

**BEFORE THE  
GOVERNING BOARD OF THE  
HUNTINGTON BEACH CITY SCHOOL DISTRICT**

IN THE MATTER OF THE ACCUSATIONS ) OAH NO. 2010020987  
AGAINST: )  
)  
(Respondents listed on Exhibit "A" [Attached )  
To the Accusation] Who Have Returned a )  
Request for Hearing/Notice of Defense Form )  
\_\_\_\_\_ )

**PROPOSED DECISION**

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 30, 2010, at the district office of the Huntington Beach City School District, Huntington Beach, California.

Sharon J. Ormond, Attorney at Law, represented the Huntington Beach City School District.

Carlos R. Perez and Steven T. Nutter, Attorneys at Law, represented the Respondents who appeared at the hearing.

Evidence was received and the matter was submitted for decision.

**SUMMARY**

The Governing Board (Board) of the Huntington City School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2010-2011 school year for budgetary reasons. The decision was not related to the capabilities and dedication of the teachers whose services were proposed to be reduced or eliminated.

District staff carried out the Board's decision by using a selection process involving review of seniority, credentials, and criteria for breaking ties between employees with the same first dates of paid service. The selection process complied with Education Code requirements.

**FACTUAL FINDINGS**

1. Kathy Kessler, Superintendent of the District, filed the Accusations in her official capacity.

2. Respondents are certificated employees of the District.

3. On or prior to February 16, 2010, Superintendent Kessler recommended that the Board give notice that certain services performed by certificated employees be reduced or eliminated for the 2010-2011 school year. Ms. Kessler also recommended that the Board adopt a resolution to reduce or discontinue particular kinds of services for the 2010-2011 school year.

4. On February 16, 2010, the Board adopted Resolution No. HR-43 whereby the Board resolved to discontinue or reduce the particular kinds of services as recommended by Superintendent Kessler. The Board further determined that based on the discontinuance or reduction of services, it would be necessary to decrease the number of certificated employees at the close of the present school year by a corresponding number of full-time equivalent (FTE) positions as follows:

Reduce Kindergarten through 5 <sup>th</sup> Grade Teaching Services	27.92 FTE
Reduce Middle School Core Teaching Services	4.0 FTE
Reduce Middle School Math Teaching Services	1.5 FTE
Discontinue Elementary School Teacher Specialist, Student Support	1.0 FTE
Discontinue Middle School Teacher Specialist, Student Support	2.0 FTE
Discontinue Teacher Inclusionary Practices/Behavioral Interventions	1.0 FTE
Discontinue Middle School Academic Counseling Services	1.0 FTE
Reduce Preschool Special Education Teaching Services	1.0 FTE
Reduce Spec. Ed. Middle School Mild/Moderate Teaching Services	1.0 FTE
Reduce Special Education Middle School RSP Teaching Services	1.0 FTE
Reduce Special Education Elementary School RSP Teaching Services	1.0 FTE
Reduce Spec. Ed. Elem. School Moderate/Severe Teaching Services	1.0 FTE
Discontinue School Readiness Nurse Services	1.0 FTE
<u>Discontinue School Psychologist Services</u>	<u>1.0 FTE</u>
TOTAL CERTIFICATED POSITIONS	45.42 FTE

5. Pursuant to Resolution HR-43, the Board directed Superintendent Kessler to notify the employees affected by the Board's resolution and give notice to said employees that their services would not be required for the ensuing school year and state the reasons therefore.

6. In an attachment to Resolution No. HR-43, the Board set forth a selection process involving review of credentials and other criteria for breaking ties between employees with the same first dates of paid service. The selection process complied with Education Code requirements.

7. Superintendent Kessler made and filed Accusations against each Respondent on March 10, 2010. The Respondents were listed in an attachment to the Accusation, which was incorporated by reference and identified as Exhibit A.

8. On or about March 10, 2010, Ms. Kessler notified 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, a copy of the Accusation and other jurisdictional documents as required by the Education Code.

9. Notices of Defense and Requests for Hearing were timely filed by all of the employees who appeared for the hearing. All jurisdictional requirements were met.

10. On or about March 16, 2010, nine teachers retired from service to the District. As a result, the Governing Board adopted Resolution HR-51 whereby the Board rescinded the preliminary layoff notices sent to certificated employees holding the positions of Teacher Specialist, Student Support Services (3 FTE) and Teacher, Inclusionary Practices/Behavioral Interventions (1 FTE).

11. During the hearing, the District's counsel informed the undersigned that on or about March 17, 2010, the District rescinded preliminary layoff notices to Respondents Constance Clem, Jeffrey Collins, Kyliegh Eckenrod, Melissa Eisenrod, Brett Hardy, Jill Hart, Stephen Hawn, Lori Hiltbrand, Tara Holmes, Timothy Kamps, Cheri Pappas, and Joelynn Strickland. The above mentioned Respondents, as well certain other certificated employees, withdrew their requests for hearing. As a result of teacher retirements, rescissions of preliminary layoff notices, and Resolution HR-51, the District submitted exhibit 9, which is a "Final List of Respondents" subject to layoff.

12. The Board considered attrition, including resignations, retirements and requests for leave, in determining the necessary layoff notices to be delivered to employees.

13. The District maintains a Seniority List which contains employees' seniority dates, current assignments and locations, advanced degrees, credentials, and authorizations.

14. The District identified the most junior employees working in a particular kind of service being reduced or discontinued. The District then analyzed whether each employee, beginning with the most senior, and based on their credentials, could fill a vacancy or “bump” (displace) a more junior employee from their position. The evidence established that for each service to be reduced, the District identified the most junior employees performing the services identified in the Resolution HR-43, then allowed most senior of these employees to exercise reassignment or “bumping rights” in their order of their seniority.

15. The District properly applied the tie-break criteria referenced in Factual Finding 6.

16. The reduction or discontinuation of the particular kinds of services set forth in Factual Finding 4, related to the welfare of the District and its pupils.

17. Respondents are not certificated and competent to render a service being performed by any employee with less seniority who is being retained.

### **LEGAL CONCLUSIONS**

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

2. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services. The Board’s decisions to reduce or eliminate 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.

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

4. Cause exists to dismiss the Accusations filed against the respondents set forth in Factual Findings 10 and 11.

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## **ORDER**

Notice may be given to Respondents Melissa Arneson, Michelle Baker, Elizabeth Bruton, Scott Christian, Lisa Cirac, Jenny Cook, Jennifer Espalin-Castillo, Annie Finnell, Amanda Hart, Laura Horn, Karen Kroeter, Sarah Krupp, Marissa Linares, Roger Mationg, Alyssa Mauro, Dana Palmer, Katharine Pearce, Gail Rocha, Christy Ruppert, Katrina Satterly, Stacy Snow, Amanda Tully and Danielle Zankich, that their services will not be required for the 2010-2011 school year.

Dated: April 6, 2010

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HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings