

BEFORE THE GOVERNING BOARD
OF THE EL MONTE UNION HIGH SCHOOL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

In the Matter of the Layoff Of:

ERICA PALMER,

Respondent.

OAH No. L2008030465

PROPOSED DECISION

This case came on regularly for hearing before Janis S. Rovner, Administrative Law Judge of the Office of Administrative Hearings, State of California, in El Monte, California, on April 30, 2008.

Miller, Brown, Dannis by Candace Bandoian, Attorney at Law, represented the El Monte Union High School District (District).

Trygstad, Schwab & Trygstad, by Richard Schwab, Attorney at Law represented Erica Palmer (respondent), who was present during the entire hearing.

The District has decided to reduce or discontinue certain educational services and has given respondent notice of its intent not to reemploy her for the 2007-2008 school year. Respondent requested a hearing for a determination of whether cause exists for not reemploying her for the 2007-2008 school year.

Oral and documentary evidence, and evidence by way stipulation, was presented and received. The matter was submitted for decision on April 30, 2008. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions and Order:

FACTUAL FINDINGS

1. Kathy M. Furnald, Superintendent of the El Monte Union High School District, filed the Accusation in her official capacity.
2. Respondent is a certificated employee of the District.

3. On March 5, 2008, the Governing Board of the District (Board) adopted a resolution to reduce or discontinue the following particular kinds of services for the 2008-2009 school year:

<u>Services</u>	<u>Full-Time Equivalent (FTE)</u> <u>Positions Eliminated</u>
AB1802 Counselors	8.0
Career Guidance Coordinators	2.0
Career Path Coordinators	<u>2.4</u>
Total Full-Time Equivalent Reductions =	12.4 FTE

4. On or before March 15, 2008, the Dan Morris, Assistant Superintendent of Personnel Services, acting on behalf of the District Superintendent, gave written notice to the Board recommending that notice be given to seven certificated employees of the District that their services would not be required for the 2008-2009 school year due to the reduction or elimination of particular kinds of services.

5. On or before March 15, 2003, the District provided notice to each of seven certificated employees, including respondent, that their services would not be required for the 2008-2009 school year, due to the reduction or elimination of particular kinds of services.

6. All seven certificated employees requested a hearing to determine if cause exists for not reemploying them for the 2008-2009 school year. The hearing requests were filed on a timely basis.

7. On March 24, 2008, the Superintendent filed and served an Accusation against each of the seven certificated employees. The Accusation with required accompanying documents was properly and timely served on each certificated employees.

8. The seven certificated employees who received the Accusation either timely filed a notice of defense or the District treated them as having timely filed a notice of defense.

9. As to six of the certificated employees, the District has withdrawn the Accusation and rescinded its notice of recommendation not to reemploy.¹ Those six certificated employees did not participate in the hearing. The respondent, Ms. Palmer, is the remaining certificated employee in this proceeding.

10. All prehearing jurisdictional requirements have been satisfied.

11. The services set forth in Factual Finding 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.

12. The Board's decision to reduce or discontinue the services pursuant to Factual Finding 4, is neither arbitrary nor capricious, but is rather a proper exercise of its discretion.

13. The reduction or elimination of services set forth in Factual Finding 3 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Board.

14. Respondent Palmer is a career guidance coordinator at Rosemead High School. She holds a pupil personnel services credential. Her position is being eliminated pursuant to the District's resolution to reduce particular kinds of services. She is junior to all other certificated employees. She is a dedicated and loyal employee. She would like to have the opportunity to return to work within the District.

15. No permanent or probationary certificated employee with less seniority than respondent is being retained to render a service that respondent is certificated and competent to render.

LEGAL CONCLUSIONS

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

2. The services identified in the Board's resolution (Factual Finding 3) are particular kinds of services under Education Code section 44955.

3. The Board has cause to reduce or discontinue the particular kinds of services. The cause relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

¹ One of the six certificated employees, Ms. Ilbea Fidele, was present, but did not make a formal appearance at the hearing because the District and Ms. Fidele had tentatively resolved her status and she would not be subject to lay-off. On May 1, 2008, the District confirmed that the resolution was final and withdrew Ms. Fidele's Accusation and rescinded her notice.

4. Pursuant to Education Code section 44955, no certificated employee junior to respondent was retained to render a service which respondent is certificated and competent to render.

5. Cause exists to give notice to respondent Erica Palmer that her services will not be required for the 2008-2009 school year.

ORDER

The Accusation is sustained as to respondent Palmer. The District may notify respondent Erica Palmer that her services will not be required for the 2008-2009 school year because of the reduction or elimination of particular kinds of services.

Dated: May 2, 2008

Janis S. Rovner
Administrative Law Judge
Office of Administrative Hearings