

BEFORE THE
GOVERNING BOARD OF THE
EL SEGUNDO UNIFIED SCHOOL DISTRICT
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

Certificated Staff of the El Segundo Unified
School District,

Respondents.

OAH Case No. 2009030173

PROPOSED DECISION

Amy C. Lahr, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 15, 2009, in El Segundo, California.

Warren S. Kinsler and Salvador O. Holguin, Atkinson, Andelson, Loya, Ruud & Romo, represented Geoff Yantz (Yantz), Superintendent of the El Segundo Unified School District (District).

Richard J. Schwab, Trygstad, Schwab & Trygstad, represented Stephen Barker, Andrea Easlick, Alfred Luna, Loreen Preuss, Eugene Williams, and Andrew Kelley (Respondents).

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2009-2010 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2009-2010 school year.

At the hearing, the District withdrew the Accusation against Andrew Kelley. In addition, the District amended the Accusation to conform with Resolution number 22/2008-09, which rescinded several proposed reductions or discontinuation of services.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Superintendent Yantz filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.

3. On February 24, 2009, the Governing Board of the District (Governing Board) adopted Resolution number 17/2008-09, reducing or discontinuing certain services for the 2009-2010 school year. It then adopted Resolution number 22/2008-09, which rescinded some of the previously proposed reductions and discontinuations, resulting in the following:

<u>Service</u>	<u>Full-Time-Equivalent Positions</u>
Reduce K-5 Classroom Instructional Services	3.0
Discontinue Elementary Reading Specialist Services	1.0
Discontinue Elementary Physical Education Instructional Services	1.0
Reduce Elementary Assistant Principal Services	1.0
Reduce Elementary Special Education Classroom Instructional Services	1.0
Discontinue Middle School Counseling Services	1.0
Reduce Middle School Physical Education Instructional Services	1.0
Reduce Middle School Computer Instructional Services	0.2
Reduce Middle School Math Instructional Services	0.4
Discontinue Middle School Associated Student Body Instructional Services	0.2
Discontinue Middle School Peer Assistance Instructional Services	0.2
Discontinue Middle School Reading Intervention Instructional Services	0.2
Discontinue Middle School Journalism Instructional Services	0.4
Reduce Middle School Band Instructional Services	0.2
Reduce Middle School Art Instructional Services	0.2
Discontinue High School Counseling Services	1.0
Reduce High School Educational Advisor Services	1.0
Reduce High School Librarian Services	0.5
Discontinue High School Drama Instructional Services	0.4
Discontinue High School Dance Instructional Services	0.4
Discontinue High School Screen Writing Instructional Services	0.2
Discontinue High School Academic Decathlon Instructional Services	0.2
Discontinue High School Journalism Instructional Services	0.2
Discontinue High School French Instructional Services	1.0
Reduce High School Choir Instructional Services	0.2
Discontinue High School Industrial Arts Instructional Services	1.0
Reduce High School Physical Education Instructional Services	0.2
Reduce High School Social Science Instructional Services	2.2
Reduce High School Special Education Instructional Services	1.0
Reduce Continuation High School Instructional Services	1.0
Reduce Preschool Special Education Instructional Services	<u>0.5</u>
Total	20.1

4. Superintendent Yantz thereafter notified the Governing Board that he recommended that notice be provided to Respondents that their services will not be required for the 2009-2010 school year due to the reduction or discontinuance of particular kinds of services.

5. On March 13, 2009, David Lubs, Director of Human Resources and Management, provided notice by registered and certified mail to Respondents that their services will not be required for the 2009-2010 school year due to the reduction or discontinuance of particular kinds of services.

6. In order to simplify the process, the District simultaneously issued the Accusation and served the resolutions, requests for hearing, and Notice of Defense forms on Respondents, with the notice that their services would not be required.

7. Respondents timely requested hearings and filed notices of defense, to determine if there is cause for not reemploying them for the 2009-2010 school year.

8. All prehearing jurisdictional requirements have been met.

9. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.¹

10. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 primarily because of the uncertainty surrounding future funding. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

11. The reduction of services set forth in factual finding number 3 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

12. Alfred Luna is a social studies teacher. He is listed as number 142 on the District's seniority list, with a seniority date of September 5, 2006. Mr. Luna contests this date. He testified that the correct date is August 30, 2006, when he attended a mandatory training for which the District compensated him. The evidence established that August 30, 2006, was Mr. Luna's first date of paid service in a probationary position. Accordingly, Mr. Luna's proper seniority date is August 30, 2006. This determination does not affect the outcome of this proceeding.

13. Stephen Barker is a high school industrial arts teacher. Mr. Barker testified regarding his opinion of the quality and importance of the industrial arts program. There was

¹ All further references are to the Education Code.

no evidence that the District's determination to discontinue the industrial arts program was arbitrary or capricious; it is within the District's discretion to do so.

14. Andrea Easlick is a Spanish teacher. She testified about her experience and qualifications; specifically, that she lived abroad in Mexico, is the coordinator of the Latin Dance club, and is a licensed Emergency Medical Technician. Ms. Easlick does not contest her seniority date, which was the determinative factor in the Superintendent's decision to recommend her layoff. Her experience, while noteworthy, does not affect the outcome of this proceeding.

15. No certificated employee junior to any Respondent was retained to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 8.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 9.

3. Respondents contended that the District's service method, as described in factual finding number 6, did not comply with Education Code sections 44955 and 44949. Respondents did not show that the District failed to comply with the Education Code; nor did they demonstrate that they suffered actual prejudice from its use. Accordingly, the District's service was proper. (See *California Teachers Assn. v. Butte Community College Dist.* (1996) 48 Cal.App.4th 1293, 1305-06.)

4. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 15.

5. Cause exists to terminate the services of Respondents Stephen Barker, Andrea Easlick, Alfred Luna, Loreen Preuss, and Eugene Williams, by reason of factual finding numbers 1 through 15, and legal conclusion numbers 1 through 4.

6. The District shall correct Alfred Luna's seniority date to August 30, 2006, by reason of factual finding number 12.

ORDER

The Accusation is sustained and the District may notify Respondents Stephen Barker, Andrea Easlick, Alfred Luna, Loreen Preuss, and Eugene Williams that their services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services.

DATED: April 29, 2009

AMY C. LAHR
Administrative Law Judge
Office of Administrative Hearings