

BEFORE THE  
GOVERNING BOARD OF THE  
DENAIR UNIFIED SCHOOL DISTRICT  
COUNTY OF STANISLAUS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against :

CERTAIN CERTIFICATED EMPLOYEES  
OF THE DENAIR UNIFIED SCHOOL  
DISTRICT,

Respondents.

OAH No. 2013070619

**PROPOSED DECISION**

Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on August 5, 2013.

Roman J. Munoz and Chelsea Olson, Attorneys at Law, Kronick, Moskovitz, Tiedemann & Girard, represented the Denair Unified School District.

Ernest Tuttle, IV, Attorney at Law, represented all of the respondents.

Evidence was received and the record was left open for the receipt of a stipulated list of respondents whose positions will be eliminated or reduced in the 2013-2014 school year if the Denair School District qualifies for the application of Education Code section 44955.5<sup>1</sup>. The stipulated list of those affected was received from the parties on August 6, 2013, marked as exhibit 21, and received in evidence. The matter was submitted on August 6, 2013. In accordance with the Governing Board's Resolution number 071713R-29 and the language of section 44955.5 requiring the Board to adopt a schedule of notice and hearing, the Proposed Decision is to be submitted to the Board on or before August 12, 2013. The Board is to act on the Proposed Decision on August 12, 2013, and send final notices to respondents on August 14, 2013.

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<sup>1</sup> All future statutory references are to the Education Code unless otherwise stated.

## FACTUAL FINDINGS

1. Walt L. Hanline, Ed.D, Interim Superintendent, Denair Unified School District (District), County of Stanislaus, State of California, filed the Accusation in his official capacity.

2. On July 17, 2013, the Governing Board (Board) of the District adopted Resolution No. 071713R-29, that reduced and/or discontinued particular kinds of certificated services (PKS) no later than the beginning of the 2013-2014 school year, in the amount of 14.78 full-time equivalent (FTE) certificated employee positions. The specific reductions were as follows:

Human Performance (P.E., K-5)	.68 FTE
Band Teacher	.14 FTE
High School Photography	.14FTE
High School Math	1.14 FTE
High School Sheltered English	.14 FTE
High School Spanish	.28 FTE
High School English	.14 FTE
High School Science/Biology	.14 FTE
High School Ag Biology	.14 FTE
High School Physical Education	1.0 FTE
Ag Mechanics	.14 FTE
High School ELD Teacher	.28 FTE
High School English/Drama	1.0 FTE
K-8 ELD Teacher	.50 FTE
K-8 Teachers Multiple Subject	6.92 FTE
Community Day School (K-12)	2.0 FTE

3. The Board further determined that it shall be necessary by reason of the reduction and/or discontinuance of services to decrease the number of permanent and/or probationary certificated employees at the beginning of the 2013-2014 school year, and directed the Superintendent to proceed accordingly by notifying the appropriate employees to implement the Board's determination.

4. The Board's Resolution referenced section 44955.5, recited below, which authorizes a school district to terminate the services of certificated personnel if the district's total revenue limit per unit of average daily attendance has not increased by at least two percent and the district's governing board is of the opinion that it is therefore necessary to decrease the number of certificated employees. The Board must act between five days after the enactment of the Budget Act and August 15 of the fiscal year to which the Budget Act applies.

5. The Board's Resolution also referenced section 44238.06, added to the Education Code on July 1, 2013, which provides that effective July 1, 2013, except as

otherwise indicated and where the context requires otherwise, references to “revenue limit” in the Education Code shall instead refer to the “local control funding formula” (explained below).

6. The Board’s Resolution stated that (1) the total local control funding formula per unit of average daily attendance for fiscal year 2013-2014 had not increased by at least two percent; and (2) it was therefore necessary to decrease the number of permanent certificated employees in the District.

7. A Request for Hearing was timely filed by respondents to determine if there is cause for not reemploying them for the next school year.

8. The Superintendent made and filed the Accusation against respondents after respondents requested a hearing. The Accusation package included the required accompanying documents and a blank Notice of Defense (Accusation packet) and was timely served on respondents. Respondents filed timely notices of defense.

9. At the administrative hearing, the parties stipulated that all procedural requirements relating to service of the required notices were satisfied. The parties also stipulated that assignments and reassignments (bumping) were properly considered in accordance with a chart received in evidence as exhibit 20. The parties further stipulated that exhibit 21 reflects the respondents whose positions will be eliminated or reduced in school year 2013-2014, providing the District qualifies for the layoff procedure described in section 44955.5. The affected teachers are as follows:

Halla (Inga) Bernard	Reduced from 1.0 Math to .86 Math
Cathy George	Reduced from 1.0 Band/Choir to .86 Band/Choir
Sheila Gianfortone	Lay off (1.0 FTE)
Monica Gonzalez	Lay off (.28 FTE)
Diana Hulbert	Lay off (.50 FTE)
Korene Keene-Stark	Reduced from 1.0 Ag to .72 Ag
Stephen Ladine	Lay off (1.0 FTE)
Joshua Lindsey	Lay off (1.0 FTE)
Sean Pham	Reduced from 1.0 English to .72 English
Justin Riggs	Lay off (1.0 FTE)
Kirsten Sweeten	Reduced from .68 ELD to .50 ELD
Rachel Watts	Lay off (1.0 FTE)

### **School Funding Changes Beginning Fiscal Year 2013-2014**

10. As part of the 2013-2014 budget package, the Legislature enacted major changes to the way in which the state allocates funding to school districts. The changes are incorporated in Chapter 47, Statutes of 2013 (AB 97). A major change was the movement away from the total revenue limit per unit of average daily attendance (ADA) plus “categorical funding,” to a system described as “local control funding formula” (LCFF).

Under LCFF, “target base rates” have been established to essentially reflect the amounts per pupil that school districts would be getting today, but for the state’s general fund deficits and its inability to fully fund the school districts.<sup>2</sup> The base rates vary by grade levels with the lowest base rates for kindergarten students, and then rising for grades 4-6, 7-8, and 9-12. Most of the categorical funding has been eliminated and the amounts subsumed in the target base rates. The formula also allows for percentage augmentations for K-3 students to help fund class size reduction and for grades 9-12 to help fund career technical education. A second component of the formula provides a 20 percent increase (“supplement”) for each student satisfying one of three criteria: an English Learner (EL), low income student (LI) defined as receiving free or reduced charge school meals, and foster children. If the district has more than 55 percent EL/LI students, the district receives an additional 50 percent of the adjusted base for each EL/LI student exceeding 55 percent (“concentration”). District, with 53 percent of eligible students, does not receive the concentration augmentation.

11. As noted, these funding figures are target rates, and because the state cannot afford to fund the entirety of the undeficitated rates, LCFF contemplates the payment of part of the “gap” each year for eight years (approximately 12 percent) until the target is reached. The target rates include annual cost of living increases as well and the cost of living raise for fiscal year 2013-2014 is 1.57 percent.

12. Because the goal is to restore districts to a position no less favorable than that enjoyed before budget deficits in 2007-2008, plus cost of living increases, some districts including Denair Unified School District also receive an Economic Recovery Target (ERT) amount of approximately one-eighth of the amount calculated to ensure that they are not disadvantaged by the new LCFF in comparison to what they would have received if the old funding were maintained and fully funded at the end of the eight year period.

### **Application of the LCFF to District’s 2013-2014 Budget**

13. The parties were in agreement about most of the component numbers for the District’s 2013-2014 LCFF.<sup>3</sup> As explained below, their disagreement involves the proper interpretation of those numbers in the context of section 4499.5 read in conjunction with Chapter 47.

14. In order to calculate a baseline against which to measure the percentage increase for budget year 2013-2014, the parties used the 2012-2013 revenue limit base funding (ADA) of \$5,354,264 and added to that number the total dollars for categorical funding, \$1,496,421, for a total of \$6,850,685. Under LCFF, the target base grant for the district is \$7,389,877 and since the district has 53 percent of students eligible for the 20 percent increase, this adds another \$768,598 for a total of \$8,158,475. This leaves a gap of

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<sup>2</sup> Described as “undeficitated school district revenue limit.”

<sup>3</sup> The numbers and analysis were drawn from the respective experts called by the parties and the documents received in evidence that both experts relied upon.

\$1,307,790 between what district would receive if fully funded at the target level and the base funding based on last year's funding. As noted above, the state is only allocating approximately 12 percent of the gap to school districts each year. This equates to an additional \$154,058 in funding for the current fiscal year, or an approximate 3.52 percent budget increase for District.

15. The new legislation contemplates that school districts that receive increased funding based on eligible students (either the 20 percent or the 50 percent increases) shall "increase or improve services for [such students] in proportion to the increase in funds apportioned on the basis of the number and concentration of [such students] in the school district..." (Ed. Code. § 42238.07, subd. (a)(1).) The State Board of Education is directed to adopt regulations governing such apportioned expenditures by January 31, 2014, but no regulations have yet been promulgated.

16. District reasons that essentially all of the funds attributable to eligible students should be regarded as "restricted" funds and excluded from the calculation of budget increases. If this were done, the 3.52 percent increase would be reduced to 1.45 percent, less than the threshold 2 percent. The District's expert, Michael Ricketts, Associate Vice President of School Services of California, Inc., explained why he chose to view the percentage attributable to eligible students as 58.8 percent, rather than 53 percent. His graphical display and charts reveal that he obtained that number by calculating what percent of the gap (\$1,307,790) the 20 percent increase (\$768,598) reflected.<sup>4</sup> The apparent rationale for attributing a larger percentage to eligible students than their percentage of total students is their ability to "earn" more for District by reason of the 20 percent supplemental allocation.<sup>5</sup> However, this is only an academic issue, because it makes no difference whether one uses the actual percentage of eligible students, 53 percent, or the 58.8 percent, as the Legal Conclusions explain.

17. Mr. Ricketts also applied the 58.8 percent to reduce the amount received by the District as its ERT, thereby decreasing the \$87,362 to \$35,993.<sup>6</sup> Although Mr. Ricketts

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<sup>4</sup> One of Mr. Ricketts's charts supporting his conclusions accurately reflects that while eligible students account for 53 percent of the base grant for target funding, they account for 100 percent of the 20 percent supplement.

<sup>5</sup> The Administrative Law Judge calculated the percentage of the *target* amount attributable to eligible students and the percentage is 57.4. As explained below, any discrepancies in these numbers are essentially irrelevant, because Mr. Ricketts's consideration of *all* monies attributed to eligible students is based on flawed logic and an incorrect application of section 44955.5.

<sup>6</sup> In one of his charts, Mr. Ricketts inexplicably (from the Administrative Law Judge's perspective), attributes in excess of 80 percent of the ERT to eligible students. However, in his chart used to try and demonstrate the errors in respondents' analysis, he applied the 58.8 percent figure to exclude that portion of the ERT from consideration as a budget increase.

testified that it would be “prudent” to attribute that portion to eligible students as well, District could identify no mandate to expend funds received as ERT in a manner proportional to the number of eligible students. If ERT funds were not so reduced, even if one used Mr. Ricketts’s 58.8 percent figure to reduce the gap funding ( $\$154,058 - 58.8\% = \$63,472$ ) and added that figure to the ERT total ( $\$87,362 + 63,472 = \$150,834$ ) or a 2.2 percent budget increase.

18. Respondents’ expert Daniel Koen is a negotiator and budget analyst for the California State Teachers’ Association. Like Mr. Ricketts, he is has been heavily involved in the process of the adoption of the LCFF and assessing its ramifications. As noted above, Mr. Koen and Mr. Ricketts used essentially the same budget figures in analyzing whether the District’s 2013-2014 budget reflected at least a two percent increase over the previous year. Mr. Koen concluded that the increase was approximately 3.30 percent. The main reason that Mr. Koen reached a different conclusion than Mr. Ricketts was Mr. Koen’s treatment of the supplemental dollars generated by eligible students. For purposes of comparison with the old budgeting process, he treated the funds attributable to the 20 percent increase in the same manner as categorical funds were treated under section 44955.5 under the old funding system. He excluded them from consideration as “restricted” based on the proportionality spending requirements explained above. Thus, while the overall budget increase is 3.52 percent, when the additional 20 percent earned by eligible students is eliminated from consideration, the increase is 3.30 percent.

### **District’s Financial Situation**

19. Whichever analysis one applies to a comparison of last year’s District budget and that for 2013-2014, the District is receiving \$241,420 more this year. However, District has been designated by the Stanislaus Office of Education as being in a “negative certification,” which denotes its inability to meet its financial obligations for last school year and the current school year.

### **Prior Layoff Proceeding**

20. The District initiated an earlier layoff based on section 44955 that resulted in a hearing on April 18, 2013, and the issuance of a Proposed Decision by another Administrative Law Judge in the matter. Some of the same respondents were involved in that case and the parties suggested that the validity of the Board’s decision in the matter is being disputed. No issues relating to the prior matter were addressed in this proceeding, and the Administrative Law Judge did not rely in any manner on factual findings or legal conclusions reached in the earlier case.

## **LEGAL CONCLUSIONS**

1. All notices and jurisdictional requirements were satisfied.

2. As the parties have stipulated to the effect of the Board's resolution to reduce PKS and the respondents to whom notice shall be given of the elimination or reduction of their services in 2013-2014 school year, the only remaining legal issue for resolution is the District's entitlement to use the layoff procedure provided in section 44955.5. For the reasons outlined below, the District has not demonstrated that it meets the requirements to conduct a section 44955.5 layoff.

3. Section 44955.5 reads:

(a) During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent, and if in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. The termination shall be pursuant to Sections 44951 and 44955 but, notwithstanding anything to the contrary in Sections 44951 and 44955, in accordance with a schedule of notice and hearing adopted by the governing board.

(b) This section is inoperative from July 1, 2002, to July 1, 2003, inclusive, and from July 1, 2011, to July 1, 2012

4. Section 42238.06, subdivision (a), reads:

Commencing on July 1, 2013, except for Sections 42238, 42238.1, 42238.2, and 42238.5, or where the context requires otherwise, all of the following shall apply:

(a) References to 'revenue limit' shall instead refer to the 'local control funding formula.'

5. For convenience, section 44955.5, subdivision (a), may now be read:

(a) During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total local control funding formula per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent, and if in the opinion of

the governing board it is therefore necessary to decrease the number of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. The termination shall be pursuant to Sections 44951 and 44955 but, notwithstanding anything to the contrary in Sections 44951 and 44955, in accordance with a schedule of notice and hearing adopted by the governing board. (Underlining added.)

6. The obvious problem presented in this case is the movement from the old funding system to LCFF, resulting in an inevitable “apples and oranges” conundrum. Under the old system, it was clear that to determine the level of budget increase, if any, one would look exclusively at the ADA component (“total revenue limit per unit of average daily attendance”) and exclude from consideration the approximately 20 percent of categorical funding. This was not only compelled by the plain language of the statute, but also logical, based on the restrictions imposed for funds allocated for very specific categorical purposes.

