

BEFORE THE  
GOVERNING BOARD  
OF THE  
SAN JACINTO UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2008020534

Respondents listed in Appendix A.

**PROPOSED DECISION**

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Jacinto, California on May 1, 2008.

Mark W. Thompson, Atkinson, Andelson, Loya, Ruud & Romo, Attorneys at Law, represented the San Jacinto Unified School District.

Jesús E. Quiñonez, Holguin and Pamela D. Chandran, Garfield & Martinez, represented the respondents listed in Appendix A, except for those listed immediately below.

No appearance was made by or on behalf of respondents Ramon Cordero, Michael Leese, Gloria Solorio-Valenzuela, Linda Thiel, and Cynthia Torres.

The matter was submitted on May 1, 2008.

**FACTUAL FINDINGS**

1. Diane Perez, Assistant Superintendent, Personnel Services of the San Jacinto Unified School District, made and filed the accusation dated March 14, 2008 in her official capacity as the designee of Dr. Shari L. Fox, District Superintendent.

2. Respondents<sup>1</sup> are certificated District employees.

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<sup>1</sup> The accusation named 50 certificated personnel as respondents, including five individuals, Christine Thomas, Wendy Morphew, Jennifer Kepler, Dawn Bray, and Barbara McNielly, who, though timely served with the accusation and with the notice described below in Factual Finding 6, did not file requests for a hearing, and thus waived their right to a hearing, and did not become and are not properly parties to this proceeding. At the hearing, one respondent, Konni Chapman, stated that she had secured employment in another state and was no longer

3. On March 7, 2008, in accordance with Education Code sections 44949 and 44955, the Superintendent notified the Board of Trustees of the San Jacinto Unified School District in writing of her recommendation to reduce or discontinue particular kinds of services for the upcoming school year. The Superintendent stated the reasons for the recommendation.

4. On March 7, 2008, the Board adopted Resolution No. 07-08-39, determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The Board determined that the particular kinds of services that must be reduced for the 2008-2009 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Elementary Teacher	35 FTE
Middle School English Teacher	4 FTE
Middle School Social Studies Teacher	3 FTE
High School English Teacher	5 FTE
High School Social Studies Teacher	3 FTE
Elementary School Counselor	4 FTE
Secondary Counselor	2 FTE
Assistant Principal	3 FTE
Principal	1 FTE

The proposed reductions totaled 60 FTE positions.

5. The Board directed the Superintendent or her designee to determine which employees' services would not be required for the 2008-2009 school year as a result of the reduction of the foregoing particular kinds of services. The Board further directed the Superintendent or her designee to send appropriate notices to all certificated employees of the District who would be laid off as a result of the reduction of these particular kinds of services.

6. On or before March 15, 2008, the District timely served on respondents a written notice that the Superintendent had recommended that their services would not be required for the upcoming school year. The notice set forth the reasons for the recommendation. The notice advised respondents of their right to a hearing, that each respondent had to deliver a request for a hearing in writing to the person sending the notice by the date specified in the notice, a date which in each case was more than seven days after

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contesting her layoff. She is deemed to have withdrawn her request for hearing. Prior to and at the hearing, the District dismissed nine respondents: Annette Doyle, Cheryl Love, Amy Milchman, Luciano Savala, Scott Stewart, Pauline Grace, Beatrice Martos, Katheryne McGregor, and Gabriel Vigil. All collective references to "respondents" in this Proposed Decision encompass the remaining 35 respondents, who are named in Appendix A to this Proposed Decision.



the notice was served, and that the failure to request a hearing would constitute a waiver of the right to a hearing.

The recommendation that respondents be terminated from employment was not related to their competency as teachers.

7. Each respondent timely filed a written request for hearing to determine if there was cause for not reemploying that respondent for the upcoming school year. The accusation was thereafter timely served on each respondent. Each respondent timely filed a notice of defense. All pre-hearing jurisdictional requirements were met.

8. The services the Board addressed in Resolution No. 07-08-39 were "particular kinds of services" that could be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious and constituted a proper exercise of discretion.

9. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

10. The Board considered attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees. No evidence was presented that any known attrition was not considered.

11. No certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render, except with regard to Jennifer Lidar.

12. Jennifer Lidar began the current school year as a sixth grade language arts (i.e., English) teacher. In late January 2008, she was reassigned to a sixth grade language arts/social studies core position, which she continued to hold as of the hearing.<sup>2</sup> The District sent a layoff notice to Ms. Lidar based on its erroneous identification of her as a middle school English teacher; middle school core positions, on the other hand, were not among the particular kinds of positions the District identified for reduction or elimination.

Ms. Lidar holds a multiple subject credential, with a supplemental authorization in English. The multiple subject credential permits the holder to teach in either a standard elementary school class position or in a middle school core position. Accordingly, even though Ms. Lidar's current position is not one the District is reducing, Ms. Lidar would be subject to "bumping" (i.e., displacement) by a more senior employee who is certificated and

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<sup>2</sup> Ms. Lidar's uncontroverted testimony to this effect is credited. The District provided no specific evidence of Ms. Lidar's current position, but instead relied solely on its overall employee seniority list, a compilation obviously gleaned from other primary documents pertaining to the assignments and status of specific employees.



competent to serve as a middle school core teacher, i.e., an elementary school teacher with a multiple subject credential.

A review of the documentation submitted at the hearing indicates that a number of respondents have multiple subject credentials. However, pursuant to Resolution No. 07-08-39, holding an appropriate credential is only one of the requirements that must be met before an employee may bump another, more junior employee. The evidence presented at the hearing was insufficient to establish that any of the numerous respondents more senior to Ms. Lidar who hold a multiple subject credential are qualified to displace her with regard to other criteria set forth in the Resolution (i.e., that the displacing employee possess "any specific prior job experience, training, or certification required by the applicable job description for the position.") The District failed to establish that Ms. Lidar would have been laid off through the bumping process had her current assignment been correctly identified. Accordingly, Ms. Lidar is not subject to layoff.<sup>3</sup>

13. Melissa Woolfrey, a second grade teacher, commenced her employment with the District in the summer of 2006. Her seniority date is August 4, 2006.<sup>4</sup>

#### LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Cause exists under Education Code sections 44949 and 44955 for the District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the accusation except as to respondent Jennifer Lidar. It is recommended that the Board give all respondents except Jennifer Lidar notice before May 15, 2008, that their services are no longer required by the District. It is also recommended that the Board give such notice to Christine Thomas, Wendy Morphew, Jennifer Kepler, Dawn Bray, and Barbara McNielly, the five individuals who waived their right to a hearing in this matter.

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<sup>3</sup> Respondents' argument that another respondent, Denise Gore, was prejudiced by the District's error was based on (what has turned out to be) the erroneous premise that Ms. Lidar would in fact be bumped. The burden to establish prejudicial error appears to be on respondents. (*Fair v. Fountain Valley School District* (1979) 90 Cal.App.3d 180, 187.) No showing has been made that any respondents have been prejudiced by the District's error (i.e., that they would not have been laid off but for the District's erroneous classification of Ms. Lidar as an English teacher), and such prejudice is not readily discernible from the record. Accordingly, the finding and conclusion that Ms. Lidar is not subject to layoff has no effect on the outcome of this proceeding as to any other respondent.

<sup>4</sup> Ms. Woolfrey testified that her employment began in July 2006. She had no documentation to support her testimony, however. Her employment contract with the District, which she signed on August 1, 2006, explicitly reflected a start date of August 4, 2008. Her employment contract is credited over her memory.

However, a preponderance of the evidence did not sustain the charges set forth in the accusation as to respondent Jennifer Lidar, whose services could not be terminated because her layoff was predicated on her erroneous identification by the District as a middle school English teacher, when in fact her assignment was to a middle school English/social studies core position. It is recommended that the Board not give respondent Jennifer Lidar notice that her services will no longer be required by the District.

#### ORDER

1. The accusations served on all respondents except Jennifer Lidar are sustained. Notice shall be given to such respondents, and to Christine Thomas, Wendy Morpew, Jennifer Kepler, Dawn Bray, and Barbara McNielly, before May 15, 2008, that their services will not be required because of the reduction or discontinuation of particular services as indicated.

2. The accusation served on respondent Jennifer Lidar is not sustained and the accusation related to Ms. Lidar is dismissed.

DATED: 5-5-08



DONALD P. COLE  
Administrative Law Judge  
Office of Administrative Hearings

## Appendix A

1. Raymundo Alcala
2. Brian Bailey
3. Jasmine Emily Banuelos
4. Melissa Brause
5. Shawnery Buren
6. Melissa Christina Camarena
7. Lynn Carlson
8. Monica Castillo
9. Kandace Marie Chudy-Murphy
10. Deborah Denae Collier
11. Ramon Cordero
12. Abbi Foster
13. Stephanie Garland
14. Denise Gore
15. Kristina Hard
16. Kirsten Heizer
17. Kristina Himes
18. Jennifer Jan Kling-Burbridge
19. Michael Leese
20. Jennifer Lidar
21. Stephanie Lipes
22. Nancy Martinez

23. Jacob Milchman
  24. Lindsey Jo Palacios
  25. Jaqueline Pedersen
  26. April Phillips
  27. Amy Schuyler (McIntyre)
  28. Margaret Coelle Sibia
  29. Shelly Skaggs
  30. Gloria Solorio-Valenzuela
  31. Juliana Tapia
  32. Linda Thiel
  33. Cynthia Torres
  34. Courtnie Wallace
  35. Melissa Woolfrey
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