

BEFORE THE  
GOVERNING BOARD OF THE  
QUARTZ VALLEY SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SUSAN CALLAGHAN.

OAH No. N2007030460

**PROPOSED DECISION**

Gary A. Geren, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 11, 2007, at the Quartz Valley School District, Fort Jones, California.

Joseph C. Kincade, Attorney at Law, represented the Quartz Valley School District.

K. Thomas Smith Jr., Attorney at Law, represented Susan Callaghan, respondent.

The matter was submitted on April 11, 2007.

**SUMMARY OF PROPOSED DECISION**

The Governing Board of the Quartz Valley School District determined to reduce or discontinue a particular kind of service provided by respondent. The decision was not related to the competency and dedication of respondent, but rather because of budgetary reasons.

District's staff carried out the Board's decision by using a selection process involving review of credentials and seniority. The selection process was carried out in accordance with the requirements of the Education Code.

## FACTUAL FINDINGS

1. The Quartz Valley School District (the District) provides services to approximately 25 students. Respondent is a teacher employed by the District who also performs some administrative tasks.

2. James Pindell is the Interim Superintendent of the District. On January 8, 2007, he prepared a "Notice to Governing Board of Recommendation Not to Reemploy Certificated Employee." The reason for Mr. Pindell's recommendation was that the District employed three teachers, including respondent. As a consequence of the relatively high teacher/student ratio, the District operated at an \$88,000 deficit for the 2006-2007 school year. No State or Federal funding is available to pay for, or to partially subsidize, the District for the costs of respondent's position. For budgetary reasons, and in consideration of the students' welfare, Mr. Pindell proposed that respondent not return to teach for the following school year. The Board passed a Resolution on January 8, 2007, resolving to reduce its certificated staff by one Full Time Equivalent (FTE) position, thus eliminating respondent's position.

3. On January 9, 2007, the District personally served respondent with written notice, pursuant to Education Code sections 44949 and 44955, that her services would not be required for the 2007-2008, school year.

4. On January 9, 2007, respondent signed a Request for Hearing which was received by District on January 12, 2007.

5. On January 26, 2007, Mr. Pindell made and filed an Accusation against respondent. The Notice of Accusation, with required accompanying documents and a blank Notice of Defense were timely served on respondent on January 26, 2007.

6. On January 29, 2007, respondent acknowledged receipt of the Notice of Accusation and accompanying documents, and timely served the District with her Notice of Defense.

7. The Board's Resolution addressed a particular kind of service that it had the authority to reduce or discontinue under Education Code section 44955. The Board's decision to reduce one FTE was neither arbitrary nor capricious, and was a proper exercise of its discretion; its decision was based on the welfare of the District and its pupils.

8. The District maintains a Seniority List which contains employees' seniority dates (first date of paid service), current assignments and locations, advanced degrees, credentials, and authorizations. Respondent was the most "junior" of the three teachers on the seniority list, the nearest "junior" teacher having approximately one more year of seniority.



## LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

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 v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.

3. Cause exists to reduce the number of certificated employees of the District. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

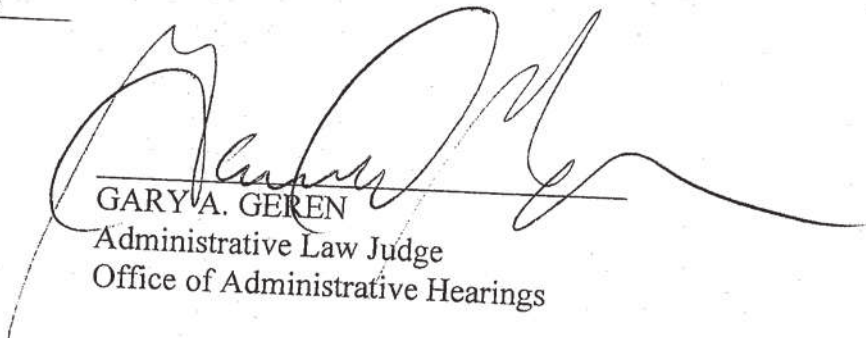
4. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469. 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. No employee with less seniority than respondent is being retained by District.

5. At hearing, respondent made a Motion to Dismiss, based on the District's failure to comply with Education Code section 44955. The Motion was taken under submission. Based on the above, respondent's motion is denied.

ORDER

1. Notice shall be given to respondent that her services will not be required for the 2007-2008 School Year because of the reduction and discontinuance of particular kinds of services.

Dated: 1.25.07



GARY A. GEREN

Administrative Law Judge  
Office of Administrative Hearings