

BEFORE THE  
GOVERNING BOARD  
OF THE  
VICTOR ELEMETARY SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Layoff/Accusation  
Against:

85 CERTIFICATED EMPLOYEES,  
  
Respondents.

OAH No. 2010030120

**PROPOSED DECISION**

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge, at Victorville, California on April 7, 2010.

Melanie A. Petersen, Esq. of Fagen, Friedman & Fulfroost LLP represented the Victor Elementary School District (the district).

Carlos R. Perez, Esq. of Reich, Adell & Cvitan represented all of the respondents who appeared at the hearing.

Oral and documentary evidence was received and the matter was submitted on April 7, 2010.

**FACTUAL FINDINGS**

1. On February 24, 2010, the Governing Board of the district (the board) adopted Resolution number 10-06, determining that it would be necessary to reduce or discontinue particular kinds of services (PKS) at the end of the current school year. The board determined that the PKS that must be reduced for the 2010-2011 school year were the following full time equivalent (FTE) positions:

<u>PKS</u>	<u>FTE</u>
Elementary Teaching	76.0
Elementary Counselors	2.0

Music

4.0

Total FTE positions to be reduced or eliminated

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82.0

The services listed above are PKS, which may be reduced or discontinued within the meaning of Education Code section 44955.

2. On February 25, 2010, based on the board's resolution, the Assistant Superintendent, designee for the Superintendent, recommended, with regard to the ensuing school year, that the board reduce or eliminate the specified PKS provided by the district for the 2010-2011 school year by notifying the certificated employees listed in Exhibit A, attached hereto, that their services will not be required for the 2010-2011 school year.

3. The district's recommendation and the board's decision to reduce or discontinue the services listed in Finding 1, above, were neither arbitrary nor capricious; rather, the recommendation and decision were based on the projected, eight to ten million dollar budget deficit. Thus, the board's decision represents a proper exercise of its discretion.

4. The reduction and 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 as determined by the board.

5. The Assistant Superintendent designated the respondents, permanent or probationary teachers employed by the district, by creating a seniority list, first selecting teachers to be laid off in the inverse of the order in which they were employed, then assigning and reassigning employment in such a manner that all employees to be retained will be retained so as to render services which their seniority and qualifications entitle them to render.

6. Prior to March 15, 2010, the 85 certificated employees listed in Exhibit A, attached hereto, affected by the layoffs received written notice notifying them that pursuant to Education Code sections 44949 and 44955, their services "will be terminated for the 2010-2011 school year."

7. On February 25, 2010, the Assistant Superintendent of the district made and filed an accusation in her official capacity.

8. Prior to March 15, 2009, all respondents were served with board resolution number 10-06, a Notice of Recommendation that Services Will Be Terminated, board resolution number 10-02 establishing tie-breaking criteria, the Accusation, a Notice of Defense, a Notice of Hearing, and copies of Education Code sections 44949 and 44955 and Government Code sections 11506, 11507.5, 11507.6, and 11507.7. Additionally, the Notice of Recommendation that Services Will be Terminated advised respondents as follows:

“You are advised that you may request a hearing to determine if there is cause for not reemploying you for the 2010-2011 school year. For that purpose, we enclose a document entitled ‘Combination Request for Hearing and Notice of Defense’ for your use.

Your completed Combination Request for Hearing and Notice of Defense must be delivered to Cheri Sanders Assistant Superintendent, Personnel Services on or before 4:00 p.m. on March 22, 2010. (Exh. 4.)”

9. All respondents timely submitted their notices of defense requesting a hearing to determine if cause exists for not re-employing them for the ensuing year.

10. Each respondent who requested a hearing and filed a Notice of Defense was properly noticed of the date, time and place of the instant hearing.

11. All prehearing jurisdictional requirements were met.

12. Respondents are certificated permanent or probationary employees of the district.

13. The following concern was raised during the hearing:

Initially, the respondents who were affected by the 4.0 FTE reduction in the Music program were advised that they were being laid off due to the elimination of the music program. Later, the respondents were informed that the music program is not going to be eliminated next year; rather, it will be redesigned, so that multi-subject credentialed teachers can provide the students with music programs.

14. In connection with this concern, the evidence established the following:

Even though the single subject music teacher positions are being eliminated multi-subject credentialed teachers can teach blocks of music so that similar, but not identical, music programs can be made available to district students. The district’s ability to alter the current music program and offer alternative music programs does not negate the district’s ability to lay-off the noticed music PKS respondents.