7. A literal reading of section 44955.5, as “amended” by section 42238.06, might render its application unworkable, because the LCFF did not exist in the previous year, and there is therefore no basis for comparison. To avoid this result, the parties have endeavored to devise analytical methods comparable to the old distinction between ADA and categorical funding to measure the budget increase for this school year. To this end, each side has attempted to quantify amounts of money allocated that are “restricted” in a manner similar to the restrictions imposed on the spending of categorical funds and exclude those amounts in the calculation of the budget increase for this school year.

8. This approach finds support in the language of section 42238.07, subdivision (a)(1):

(a) On or before January 31, 2014, the state board shall adopt regulations that govern the expenditure of funds apportioned on the basis of the number and concentration of unduplicated pupils pursuant to Sections 2574, 2575, 42238.02, and 42238.03. The regulations shall include, but are not limited to, provisions that do all of the following:

(1) Require a school district, county office of education, or charter school to increase or improve services for unduplicated pupils in proportion to the increase in funds apportioned on the basis of the number and concentration of unduplicated pupils in the school district, county office of education, or charter school. (Underlining added.)

9. While the Board of Education has not yet promulgated the required regulations, the underlined language of section 42238.07 reflects a clear legislative mandate that the increase in funds apportioned for eligible<sup>7</sup> students should be devoted to increased or improved services for such students.

10. The differences in the analyses of the budget increases between District and respondents are easily explained by their interpretation of what the experts referred to as the “proportionality” requirement. District’s expert viewed the requirement as providing a rationale for restricting (and excluding from consideration for purposes of assessing the amount of the budget increase) all funds attributable to eligible students. Respondents’ expert regarded only the 20 percent supplement as restricted funds and thus not to be considered in calculating the budget increase. Respondents’ view correctly applies the language of the proportionality statute, because the statute refers to the “increase in funds” on the basis of the number of eligible students. There is no reference to apportionment of the base amounts attributable to eligible students.

11. Not only is this interpretation consistent with the plain language of the statute, it achieves a logical result, whereas District’s interpretation creates an illogical situation. The very name of the new formula connotes the increased flexibility the Legislature sought to provide school districts in contrast to the limitations of the old categorical funding system. This is spelled out in the Legislative Counsel’s Digest to Chapter 47: “This bill would authorize local educational agencies to expend, for any local educational purpose, the funds previously required to be spent for specified categorical educational programs, including, among others, programs for teacher training and class size reduction.” District’s calculations are premised on the proposition that *all* funds attributable to eligible students should only be used to provide services to them. This interpretation would limit a school district’s budgeting flexibility even beyond the limitations imposed by categorical funding, at least where more than 20 percent of students are eligible. Moreover, it would mean that the higher the percentage of eligible students and therefore the *increase* in a school district’s target and actual funding, the lower the percentage by which District would calculate the budget increase. Under this model, the increase would eventually be calculated as zero. This scenario would clearly run counter to the obvious purpose of Education Code section 44955.5, to allow a school district with only a modest budget increase to affect a layoff after the budget is passed because of too little money to pay all of the costs related to teaching staff. Here, District’s budget increase was 3.52 percent, well above the 2 percent threshold, and even if one deducts the supplemental allocation for eligible students, the increase exceeded 3 percent. The expenditure of the funds to pay for teachers would obviously benefit all students, eligible and ineligible.

12. District did not establish the necessary precondition for resort to the layoff process contemplated by section 44955.5, as modified by section 42238.06. District argued

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<sup>7</sup> “Unduplicated” students refers to the three categories of students for which a district receives the supplement or concentration funding, and conveys that they are only to be counted once, even if meeting more than one criterion. (Educ. Code. § 2574, subd. (b)(2).)

that the determination of whether the two requirements contained in section 44955.5 were met was left to the sound discretion of the Board. That is only true for the second requirement: that less than a two percent increase necessitates a layoff “in the opinion of the governing board.” The first requirement must be supported by facts and those facts were not established in this matter.

ORDER

The Accusation is dismissed.

Dated: August 8, 2013

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KARL S. ENGEMAN  
Administrative Law Judge  
Office of Administrative Hearings