

BEFORE THE
GOVERNING BOARD
APPLE VALLEY UNIFIED SCHOOL DISTRICT
COUNTY OF SAN BERNARDINO
STATE OF CALIFORNIA

In the Matter of the Layoff of:

Christie Axtman and other
certificated employees of the
Apple Valley Unified School District,

Respondents.

OAH Case No. 2012030326

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 17, 2012, in Apple Valley, California.

Margaret A. Chidester, Attorney at Law, represented Donna Colosky (Colosky), Senior Director, Human Resources, Apple Valley Unified School District (District).

Brenda E. Sutton-Wills, Staff Attorney, California Teachers Association, represented Respondents Christine Axtman (Axtman), Evelin Davy (Davy), Anna Owens (Owens), Kattie Romero (Romero), Maria Sanchez (Sanchez), Melissa Villanueva (Villanueva), Lyndsie Willis (Willis), and Pamela Yearton Garrett (Yearton Garrett), who are collectively referred to as Respondents.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2012-2013 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2012-2013 school year.

Oral and documentary evidence, and evidence by oral stipulation on the record, was presented at the hearing, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Director Colosky filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.

3. On March 8, 2012, the Governing Board of the District (Governing Board) accepted the recommendation of Superintendent Thomas E. Hoegerman (Hoegerman) and Director Colosky, and adopted Amended Resolution Number 1112-19, reducing or discontinuing the following services for the 2012-2013 school year:

<u>Service</u>	<u>FTE¹ Reduction</u>
High School Physical Education Teachers	2.0
Independent Study Teachers	2.0
Opportunity Teacher	1.0
High School Math Teachers	3.0
High School English Teacher	1.0
K-8 English Teachers	2.0
K-8 Multiple Subject Teachers	20.0
Counselor	<u>1.0</u>
Total	33.0

4. On March 9, 2012, the District provided notice to the Governing Board and to Respondents that Respondents' services will not be required for the 2012-2013 school year due to the reduction of particular kinds of services. Respondents thereafter filed timely requests for hearing.

5. On or about March 12, 2012, the District issued the accusation, and served it and other required documents on Respondents during the period of March 14, 2012 to March 22, 2012. With the exception of Respondent Axtman, Respondents thereafter filed timely notices of defense. The District has nevertheless accepted Respondent Axtman's notice of defense and does not object to her participation in the hearing.

6. All prehearing jurisdictional requirements have been met.

7. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.²

8. The District seeks to reduce or discontinue the services set forth in factual finding number 3 due to the loss or projected loss of State funding. The Governing Board's decision to reduce or discontinue the services is not arbitrary or capricious but is rather a proper exercise of the District's discretion in light of such potential loss of revenue.

¹ Full-time equivalent position.

² All further references are to the Education Code.

9. The reduction or discontinuation of services set forth in factual finding number 3, in the context of potential revenue losses and the need to continue providing services to students if such losses materialize, 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 Governing Board.

10. In Exhibit "A" to Amended Resolution 1112-19, the Governing Board exempted from layoff certificated personnel who met designated credential, competence, assignment, experience or certification criteria. Respondents did not challenge any of the exemptions set forth in the exhibit to the resolution.

11. In Exhibit "B" to Amended Resolution 1112-19, the Governing Board set forth its tie-breaking criteria for employees with the same seniority date. Points were awarded for each of the following criteria: speech therapist credential, Bilingual Crosscultural Language and Academic Development certificates, other authorizations to teach English Learners, experience in certificated positions with the District prior to the seniority date, certificated experience outside the District, additional credentials, Master's Degree, and Doctor's Degree. The criteria are reasonable as they relate to the skills and qualifications of certificated employees. Respondents did not challenge the District's application of the criteria.

12. The District considers Respondents Axtman, Davy, Owens, Romero, Sanchez, Villanueva, Willis, and Yearton Garrett to be temporary employees, most of whom are filling positions of other teachers on special assignment in various positions that receive some type of categorical funding. One of the positions occupied by one of the employees considered temporary is the one created by the job-sharing arrangement of two permanent certificated employees who are expected to return to their regular full time positions for the 2012-2013 school year. In the exercise of caution, the District nevertheless sent notices and afforded all other protections of sections 44949 and 44955 to all certificated employees it seeks to lay off, even those it considers temporary.

13. The District has considered all positively assured attrition, including two resignations during the week of April 10, 2012. As a result, seven notices of layoff have been rescinded. The District plans to continue to consider all future additional positively assured attrition to avoid unnecessary layoffs.

14. The District did not retain any certificated employee junior to any Respondent to render a service which any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 6.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 7.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 9.

4. The District maintains that Respondents Axtman, Davy, Owens, Romero, Sanchez, Villanueva, Willis, and Yearton Garrett are temporary employees by virtue of occupying the positions of certificated employees on special assignment or job-sharing. Although Respondents contend that such "back-filling" of positions is not an authorized basis to designate employees as temporary, they ultimately assert that it is unnecessary to resolve the issue in this proceeding. The parties did not present sufficient evidence, which would have included Respondents' employment contracts and additional detail regarding the circumstances of their employment, to resolve the issue of whether Respondents are properly classified as temporary employees. In any event, even if deemed probationary employees, the District did not retain any junior employee to perform a job which any one of the Respondents is certificated and competent to perform. In these circumstances, it is unnecessary to determine whether Respondents are temporary or probationary employees, as it would not impact their order of termination.

5. Cause exists to terminate the services provided by Respondents Axtman, Davy, Owens, Romero, Sanchez, Villanueva, Willis, and Yearton Garrett for the 2012-2013 school year, by reason of factual finding numbers 1 through 14 and legal conclusion numbers 1 through 4.

ORDER

The Accusation is sustained and the District may notify Respondents Axtman, Davy, Owens, Romero, Sanchez, Villanueva, Willis, and Yearton Garrett that their services will not be needed during the 2012-2013 school year due to the reduction of particular kinds of services.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings