

**BEFORE THE
GOVERNING BOARD
PASADENA UNIFIED SCHOOL DISTRICT**

In the Matter of the Accusations Against:

**KENNETH BANKS, TERRY MARIE
BOEHMER, and LEABETH GANADEN
YICK,**

Respondents.

OAH No. L2005030489

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 22, 2005, in Pasadena.

James B. Fernow, Esq., Lozano Smith, represented Complainant.

Glenn Rothner, Esq., Rothner, Segall & Greenstone, represented Respondents.

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 DECISION

The Governing Board of the Pasadena Unified School District determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons, totaling 7.00 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 Accusations against Respondents are SUSTAINED.

FACTUAL FINDINGS

Parties & Jurisdiction

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 March 3, 2005, the Governing Board of the District (Board) adopted Resolution No. 1726, which proposed to reduce or discontinue the particular kinds of services encompassing 7.00 Full-Time Equivalent (FTE) positions at the end of the current school year.

4. By no later than March 10, 2005, Complainant recommended to the Board that notice be given to Respondents and others that their services will be terminated at the end of the current school year, pursuant to Education Code sections 44949 and 44955.

5. On March 10, 2005, after notification to the Board, Respondents and others were given written notice that it had been recommended, pursuant to Education Code sections 44949 and 44955, that their services will be terminated at the end of the school year.

6. Respondents timely requested a hearing to determine if there is cause for terminating their services next school year. Each was served with an Accusation. Respondents timely filed Notices of Defense, requesting the hearing that ensued.

7. After adoption of Resolution No. 1726, the Board considered all known assured attrition.

8. Out of seven (7) certificated District employees initially identified for layoff, only the three (3) Respondents herein remained by the time of the hearing. Erica Civitate had been given the above notice, but she failed to request a hearing. The District therefore terminated her employment, effective June 30, 2005. The above layoff notice was subsequently rescinded as to the following three (3) certificated District employees: Armine Aghani, Richard M. Alpert and Kevork Hovsep Halladjian.

The District's Layoff Decision

9. Board Resolution No. 1726 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 (FTE)</u>
Secondary Counselors	4.0 FTE
Nurses	2.0 FTE
Adult Education	1.0 FTE
	=====
TOTAL FTE REDUCTION	7.0 FTE

10. Board Resolution No. 1726 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.

11. The reduction or elimination of the two (2) nurse FTE positions will not reduce nursing services below mandated levels.

12. The decision to reduce the seven (7) FTE positions was based on fiscal problems caused by the current budget, anticipated future budget problems that may result from decisions of the California Department of Education, leaves of absence, and other events causing uncertainty with the District's budget for the next school year. A small part of the budget problem is the decrease in revenue that will result from an expected decline of approximately 300 students (out of approximately 23,000 students throughout the District) next school year. In terms of the layoff decision, the District's Director of Certificated and Classified Personnel, Dr. Debra Jenkins DeBose, characterized the student decline as the least important of the various factors considered.

13. The District maintains a Seniority List containing employees' seniority dates, current assignments and locations, advanced degrees, credentials, and authorizations. The information on the Seniority List is accurate.

14. The District used the Seniority List to develop a proposed layoff list of 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.

15. 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.

16. 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.

17. 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 1-8.

2. Respondents argue the District's layoff decision is invalid because part of the decision-making included, in very small part, the anticipated reduced revenue from the decrease of 300 students next school year. Respondents cite *Cousins v. Weaverville Elementary School* (1994) 24 Cal.App.4th 1846 for the proposition that if reduced student attendance has any part in a district layoff decision, the notice must specifically include that the decision is based on a decline in average daily attendance (ADA) as a ground for a layoff. The District's notice focused solely on the need to reduce particular kinds of services (PKS).

Respondents' argument is unconvincing. The *Cousins* case did not involve a layoff but rather the non-election of a probationary employee. The court in that case simply held that although a district may ordinarily elect not to retain a probationary employee and that it need not assert a reason, where it is undisputed that such a termination was prompted by economic conditions described in Education Code section 44955 regarding layoffs, the district must provide notice and a right to a hearing pursuant to section 44955. *Cousins v. Weaverville Elementary School, supra*, 24 Cal.App.4th 1846.

In this case, the weight of the evidence established the instant layoff decision was caused by overall budget concerns and not a simple reduction in average daily attendance (ADA). Thus, the reason for the layoff, i.e. the reduction or elimination of particular kinds of services (PKS), was correctly stated in the pertinent notices. There is nothing in Education Code section 44955 prohibiting an expected decline in student attendance from being one factor of many in the overall decision to reduce or eliminate particular kinds of services. In any event, Respondents were provided notice and a hearing under Education Code section 44955, as required by *Cousins*. Factual Findings 1-12.

3. The services identified in Board Resolution No. 1726 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. Services will not be reduced below mandated levels. 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. Factual Findings 1-16.

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 1-16.

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 Findings 1-17.

ORDERS

1. The Accusations are SUSTAINED against Respondents KENNETH BANKS, TERRY MARIE BOEHMER, and LEABETH GANADEN YICK.

2. Notice SHALL be given to those Respondents that their services will not be required for the 2005-2006 school year, and such notice SHALL be given in inverse order of seniority.

Dated: April 28, 2005



ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings