

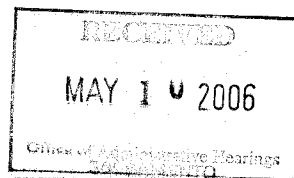
**BEFORE THE  
GOVERNING BOARD OF THE  
PASADENA UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA**

In the Matter of the Accusations Against:

MICHELLE RODRIGUEZ, MONICA E.  
CASTILLA, DAVID K. NEWHALL,  
TUCKER CANNON, CHRISTINE KIM  
and ERICA CIVITATE,

Respondents.

OAH No. L2006030664



**PROPOSED DECISION**

Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, State of California, heard this matter on April 24, 2006, in Pasadena, California.

Jeff C. Marderosian, Attorney at Law, represented the Pasadena Unified School District.

Glenn Rothner, of Rothner, Segall & Greenstone, represented respondents Michelle Rodriguez, Monica E. Castilla, David K. Newhall, Tucker Cannon and Christine Kim (Respondents). Respondent Erica Civitate did not appear at the hearing. Ms. Civitate, having requested a hearing and having received notice of the date, place and time of the hearing, is deemed to have abandoned her appeal.

Oral and documentary evidence was received and argument made. The record was closed and the matter submitted for decision at the conclusion of the hearing.

**SUMMARY OF PROPOSED DECISION**

The Governing Board of the Pasadena Unified School District determined to reduce or discontinue particular kinds of services provided by certificated employees totaling 9.00 full-time equivalent positions. The decision was not related to the competency and dedication of the individuals whose services are to be reduced or eliminated. The process of selecting the less senior certificated employees for layoff was in accordance with the requirements of the Education Code. The issue in this proceeding is whether the Board has acted properly to discontinue five school social worker positions presently held by Respondents.

## FACTUAL FINDINGS

1. Complainant Percy Clark, Jr., Ph.D., is the Superintendent of the Pasadena Unified School District (District), and he signed the Accusations in that official capacity.
2. Respondents were at all times mentioned certificated District employees.
3. On February 28, 2006, pursuant to Complainant's recommendation, the Governing Board of the District (Board) adopted Resolution No. 1812, which determined to reduce or discontinue particular kinds of services encompassing 9.00 full-time equivalent (FTE) positions at the close of the current school year. The resolution directed Complainant to send appropriate notices to employees affected by the Board's action.
4. On March 10, 2006, Complainant gave written notices to 10 affected employees, including Respondents, under Education Code sections 44949 and 44955. The notices informed Respondents that their services would not be required for the next school year, based on Complainant's recommendation and the Board's action. Notices were hand-delivered or served by certified mail, return receipt requested. Each notice advised Respondents of their right to an administrative hearing to determine if there was cause for not reemploying them for the ensuing school year. Of the 10 noticed employees, six filed written requests for a hearing.<sup>1</sup>
5. Complainant thereafter served each of the Respondents with an Accusation. Five Respondents timely filed Notices of Defense to these Accusations, and this hearing ensued. All prehearing jurisdictional requirements were met.
6. Board Resolution No. 1812 specifically provides for the reduction or elimination of the following particular kinds of services:

<u>Particular Kinds of Service</u>	<u>Full-Time Equivalent Positions</u>
Secondary Counselors	3.0 FTE
School social workers	6.0 FTE
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TOTAL FTE REDUCTION	9.0 FTE

7. The District maintains "seniority" lists containing the employees' first date of paid service, whether employees are permanent, probationary or temporary, as well as their

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<sup>1</sup> This Proposed Decision addresses the contentions of five District school social workers who are named as Respondents herein. The sixth employee who requested a hearing, Erica Civitate, is a secondary counselor; however, as noted above, Ms. Civitate has waived her right to a hearing and therefore, this Proposed Decision does not decide issues regarding the Board's proposed layoff of three FTE secondary counselor positions.

current assignments and locations. The information on these lists is accurate. The District used the lists so as to layoff the least senior employees currently assigned in the various services being reduced. In determining who would be subject to layoff for each kind of particular service reduced, the District counted the number of reductions not covered by the known vacancies, attrition, and determined the impact on incumbent staff in inverse order of seniority.

8. Board Resolution No. 1812 also established tie-breaking criteria to determine the relative seniority of certificated employees who first rendered paid service on the same date. The tie-breaking criteria did not become necessary to use.

9. The Board desires to eliminate six FTE positions for school social worker, with the effect of eliminating all six current staff members, who currently provide professional services to students who have special needs which hamper their ability to learn. The school social workers perform psychiatric social work, including counseling children and parents with mental health problems, providing social training, and coordinating services for students who are not attending due to truancy, delinquency or other problems.

10. The Board proposes to provide the same services to its students in the next school year through a newly created position of "clinical social worker." The District already has advertised the proposed new position through a job opportunity bulletin posted on its web-site. Judith Barhydt, the District's Director of Special Education and SELPA director, and current supervisor of the school social workers, testified on behalf of Complainant. She said those hired for the new positions should do the same job as now, "performing the same services in the same manner." The job opportunity bulletin contains a description of job duties which are substantially similar, as well -- providing intensive mental health services to students meeting the need-based qualifications. The new positions, however, will not require a credential, but will be designated "classified supervisory" positions.

11. The Board's proposed action would allow it to change six certificated positions to classified positions. The Board argues that this proposed new system is a change in the manner of providing services, primarily because the new positions will be directly supervised by a newly hired classified employee, who is a licensed clinical social worker (LCSW), instead of Ms. Barhydt, who is a credentialed employee and is not trained or experienced in providing the services of a clinical social worker. (Ms. Barhydt currently does not observe the work of the school social workers on a daily basis; rather, the District has retained an LCSW as a consultant to perform day-to-day supervision and to evaluate the school social workers.) The Board further argues that the proposed new position will only be offered to persons who have earned a Master's degree in clinical social work, it will be a classified supervisory position, and it will allow the new employees to amass supervisory hours necessary to qualify for state licensure as an LCSW.

12. Respondents argue that the Board has failed to establish the propriety of its decision with regard to the school social worker positions, and that there is no real reduction in a "particular kind of service."

13. The Board's decision to reduce or discontinue the above-described particular kinds of services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

14. The cause for reducing and/or eliminating the above-described particular kinds of services relates solely to the welfare of the schools in the District and its pupils.

15. No permanent certificated employee with less seniority will be retained to render a service that the Respondents are certificated and competent to render.

### LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met. Factual Findings 1-6.

2. The services identified in Board Resolution No. 1812 are particular kinds of services that can be reduced or discontinued under Education Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Respondents have relied on *Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571, to argue that the Board's action is not truly a discontinuance of a particular kind of service, since the District will continue to provide professional counseling services which it currently provides to its students, but through classified employees instead of certificated ones. Respondents argue that since it is likely some of the same persons would be providing the same services next school year, there is no discontinuance of a particular kind of service. The *Gallup* court, however, stated that "the issue is not *who* will perform the services, but *how* the services will be performed." (*Id.* at p. 1588.) Here, it has been shown that the "new" providers, who will be classified supervisory personnel, will not perform the services in the same manner as the certificated employees.

Under the case law,<sup>2</sup> the Board has wide latitude to determine the manner in which services are provided. Here, although the job duties for the new position are similar to the existing positions, the Board has established that a change from certificated to classified employees will afford more flexibility in how the District will manage and supervise its employees who provide professional services to its students. The Board also hopes to hire highly qualified individuals who will be gaining experience to advance toward full licensure in their field.

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<sup>2</sup> See, *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 639-640 (a school district may decide to provide mandated services on a contract basis, and thereby discontinue the existing particular kind of service used to provide them).

3. Cause for the reduction or discontinuation of those particular services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949. No showing has been made that the action of the Board was not taken in good faith. Factual Findings 1-14.

4. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Factual Findings 1-14.

5. No junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render. Factual Finding 15.

#### ORDERS

1. The Accusations are sustained.

2. Notice shall be given to Respondents that their services will not be required for the 2006-2007 school year, and such notice shall be given in inverse order of seniority.

Dated: May 5, 2006



MARK E. HARMAN

Administrative Law Judge

Office of Administrative Hearings