

BEFORE THE  
GOVERNING BOARD  
OAK PARK UNIFIED SCHOOL DISTRICT  
COUNTY OF VENTURA  
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Jennifer Aaronson, and Other  
Certificated Employees of the  
Oak Park Unified School District,

Respondents.

OAH Case No.: L2008030063

**PROPOSED DECISION**

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 9, 2008, in Oak Park, California.

Warren S. Kinsler, Attorney at Law, represented Anthony Knight (Knight), Superintendent of the Oak Park Unified School District (District).

Paul D. Powers and Jeanne MacCalden Kvale, Attorneys at Law, represented Marjorie Cohen (Cohen), Kristin Dikes (Dikes), Nicole Elsokary (Elsokary), Debi Fries (Fries), Stacy Gattleson (Gattleson), Allan Hunt (Hunt), Matt Kracht (Kracht), Dianne Large (Large), Anna Lovejoy (Lovejoy), Daniel O'Brien (O'Brien), Ken Paulson (Paulson), Brandie Pryor (Pryor), Michelle Schlatter (Schlatter), Tristine Wenker (Wenker), Erica White (White), and Jan Willis (Willis), collectively referred to as Respondents.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2008-2009 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2008-2009 school year.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. Superintendent Knight filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.

3. On February 28, 2008, the Governing Board of the District (Governing Board) adopted Resolution number 08-06, reducing or discontinuing the following services for the 2008-2009 school year:

<u>Service</u>	<u>Full-Time-Equivalent Positions</u>
Kindergarten through Fifth Grade Classroom Instruction	15
Elementary Music Instruction	2.8
Elementary Counseling Services	1
Elementary Science Specialist Services	.5
Middle School Title I Reading Intervention	.6
Middle School Art Instruction	.2
Middle School Physical Education Instruction	.4
Middle School Language Arts Instruction	.6
Middle School Drama Instruction	.4
Middle School Social Studies Instruction	.8
Middle School Instrumental Music Instruction	.2
Middle School Science Instruction	.2
Middle School Mathematics Instruction	.2
High School Choral Music Instruction	.2
High School Theatre Arts Instruction	.2
High School Science Instruction	.6
High School Art Instruction	.4
High School Mathematics Instruction	.8
High School Chinese Instruction	.2
High School French Instruction	.2
High School Dance Instruction	.4
High School Instrumental Music Instruction	.2
High School English Instruction	1.4
High School History/Social Science Instruction	.8
High School American Sign Language Instruction	.2
High School Computer Instruction	.5
High School Technical Support Services	.2
Nursing Services	.5
Secondary Counseling Services	2.0
ROP Computer Instruction	.5
ROP Athletic Training	.4
ROP Millwork, Cabinet-making & Drafting	.6
ROP Theatre Occupations	<u>.6</u>
Total	33.8



4. On or about March 13, 2008, Superintendent Knight notified the Governing Board and provided written notice, via personal service or, in two instances, via express mail sent to the last known address, to 42 certificated employees of the District, including Respondents, that their services will not be required for the 2008-2009 school year due to the reduction of particular kinds of services. The notices sent to Tim Chevalier, Jonathan Murphy, Liz Blum, and Brenda Pasqua were designated as "precautionary," in the event that it was determined, after hearing, that their services should be terminated instead of the services of other employees selected by the District.

5. Respondents requested a hearing, and filed notices of defense,<sup>1</sup> to determine if there is cause for not reemploying them for the 2008-2009 school year. All hearing requests/notices of defense were timely filed.

6. Assuming that all certificated employees would file a request for hearing/notice of defense, the District issued the Accusation on March 12, 2008, and served it on Respondents with the March 13, 2008 notice set forth on factual finding number 4.

7. All prehearing jurisdictional requirements have been met.

8. At the hearing, the District dismissed the accusation against Respondent Wenker.

9. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.<sup>2</sup>

10. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 primarily because of the uncertainty surrounding State funding. The Board was also aware that enrollment in the District declined from 3,654 in the 2006-2007 school year to 3,591 in the current school year, and that it is projected to decline to 3,470 in the 2008-2009 school year. 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.

11. The reduction of services set forth in factual finding number 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 Governing Board.

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<sup>1</sup> The District provided Respondents with a single "Request For Hearing/Notice of Defense" form.

<sup>2</sup> All further references are to the Education Code.

12. On February 28, 2008, the Governing Board adopted Resolution No. 08-05, setting forth the criteria to determine seniority among employees who first rendered paid service in a probationary position on the same date (tie-breaking criteria). The tie-breaking criteria are reasonable as they relate to the skills and qualifications of certificated employees. Moreover, the District properly utilized the criteria to break ties involving Respondents.

13. The reduction of 15 full-time equivalent (FTE) positions in Kindergarten to fifth grade class instruction impacted Respondents Cohen, Elsokary, Gettleson, Pryor, Schlatter, and White. They each hold multiple subject credentials that allow them to teach in self-contained classrooms in grades Kindergarten through twelve, but, with the exception of Respondent Schlatter, did not have sufficient seniority to bump into any other assignment for which they were credentialed. Respondent Schlatter, whose seniority date is August 25, 2003, also holds a supplemental authorization in social sciences, which enabled her to retain .6 FTE of her assignment by displacing, or "bumping," a less senior employee teaching social sciences at the middle school.

14. Respondent Dikes holds a single subject credential (physical education). Her seniority date is August 28, 2006. The District proposes to lay her off because the services she performed, .4 FTE of High School Dance Instruction, have been discontinued.

15. The reduction in counseling services resulted in notices to Respondents Fries and Large. Respondent Fries, who holds a pupil personnel services credential and who was hired on August 23, 2004, works as a high school counselor. She was displaced by the reduction in elementary school counseling services, as a more senior counselor at that level, Deborah King, was able to bump into the high school assignment. Respondent Large has a seniority date of February 17, 2007 and holds a pupil personnel services credential. The services Respondent Large performed, secondary school counseling, were reduced, and she is the most recently hired counselor.

16. Respondent Hunt holds a vocational education credential, theatrical occupations, and has a seniority date of August 25, 2003. He teaches theatre arts. His position was reduced by .8 FTE as a result of the reduction of theatre arts instruction (.2 FTE in the discontinuation of High School Theatre Arts instruction and .6 in that of ROP Theatrical Occupations).

17. Respondent Kracht, whose seniority date is August 30, 2004, holds a single subject credential (biological sciences). He taught high school science, a service that suffered a .6 reduction. He lost another .2 FTE as a result of being bumped by Debbie West, a teacher credentialed to teach high school science with the same seniority date, but who benefited from having multiple subject matter authorizations, criterion 13 in the tiebreaking criteria.



18. Respondent Lovejoy has a professional clear single subject credential (art), and teaches art at the high school, a service reduced .4 FTE. Her seniority date is August 29, 2005. Another teacher, Blum, one of the certificated employees who received a provisional notice, also teaches art at the high school and has the same seniority date. However, the District decided to retain Blum based on the tie-breaking criteria. As all preceding criteria were equal, the tie was broken by resort to criterion number 18, the total number of semester credits earned at an accredited institution of higher education. Blum had 172 units to Respondent Lovejoy's 165. In addition to the loss of .4 FTE directly attributable to the reduction in art instruction, Respondent Lovejoy lost another period, or .2 FTE, to a more senior certificated employee, Annette Johnson, whose middle school art instruction assignment had been reduced. The District plans to retain Respondent Lovejoy to teach a .4 FTE assignment.

19. The reduction of music instruction impacted Respondent O'Brien. His seniority date is January 8, 2007, and he holds a single subject credential (music). He teaches instrumental music, one of the services reduced .2 FTE. He lost the rest of his assignment when bumped by a more senior teacher displaced by cuts in elementary music instruction, Cynthia Hall.

20. Respondent Paulson, whose seniority date is August 28, 2006, lost .6 FTE when classes he was credentialed to teach, ROP Millwork, Cabinet Making, and Drafting, were discontinued.

21. Respondent Willis, who holds a single subject credential (physical education), with authorizations to teach introductory science and introductory English, was hired on August 27, 2007. She taught High School English, one of the services reduced.

22. No certificated employee junior to any Respondent was retained to render a service which any of the Respondents are certificated and competent to render.

#### LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 9.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 22.



4. Respondents argue that the District is laying off a disproportionate number of certificated employees. Respondents assert that since the District was concerned about declining enrollment, the number of teachers selected for layoff must proportionally correspond to the decline in average daily attendance (ADA). Since the declines in enrollment are relatively small, it is argued, so should the number of employees laid off.

Section 44955, subdivision (b), sets forth the following grounds for a district to undertake an economic layoff: "Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall become necessary to decrease the number of permanent employees of 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. . . ."

Section 44955, subdivision (b), provides for four independent grounds for undertaking a layoff of certificated employees. Nothing in the statute mandates a specific basis, and, no limitations are placed on the reason(s) a district may have for the reduction or discontinuation of a particular kind of service. Nor have Respondents provided any authority or persuasive argument to require the District to undertake the layoff on grounds of a decline in ADA merely because of concerns about declining enrollment.

The undisputed evidence in this case establishes that the District was primarily concerned about the uncertain level of State funding for the 2008-2009 school year. While the District was also concerned about declining enrollment, it did not undertake to conduct the layoff pursuant to the declining ADA provisions of the statute and, therefore, did not make the requisite comparative ADA decline calculations. Rather, as the statute permits, the Governing Board adopted a resolution focusing on particular kinds of services as the basis for the layoff. Consistent with this decision, the notices sent to Respondents refer to the financial uncertainty and the reduction in particular kinds of services.

The court in *Campbell Elementary Teachers Association, Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 808, provided the following guidance to evaluate a district's exercise of its discretion: " 'In determining whether the decision of a school board is reasonable as distinguished from fraudulent, arbitrary, or capricious, its action is measured by the standard set by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion on the same subject.' (Arthur v. Oceanside-Carlsbad Junior College Dist. (1963))



216 Cal.App.2d 656, 663.) ” With respect to the specific facts before it, the court noted that while the district wanted to keep as many certificated employees as possible, it faced many financial uncertainties. The district also desired to maintain maximum flexibility in determining staffing for the ensuing school year in light of available resources and educational needs. The governing board met and consulted with its business manager regarding the district’s financial position. In these circumstances, the court concluded, the governing board’s decision to reduce particular kinds of services was not arbitrary or capricious.

In the instant case, as in *Campbell*, the District provided sufficient evidence to establish it had not abused its discretion, which evidence was not contradicted. In light of its concern about future State funding, even if it was also concerned about declining enrollment, which, incidentally, would lead to further loss of State revenue, it was not unreasonable for the Governing Board to meet the challenges it faced by reducing or discontinuing particular kinds of services. In these circumstances, the District’s decision to choose to undertake a layoff based on one of the available grounds and to reduce or discontinue the particular kinds of services set forth in factual finding number 3 is not arbitrary or capricious.

5. Cause exists to terminate the services of respondents Marjorie Cohen, Kristin Dikes, Nicole Elsokary, Debi Fries, Stacy Gettleson, Allan Hunt (.8 FTE), Matt Kracht (.8 FTE), Dianne Large, Anna Lovejoy (.6 FTE), Daniel O’Brien, Ken Paulson (.6 FTE), Brandie Pryor, Michelle Schlatter (.4 FTE), Erica White, and Jan Willis for the 2008-2009 school year due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 7, and 9 through 22, and legal conclusion numbers 1 through 4.

#### ORDER

The Accusation is sustained and the District may notify Respondents Marjorie Cohen, Kristin Dikes, Nicole Elsokary, Debi Fries, Stacy Gettleson, Allan Hunt, Matt Kracht, Dianne Large, Anna Lovejoy, Daniel O’Brien, Ken Paulson, Brandie Pryor, Michelle Schlatter, Erica White, and Jan Willis that their services will not be needed during the 2008-2009 school year due to the reduction of particular kinds of services.

DATED: \_\_\_\_\_

SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings