondent Martinez contended that the District incorrectly listed his first date of paid service on Exhibit 6. However, the District first employed Respondent Martinez as an assistant principal, which is an administrative position.

13. California Education Code section 44956.5 states:

For a certificated employee initially employed in an administrative position on or after July 1, 1983, who transfers to a teaching position, the period of employment in the administrative position shall not be included in determining seniority for purposes of Sections 44955 and 44956, except for school site administrators who shall earn up to a maximum of three years seniority while serving as site administrators.

14. Respondent Martinez did not establish that he was not given proper credit, for purposes of determining his seniority, for the period of time he was employed in an administrative position by the District.

All Other Respondents

15. As discussed above, Respondent Gregory Boyer testified and the Accusation was thereafter withdrawn as to him. All other arguments 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 Findings 5 and 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 the exception of the 26 teachers whose names are listed in exhibit 7. Those 26 names are to be removed from the exhibit 6 list and the Accusation is dismissed as to those teachers.

ORDER

Because of the reductions of services, the District may give notice to the teachers identified in Legal Conclusion No. 4 that their services will not be required for the 2009-2010 school year.

Dated: April ____, 2009.

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings