

**BEFORE THE GOVERNING BOARD OF  
THE CAPISTRANO UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

OAH No. 2009030108

Certain Certificated Employees of the  
Capistrano Unified School District,

Respondents.

**PROPOSED DECISION**

Chris Ruiz, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on April 27, 2009, in San Juan Capistrano.

David C. Larsen, Esq., represented the Capistrano Unified School District (District).

Marianne Reinhold, Esq., represented the Respondent teachers (Respondents).

Respondent David Burnett represented himself. He was only present until the lunch break.

The District served a Notice of Layoff and Accusation packets on Respondents. The parties stipulated that those teachers whose employment is at issue are listed and highlighted in the color yellow in Exhibit 10, which is hereby incorporated by reference as if fully set forth herein. At the hearing, the District withdrew the Notice of Layoff and Accusation as to those teachers whose names are crossed out in Exhibit 10. By stipulation between the parties, Exhibit 10 was also modified to reflect corrections to certain teachers' seniority date.

The matter was submitted for decision on April 27, 2009.

**FACTUAL FINDINGS**

1. Suzette Lovely, Deputy Superintendent of Personnel Services, acting in her official capacity, caused all pleadings, notices and other papers to be filed and served upon Respondents 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 March 9, 2009, pursuant to Education Code sections 44949 and 44955, the Governing Board of the District (Board) issued Resolution number 0809-49 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:

<b>Particular Kind of Service or Program Certificated Non-Management Positions</b>	<b>Number of Full Time Equivalents</b>
<i>Elementary Instructional Services (Self Contained Classrooms)</i>	
Kindergarten	3 FTE
1 <sup>st</sup> Grade	77 FTE
2 <sup>nd</sup> Grade	74 FTE
3 <sup>rd</sup> Grade	77 FTE

<i>Upper Grade Classrooms</i>	
Grades 4-6	11 FTE
Elementary Chinese	1 FTE
Elementary Music	22.6 FTE
<i>Secondary Instructional Services (Single Subject Course Offerings)</i>	
Grades 7-12	20 FTE
<ul style="list-style-type: none"> <li>• English (5 FTE)</li> <li>• Social Science (4 FTE)</li> <li>• Math (4 FTE)</li> <li>• Life Science (4 FTE)</li> </ul>	

<ul style="list-style-type: none"> <li>• Foreign Language (1 FTE)</li> <li>• PE (2 FTE)</li> </ul>	
<b><i>Instructional Support Services</i></b>	
Resource Teachers on Special Assignment	26 FTE
Special Education (Program/Classroom Restructuring, TLC)	5 FTE
Counselors	27 FTE
Psychologist	1 FTE
<b>TOTAL FULL TIME EQUIVALENTS</b>	<b>344.6 FTE</b>

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 of approximately 25 million dollars.

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 prior to March 15, 2009. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627 at 636).

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 properly used the seniority list to determine which employees should receive layoff notices. The District also “skipped” over certain categories of personnel. Respondents did not establish that any of the District’s “skips” were inappropriate.

*Music Teachers*

11. The District is reducing the number of elementary school music teachers. As a result, some of these teachers are “bumping” high school music teachers and taking their position. Some high school music teachers testified that it would be difficult, or impossible, for an elementary school music teacher to transition to teaching music at the high school level. Other elementary school teachers testified that they could make the transition to teaching high school music. It was established that there are differences between teaching music at the elementary school level versus the high school level. However, a teacher who

holds a teaching credential, with an authorization to teach music, is legally qualified to teach at either level. Whether a particular teacher is “better” than another teacher is not at issue. The only issue is whether a more junior music teacher is being retained when a more senior music teacher is being laid-off. Such is not the case. The District is obligated to lay off the music teachers in reverse order of seniority, and it has done so.

12. All other arguments presented by Respondents were unconvincing and were not established by the evidence. The District followed the required procedures and did not act 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 whose names are highlighted in yellow in Exhibit 10, except any teacher whose name is crossed out. The Accusation is dismissed as to any teacher whose name is crossed out.

## **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