

BEFORE THE  
GOVERNING BOARD  
OF THE  
OCEANSIDE UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Respondents Listed in Exhibit "A."

OAH No. 2009020344

**PROPOSED DECISION**

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in Oceanside, California on April 7, 2009.

Kelly R. Minnehan, Esq., Fagen, Friedman & Fulfrost LLP, represented Luis Ibarra, Ed.D., Associate Superintendent for Human Resources, Oceanside Unified School District.

Jon Y. Vanderpool, Esq., Tosdal, Smith, Steiner & Wax, represented Respondents.

The matter was submitted on April 7, 2009.

**SUMMARY OF PROPOSED DECISION**

The Governing Board of the Oceanside Unified School District determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees 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.

District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, "bumping," and breaking ties between 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. Luis Ibarra made and filed Accusation, dated March 24, 2009, against Respondents, listed in Exhibit "A," in his official capacity as Associate Superintendent for Human Resources (Associate Superintendent), Oceanside Unified School District (District).
2. Respondents are probationary or permanent certificated employees of the District.
3. The Superintendent notified the Governing Board of Oceanside Unified School District (Board) and Respondents that he recommended that notice be given to Respondents that their services would not be required for the 2009-2010 school year.
4. The parties stipulated and agreed that the following facts were true and correct.
  - On January 27, 2009, the Board adopted Resolution number 19 (08-09) entitled "Tie-Breaking Criteria – Certificated," establishing the criteria to be used to establish the order of seniority of the District's certificated employees who had the same credential and who shared the same first date of paid service in probationary status.
  - On March 10, 2009, the Board adopted Resolution number 23 (08-09) recommending a reduction in particular kinds of services provided by the District for the 2009-2010 school year.
  - On or before March 14, 2009, the District informed the Board of the names of the 75 employees who would be noticed that the Superintendent had recommended not re-employing them in the upcoming 2009-2010 school year.
  - On or before March 15, 2009, the District timely served 20 Respondents, whose names are set forth in Exhibit "A," with Notice that the District's Superintendent had recommended the District not to re-employ them in the upcoming 2009-2010 school year.
  - Each of the 20 Respondents, listed in Exhibit "A," timely filed a Request for Hearing.
  - The District timely served a Notice of Hearing on each Respondent who requested a hearing, setting the hearing date for April 7, 2009 and each consecutive date thereafter until the hearing concluded.
5. All pre-hearing jurisdictional requirements were met.

6. On March 10, 2008, the Board adopted Resolution number 23 (08-09) and thereby took action to reduce or eliminate the following particular kinds of certificated services commencing the 2009-2010 school year:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Teacher – K - 3 (Class Size Reduction)	53
Teacher – English (Secondary Grades)	10
Teacher – Foundational Math (Secondary Grades)	7
Teacher – Services authorized by Multiple Subject teaching credential (Secondary Grades)	4
Teacher - Social Science (Secondary Grades)	3
Teacher - Spanish (Secondary Grades)	1
Teacher – Bio Science (Secondary Grades)	2
Teacher – Music	3
Counselor	5
Assistant Principal	2
Director	3

The proposed reductions totaled 93 full-time equivalent (FTE) positions.

7. The District considered all known attrition, including resignations and retirements, in determining the actual number of final layoff notices to be delivered to its certificated employees.

8. The Associate Superintendent was responsible for implementing the technical aspects of the layoff. The District developed a seniority list that contained, among other matters, each employee’s name, seniority date, tie-breaker points, credentials, supplementary authorization, No Child Left Behind Certifications, site, assignment, and job title.

The seniority date was based on the first date of paid service rendered.<sup>1</sup> A teacher hired as a probationary employee who worked as a substitute or temporary employee for at least 75 percent of the school days during the previous year and who had performed the duties normally required of a certificated employee of the school district was deemed to have served a complete school year as a probationary employee if that individual was employed as a probationary employee for the following school year. The individual was entitled to have that earlier year counted as a year of probationary service. The prior year was “tacked” on for seniority purposes,<sup>2</sup> but only one year could be tacked.

9. Respondents Nadeja Casselberry (Respondent Casselberry) and Theresa Matzke (Respondent Matzke) each challenged the seniority date, which was reported in the seniority list as being August 25, 2005.

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<sup>1</sup> Education Code section 44845.

<sup>2</sup> Education Code section 44918.

For 2005/2006 school year, Respondents Casselberry, Matzke, Scott Campbell (Respondent Campbell) and Jennifer Cerda (Respondent Cerda) were new teachers in the District.

Before the 2005/2006 school year, Respondents Campbell and Respondent Cerda had never been employees of the District; by the terms of their contracts, each was required and paid by the District to attend orientation on August 24, 2005.

Respondents Casselberry and Matzke were not required to attend the orientation because each had worked in a temporary position within the District for the two prior school years. As such, the prior year was “tacked” on for seniority purposes. Respondents Caselberry and Matzke were not required to attend orientation; as such; their first date of paid service with the District was August 25, 2005.

Given the foregoing, the seniority dates of Respondents Casselberry and Matzke were properly determined.

10. The District used the Seniority List to develop a proposed order of layoff and “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 him or her 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.

11. The Board adopted tie-breaker criteria (Board Resolution No. 10 (08-09)) to determine the order of termination of employees with the same seniority date, which stated, in pertinent part:

“The governing board of the district hereby adopts the following resolution regarding tie-breaking criteria for seniority order in reduction in service layoff. The Education Code, section 44955, provides for the reduction of permanent certificated staff under certain conditions, and further provides that, *‘As between employees who first rendered service to the district on the same date, the governing board shall determine the order of termination solely on the basis of the needs of the district and the students thereof.’* In order to prepare for the possibility of such an event, the governing board adopts the following criteria for the determination of the order of termination of employees who first rendered service to the district on the same date. The employee with the most points is entitled to preference in seniority, but only as between two people who first rendered service on the same date.”

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	<b>Points</b>
5. Service to the school and students:	
a. Recent service as Department Chair/Grade Level Team Leader (within the last three years)	10
b. Co- or Extra-curricular activities as listed below (per activity, up to 15 points)	5

**Item 5 only pertains to permanent employees**

Elementary Head Teachers

COACHES

Head Varsity Football  
Boys Athletic Trainer (fall, winter, spring)  
Girls Athletic Trainer (fall, winter, spring)  
Boys Head Varsity Baseball  
Boys Head Varsity Basketball  
Girls Head Varsity Basketball  
Boys Head Varsity Cross Country  
Girls Head Varsity Cross Country  
Boys Head Varsity Golf  
  
Girls Head Varsity Golf  
Girls Head Varsity Gymnastics  
Boys Head Varsity Soccer  
Girls Head Varsity Soccer  
Girls Head Varsity Softball  
  
Boys Head Varsity Swimming  
Girls Head Varsity Swimming  
Boys Head Varsity Tennis  
Girls Head Varsity Tennis  
Boys Head Varsity Track  
Girls Head Varsity Track  
Boys Head Varsity Volleyball  
  
Girls Head Varsity Volleyball  
Boys Head Varsity Water Polo  
Girls Head Varsity Water Polo  
Head Varsity Wrestling  
Boys Assistant Varsity Baseball  
Boys Head Freshman Baseball  
Boys Head J.V. Baseball

ADVISORS

Director – Athletics  
Director – Marching Band  
Director – Student Activities  
Forensics Coach  
Debate Coach  
Director – Choir (fall, spring)  
Director – Drill Team/Color Guard  
Drama Coach  
Asst. Director – Marching Band (fall, spring)  
Choir Accompanist (fall, spring)  
Director – Dance (fall, spring)  
Director – Orchestra  
Director – Percussion (fall, spring)  
Director – Rally Group (fall, winter)  
Director – Tall Flags (fall, spring)  
Varsity Academic League Coach  
Asst. Academic League Coach  
Asst. Director – Rally Group (fall)  
Director – Stage/Concert Band  
Journalism Advisor  
Show Choir Choreographer (fall, spring)  
Yearbook Advisor  
Middle School Advisors  
    Designated Advisors:  
        Band  
        Choir  
        Orchestra  
        ASB

Boys Assistant Varsity Basketball  
 Boys Head Freshman Basketball  
 Boys Head J.V. Basketball  
 Girls Assistant Varsity Basketball  
 Girls Head Freshman Basketball  
 Girls Head J.V. Basketball  
 Assistant Varsity Football  
 Head Freshman Football  
 Boys Head J.V. Football  
 Boys Head J.V. Golf  
 Girls Head J.V. Golf  
 Head J.V. Gymnastics  
 Assistant Varsity Soccer  
 Boys Head Freshman Soccer  
 Girls Head Freshman Soccer  
 Boys Head J.V. Soccer  
 Girls Head J.V. Soccer  
 Girls Assistant Varsity Softball  
 Girls Head Freshman Softball  
 Girls Head J.V. Softball  
 Assistant Varsity Swimming  
 Boys Head J.V. Tennis  
 Girls Head J.V. Tennis  
 Boys Assistant Varsity Track  
 Girls Assistant Varsity Track  
 Boys Assistant Varsity Volleyball  
 Girls Assistant Varsity Volleyball  
 Boys Head J.V. Volleyball  
 Boys Head Freshman Volleyball  
 Girls Head Freshman Volleyball  
 Girls Head J.V. Volleyball  
 Head Freshman Wrestling  
 Head J.V. Wrestling  
 Assistant Freshman Football  
 Assistant J.V. Football  
 Weight/Strength Coach (fall, winter, spring)  
 Middle School Coaches

Yearbook  
 Safety Patrol

**Need:** Staff that will support students, student activities, and provide leadership to students and staff.”

12. Respondents Campbell and Cerda argued that the District improperly applied its tie-breaker criteria (Finding 11), claiming that they should have received five additional tie-breaking points for services as a coach. The District asserted that the intention was to allow tie-breaking points only for coaching services for which the District paid the employee; the District could not confirm that Respondents Campbell and/or Cerda had been

paid by the District for coaching services, and the District, therefore, denied them additional points. Respondents Campbell and Cerda argued that there was no reference in the District's tie-breaker criteria (Finding 11) that required that a teacher be paid by the District for the coaching services to receive tie-breaker credit. In this case, any increase in tie-breaker points awarded to Respondent Campbell and Respondent Cerda would not impact whether either would be laid off. For this reason, whether the District properly applied the tie-breaker criteria to Respondent Campbell or Cerda was not relevant in this proceeding.

13. 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 its students. The Board adopted specific criteria and provided clear instructions for implementing its criteria, including a point system. The order of termination was based on the needs of the District and its students. The tie-breaker criteria were fairly applied to rank those employees who were hired on the same date.

14. The services that the District proposed 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.

15. The reduction or discontinuance of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuance of particular kinds of services necessitated a decrease in the number of certificated employees of the District as determined by the Board.

16. No certificated employee junior to any Respondent was retained to perform any services which any Respondent was 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 deal with the pupils involved." (*Rutherford vs. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Cause exists under Education Code sections 44949 and 44955 for the Oceanside Unified 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 vs. 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 Accusations served on Respondents, listed in Exhibit “A,” are sustained. Notice shall be given to Respondents before May 15, 2009 that their services will not be required for the 2009-2010 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