

BEFORE THE  
GOVERNING BOARD OF  
THE MANHATTAN BEACH UNIFIED SCHOOL DISTRICT

In the Matter of the Accusation Against:

**Certain Certificated Employees of the  
Manhattan Beach Unified School District,**

Respondents.

OAH No. L2010031166

**PROPOSED DECISION**

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 5, 2010, in Manhattan Beach, California.

Howard A. Friedman, Attorney at Law, represented Manhattan Beach Unified School District (District).

Lawrence B. Trygstad, Attorney at Law, represented respondents Don Braunecker, Lynn Burrell, Donna Gallageher, Shawn Genut, Jody Kellogg and Edward Naves, who were not present at the hearing.

Respondents Brittney Olson and Sam Sybesma (Sybesma) were present at the hearing and represented themselves.

Respondents Grisel Hands, Tom Walker and Krist Walz failed to appear or be represented at the hearing.

Evidence was received by stipulation, testimony and documents. The record was held open for submission of Post-Hearing Briefs by May 11, 2010. District submitted a Post-Hearing Brief on May 11, 2010, which has been marked for identification as Exhibit 12. No respondent submitted a Post-Hearing Brief. The matter was submitted on May 11, 2010.

**FACTUAL FINDINGS**

1. Kathryn A. Hall, Director of Human Resources for the District, made and filed the Accusation in her official capacity.
2. Respondents in this proceeding are certificated employees of the District.

3. On March 8, 2010, the District provided written notice to respondents pursuant to Education Code<sup>1</sup> sections 44949 and 44955 that their services would not be required for the 2010-2011 school year. Each written notice set forth the reasons for the District's decision and noted that 20.7 full time equivalent (FTE) positions would be reduced or discontinued.

4. On April 9, 2010, the District filed and thereafter served the Accusation and related documents on respondents. Each respondent in this matter filed a timely Notice of Defense requesting a hearing for a determination of whether cause exists for not reemploying them for the 2010-2011 school year. All prehearing jurisdictional requirements were met.

5. On March 8, 2010, the Governing Board (Board) of the District adopted Resolution 2010-7(Resolution) reducing or discontinuing the following particular kinds of services (PKS) for the 2010-2011 school year:

<u>Certificated Services</u>	<u>Number of Full-Time Equivalent Positions (FTE)</u>
Teacher-Math, Secondary	.8FTE
Teacher-Social Studies, Secondary	.4FTE
Teacher-Spanish, Secondary	1.0FTE
Teacher- English, Secondary	.6FTE
Teacher-Art, Secondary (ceramics)	.2FTE
Teacher-MCHS AVID Program	.4FTE
Teacher-Secondary General Education Physical	.6FTE
Teacher-Secondary Biology	.2FTE
Teacher-Secondary Physics	.4FTE
Teacher-PACE	.2FTE
Teacher-CAHSEE	.2FTE
Secondary Counselors	1.6FTE
Nurse	1.0FTE
Special Education Program Specialist	.6FTE
Teachers-Elementary General Education Physical Education	2.0FTE
Teachers- Elementary Class Size Reduction	*10.0 FTE
School Psychologist	.5FTE
Total	*20.7FTE
Total Full Time Equivalent Reduction	*20.7FTE

\* As amended<sup>2</sup>

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<sup>1</sup> All statutory citations are to the Education Code, unless indicated otherwise.

<sup>2</sup> On April 28, 2010, the number of FTE positions was revised to include two additional certificated services.

6. The Resolution established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service to the District on the same day. The Resolution also provided that the order of employee termination shall be based on the needs of the District and its students in accordance with the nature and type of credentials and authorizations of the certificated employees.

7. The services set forth in Factual Finding 5 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.

8. The Board took action to reduce the services set forth in Factual Finding 5 because of uncertainty surrounding future State funding. The decision to reduce services was not related to the capabilities and dedication of the individuals whose services are proposed to be reduced or eliminated. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

9. The District maintains a seniority list which contains employee's seniority dates (first date of paid service), current assignments, and credential and certifications. Certificated employees within the District were given access to the seniority list to verify, update or correct pertinent information.

10. The District used the seniority list to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other employees.

11. The District properly considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of layoff notices to be delivered to employees by March 15, 2010.

12. Respondent Sybesma is a certificated employee of the District with a physical education (P.E.) credential. The Resolution provides for discontinuation of a .6 FTE P.E. teaching position. Sybesma was noticed for .2 FTE of the .6 FTE reduction. He contended that his .2 FTE should be reassigned to teach elective dance, a course taught by Yvonne Johnson (Johnson). Johnson holds a Performing Arts Occupations credential and is retained and paid by the Southern California Regional Occupational Center to teach an elective dance course within the District. Johnson is not a District employee, and therefore was correctly omitted from the seniority list. Sybesma is not certificated to teach elective dance. The District correctly identified Sybesma as an employee subject to a .2 FTE layoff.

## LEGAL CONCLUSIONS

1. Section 44949 provides in pertinent part as follows:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefore.

[¶] . . . [¶]

2. Section 44955 provides in pertinent part as follows:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever in any school year the average daily attendance in all of the schools district for the first six months in which school is in session shall have declined . . . , whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certified and competent to render.

[¶] . . . [¶]

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis on needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish . . . a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group . . . .

(c) . . . [S]ervices of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. . . .

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrated a specific need for personnel to teach a specific course or course of study . . . and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

[¶] . . . [¶]

3. All notice and jurisdictional requirements set forth in sections 44949 and 44955 were met.

4. The services set forth in Factual Finding 5 are particular kinds of services which may be reduced or discontinued within the meaning of 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. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

5. A school 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 service’ 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.)

6. Cause exists pursuant to sections 44949 and 44945 to reduce the number of certificated employees of the District due to the reduction or discontinuation of the particular kinds of services set forth in Factual Finding 5. The District properly identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

7. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

#### ORDER

The District may give notice to respondents Don Braunecker, Lynn Burrell, Donna Gallageher, Shawn Genut, Grisel Hands, Jody Kellogg, Edward Naves, Brittney Olson, Sam Sybema, Tom Walker and Krist Walz that their services will not be required for the 2010-2011 school year.

Dated: May 17, 2010

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JENNIFER M. RUSSELL  
Administrative Law Judge  
Office of Administrative Hearings