

**BEFORE THE  
BOARD OF TRUSTEES  
LOWELL JOINT SCHOOL DISTRICT**

In the Matter of the Accusations Against:

Berg, Kristen; Brimmage, Mary; Coleman, Rachel; Crabtree, Gail; Curd, Kelly; Dember, Susan; East, Alison; Espinosa, Martina; Giesler, Dawn; Heimlich, Cynthia; Huff, Kenneth; Johnson, Christine; Kim, Angela; Miller, Lori; Nikaj, Darrelle; Padilla, Brooke; Paine, Jennifer; Roth, Julie; Tarbell, Christina; Warner, Alison; Wolven, Kristin; and Wrobel, Melissa,

Respondents.

OAH No. L2006040526

**PROPOSED DECISION**

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on May 5, 2006, in Whittier.

Anthony P. De Marco, Esq., Parham & Rajcic, represented Complainant.

Carlos R. Perez, Esq., Reich, Adell, Crost & Cvitan, represented Respondents, the following of whom were present: Rachel Coleman, Gail Crabtree, Kelly Curd, Angela Kim, Jennifer Paine and Christina Tarbell.

Oral and documentary evidence was received and the parties entered into stipulations regarding some factual findings and legal conclusions. The record was thereafter closed and the matter submitted for decision at the conclusion of the hearing.

**FACTUAL FINDINGS**

*Parties & Jurisdiction*

1. Complainant Dr. Ronald T. Randolph is the Interim Superintendent of the Lowell Joint School District (District) and he signed the Accusations in that official capacity.
2. Respondents were at all times mentioned certificated District employees.

3. Respondents first rendered paid service to the District on the following dates:

<u>Names</u>	<u>Seniority Dates</u>
Berg, Kristen	09/01/2004
Brimmage, Mary	09/01/2005
Coleman, Rachel	09/01/2005
Crabtree, Gail	09/01/2005
Curd, Kelly	09/01/2005
Dember, Susan	09/01/2005
East, Alison	09/08/2003
Espinosa, Martina	09/01/2003
Giesler, Dawn	09/01/2005
Heimlich, Cynthia	09/01/2001
Huff, Kenneth	09/01/2004
Johnson, Christine	09/01/2001
Kim, Angela	09/01/2002
Miller, Lori	09/01/2002
Nikaj, Darrelle	09/01/2004
Padilla, Brooke	09/01/2002
Paine, Jennifer	09/15/2003
Roth, Julie	09/01/2002
Tarbell, Christina	09/01/2002
Warner, Alison	09/01/2004
Wolven, Kristin	09/16/2002
Wrobel, Melissa	09/01/2002

4. On February 27, 2006, the Board of Trustees (Board) of the District issued Resolution No. 419 proposing to reduce the number of certificated employees based on budgetary needs of the District.

5. On February 27, 2006, pursuant to Education Code sections 44949 and 44955, the Board directed that notice be given to Respondents, and others, that their services will not be required for the ensuing school year.

6. Prior to March 15, 2006, Respondents were provided written notice, by personal service or registered mail, of the recommendation that they receive notice pursuant to Education Code sections 44949 and 44955 that their services will not be required for the ensuing school year.

7. Respondents timely requested in writing a hearing to determine if there is cause to not re-employ them next school year. Each Respondent was thereafter served with an Accusation.

8. The following Respondents timely filed a Notice of Defense: Rachel Coleman, Gail Crabtree, Kelly Curd, Alison East, Angela Kim, Brooke Padilla, Jennifer Paine, Julie Roth and Christina Tarbell. The parties agreed that although Respondent Susan Dember filed her Notice of Defense late, she could also participate in the hearing and a disposition of the Accusation against her be made.

9. After adoption of Resolution No. 419, the Board considered all known assured attrition.

10. The hearing of this matter was initially scheduled for April 28, 2006. By mutual agreement of the parties, the hearing was continued to May 5, 2006.<sup>1</sup>

*The District's Layoff Decision*

11. Board Resolution No. 419 specifically provides for the reduction or elimination of the following particular kinds of services:

<u>Particular Kinds of Service</u>	<u>Full-Time Equivalent (FTE) Positions</u>
14 Full-Time Teaching Positions	14.0 FTE
1 Full (2 Half-Time) Intermediate Assistant Principal Position	1.0 FTE
1 Half-Time SELPA Director	0.5 FTE
1 Speech Consultant	1.0 FTE
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Total FTE Reduction	16.5 FTE

12. Board Resolution No. 419 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 were used in this matter to resolve ties in seniority amongst certificated personnel. The tie-breaking process is not subject to dispute in this matter.

13. Subsequent to the above-described events, the District became aware of other factors in reasonably assured attrition, including the release and resignation of other certificated employees. As a result, only 11.0 FTE positions in Full-Time Classroom Teaching need to be reduced.

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<sup>1</sup> Pursuant to Education Code section 44949, subdivision (e), and Government Code section 11524, the deadlines prescribed for issuance of this Decision by Education Code section 44955, subdivision (c), are extended by the number of days between hearing dates caused by the continuance (7 calendar days).

14. The reduction or elimination of the 11.0 FTE positions will not reduce services below mandated levels.

15. Cause exists within the meaning of Education Code sections 44949 and 44955 to reduce and/or eliminate 11.0 FTE positions in Full-Time Classroom Teaching for the ensuing school year because of the financial constraints resulting from revenue being insufficient to maintain the current levels of programs, and necessary program changes as a result.

16. 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 in terms of seniority is accurate.

17. 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.

18. During the hearing, the parties stipulated that final notice of termination shall be sent to the following Respondents and others, on the basis of least seniority, corresponding to the 11.0 FTE positions that are being reduced and/or eliminated: Dember, Susan; Gilson, Sandra; Giesler, Dawn; Brimmage, Mary; Cooke, Kristen; Berg, Kirsten; Paine, Jennifer; East, Alison; Van Sluis, Amber; Wølven, Kristin; and Kim, Angela.

19. During the hearing, the parties stipulated that the Accusations shall be dismissed as to these Respondents: Coleman, Rachel; Crabtree, Gail; Curd, Kelly; Espinosa, Martina; Heimlich, Cynthia; Huff, Kenneth; Johnson, Christine; Miller, Lori; Nikaj, Darrelle; Padilla, Brooke; Roth, Julie; Tarbell, Christina; Warner, Alison; and Wrobel, Melissa.

20. The Board's decision to reduce or discontinue the above particular kinds of services was neither arbitrary nor capricious, but was a proper exercise of discretion.

21. 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.

22. 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 1-10.)

2. The 11.0 FTE positions in question are particular kinds of services that can be reduced or discontinued under Education Code section 44955. The Board's decision to reduce or discontinue those 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 1-22.)

3. 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 1-22.)

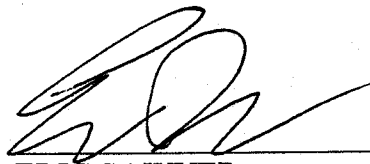
4. No junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render. (Factual Findings 1-22.)

### ORDERS

1. The Accusations are DISMISSED against the following Respondents: Coleman, Rachel; Crabtree, Gail; Curd, Kelly; Espinosa, Martina; Heimlich, Cynthia; Huff, Kenneth; Johnson, Christine; Miller, Lori; Nikaj, Darrelle; Padilla, Brooke; Roth, Julie; Tarbell, Christina; Warner, Alison; and Wrobel, Melissa.

2. The Accusations are SUSTAINED against the remaining Respondents. The District SHALL give notice to the following persons that their services will not be required for the 2006-2007 school year, and such notice SHALL be given in inverse order of seniority: Dember, Susan; Gilson, Sandra; Giesler, Dawn; Brimmage, Mary; Cooke, Kristen; Berg, Kirsten; Paine, Jennifer; East, Alison; Van Sluis, Amber; Wolven, Kristin; and Kim, Angela.

Dated: May 9, 2006



ERIC SAWYER  
Administrative Law Judge  
Office of Administrative Hearings