

BEFORE THE
GOVERNING BOARD OF THE
PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter Of The Accusations Against:

Certain Certificated Employees of the
Palos Verdes Peninsula
Unified School District,

Respondents.

OAH No. 2009030083

PROPOSED DECISION

David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 21, 2009, at the Palos Verdes Peninsula Unified School District, Palos Verdes Estates, California.

Atkinson, Andelson, Loya, Ruud & Romo, by Sharon J. Ormond, Attorney at Law, represented the School District.

Reich, Adell & Cvitan, by Carlos R. Perez, Attorney at Law, represented Respondent teachers as set forth in more detail below. Many of the Respondents appeared at the hearing.

Evidence was received by stipulation, documents, and testimony. The matter was submitted on April 21, 2009.

FACTUAL FINDINGS

1. The Palos Verdes Peninsula Unified School District (District) operates ten elementary schools, three intermediate schools, two comprehensive junior high schools, and one continuation high school, for approximately 12,000 students.

2. Respondents in this proceeding are probationary or permanent certificated employees of the District.

3. Walker Williams is the Superintendent of the District. William Franchini, Director of Human Resources, and his staff were responsible for implementation of the technical aspects of the layoff.

4. Before March 15, 2009, the District personally served on each Respondent a written notice that it had been recommended that notice be given to Respondents pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that the Board had passed a Resolution reducing the certificated staff by 74.7 full-time equivalent (FTE) positions.

5. Notice of layoff was served personally on most Respondents and, on others, by certified mail, return receipt requested. Respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

6. The Superintendent made and filed Accusations against each of the Respondents who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense were timely served on those Respondents.

7. Notices of Defense were timely filed by the 55 Respondents listed in Exhibit 5, attached hereto and incorporated herein by reference.

8. As noted in Exhibit 5, the District has rescinded its layoff notice and Accusations against Respondents numbered 7, 8, 23, 30, 36, 37 and 39.

9. On February 26, 2009, the Governing Board of the District was given notice of the Superintendent's recommendation that 74.7 FTE employees be given notice that their services would not be required for the next school year and stating the reasons for that recommendation.

10. Board Resolution No. 18 – 2008/09 (Resolution), adopted on February 26, 2009, proposed a layoff of 74.7 FTE certificated employees. Specifically, the Resolution provided for the reduction or elimination of the following particular kinds of services:

Reduce Kindergarten through 5th Grade Classroom Teaching Services	25.1 FTE
Reduce Secondary Schools English/Language Arts Teaching Services	7 FTE
Reduce Secondary Schools Math Teaching Services	6 FTE
Reduce Secondary Schools Life Science Teaching Services	2 FTE
Reduce Secondary Schools Social Science Teaching Services	4 FTE
Reduce Secondary Schools Health Teaching Services	2 FTE
Reduce Secondary Schools Music Teaching Services	2.4 FTE
Discontinue Secondary Schools Athletic Director Services	2 FTE
Discontinue Secondary Schools Activities Director Services	2 FTE
Reduce Counseling Services	4 FTE
Reduce Nursing Services	1 FTE

Reduce Psychologist Services	2 FTE
Reduce Teacher On Special Assignment (Speech Therapy) Services	1 FTE
Reduce Speech Therapist Services	1 FTE
Discontinue Teacher On Special Assignment (District) Services	2.8 FTE
Discontinue Teacher On Special Assignment (Intermediate) Services	1 FTE
Discontinue Intermediate School Assistant Principal Services	2 FTE
Discontinue High School Associate Principal Services	5 FTE
Discontinue Director Curriculum & Instruction Services	1 FTE
Discontinue High School Dean Services	1.4 FTE

TOTAL CERTIFICATED POSITIONS: 74.7 FTE

11. Board Resolution No. 19 – 2008/09, adopted on February 26, 2009, established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination shall be based on the needs of the District and its students in accordance with the type and subject matter of credentials, authorizations, salary step, and college degrees, majors and credits.

12. The District maintains a seniority list which contains employees’ seniority dates (first date of paid service), current assignments and locations, advanced degrees, credentials, and authorizations. Certificated employees were given access to the seniority list and some submitted information to update or correct the pertinent information.

13. The District used the seniority list to develop a proposed layoff and “bumping” list of 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 and were entitled to “bump” other employees. In determining who would be laid off for each kind of service reduced the District counted the number of reductions not covered by the known vacancies, 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, and used that information to determine that certain Respondents should be included in these layoff proceedings.

14. The District used information from the District’s seniority list to apply the tie-breaker criteria of Board Resolution No. 19 – 2008/09.

15. The Resolution proposes to exempt drama teachers from the layoff proceedings, also known as skipping, based upon special training and experience. The teachers to whom this would apply are Seth Cohen (seniority list # 644), Jaclyn Thompson (seniority list # 576) and Jennifer McArthur (seniority list # 590, but only as to one period per day).

16. The District indicated that it was rescinding/dismissing the Accusations as to the following certificated employees, some of whom are Respondents: Kevin Kochakji, Kelly Pardini, Steven Chudy, Mark MacKenzie, Stephanie Peppermuller, Charles Lee, Michaele Cavanaugh, Wendy Keller, Susan Pavelka, and suggests that the Accusation should be

dismissed as to Ana Jones if the seniority list and bumping implementation are found correct.¹

17. Various contentions raised by Respondents, and a summary of the evidence relating thereto, are set forth below.

18. Dionne Sevy had a contract that indicated she would serve as a second year probationary employee for the school year 2007/08. Her contract for the school year 2008/09 says the same thing. On the seniority list, Ms. Sevy (#585) is listed as probationary 1. In each of the school years 2005/06, 2006/07, and 2007/08, Ms. Sevy worked for the District for less than 75 percent of the days that school was in session.

19. Samantha Weiss (seniority list # 572) contends that she has special experience, training and qualifications that should entitle her to teach the drama classes for which the District proposes to exempt from layoff, or skip, Seth Cohen (seniority list # 644), Jaclyn Thompson (seniority list # 576) and Jennifer McArthur (seniority list # 590). Ms. Weiss has rendered valuable service to the District in incorporating drama techniques into her language arts classes and by teaching one trimester this year and two trimesters last year of drama at the intermediate school level, and has had some college coursework related to the dramatic arts. The totality of the evidence established that she does not have the specialized training and experience cited by the Board and the District as justifying the exemption for the three drama teachers.

20. Michael and Allison Lehault (seniority list # 627 and #633) were both hired by the District on August 28, 2002, resigned June 30, 2007, and were rehired August 26, 2008. Both presently have permanent status and dates of first service of August 26, 2008. Their claim that they should have been allowed a leave of absence and, therefore, earlier seniority dates, was not supported by the evidence. Further, as no probationary or permanent certificated teacher with the same credentials and a higher seniority number (later date of first paid service) has been retained, the District may serve them with layoff notices.

21. Nicolai Anikouchine contends that the District should not exercise its discretion in the manner that it did with respect to exemption of the drama teachers, and that drama and music could be made available at the high school level if the exemptions were not allowed. However, he recognizes that it is within the District's discretion to seek the exemptions.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

¹ This information is taken from Exhibit 5 and the District's Pre-Hearing Brief, Exhibit 10.

2. The services identified in Board Resolution No. 18 – 2008/09 are particular kinds of services that could be reduced or discontinued under Education Code 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 Education Code section 44949.

A school 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. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

4. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render, except as set forth below.

5. 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.) Under Education Code section 44955, subdivision (d)(1), junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393 v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

6. The Board’s decision to exempt drama teachers Seth Cohen (seniority list # 644), Jaclyn Thompson (seniority list # 576) and Jennifer McArthur (seniority list # 590) from the layoff proceedings was not an abuse of its discretion and was for the good of the District and its students. There was no evidence that the District implemented the bumping process improperly.

7. Ms. Sevy is properly on the seniority list at the probationary one level. Her service for several years at less than 75 percent of the days that school was in session is not entitled to probationary credit, and her first date in service as a probationary employee is properly set out in the seniority list, under Education Code sections 44845, 44908 and 44920.

8. Samantha Weiss, Michael Lehault and Allison Lehault are properly included in these proceedings and not entitled to be exempt or to be assigned any other seniority date.

9. The Accusations are dismissed as to Kevin Kochakji, Kelly Pardini, Steven Chudy, Mark MacKenzie, Stephanie Peppermuller, Charles Lee, Michaele Cavanaugh, Wendy Keller, Susan Pavelka and Ana Jones.

ORDER

1. Notice shall be given to employees occupying 74.7 full-time equivalent certificated positions that their services will not be required for the 2009-2010 School Year because of the reduction and discontinuance of particular kinds of services, except as set forth below.

2. Notice shall be given in inverse order of seniority.

3. The Accusations are dismissed as to Kevin Kochakji, Kelly Pardini, Steven Chudy, Mark MacKenzie, Stephanie Peppermuller, Charles Lee, Michaele Cavanaugh, Wendy Keller, Susan Pavelka and Ana Jones.

Dated: April 24, 2009.

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

PALOS VERDES PENINSULA UNIFIED SCHOOL DISTRICT
LIST OF RESPONDENTS

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| 1. Anikouchine, Nicolai | 26. Lehault, Michael |
| 2. Bagg, Suzanne | 27. Leonard, Anne |
| 3. Barnett, Kristen | 28. Lloyd, Christina |
| 4. Berkson, Andrea Gay | 29. Lopez, Christine |
| 5. Berlin, Jeri | 30. Mac Kenzie, Mark (Rescinded) |
| 6. Briskin, Karen | 31. Maemoto, Julie |
| 7. Cavanaugh, Michael (Rescinded) | 32. Mc Arthur, Jennifer |
| 8. Chudy, Steven (Rescinded) | 33. Mc Hugh, Amerika |
| 9. Church, Timothy | 34. Michalski-Colin, Patricia |
| 10. Cohen, Seth | 35. O'Toole, Kelly |
| 11. Cormier, Terrence | 36. Pardini, Kelly (Rescinded) |
| 12. Crady, Jama | 37. Pavelka, Susan (Rescinded) |
| 13. Doctor, Daniel | 38. Pellicane, Andrea |
| 14. Donahoe, Mariana | 39. Peppermuller, Stephanie (Rescinded) |
| 15. Exner, Sara | 40. Peterman, William |
| 16. Farrell, Micah | 41. Rosen, Jaclyn |
| 17. Godbold, Bryan | 42. Ryan, Kimberly |
| 18. Greiner, Bethany | 43. Sevy, Dionne |
| 19. Hambel, Christina | 44. Seymour, Alison |
| 20. Heffernan, Richard | 45. Singh, Shannon |
| 21. Helmrich, Brian | 46. Stewart, Amy |
| 22. Jetton, Katy | 47. Stoddart, Jennifer |
| 23. Keller, Wendy Ann (Rescinded) | 48. Thompson, Jaclyn Nicole |
| 24. King, Phillip | |
| 25. Lehault, Allison | |

49. Vander Veen, Stephen
50. Vestal, Karla
51. Vroom, Dustin
52. Weiss, Samantha
53. Wildey, Suzanne
54. Wilson, Christopher
55. Wolven, Adam