

BEFORE THE
GOVERNING BOARD
WARNER UNIFIED SCHOOL DISTRICT
SAN DIEGO COUNTY, CALIFORNIA

In the Matter of the Employment Status of:

OAH No. L2006040331

FIVE CERTIFICATED EMPLOYEES,
including SHAHRAM YOUSEFIAN, Ph.D.,

Respondents.

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Warner Springs, California, on May 2, 2006.

Pamela A. Dempsey, Attorney at Law, represented the Warner Unified School District.

Respondent Shahram Yousefian, Ph.D., ably represented himself and was present throughout the administrative hearing.

The matter was submitted on May 2, 2006.

FACTUAL FINDINGS

The Warner Unified School District

1. The Warner Unified School District (the District) is a relatively small school district located in the foothills of Palomar Mountain approximately 50 miles northeast of San Diego. The school is adjacent to the historic Warner Springs Ranch, established in 1844, which has served travelers since the days of the Butterfield Overland Stage Coach. There are two Native American Indian reservations within the District, the Los Coyotes Reservation and the Santa Ysabel Reservation.

The District provides educational services to approximately 450 students who live within in a rural area covering approximately 435 square miles. The District includes a continuation school, a high school, a middle school (6th to 8th grades), and an elementary

school (kindergarten through 5th grade). The District employs approximately 22 certificated employees (administrators and teachers) and about 22 non-certificated employees.

2. The District is governed by a five member Board of Education (the Board), each member being a duly elected official. The District's Chief Executive Officer is Richard L. Swanson, Ph.D. (Dr. Swanson), the Superintendent of Schools.

Economic Layoffs

3. Proposition 13 limited local property taxes and reduced a major source of assured revenue for the funding of public education. Following the passage of Proposition 13, a public school district has primarily relied upon the State of California and other governmental entities for funding. To a large extent, funding is based on average daily attendance within the district.

A school district cannot determine the level of funding it will receive until the state budget is chaptered, an event usually occurring in late June. Before then, the governing board of a school district must take precautionary steps to make certain that financial ends meet in the event that a worst-case funding scenario develops and in circumstances in which there has been a declining enrollment. To meet its duty to be fiscally responsible, a school board frequently reviews the particular kinds of services it provides through its certificated employees and then determines if some of those services can be reduced or eliminated.

A school board's obligation to balance a budget in light of a potential but unknown shortfall often requires that teachers, administrators and other valued certificated employees be given preliminary layoff notices, i.e., notices warning that their services will not be required in the next school year. Under Education Code section 44949, these preliminary layoff notices must be given no later than March 15.

The economic layoff statutes found in the Education Code generally require the retention of more senior employees over more junior employees and the retention of permanent employees over probationary employees.

The Situation at Warner Unified School District

4. For the past several years, there has been declining enrollment within the District, a situation well known to the Board and the District. In early 2006, the Board was concerned with the impact of these issues on the District's operations and on a projected \$220,000 shortfall for the coming school year. The District looked into ways to trim the budget, including the reduction or elimination of particular kinds of services being provided by certificated employees.

Superintendent Swanson determined that 3.2 full-time equivalent (FTE) teaching positions could be cut by reducing or eliminating particular kinds of services or programs including 1.0 self-contained elementary school classroom, 0.6 self-contained middle school classroom, 0.6 single subject Science class in middle school, 0.2 of an Agriculture class in

middle school, 0.2 of a Mathematics class in middle school, and 0.6 of a single subject Science class in high school. In reaching this determination, Superintendent Swanson confirmed with the University of California that an AP Environmental Science class and an Agricultural Biology class being offered at the high school satisfied the University of California/California State University admission requirements for lab classes. He also determined that several courses, including Physics A/B, could be taken online at the National University Virtual High Schools.

Superintendent Swanson's recommendation concerning reductions in force was made in the best interests of the District and its students.

The Board's Resolution

5. On March 9, 2006, the Board adopted Resolution 2005-06-01. That resolution stated:

"WHEREAS, Sections 44949 and 44955 of the Education Code require action by the Governing Board in order to reduce or eliminate services and permit the layoff of certificated employees and;

WHEREAS, the Superintendent of the Warner Unified School District has recommended to the Governing Board that particular kinds of services be reduced or eliminated no later than the beginning of the 2006-2007 school year; and

WHEREAS, the Governing Board has determined that a reduction or elimination of particular kinds of services is needed no later than the beginning of the 2006-2007 school year; and

WHEREAS, the Governing Board has considered all positively assured attrition which has occurred to date, that is, all deaths, resignations, retirements and other permanent vacancies in reducing these services and, but for the attrition already assured, would have found it necessary to reduce additional particular kinds of services.

NOW, THEREFORE, BE IT RESOLVED by the Governing Board of the Warner Unified School District:

1. That all of the foregoing recitals are true and correct.
2. That because of the financial constraints resulting from revenue being insufficient to maintain the current levels of programs, and necessary program changes resulting therefrom, the Governing Board hereby determines to render or eliminate from those positions set forth in **Exhibit A**, attached hereto and incorporated by reference herein, listing by level, subject field or

classification, and full-time equivalent, those positions which shall be reduced or eliminated no later than the beginning of the 2006-20007 school year.

3. That because of the elimination and reduction of particular kinds of services listed in **Exhibit A** it is necessary to terminate at the end of the 2005-2006 school year certificated employees equal in number to the positions affected in the reduction or eliminate of the above-described service.

4. That the seniority and qualifications of some of the employees in the services being reduced or eliminated are such that they have displacement rights by virtue of seniority, and that no employee will be terminated while a less senior employee is retained to render a service which the more senior is both certificated and competent to render.

5. That in selecting those probationary and permanent certificated employees who shall receive notice of termination pursuant to this Resolution, Education Code section 44955 requires the Governing Board to state specific criteria to be used in determining the termination of certificated employees who first rendered paid service to the Governing Board in a probationary position on the same date.

6. That the criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the Governing Board in a probationary position on the same date are listed and described in **Exhibit B**, which is attached hereto and incorporated by reference herein.

7. The criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the Governing board in a probationary position on the same date. Listed and described in **Exhibit B**, are based solely on the needs of the Warner Unified School District and the students thereof.

8. That in selecting those probationary and permanent certificated employees who shall received notice of termination pursuant to this resolution, Education Code section 44955 allows the Governing Board to deviate from terminating a certificate employee in order of seniority by virtue of their competence, credential(s), assignment, and the specific needs of the District and its students.

9. That the criteria that will be applied to deviate from terminating certificated employees who may otherwise be terminated by order of seniority will be based on the needs of the students of the District, and will ensure that no employee will be terminated while a less senior employee is retained to render service which the more senior employee is both certificated and competent to render.

10. That the Superintendent or his designated representative will send appropriate notices to all employees possibly affected by virtue of the reduction and elimination of particular kinds of services.

11. That the action of this Governing Board will not, in any way, be considered to prejudice the rights of certificated employees to whom notice will be given as to the Superintendent's consideration of any proposed decision by an administrative law judge in the event a hearing is requested by any employee.

ADOPTED by the Governing Board of the Warner Unified School District this 9th day of March 2006."

6. Exhibit A set forth the particular kinds of services and the number of full-time equivalent teaching positions as follows:

Particular Kinds of Services or Programs	Number of Full-Time Equivalent Positions Inc. Prep and Travel
<i>Elementary</i>	
Self contained classroom (K-5)	1.00
Self contained classroom (6-8)	0.60
Single subject Science (6-8)	0.60
Agriculture (6-8)	0.20
Mathematics (6-8)	0.20
<i>Secondary</i>	
Single subject science	0.60
<i>Support</i>	
None	
TOTAL	3.20

7. Exhibit B set forth tie-breaking criteria which set forth numerous criteria to be applied in the priority order indicated to determine which employee(s) with the same date of hire should be retained over other employees with the same date of hire.

1. Persons with preliminary or clear credentials.
2. Persons with preliminary or clear credentials or certificates authorizing services in classes for limited or non-English proficient students as follows:
 - A. CLAD.
 - B. BCLAD.
 - C. Language Development Specialist Certificate.
 - D. Supplemental Authorization for English as a Second Language.
 - E. SDAIE.

3. Persons with one or more of the following credentials, certificated and/or graduate degrees priority listed as follows:

- A. Majors in academic teaching subject possessing more than two teaching credentials
- B. Majors in academic teaching subject possessing two teaching credentials.
- C. Two or more teaching credentials.
- D. Masters degree.
- E. Persons with one or more additional authorizations.

4. Persons with specialized training/experience in elementary science or mathematics.

5. Persons with specialized reading training.

6. Persons who are currently assigned to one of the following assignments priority listed as follows:

- A. Activities Director.
- B. Athletics Director.
- C. Department Chair.
- D. High School Head Coach.

The Seniority List

8. Under Superintendent Swanson's supervision, a certificated seniority list was developed for all certificated employees within the District providing services in the 2005-2006 school year. The list contained a seniority number (from the most senior to the least senior teacher, in ascending order) the teacher's name, a seniority date based upon the teacher's first date of paid service, the teacher's assignment, and the teacher's credentials.

The names of 18 certificated employees appeared on that list. Respondent Shahram Yousefian, Ph.D. (Dr. Yousefian) was assigned seniority number 13, based on his first day of paid service on August 26, 2002.

Dr. Yousefian offered no evidence challenging the District's seniority list.

The Layoff Notices

9. On March 14, 2006, five certificated employees, including Dr. Shahram, were served with a preliminary layoff notice, which advised of the reason for the layoff ("financial constraints resulting from insufficient revenue to sustain current levels of programs, and program changes resulting therefrom"), a representation that "there is no probationary or permanent certificated employee with less seniority retained who is rendering service which you are certificated and competent to render," notification that a request for a hearing had to

be made in writing and had to be delivered to Superintendent Swanson no later than 3:00 p.m. on March 31, 2006, together with a copy of Education Code sections 44944 and 44955 and the recommendation.

Others served with the notice included Melissa Adrid (seniority number 15, a high school and self-contained middle school classroom teacher with a first day of paid service on August 23, 2004), Tiffany Lenfers (seniority number 16, a 5th grade self-contained classroom teacher with a first day of paid service on August 23, 2004), Thomas McDonough (seniority number 17, a high school and self-contained middle school classroom teacher with a first day of paid service on August 23, 2004), and Laura Worthen (seniority number 19, a high school and self-contained middle school classroom teacher with a first day of paid service on August 22, 2005).

10. Christopher Sanchez (seniority number 18, a Spanish high school and middle school language classroom teacher with a first day of paid service on August 22, 2005) was *not* given a preliminary notice because he was the only person at the school credentialed to teach a foreign language and there was a need for that subject to meet University of California admission requirements.

11. Dr. Yousefian did not challenge the providing of preliminary layoff notices based on the Board's resolution and its application to the District's seniority list. Instead, he challenged the wisdom of his employment being terminated for the reasons set forth in factual finding 16.

The Administrative Proceeding

12. Dr. Yousefian and the other certificated employees who requested a hearing were personally served with a notice of accusation and acknowledgment of request for hearing, the accusation, a blank notice of defense, copies of Education Code sections 44949 and 44955, and copies of Government Code sections 11500, 11505, 11506, 11507.5, 11507.6, 11507.7, 11590 and 11520.

Dr. Yousefian timely filed a notice of defense. The matter was set for an administrative hearing.

13. On May 2, 2006, the record in the administrative hearing was opened. Jurisdictional documents were presented, sworn testimony and documentary evidence was received, closing arguments were given, the record was closed and the matter was submitted.

The Board's Reduction or Elimination of Particular Kinds of Services and Programs

14. The reduction and elimination of the classes and programs set forth in Exhibit A involved the Board's exercise of discretion. The decision was related to the welfare of the schools and its pupils within the meaning of Education Code section 44949, subdivision (c). It was a difficult decision that was reasonably made, even though others similarly situated may have reached a different decision. The reduction of a 0.60 FTE in secondary single

subject Science was a "particular kind of service" the Board was authorized to reduce within the meaning of Education Code section 44955.

The Board's decision to reduce the particular kind of services identified in Exhibit A was not fraudulent, arbitrary or capricious, but constituted an appropriate exercise of the Board's discretion. The extent to which the particular kinds of service were reduced was a matter well within the Board's discretion.

Sherri Freeman (seniority number 6, a single subject ROP/Agriculture, Agricultural Science and AP Science high school teacher with a first day of paid service on September 1, 1995) was qualified and competent to teach the science lab classes. The termination of Dr. Yousefian's employment by the District would not preclude students from being accepted at either the University of California or at California State University campuses.

No certificated employee who was junior to Dr. Yousefian was retained to provide services within the District which respondent was competent and qualified to render by reason of his teaching certificate. Dr. Yousefian was not credentialed to teach Spanish.

No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

Dr. Shahram Yousefian

15. Dr. Yousefian was born on November 4, 1962, in Iran. He graduated from Parkway North High School in St. Louis, Missouri, in 1980. He graduated from Southwest Baptist University in Bolivar, Missouri, with a Bachelor of Science degree in May 1984. He married and spent a year working at Southwest Baptist University. He then attended the University of Missouri, where he obtained a Ph.D. in Chemistry, with a specialization in Organic Chemistry, in December 1990. Thereafter, Dr. Yousefian spent a year in a post-doctoral program as a research assistant at the Washington University School of Medicine in St. Louis, Missouri.

After a brief vacation in Iran in 1992, Dr. Yousefian and his family returned to the St. Louis area where he taught Chemistry at the Missouri Baptist University. Thereafter, he engaged in further post-doctoral training and teaching assignments at Trinity University in San Antonio, Texas. Dr. Yousefian and his family moved to California in 1994.

In 1994-1995, Dr. Yousefian was a Lecturer at the University of California, San Diego, in Chemistry, after which he served as a Professor at Cuyamacas Community College and at California State University, San Marcos, in the field of Chemistry.

Dr. Yousefian attended National University from 1998-2000, and obtained a Professional Clear Single Subject Teaching Credential¹ in Chemistry with an additional authorization in Introduction to Mathematics. He also received a CLAD certification.²

Dr. Yousefian began teaching at University City High School in summer 2000, and then taught at Mira Mesa High School. He taught at West Hills High School in Santee in the 2000-2001 school year, but his employment was terminated by the San Diego City School District when a tenured teacher returned to West Hills High School.

Dr. Yousefian found employment teaching high school in Novato, the northernmost city in Marin County, approximately 29 miles north of San Francisco and 37 miles northwest of Oakland. He commuted from his home in Poway to Novato on weekdays, but he ultimately found this to be impossible after 9/11 and he was forced to leave this employment.

Dr. Yousefian began his employment with the District on August 26, 2002. During his employment with the District, Dr. Yousefian has taught laboratory sciences (including Chemistry, Physics, and Earth Science), college success classes, and computer science.

16. Dr. Yousefian studied school accountability documents and concluded the Board made several erroneous or irresponsible decisions that "precipitated the current financial condition." He noted that while teachers' salaries remained stagnant, the salaries of administrators increased dramatically, notwithstanding declining enrollment. Even then, Dr. Yousefian did not understand how there could be a budget shortfall given the number of students enrolled in the District. He believed cutting courses and teachers would further erode District enrollment and cause revenue to further decline. Dr. Yousefian was concerned about the academic impact of cutting Science classes on the ability of students to enter the University of California or the California State University campuses, and wondered if the cut would impact the implementation of an AVID program and the 2007 Western Association of Schools and Colleges (WASC) evaluation.

Dr. Yousefian proposed the Board retain one administrator to supervise the District's operations, and use the savings resulting from the elimination of one administrative position to fund teachers. He speculated that any "projected shortfall could be covered by the upcoming retirements, additions of the casino in Santa Ysabel, and the planned housing development by the Los Coyotes."

¹ This credential authorizes the holder to teach (in grades twelve and below, including preschool, and in classes organized primarily for adults) the subject matter content for the subject or subjects identified in the credential and supplementary authorizations.

² The Crosscultural, Language & Academic Development (CLAD) certification authorizes the holder to provide the following services to limited-English-proficient pupils: (1) instruction for English language development in grades twelve and below, including preschool, and in classes organized primarily for adults; and (2) specially designed content instruction delivered in English in single-subject-matter (departmentalized) courses as authorized on this document. This crosscultural, language and academic development authorization also covers classes authorized by other valid, non-emergency credentials held, as specified in Education Code section 44253.3.

Dr. Yousefian offered his testimony and a variety of documents to support his fiscal, political and academic arguments.

17. Scott Loeffke (Loefke), who has taught for the District for six years, is President of the Association of Warner Educators. He acknowledged there was declining enrollment within the District, as did all other witnesses. Loeffke was uncertain what impact, if any, the reduction and elimination of particular kinds of services would have, if any, on the possible implementation of the AVID program or on the 2007 WASC evaluation.

18. Dr. Yousefian did not establish the particular kinds of services being reduced or eliminated were exempt, or the decision to reduce the particular kinds of services was fraudulent, arbitrary or capricious, or the decision would result in the lowering educational services to levels less than those levels mandated by state or federal law, or that the Board abused its discretion. Dr. Yousefian did not establish that any certificated employee who was junior to Dr. Yousefian was retained to provide services within the District which he was competent and qualified to render by reason of his teaching certificate.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied as to respondent Shahram Yousefian.

2. A governing board's decision to reduce or discontinue particular kinds of services need not be tied to any statistical computation, such as a reduction in the number of students. The number of PKS reductions depends totally upon a district's decision as to how many services will be reduced. It is within the board's discretion to determine the amount by which it will reduce a particular service. *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 645-636.

3. "In determining whether the decision of a school board is reasonable as distinguished from fraudulent, arbitrary, or capricious, its action is measured by the standard set by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion on the same subject." *Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 808.

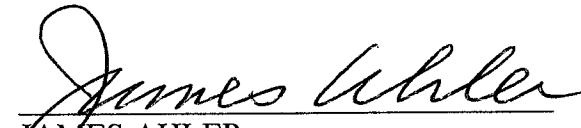
4. Cause exists to affirm the Board's decision to reduce the particular kinds of services and in the amount of full time equivalent positions as identified in Board Resolution No. 2005-06-01. The Board's decision was not arbitrary or capricious, but was a valid exercise of its discretion. The Board's elimination and reduction of these particular kinds of service was related to the welfare of the District and its students.

5. Cause exists under Education Code section 44955 to give notice to Shahram Yousefian that his services will not be required by the District for the 2006-2007 school year.

RECOMMENDATION

Notice shall be given to Shahram Yousefian under Education Code section 44955 that his services will not be required by the Warner Unified School District for the 2006-2007 school year.

DATED: May 4, 2006.


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings