

BEFORE THE GOVERNING BOARD OF THE  
PALM SPRINGS UNIFIED SCHOOL DISTRICT

In the Matter of the Accusation Against:

Respondents Listed on Exhibit "A"

OAH No. 2010020591

**PROPOSED DECISION**

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in Palm Springs, California on April 26, 2010.

William A. Diedrich, Esq., Atkinson, Andelson, Loya, Ruud and Romo represented the District.

There was no appearance by or on behalf of Respondents Nidia Bustamante, Kim McClinton, Maria Rivas and Kristin Wells.

With the exception of Respondents Nidia Bustamante, Kim McClinton, Maria Rivas and Kristin Wells, Jon Y. Vanderpool, Esq., Tosdal Smith Steiner & Wax, represented all Respondents.

The matter was submitted on April 26, 2010.

**SUMMARY OF PROPOSED DECISION**

The Governing Board of the Palm Springs Unified School District determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, "bumping," "skipping" and breaking ties between/among employees with the same first dates of paid service. The selection process was in accordance with the requirements of the Education Code.

## FACTUAL FINDINGS

1. Respondents listed on Exhibit “A” (Respondents) are probationary or permanent certificated employees of the Palm Springs Unified School District (District).
2. On March 9, 2010, Lorri McCune, the District’s Superintendent (Superintendent), notified the District’s Governing Board (Board) of her recommendation to reduce or discontinue services for the ensuing school year “due to budgetary limitations”.
3. On March 9, 2010, the Board adopted Resolution No. 2009/2010-53 reducing or eliminating particular kinds of services for the ensuing school year and establishing “competency” criteria as described in Education Code section 44955 for purposes of bumping.
4. On March 9, 2010, the Board adopted the Superintendent’s recommendation and thereby took action to reduce or eliminate particular kinds of services, commencing the 2010-2011 school year. Further, the Board directed the Superintendent to determine which employees’ services would not be required for the 2010-2011 school year and to take all necessary steps under the law “not to employ those certificated employees of the District” because of the reduction and elimination of these programs and services.
5. On March 10, 2010, Mauricio Arellano, Assistant Superintendent Human Resources (Assistant Superintendent), served Respondents with written notice that, due to financial conditions of the District, the Superintendent recommended not to re-employ them for the ensuing school year. In addition, the notice advised Respondents of the right to hearing, that the request for hearing must be delivered to the District’s office no later than March 22, 2010 and that failure to request a hearing would constitute waiver of the right to a hearing.

Respondents submitted a timely request for hearing to determine if there was cause for not re-employing them for the ensuing school year.

6. On March 10, 2010, the Assistant Superintendent made, filed and timely served an Accusation for lay-off of certificated employees and related materials on each Respondent.

In response, Respondents submitted a timely Notice of Defense.

7. All prehearing jurisdictional requirements were satisfied.
8. On March 9, 2010, the Board adopted Resolution No. 2009/2010-53 and thereby took action to reduce or eliminate the following particular kinds of certificated services commencing the 2010-2011 school year as follows:

Elementary (K-5) Classroom Teachers	34	F.T.E.
Elementary Music Teachers	5	F.T.E.
Certificated Registered Nurse	1	F.T.E.
ARRA Intervention Teachers	8	F.T.E.
Secondary Business Teacher	1	F.T.E.
Elementary Reading Teacher	1	F.T.E.
Elementary Teacher on Special Assignment	1	F.T.E.
Middle School Core Teachers	5	F.T.E.
Middle School Nutrition Exploratory Teacher	1	F.T.E.
Secondary English Teacher	2	F.T.E.
Secondary French Teacher	1	F.T.E.
Secondary P.E. Teacher	1	F.T.E.
Secondary Social Studies	1	F.T.E.
School Psychologists	1.5	F.T.E.
Vice Principals	3	F.T.E.
<b>TOTAL CERTIFICATED POSITIONS</b>	<b>66.5</b>	<b>F.T.E.</b>

The proposed reductions totaled 66.5 full-time equivalent (FTE) positions.

