

BEFORE THE
BOARD OF EDUCATION
FALLBROOK UNION ELEMENTARY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2009030699

CERTIFICATED EMPLOYEES OF THE
FALLBROOK UNION ELEMENTARY
SCHOOL DISTRICT LISTED ON
EXHIBIT A,

Respondents.

PROPOSED DECISION

On April 20, 2009, in Fallbrook, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

William A. Diedrich, Attorney at Law, represented the Fallbrook Union Elementary School District.

Jon Y. Vanderpool, Attorney at Law, represented all respondents except Teresa Ballman, Jennifer Matsumoto, and DeCuba Porter. None of these respondents appeared at the hearing.

Prior to the hearing, the District withdrew layoff notices for Rebecca Cook and dismissed the accusation. During the hearing, the District dismissed the accusations and withdrew the notices of layoff for Erin Corduan and Katie Stonehouse.

The matter was submitted on April 20, 2009.

FACTUAL FINDINGS

1. On or about March 15, 2009, Janice Schulz, Ed. D., Superintendent, of the Fallbrook Union Elementary School District (hereafter, "the District"), made and filed the accusations against respondents in her official capacity.

2. Respondents are certificated employees of the District.

3. Before March 15, 2009, pursuant to Education Code sections 44949 and 44955, Dr. Schultz notified the Board of Education of the District of the Superintendent's recommendation that respondents be notified their services will not be required for the ensuing school year. The Superintendent's notification to the Board of Education set forth the reasons for the recommendation.

4. On or before March 15, 2009, each respondent was given written notice that the Superintendent had recommended that notice be given to respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing year. Each written notice set forth the reasons for the recommendation. The notices satisfied the requirements of sections 44949 and 44955. *San Jose Teachers Association, Inc. v. Allen* (1983) 144 Cal.App.3d 627, 632; *Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 803-04, distinguishing *Karbach v. Board of Education* (1974) 39 Cal.App.3d 355, 360-63.

5. Each respondent timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year. Accusations were timely served on respondents, and each respondent filed a timely Notice of Defense. All pre-hearing jurisdictional requirements have been met.

6. The Board of Education of the District took action in Resolution No. 08/09 to discontinue the following services for the 2009-10 school year:

Assistant Principals	(4.5 F.T.E.)
Counselors: Elementary	(1.5 F.T.E.)
Counselors: Junior High School	(2.0 F.T.E.)
Lead Teachers	(3.0 F.T.E.)
VAPA (Vocational and Performing Arts) Coordinator	(0.5 F.T.E.)
Deluz Ecology Program Teacher	(1.0 F.T.E.)
Junior High School Language Arts Teachers	(2.0 F.T.E.)
Music Program Teachers	(3.0 F.T.E.)
K-6 Classroom Teachers	(9.0 F.T.E.)
Program support personnel services	(1.0 F.T.E.)

The resolution proposed elimination of a total of 27.50 full-time equivalent positions.

The resolution provided in part:

That "competency" as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include possession of a valid credential in the relevant subject matter area, "highly qualified" status under the No Child Left Behind Act in the position into which the employee is bumping, and an appropriate EL authorization (if required by the position).

The services set forth above are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. *California Teachers*

Association v. Board of Trustees of the Goleta Union School District (1982) 132 Cal.App.3d 32, 34-37 and cases cited therein. *See also San Jose Teachers Association v. Allen, supra* at 635-38, in which the court specifically rejected the reasoning of *Burgess v. Board of Education* (1974) 41 Cal.App.3d 571; *Zalac v. Governing Board* (2002) 98 Cal.App.4th 838, 853-54.

Furthermore, these services may be reduced because of budgetary difficulties. *Zalac v. Governing Board, supra*, and cases cited therein. The decision to reduce or discontinue the services is neither arbitrary nor capricious but rather a proper exercise of the District's discretion.

7. No certificated employee junior to any respondent is retained to perform services which any respondent is certificated and competent to render.

8. The reduction or discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees of the District as determined by the Board of Education.

9. The Board of Education 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.

10. The Board of Education established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. The Board of Education provided the order of termination shall be based on the needs of the District and its students. The criteria were to be applied based on information on file as of February 13, 2009, one step at a time until the tie was broken.

11. The District created a Seniority List which contains employees' seniority dates (first date of paid service), current assignments and site, status, and credentials and authorizations. The District used the Seniority List to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the two 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.

12. During the hearing, the District reduced the layoff of respondent Jennifer Matsumoto to 0.5 F.T.E.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter relating to the elimination of 27.50 full-time equivalent positions exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Cause exists under Education Code sections 44949 and 44955 for the District to discontinue particular kinds of services relating to 27.50 full-time equivalent positions. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the Accusation. It is recommended that the Board give respondents notice before May 15, 2009, that their services will no longer be required by the District.

ORDER

1. The accusations served on respondents Rebecca Cook, Erin Corduan, and Katie Stonehouse are dismissed.

2. The layoff of respondent Jennifer Matsumoto shall be reduced to 0.5 F.T.E.

3. The layoff of respondent Leticia Stamos shall not be treated as precautionary and instead she will receive a layoff notice.

4. The Accusations served on all the remaining respondents are sustained. Notice shall be given to each respondent before May 15, 2009 that his or her services will not be required for the 2009-10 school year pursuant to the Board of Education's resolution because of the reduction of particular kinds of services.

Notice shall be given in inverse order of seniority.

DATED: _____

ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

Exhibit A

FALLBROOK UNION ELEMENTARY SCHOOL DISTRICT

The following certificated personnel will receive a layoff notice:

- | | | | |
|----|--------------------------|----|-------------------------|
| 1 | Angulo-Lupercio, Yessica | 14 | Hoehn, Amanda |
| 2 | Appleby, Jennifer | 15 | Karl, Teresa |
| 3 | Ballman, Teresa | 16 | Kesel, Susan |
| 4 | Cook, Rebecca | 17 | Matsumoto, Jennifer |
| 5 | Cox, Christopher | 18 | McConnell, Jennifer |
| 6 | Corduan, Erin | 19 | Miller, Kristen |
| 7 | Felix, Rosa | 20 | Mills, Joshua |
| 8 | Foster, Nancy | 21 | Porter, DeCuba |
| 9 | Galvin, Kindra | 22 | Shellman-Smith, Jessica |
| 10 | Goldate, Charla | 23 | Smith, Keely |
| 11 | Guerrettaz, Cyndy | 24 | Stonehouse, Katie |
| 12 | Hilke, Dana | 25 | Taylor, Andria |
| 13 | Hilsabeck, Larry | | |

The following certificated personnel will receive a precautionary layoff notice:

- 1 Stamos, Leticia