

BEFORE THE BOARD OF TRUSTEES OF THE  
FULLERTON JOINT UNION HIGH SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 20133030471

Certificated Employees of the Fullerton Joint  
Union High School District,

Respondents.

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), heard this matter on May 7, 2013, in Fullerton, California.

Anthony P. DeMarco, Esq., represented the Fullerton Joint Union High School District (District).

Carlos Perez, Esq., represented the nine Respondents (as listed on exhibit 3, page 2). At the conclusion of the hearing, the District withdrew the Accusation against Respondents Aaron Chang and David Edwards.

**FACTUAL FINDINGS**

1. Edward D. Atkinson, Assistant Superintendent of the District, acting in his official capacity, caused all pleadings, notices and other papers to be filed and served upon each Respondent pursuant to the provisions of Education Code sections 44949 and 44955. All pre-hearing jurisdictional requirements were met.

2. Respondents are employed by the District as permanent, probationary, intern, pre-intern, emergency permitted, waiver, and/or temporary certificated employees of the District.

3. On March 5, 2013, pursuant to Education Code sections 44949 and 44955, the Governing Board of the District (Board) issued a Resolution which approved the recommendation by the Superintendent that notice be given to Respondents that their services will not be required for the ensuing school year and stating the reasons for that recommendation

4. On March 13, 2013, Respondents were given written notice of the recommendation that notice be given to them, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

5. It was established that cause exists, within the meaning of Education Code sections 44949 and 44955, for not reemploying Respondents for the ensuing school year for all of the reasons set forth below. The District has decided that particular kinds of services of the District will be reduced or eliminated no later than the beginning of the 2013-2014 school year.

6. The reduction or discontinuation of these particular kinds of services is related to the welfare of the District and its pupils. Due to the reduction or discontinuation of particular kinds of services, it is necessary to decrease the number of certificated employees of the District as determined by the Board. This reduction is necessary because of budgetary issues.

7. The Board decided that it is necessary to decrease the number of certificated employees because of the reduction in services. These services are “particular kinds of services” that may 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 rather, constituted a proper exercise of discretion. The Board is faced with a budget shortfall. A detailed list of the particular kinds of services to be eliminated is stated in Exhibit 1, Resolution number 2012/13 #45, which is hereby incorporated by reference as if fully set forth herein.

8. The reduction or discontinuation of these particular kinds of services is related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services is necessary to decrease the number of certificated employees of the District as determined by the Board. This reduction is necessary because of budget reductions.

9. The Board properly considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees prior to March 15, 2013. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627 at 636).

10. The District properly created and utilized its seniority list by determining the first date of paid service of each certificated employee and properly utilized reasonable “tie-breaker” criteria when necessary. No junior teacher has been improperly retained in place of more senior teacher.

11. None of the seven remaining Respondents presented any legal basis to challenge their layoff.

## CONCLUSIONS OF LAW

1. Jurisdiction for these proceedings exists pursuant to Education Code sections 44949 and 44955.

2. Each of the services set forth in Findings 5-7 is a particular kind of service which may be reduced or discontinued in accordance with applicable statutes and case law.

3. The District's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

4. Cause exists to reduce the District's teaching positions as described above and to give notice to the affected teachers pursuant to Education Code section 44955. Based on the above Findings, including the preamble to this Proposed Decision, the names of the affected teachers, those as to whom final notices of layoff may be given, are as follows:

All Respondent teachers listed in exhibit 3, page 2, as follows: Eduardo Avendano, Marjorie Brown, Brian Cuevas, William Fritz, Teresa Mormont, Anna Sanders, and Han Tran.

Respondents Aaron Chang and David Edwards are retained by the District and are not subject to layoff.

## ORDER

Because of the reductions of services, the District may give notice to the teachers identified in Legal Conclusion No. 4 that their services will not be required for the 2013-2014 school year.

Dated: May 8, 2013

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CHRIS RUIZ  
Administrative Law Judge  
Office of Administrative Hearings