9. The District considered all known attrition, including resignations and retirements, in determining the actual number of final layoff notices to be delivered to its certificated employees.

10. The Assistant Superintendent was responsible for implementing the technical aspects of the layoff. The District developed a seniority list that contained, among other matters, the teacher's name, status, seniority date, assignment, credentials, credential status, and application of tie-breaker criteria.

The seniority date was based on the first date of paid service rendered in a probationary position.<sup>1</sup> To assure the accuracy of the District's information, the District notified certificated employees of seniority date, credentials and other data that it had on file and provided an opportunity to challenge or update this information. If the District

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Education Code section 44845.

substantiated the employee's requested changes, the District changed its records. The date of the District's seniority list for certificated personnel (Exhibit 12) is April 21, 2010.

The District used the seniority list for permanent and probationary certificated employees to develop a proposed order of layoff and a "bumping" list to determine the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area that would entitle them to "bump" other junior employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions 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. In so doing, the District considered "competency" criteria established by the Board in its Resolution, to wit:

"That "competency" as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include: (1) possession of a valid credential in the relevant subject matter area; (2) "highly qualified" status under the No Child Left Behind Act in the position into which the employee is bumping; (3) and an appropriate EL authorization (if required by the position); and (4) with regard to bumping into a position that includes instruction in "Read 180," special training in implementing the "Read 180" program; (5) with regard to bumping into a Secondary Theatre, Secondary Band, or Secondary Chorus positions, special training and experience necessary to serve in said positions and at least one (1) year of experience in the previous five (5) years serving in the position; (6) with regard to assignments involving instruction in Language 3, completion of Language 3 training; (7) with regard to assignments involving GATE instruction, possession of GATE Certification; and (8) with regard to bumping an employee who possesses a National Board Certification, possession of a National Board Certification."

11. The District applied some but not all of the competency criteria adopted in the Board's Resolution. At issue in this proceeding are the Board's competency criteria described in subsections (5) and (6) of its Resolution [Finding 10].

12. Respondent Andrew Buchanan (Respondent Buchanan) asserts that he should be allowed to bump Respondent Allyson Huntsman (Respondent Huntsman). The District contends that in order to do so he must satisfy the competency criteria set forth in the Board's Resolution; in other words, he must establish that he has the special training and experience necessary to serve in the position and that he has served in the position at least one year of the previous five.

The Assistant Superintendent testified regarding the distinction between secondary Band, secondary Chorus and elementary music teachers. He explained that secondary Band and secondary Chorus teachers "run" the CORE music program and described their responsibilities outside of the classroom, such as marching band, jazz band and after school events; in addition, these teachers work with boosters and are involved with civic events. In response to questioning regarding particular skill set that secondary Band and secondary

Chorus teachers require, the Assistant Superintendent testified that these teachers have a background in instrumental music and choral music arrangements respectively; further, they put on a production with the Fine Arts Program. Finally, he testified that issuing lay off notices to these teachers would have a “huge effect” on the continuity of instruction of that program “because of their connections to the city, to different programs and participation in different events that the District has locally.”

The District issued Respondent Huntsman a precautionary layoff notice. During the current school year, Respondent Huntsman teaches Choral Music to the District’s middle school students. She holds a preliminary music credential, and her seniority date is August 27, 2009.

During the 2009 – 2010 school year, Respondent Buchanan is assigned to teach elementary music. His seniority date is August 27, 2008. He holds a clear music credential. He has had experience teaching secondary Band in Michigan as well as at La Quinta High School. None of the teaching experience occurred within the past five years. The District issued him a layoff notice.

Though he is more senior than Respondent Huntsman, Respondent has not taught secondary Band or secondary Chorus within the past five years. Therefore, he did not establish that he satisfied the District’s competency criteria in order to displace Respondent Huntsman. As such, Respondent Buchanan is not entitled to bump Respondent Huntsman.

13. The District seeks to retain the most senior teachers who have “special training and experience” to assignments involving instruction in Language 3.

Language 3 is an alternative CORE language arts program, an intervention program for at-risk readers who are two or more grade levels behind level in English Language Arts, beginning in the third grade. It is taught in grades three through twelve. The District offered Language 3 for the first time during the 2009 – 2010 school year at one school, Two Bunch Palms Elementary School.

Teachers who provide this service receive five days initial training and another six days of maintenance training. The total cost to the District is \$7,500.00 per teacher. Deborah Collier (Collier) and Rochelle Warila (Warila) are certificated employees of the District, teach Language 3 during the current school year and did not receive layoff notices. Each described the distinctions in teaching methods, benefits for the students and excellent results that she has witnesses as a result of implementation of Language 3 this year. According to the Assistant Superintendent, if not allowed to retain these teachers, principals would be required to identify additional teachers to take the training and expend additional funds for these teachers to do so because the District has identified a goal to help these students reach grade level to the extent possible.

Considering the evidence, the District established a need for Language 3 teachers and provided evidence of the training and experience these teachers have.

Collier and Warila each has a seniority date of August 27, 2008, has had Language 3 training and teaches Language 3 during the 2009 – 2010 school year.

Respondents Maritza Castro, Juanita Perez Chica and Shelby Holton are certificated employees of the District and assert that they should be allowed to bump Warila and Collier. Though more senior to Collier and Warila, Respondents Castro, Perez Chica and Holton do not have training or experience to teach Language 3.

The District demonstrated that it has a need to retain more experienced Language 3 teachers. The teachers it seeks to retain Collier, Warila have the special training and experience teaching Language 3. There is no evidence that any more senior teacher is competent to displace Collier and/or Warila.

14. Between the employees who first rendered paid service to the District on the same date, the Board determined their order of termination solely on the basis of needs of the District and the students. The Board adopted specific criteria and provided clear instructions for implementation of the criteria. The order of termination was based on the needs of the District and its students. There is no evidence that tie-breaker criteria were not fairly applied to rank those employees hired on the same date.

15. The services that the District proposed to reduce were “particular kinds of services” that can be reduced or discontinued within the meaning of Education Code section 44955. The Board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious but constituted a proper exercise of discretion.

16. The District’s reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

17. No certificated employee junior to any Respondent was retained to perform any services that any Respondent was certificated and competent to render.

## LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in these sections are satisfied.

2. A District may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to

deal with the pupils involved.” (*Rutherford vs. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

3. Cause exists under Education Code sections 44949 and 44955 for the Palm Springs Unified School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuance of particular kinds of services is related solely to the welfare of the schools and the pupils thereof.

4. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he/she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy vs. Richmond Unified School District* (1975) 13 Cal. 3d 469.)

5. The District has the discretion to determine whether teachers are certificated and competent to hold the position for which said teachers have been skipped and retained. (*King v. Berkeley Unified School District* (1979) 89 Cal.App.3d 1016) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831)

6. No employee with less seniority than any Respondent is being retained to perform a service that any Respondent is certificated and competent to render.

7. All arguments not addressed herein are not supported by the evidence and/or the law and therefore rejected.

#### ORDER

The Accusation served on Respondents listed on Amended Exhibit “A” is sustained. Notice shall be given to Respondents listed on Amended Exhibit “A” before May 15, 2010 that their services will not be required for the 2010-2011 school year because of the reduction or discontinuance of particular kinds of services.

DATED: \_\_\_\_\_

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VALLERA J. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

**Palm Springs Unified School District**  
**EXHIBIT "A"**

The following certificated personnel will receive a layoff notice:

- |                        |                               |
|------------------------|-------------------------------|
| 1 Bobro, Gail          | 27 Mulligan, Christine        |
| 2 Bryan, Joseph        | 28 Myers, Geoffrey            |
| 3 Buchanan, Andrew     | 29 Nuno, Sandra               |
| 4 Bustamante, Nidia    | 30 O'Connor, Jennifer         |
| 5 Castro, Maritza      | 31 Omier, Erika               |
| 6 Clem, Amanda         | 32 Parent, Jessica            |
| 7 Cortez, Elba         | 33 Perez-Valenzuela, Brenda   |
| 8 Damico, Cheri        | 34 Pimentel-Jaimes, Maria     |
| 9 Domene, Timberly     | 35 Rhoton, Scott              |
| 10 Gascoigne, Amber    | 36 Rivas, Maria               |
| 11 Goldshteyn, Tatyana | 37 Robinson, Elizabeth        |
| 12 Heard, Rebecca      | 38 Rodriguez, Doris           |
| 13 Holton, Shelby      | 39 Scotti, Gina               |
| 14 James, Clint        | 40 Simpson, Jessica           |
| 15 Kistler, Casey      | 41 Smith, Nancy               |
| 16 Kudlac, Amy         | 42 Smith, Shannon             |
| 17 La Beaf, Tara       | 43 Stone, Guy                 |
| 18 Lee, Brandy         | 44 Surdin, Katharine          |
| 19 Lee, Heidi          | 45 Thompson, Rhonda           |
| 20 Leon, James         | 46 Velazquez-Romero, Cristina |
| 21 Lopez, Sabrina      | 47 Wade, Heather              |
| 22 Ludwin, Ryan        | 48 Walters, Robyn             |
| 23 Luoto, Karen        | 49 Washburn, Polly            |
| 24 Mathis, Pamela      | 50 Whittaker, Angela          |
| 25 McKee, Norman       | 51 Yasuda, Jason              |
| 26 Moser, Amber        |                               |

The following certificated personnel will receive a precautionary layoff notice:

- |                          |                        |
|--------------------------|------------------------|
| 1 Collier, Deborah       | 17 Nisco, Leigh-Ann    |
| 2 Comer, Sharon          | 18 Orozco, Mayra       |
| 3 Contreras, Eduardo     | 19 Perezchica, Juanita |
| 4 Ediss, Nicole          | 20 Plank, Christina    |
| 5 Feffer, Tricia         | 21 Powell, Jason       |
| 6 Fleischner, Krista     | 22 Rosen, Brandi       |
| 7 Goerzen, Kristen       | 23 Schindler, Kelly    |
| 8 Gunkel, Kari           | 24 Schroer, Erin       |
| 9 Hebert, Anne           | 25 Sharma, Priyanka    |
| 10 Huntsman, Allyson     | 26 Silvey, Kristen     |
| 11 Lauthen, Jennifer     | 27 Verhasselt, Michael |
| 12 Lemay, Stephanie      | 28 Warila, Rachelle    |
| 13 Licata, Janna         | 29 Wells, Kristin      |
| 14 Lightcap, Lynn        | 30 Williams, Anita     |
| 15 McClinton, Kim        | 31 Wimberley, Emmaline |
| 16 Miramontes, Christina | 32 Wyatt, Clinton      |

**PALM SPRINGS UNIFIED SCHOOL DISTRICT**  
**AMENDED EXHIBIT “A”**

1. Borbro, Gail
2. Buchanan, Andrew
3. Castro, Maritza
4. Clem, Amanda
5. Cortez, Elba
6. Feffer, Tricia
7. Gasciogne, Amber
8. Goldshteyn, Tatyana
9. Heard, Rebecca
10. Holton, Shelby
11. Kistler, Casey
12. Lauthen, Jennifer
13. Lee, Brandy
14. Lopez, Sabrina
15. Miramontes, Christina
16. Moser, Amber
17. Nisco, Leigh-Ann
18. Nuno, Sandra
19. O’Connor, Jennifer
20. Omier, Erika
21. Perez Chica, Juanita
22. Rosen, Brandi
23. Schindler, Kelly
24. Scotti, Gina
25. Simpson, Jessica
26. Smith, Shannon
27. Smith, Nancy
28. Stone, Guy
29. Thompson, Rhonda
30. Velazquest-Romero, Christina
31. Verhasselt, Michael
32. Wade, Heather
33. Walters, Robyn
34. Washburn, Polly
35. Whittaker, Angela
36. Yasuda, Jason