

**BEFORE THE GOVERNING BOARD OF  
THE SOUTH PASADENA UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

OAH No. 2009030098

Certificated Employees of the South  
Pasadena Unified School District,

Respondents.

**PROPOSED DECISION**

Chris Ruiz, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on April 14, 2009, in South Pasadena, California.

Sharon J. Ormond, Esq., represented the South Pasadena Unified School District (District).

Emma Leheny, Esq., represented the Respondent teachers (Respondents).

The District served a Notice of Layoff on 38 teachers and a Precautionary Layoff Notice on 6 additional teachers. All jurisdictionally required documents were served on Respondents. The parties stipulated that the remaining 33 teachers whose jobs are at issue are listed in Exhibit 5, which is hereby incorporated by reference as if fully set forth herein. Exhibit 5 was amended by interlineation and by stipulation of the parties.

The matter was submitted for decision on April 14, 2009.

**FACTUAL FINDINGS**

1. Julie Jennings, Assistant 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 19, 2009, pursuant to Education Code sections 44949 and 44955, the Governing Board of the District (Board) issued Resolution number 2008-2009-28 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. Prior to March 15, 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:

Reduce K-5 Classroom Teaching Services	21.00	F.T.E. 1
Reduce Elementary Reading Intervention Specialist	.60	F.T.E.
Reduce Elementary School Art Teaching Services	.80	F.T.E.
Reduce Elementary School Drama Teaching Services	.80	F.T.E.
Reduce Elementary School Music Teaching Services	.80	F.T.E.
Reduce Elementary School Band Teaching Services	.40	F.T.E.
Reduce Middle School Music Teaching Services	.20	F.T.E.
Reduce High School Music Teaching Services	.40	F.T.E.
Reduce Middle School English Teaching Services	.40	F.T.E.
Reduce High School English Teaching Services	3.00	F.T.E.
Reduce High School Math Teaching Services	1.00	F.T.E.
Reduce High School Biology/Science Issues Teaching Services	.40	F.T.E.
Reduce Middle School Social Studies Teaching Services	.20	F.T.E.
Reduce High School Spanish Teaching Services	.40	F.T.E.
Reduce Middle School Life Skills Teaching Services	.40	F.T.E.

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<sup>1</sup> Full-Time Equivalent.

Reduce AVID Teaching Services	1.00	F.T.E.
Reduce Elementary Counseling Services	1.20	F.T.E.
Reduce Secondary Counseling Services	3.20	F.T.E.
Discontinue Teacher Specialist	1.00	F.T.E.
Reduce ROP <sup>2</sup> Dance Teaching Services	.60	F.T.E.
Reduce ROP Medical Careers Teaching Services	.20	F.T.E.
Reduce ROP Computer Applications Teaching Services	.20	F.T.E.
Reduce ROP Financial Occupations Teaching Services	.20	F.T.E.
Reduce ROP Sports Medicine Teaching Services	.20	F.T.E.
Reduce ROP Photography Teaching Services	.40	F.T.E.
TOTAL CERTIFICATED POSITIONS:	38.80	F.T.E.

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 deficit and 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 deficits and the potential loss of future funding.

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 prior to March 15, 2009. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App. 3d 627, at 636). The District intends to consider any future attrition and “call back” teachers, if possible.

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 did not “skip” over any categories of personnel.

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<sup>2</sup> The term “ROP” as used herein refers to the District’s Regional Occupational Program.

11. Exhibit 7 lists 238 District employees in order of seniority. Number 1 on the seniority list is the most senior District employee and number 268 is the least senior employee. Exhibit 7 is hereby incorporated by reference as if fully set forth herein.

12. Respondents did not challenge the District's procedures or processes except as stated below.

*Respondents Casandra Caskey and Diana Olivarez*

13. Respondents Casandra Caskey (Caskey) and Diana Olivarez (Olivarez), both listed on Exhibit 5, requested that their "seniority date," or first date of paid service, be modified to give them credit for time they worked as "long-term" substitutes before they were hired and employed by the District as probationary employees. Caskey was a substitute from February 1, 2005, to June 2005. Caskey was hired by the District as a probationary employee on August 28, 2005. Olivarez was a substitute teacher from January 28, 2008, to June 2008. Olivarez was hired by the District as a probationary employee on August 28, 2008. These two Respondents rely on Education Code section 44920. On the other hand, the District relies on Education Code section 44917.

14. Education Code section 44920 states:

Notwithstanding the provisions of Sections 44917 and 44919, the governing board of a school district may employ as a teacher, for a complete school year, but not less than one semester during a school year unless the date of rendering first paid service begins during the second semester and prior to March 15th, any person holding appropriate certification documents, and may classify such person as a temporary employee. The employment of such persons shall be based upon the need for additional certificated employees during a particular semester or year because a certificated employee has been granted leave for a semester or year, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board.

Any person employed for one complete school year as a temporary employee shall, if reemployed for the following school year in a vacant position requiring certification qualifications, be classified by the governing board as a probationary employee and the previous year's employment as a temporary employee shall be deemed one year's employment as a probationary employee for purposes of acquiring permanent status.

For purposes of this section "vacant position" means a position in which the employee is qualified to serve and which is not filled by a permanent or probationary employee. It shall not include a

position which would be filled by a permanent or probationary employee except for the fact that such employee is on leave.

15. The second paragraph of Education Code 44920 does not support Respondents' contentions. That paragraph requires that a person "be employed for one complete school year as a temporary employee" before the District is allowed to give credit, for seniority purposes, for that time worked. Both Respondents were initially employed for less than a full year as substitute teachers and therefore do not qualify under this statute.

16. Education Code section 44918, subdivision (a) states:

Any employee classified as a substitute or temporary employee, who serves during one school year for at least 75 percent of the number of days the regular schools of the district were maintained in that school year and has performed the duties normally required of a certificated employee of the school district, shall be deemed to have served a complete school year as a probationary employee if employed as a probationary employee for the following school year.

17. Education Code section 44918 also does not support Respondents' contentions. Neither Respondent worked 75 percent of the school year while employed as a substitute teacher.

18. It was not established that the District improperly designated the "seniority date" of Caskey or Olivarez. The District's decision was not arbitrary, capricious, or incorrect.

19. All other arguments presented by Respondents were unconvincing and were not established by the evidence.

### **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 5 are properly subject to layoff. The Accusation is dismissed as to all other 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.

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CHRIS RUIZ  
Administrative Law Judge  
Office of Administrative Hearings