15. The services of no permanent employee are being terminated while any probationary employee, or any permanent employee with less seniority, is being retained to render services which such permanent employee is certificated and competent to render.

16. Subsequent to the action the board took on February 24, 2010, to reduce particular kinds of services by 82.0 FTE positions, the district continued to evaluate its personnel needs. After taking into consideration positively assured attrition and the effects of a retirement incentive program, the district has elected to rescind the notices of

termination as to the following respondents: Merrilee Ironside; April Kline; Judy Garrett; Natalie Phillips; and Katie Rossi.

17. In addition to rescinding the notices, as set forth in Finding 16, above, the district agreed to modify the seniority list by changing Stephanie Clapper's seniority date from 2/5/2007 to 1/8/2007 (this change does not alter her position on the reduction in force list).

## LEGAL CONCLUSIONS

1. Jurisdiction for the instant proceedings exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided/met, as required.

2. The services listed in Factual Finding 1 are PKS that can be reduced or discontinued pursuant to Education Code section 44955. The board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

3. Based on the Factual Findings, considered in their entirety, cause exists to reduce the number of certificated employees of the District by 77 FTE positions (the original 82 FTE positions minus the 5 notices that were rescinded), due to the budget crisis described in Factual Finding 3.

4. Cause to reduce or discontinue services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

5. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

6. Cause exists to notify all of the respondents, except for the five listed in Finding 16 and those issued precautionary notices, that their services will not be needed during the 2010-2011 school year due to reduction or discontinuance of PKS.

## ADVISORY DETERMINATION

WHEREFORE, THE FOLLOWING ADVISORY DETERMINATION is hereby made:

1. The Accusation is sustained in part. The district shall notify all of the respondents listed in Exhibit A, except for Merrilee Ironside, April Kline, Judy Garrett, Natalie Phillips, Katie Rossi, and those issued precautionary notices, that their services will not be needed during the 2010-2011 school year due to lack of funds and the resulting need to reduce or discontinue PKS.

2. The Accusation is dismissed with respect to respondents Merrilee Ironside, April Kline, Judy Garrett, Natalie Phillips, and Katie Rossi and all respondents who were issued precautionary notices.

DATED: April \_\_\_\_, 2010

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ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings

## EXHIBIT A

<b>Last Name</b>	<b>First Name</b>
Aleman	Martha
Alsbury	Amy
Alsbury	Matthew
Alvarez	Humberto
Barbour	Kristi
Beck	Merry
Bernal	Sacnite
Bimber	Megan
Bossi	Karen
Bragg	Christy
Brown	Lloyd
Budgett	Amber
Caughey	Michelle
Claire	Kimberly
Clapper	Stephanie
Clark	Marcos
Clarke	Cassandra
Collins	Gary
Cortez-Ramirez	Irma
Davis	Aubrey
Denson	Lorrie
Devlin	Conor
Egnozzi	Brittan
Fernandez	Lupita
Flores	Daisy
Forget	Ricky
Fronarina	April
Gabler	Christine
Gallegos	Janet
<b>[DISMISSED]</b> Garrett	Judy
Garza	Joseph
Halemeier	Kristin
Honeycutt	Jer'Ray
Howard	Audrey
<b>[DISMISSED]</b> Ironside	Merrilee
Jore	Sunny

Keck	Lori
Kerns	Crystal
King	Kristie
Kinney	Stephanie
<b>[DISMISSED]</b> Kline	April
Lee	Rebecca
Leon	David
Mata	Kristine
McKee	Krista
Mosqueda	Esther
Natali	Anthony
Nelson	Joanne
Ninemire	Jayme
Norby	Brian
O'Connor	Joanne
Omila-Requerme	MaryAnn
Ornelas	Nicole
Palacios	Jennifer
Palacios	Livier
<b>[DISMISSED]</b> Phillips	Natalie
Picarelli	Michael
Pike	Wendy
Pinckney	Judy
Plotner	Jamie
Potter	Steve
Reid	Carmen
Reyes	Jerry
Reyes	Margarita
Roberts	Regina
<b>[DISMISSED]</b> Rossi	Katie
Salgado	Michelle
Sanderson	William
Sandven	April
Sipes	Melissa
Smith	Robin
Soto	Michelle
Stoker	Michelle
Trudeau	Sara
Ubina	Misty

Vinson	Kristin
Wolfe	Megan
Wong	Shelley
Yamnitz	Ashley

Brakin	Eiko
Graham	Jill
Hernandez	Noel-Laura
Hollis	Daniel
Johnson	Anita
Luke	Kim