

BEFORE THE  
GOVERNING BOARD  
OF THE  
FALLBROOK UNION HIGH SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JOSEPH GEIGER AND  
BARBARA PLANTE,

OAH No. 2010020350

Respondents.

**PROPOSED DECISION**

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in Fallbrook, California on April 15, 2010.

William Wood Merrill, Esq., Best, Best & Krieger LLP, represented Dale J. Mitchell, Ed.D., Superintendent, Fallbrook Union High School District.

Jon Y. Vanderpool, Esq., Tosdal, Smith, Steiner & Wax, represented Respondents Joseph Geiger and Barbara Plante.

The matter was submitted on April 15, 2010.

**SUMMARY OF PROPOSED DECISION**

The Governing Board of the Fallbrook Union High School District determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, "bumping," "skipping" and breaking ties between/among employees with the same first dates of paid service. The selection process was in accordance with the requirements of the Education Code.

## FACTUAL FINDINGS

1. Joseph Geiger (Respondent Geiger) and Barbara Plante (Respondent Plante) are probationary or permanent certificated employees of the Fallbrook Union High School District (District).

2. On March 2, 2010, Dale J. Mitchell, Ed.D., the District's Superintendent (Superintendent) notified the District's Governing Board (Board) of his recommendation to reduce or discontinue services for the ensuing school year and stated the reasons for her recommendation.

3. On March 2, 2010, the Board adopted Resolution number 6-0910 reducing or eliminating particular kinds of services for the ensuing school year and establishing tie-breaker criteria and "Competency" for purposes of Education Code sections 44955, 44956 and 44957.

4. On March 2, 2010, the Board adopted the Superintendent's recommendation and thereby took action to reduce or eliminate the following particular kinds of services, commencing the 2010-2011 school year. Further, the Board directed the Superintendent to determine which employees' services would not be required for the 2010-2011 school year and to take all necessary steps under the law "not to employ those certificated employees of the District" because of the reduction and elimination of these programs and services.

5. On March 5, 2010, the Superintendent served Respondents with written notice that he recommended not to re-employ them in the 2010-2011 school year and stated the reasons therefor. In addition, the notice advised Respondents of the right to hearing, that the request for hearing must be delivered to the District's office no later than 10 days from the date of the letter (March 15, 2010), and that the failure to request a hearing would constitute waiver of the right to a hearing.

Each Respondent submitted a timely request for hearing to determine if there was cause for not re-employing him or her for the ensuing school year.

6. On March 29, 2010, the Superintendent made, filed and timely served an Accusation for lay-off of certificated employees and related materials on each Respondent.

In response, Respondents submitted a timely Notice of Defense.

7. All prehearing jurisdictional requirements were satisfied.

8. On March 2, 2010, the Board adopted Resolution number 6-0910 and thereby took action to reduce or eliminate the following particular kinds of certificated services commencing the 2010-2011 school year as follows:

<u>PARTICULAR KINDS OF SERVICES</u>	<u>FTE<sup>1</sup> REDUCTION</u>
1. CAREER TECHNICAL EDUCATION	<u>1.80</u>
a. Computers	0.40
b. Geographic Information Systems	0.40
c. Metal	1.00
2. COUNSELING	1.00
3. ENGLISH	0.40
4. MATHEMATICS	1.00
6. PHYSICAL EDUCATION	0.20
7. SCIENCE	0.60
8. SOCIAL SCIENCE	0.80
9. VISUAL & PERFORMING ARTS	<u>0.80</u>
a. Art	0.40
b. Band	0.40
10. WORLD LANGUAGE	<u>0.40</u>
a. Spanish	0.40
11. TEACHERS ON SPECIAL ASSIGNMENT	<u>0.60</u>
a. Agriculture	0.20
b. English	0.20
c. Social Studies	0.20
12. ADMINISTRATION	1.00
a. Assistant Principal	

The proposed reductions totaled 8.6 full-time equivalent (FTE) positions.

9. The District considered known retirements in determining the actual number of final layoff notices to be delivered to its certificated employees.

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<sup>1</sup> Full-Time Equivalent

10. The Superintendent was responsible for implementing the technical aspects of the layoff. The District developed a seniority list that contained, among other matters, the certificated employee's name, seniority date, service provided, status, assignment and credentials.

The seniority date was based on the first date of paid service rendered in a probationary position.<sup>2</sup>

11. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he/she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy vs. Richmond Unified School District* (1975) 13 Cal. 3d 469.)

12. Respondent Geiger challenged the issuance of a layoff notice to him.

He holds a Pupil Personnel Services Credential which authorizes him to provide counseling services. His first date of paid service in a probationary position was August 11, 2008. Cheryl Landin (Landin) holds the same Credential, also provides services as a counselor in the District, and her seniority date is August 6, 2008.

By contract, the District's counselors are allowed to report to work earlier than teachers in order to fulfill responsibilities. Because he had an out-of-state commitment, Respondent Geiger was not available to commence employment with the District prior to August 11, 2008. Only after he began work as a District counselor did Respondent Geiger learn the significance of his seniority date.

The District intends to reduce counseling services by 1.0 FTE. Respondent Geiger is the most junior counselor in the District. He holds no other credential or competence that authorizes him to bump a more junior certificated employee. Based on the evidence in the record, there is not a more junior employee being retained to provide a service for which Respondent Geiger is credentialed and competent to provide.

Given the foregoing facts, the District properly noticed Respondent Geiger.

13. Respondent Plante holds a 1.0 FTE position, and the District seeks to reduce it by .40 FTE. She challenged the issuance of a layoff notice to her. She contends that she is certificated and competent to teach Arts, Media and Entertainment (TV Technology), a course taught by Mark Schneider (Schneider), a more junior employee who is being retained.

As of March 15, 2010, Respondent Plante held a Preliminary Designated Subjects Vocational Education Teaching Credential, with subject authorization: office occupations.

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Education Code section 44845.

Her Credential authorizes her to teach this subject only. During the 2009-2010 school year, Respondent Plante has taught five periods of computer courses.

Mark Schneider (Schneider) holds a “Preliminary Full Time Designated Subjects Career Technical Education: Arts, Media and Entertainment” Credential. His seniority date is July 28, 2008. During the 2009-2010 school year, he has taught TV Technology.

On March 1, 2010, Respondent Plante submitted an application to the Commission on Teacher Credentialing (CTC), requesting that her Credential be updated from a Preliminary to a Clear Credential. On March 10, 2010, on behalf of Respondent Plante, the District’s Human Resources Technician requested that the San Diego County Office of Education (SDCOE) “clear and convert” Respondent Plante’s application to a Finance/Business & Art/Media Entertainment Technical Education Credential. If granted, this modification would authorize Respondent Plante to teach TV Technology.

For purposes of layoff proceedings, the District was required to consider employee credentials on file with the District on March 15, 2010. (*Degener v. Governing Board* (1977), 67 Cal.App.3d 689.) As of March 15, 2010, the CTC had not registered the Credential for which Respondent Plante applied. Respondent Plante has not previously taught TV technology.

Given the foregoing, it was not established that Respondent Plante is credentialed and competent to teach TV Technology.

14. Respondent Plante asserts that she is certificated and competent to teach “Freshman Advisory”, a course taught by Trace Deneke (Deneke), a more junior employee who is being retained.

Deneke has a seniority date of August 25, 2009, holds a Clear Single Subject: Physical Education Credential and a Clear Multiple Subject: General Subjects Credential. He teaches four sections of “Freshman Advisory (Frosh Advisory)” and one section of Physical Education (PE). Respondent Plante teaches a course entitled “Asset Study Skills” during seventh period. As such, she contends that she is qualified to teach the Frosh Advisory course. According to the evidence, Respondent Plante’s credential authorizes her to teach office occupations only. Respondent is not credential to teach PE.

Respondent Plante did not establish that she is certificated and competent to teach Frosh Advisory.

15. The District intends to reduce Computer services by .40 FTE. Respondent Plante is the most junior teacher in the District that teaches Computers. She holds no other credential or competence that authorizes her to bump a more junior teacher. Based on the evidence in the record, there is not a more junior employee being retained to provide a service for which she is credentialed and competent to provide.

Given the facts in Findings 11 and 12, the District properly noticed Respondent Plante, and her position shall be reduced by .40 FTE.

16. Between the employees who first rendered paid service to the District on the same date, the Board determined their order of termination solely on the basis of the needs of the District and its students. The order of termination is based on the needs of the District and its students.

17. The services that the District proposed to reduce were “particular kinds of services” that can 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 but constituted a proper exercise of discretion.

18. The District’s 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.

19. No certificated employee junior to any Respondent was retained to perform any services which any Respondent was certificated and competent to render.

## LEGAL CONCLUSIONS

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

2. A 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 services’ 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)

3. Cause exists under Education Code sections 44949 and 44955 for the Fallbrook Union High School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuance of particular kinds of services is related solely to the welfare of the schools and the pupils thereof.

4. All arguments not addressed herein are determined not to be relevant and/or unsupported by the evidence and therefore rejected.

## ORDER

1. The Accusation served on Respondents Joseph Geiger and Barbara Plante is sustained.

2. Notice shall be given to Respondent Joseph Geiger that his service will not be required for the 2010-2011 school year because of the reduction or discontinuance of particular kinds of services.

3. Notice shall be given to Respondent Barbara Plante that her position will be reduced by .40 full-time equivalent for the 2010-2011 school year because of the reduction or discontinuance of particular kinds of services.

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

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VALLERA J. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings