

**BEFORE THE
GOVERNING BOARD
OF THE FRUITVALE SCHOOL DISTRICT**

In the Matter of the Layoff of
CERTIFICATED EMPLOYEES OF THE
FRUITVALE SCHOOL DISTRICT,

OAH NO. 2009060666

Josh Barr, Kathy Burgoni, Callie Clanahan,
Jeff Dundas, Michelle English, Ellen Ferreira,
Magan Gregg, Steve Hilts, Jill Napier, Linda
Provencio, Katy Rios, Sonia Rodriguez,
Monetta Rustin, and Dana Saba,

Respondents.

PROPOSED DECISION

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings,
State of California, heard this matter on July 16, 2009, in Bakersfield, California.

Peter Carton, Attorney at Law, represented the Fruitvale School District.

Ernest Tuttle III, Attorney at Law, represented the respondents.

Evidence was received, and the matter was submitted for decision.

SUMMARY

The Governing Board (Board) of the Fruitvale School District (District) decided to reduce particular kinds of services provided by certificated personnel for the 2009-2010 school year for budgetary reasons.

District staff carried out the Board's decision by using a selection process involving review of credentials, seniority, and skipping. The selection process complied with Education Code requirements.

FACTUAL FINDINGS

1. Carl Olsen, Superintendent of the District, filed the Accusation in his official capacity.

2. Respondents are certificated employees of the District.

3. On June 9, 2009, the Board adopted Resolution No. 0809-14, to discontinue or reduce the particular kinds of services as follows:

Teachers

Self-Contained Classroom Instruction, Grades K-6	4.0 FTE
Physical Education	2.6 FTE
<u>Music</u>	<u>3.31 FTE</u>
Total	9.91 FTE

Other Personnel

Psychologist	.4 FTE
Counselors	2.63 FTE
<u>Total</u>	<u>2.63 FTE</u>

4. The Board based Resolution 08-09-14 on its determination that the legislature failed to provide a COLA (Cost-of-living Adjustment) for the 2009/2010 school year. Based on this determination, the Board authorized a decrease the number of certificated employees at the close of the present school year by a corresponding number of full-time equivalent positions as set forth in Factual Finding 3. The Board also established tie-breaking 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 would be based on the needs of the District and its students in accordance with the specific criteria set forth in the resolution. The District had not applied the tie-breaking criteria as of the time of the hearing.

5. The Board directed the Superintendent to notify the employees affected by the Board's resolution. On or about June 10, 2009, the Superintendent notified certificated employees, including Respondents, in writing that it had been recommended their services would not be required for the next school year. The mailing included the reasons for the notification. Respondents made timely requests for hearing.

6. On June 10, 2009, Superintendent Olsen made and filed Accusations against each Respondent.

7. Notices of Defense were timely filed by Respondents. All prehearing jurisdictional requirements were met.

8. The reduction of the particular kinds of services set forth in Factual Finding 3, related to the welfare of the District and its pupils.

9. The District established through the testimony of its Business Office Administrator that its total revenue limit per unit of average daily attendance for fiscal year 2009/2010 has not increased by at least two percent. In fact, he testified that the District expects a reduction in the Base Revenue Limit for the 2009/2010 school year.

10. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid service in a probationary position), current assignments and locations, advanced degrees, credentials, and authorizations.

11. The District used the Seniority List to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. In determining who would be laid off for the 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.

12. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949, 44955 and 44955.5 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents.

2. Education Code section 44955.5 provides:

(a) During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent, and if in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. The termination shall be pursuant to [Sections 44951 and 44955](#) but, notwithstanding anything to the contrary in [Sections 44951 and 44955](#), in accordance with a schedule of notice and hearing adopted by the governing board.

(b) This section is inoperative from July 1, 2002, to July 1, 2003, inclusive.

3. In this case, the Governing Board of the District determined that based on the Budget Act passed on February 20, 2009, the District determined that its total revenue limit per unit of average daily attendance has not increased by at least two percent, and, in the opinion of the Governing Board of the District, it is necessary to decrease the number of permanent employees in the District.

4. A District may reduce services within the meaning of section 44955, subdivision (b), 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.)

5. Respondent contended that the District cannot proceed with the layoffs because there was no budget in place at the time it gave notice to respondent of the layoff. Respondents’ contention is not persuasive. The District is properly made its determination based on the Budget Act passed on February 20, 2009, in that this Budget Act affects the 2009/2010 school year.

6. Cause was established as required by Education Code sections 44949, 44955 and 44955.5 to reduce the number of certificated employees due to the reduction of particular kinds of services. The Board’s decisions to reduce the identified services were neither arbitrary nor capricious. The decisions relate solely to the welfare of the District’s schools and the pupils within the meaning of Education Code section 44949.

7. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

ORDER

Notice may be given to Respondents Josh Barr, Kathy Burgoni, Callie Clanahan, Jeff Dundas, Michelle English, Ellen Ferreira, Magan Gregg, Steve Hilts, Jill Napier, Linda Provencio, Katy Rios, Sonia Rodriguez, Monetta Rustin, and Dana Saba, that their services will not be required for the 2009-2010 school year.

Dated: July 30, 2009

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings