

BEFORE THE GOVERNNING BOARD OF THE
ALPINE UNION SCHOOL DISTRICT

In the Matter of the Accusation Against:

OAH No. 2010020591

Respondents Listed on Exhibit "A"

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in Alpine, California on April 20, 2010.

Cathie L. Fields, Esq. and Heather A. Dozier, Esq., Atkinson, Andelson, Loya, Ruud and Romo represented the District.

With the exception of Respondent Robert Monfort, Georgiana D'Alessandro, Esq., Tosdal Smith Steiner & Wax, represented Respondents.

There was no appearance by or on behalf of Respondent Robert Monfort.

The matter was submitted on April 20, 2010.

SUMMARY OF PROPOSED DECISION

The Board of Education of the Alpine Union School District determined to reduce or discontinue particular kinds of services provided by teachers 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, "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. Respondents listed on Exhibit "A" (Respondents) are probationary or permanent certificated employees of the Alpine Union School District (District).

2. On March 10, 2010, the Board considered the recommendation of Greg Ryan, the District's Superintendent (Superintendent) to reduce or eliminate particular kinds of services and thereby took action to do so.

3. The Board directed the Superintendent or his designee to determine which employees' services would not be required for the 2010-2011 school year as a result of the reduction of these particular kinds of services. The Board further directed the Superintendent or his designee to send the appropriate notices to all certificated employees of the District who would be laid off as a result of the reduction or discontinuance of the particular kinds of services.

4. On March 11, 2010, Bill Cudog, the District's Assistant Superintendent of Curriculum and Human Resources (Assistant Superintendent) served Respondents with written notice that he recommended not to re-employ them in the 2010-2011 school year and stated the following reasons "... financial constraints resulting from revenue being insufficient to maintain the current levels of programs, the uncertainty of funding, and necessary program changes resulting therefrom...". In addition, the notice advised Respondents of the right to hearing, that a Request for Hearing must be delivered to the District's office no later than March 19, 2010 and that the failure to request a hearing would constitute waiver of the right to a hearing.

5. On March 10, 2010, the Board adopted Resolution number 3-10-10/01, ordering release of temporary certificated employees from their assignments.

6. Respondents submitted a timely Request for Hearing to determine if there was cause for not re-employing them for the ensuing school year.

7. On March 23, 2010, the Superintendent made and filed an Accusation for lay-off of certificated employees. He served each individual who submitted a Request for Hearing with an Accusation, Notice of Defense, Notice of Hearing and related materials.

In response, Respondents submitted a timely Notice of Defense.

8. All prehearing jurisdictional requirements were satisfied.

9. By letter, dated March 11, 2010, the Assistant Superintendent notified each temporary certificated employees that his/her service as temporary certificated employee would not be required for the ensuing school year and provided the limited right to request a hearing to challenge his/her status as a temporary employee. No temporary employee filed a Request for Hearing.

The employment of temporary certificated employees will be terminated at the conclusion of the 2009-2010 school year.

10. On March 10, 2010, the Board adopted Resolution number 3-10-10/02 and took action to reduce or eliminate the following particular kinds of services (PKS) commencing the 2010-2011 school year as follows:

<u>TYPE OF PROGRAM</u>	<u>FTE</u>
K-5 Instruction	9.50
6-8 Instruction	7.00
District-Wide Music	1.00

The proposed reductions totaled 17.50 full-time equivalent (FTE) positions.

11. The District considered all known attrition, including resignations and retirements, in determining the actual number of final layoff notices to be delivered to its certificated employees.

12. The Assistant Superintendent was responsible for implementing the technical aspects of the layoff. The District developed a seniority list for probationary or permanent certificated staff that included, among other matters, the name of the certificated employee, status, site, assignment, credentials, English Language Certification (if any) and seniority date.

The seniority date was based on the first date of paid service rendered in a probationary position.¹ To assure the accuracy of the District's information, in December 2009, the Assistant Superintendent notified certificated employees of seniority date, credentials and other data on file with the District and provided this staff an opportunity to verify, challenge or update this information. If the District substantiated the employee's proposed changes, the District changed its records. The date of the District's seniority list for certificated personnel (Exhibit 8) is April 16, 2010. During the hearing, the District changed the seniority date of some Respondents. None of the changes impacted the order of layoff in this proceeding.

13. In reducing or eliminating particular kinds of services, the Board provided direction to the District regarding the order of termination. In Resolutions No. 03-10-10/02, the Board stated, in pertinent part:

“

4. That the seniority and qualifications of some of the employees in the services being reduced or eliminated are such that they have displacement rights by virtue of seniority, and that no employee will be terminated while a

¹ Education Code section 44845.

less senior employee is being retained to render a service which the more senior employee is both certificated and competent to render.

5. That in selecting those probationary and permanent certificated employees who shall receive notice of termination pursuant to this Resolution, Education Code section 44955 requires the Board of Trustees to state specific criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the Board of Trustees in a probationary position on the same date.

6. That the criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the Board of Trustees in a probationary position on the same date, listed and described in **Exhibit B**, which is attached hereto and incorporated by reference herein.

....

8. That in selecting those probationary and permanent certificated employees who shall receive notice of termination pursuant to this Resolution, Education Code section 44955 allows the Board of Trustees to deviate from terminating a certificated employee in order of seniority by virtue of their competence, credential (s), assignment and the specific need of the District and its students.

9. That the criteria that will be applied to deviate from terminating certificated employees who may otherwise be terminated by order of seniority, are based on the needs of the students of the District, and will ensure that no employee will be terminated while a less senior employee is retained to render service which the more senior employee is both certificated and competent to render.

10. That in observing the statutory rights of more senior certificated employees performing services in a subject matter or field identified by the District for reduction or elimination to displace a less senior certificated employee, those more senior certificated employees may displace less senior certificated employee if it is established to the satisfaction of the District that the more senior certificated employee is both competent and credentialed to render the services performed by a less senior certificated employee.

....”

14. The Assistant Superintendent testified that the District has a need for a physical education (PE) teacher and therefore seeks to skip the most senior teacher certificated, competent and willing to teach PE. The District identified Respondent Jill

Anderson (Respondent Anderson) as the certificated employee who meets the foregoing competency but nevertheless issued a layoff notice to her.

Respondent Anderson's seniority date is September 14, 2007, and she holds a clear multiple subject credential. During the current school year, she is assigned to Joan MacQueen Middle School and teaches physical education (PE).

In 2009 Respondent Anderson was part of the District's reduction in force and laid off at the conclusion of the 2008-2009 school year. At the same time, one of two of the District's credentialed PE teachers retired. The position was offered to the remaining PE teacher, who declined. In order to fill this position, the District considered employees on its reemployment list and inquired whether any of them was interested in pursuing a single-subject PE credential. Respondent Anderson expressed an interest. The Assistant Superintendent testified that the District obtained a waiver for Respondent Anderson to teach PE. Presumably he meant that the District obtained the limited assignment single subject teaching permit on her behalf. To renew this permit, the holder must maintain a valid non-emergency teaching credential and must complete a minimum of six semester hours of work applicable toward the credential that authorizes the service (5 C.C.R. §80027(b)(3)(C).).

Respondent Anderson completed the coursework towards the PE credential, and the District is satisfied with her performance as a PE teacher. No evidence was offered to establish that a more senior teacher in the District is certificated and competent to teach PE.

The District has a need for a PE teacher. Respondent Anderson has the special training and experience necessary to teach this class. There is no more senior teacher in the District who does. Given the facts in Finding 14, it is proper for the District to skip and retain Respondent Anderson.

15. The Assistant Superintendent testified that the District needs a certificated teacher who is qualified to teach Algebra in the District's Community Day School (CDS), also known as a "special setting." The District noticed Respondent Robert Monfort (Respondent Monfort) but seeks to retain him, asserting that he is the District's most senior certificated teacher who satisfies this competency.

Respondent Monfort has a seniority date of August 23, 2005 and holds a clear multiple subject credential. He is assigned to the District's CDS, his assignment for the past four years. The Assistant Superintendent testified that the CDS program focuses on students in grades six through eight "who have had some problems at the mainstream middle school".

The Assistant Superintendent testified that during the 2005 – 2006 school year, all teachers in the District, including Respondent Monfort, were certified as highly qualified under NCLB.

During the current school year, in accordance with a requirement of the California Commission on Teacher Credentialing, as the teacher assigned to the District's CDS, in

addition, Respondent Monfort was qualified to teach Algebra through the verification process for “special settings” (VPSS).² The Assistant Superintendent testified that Respondent Monfort did not have sufficient college credits to qualify. Therefore, he was deemed highly qualified pursuant to the “HOUSSE” (High Objective Uniform State Standard of Evaluation) method using lesson observations³ to teach Algebra in the District’s CDS, and the Assistant Superintendent described the process.

Respondent Stephanie Jacques (Respondent Jacques), Karen Hohimer (Respondent Hohimer) and Respondent Robert Bordelon (Respondent Bordelon) are more senior to Respondent Monfort.⁴ Each holds a multiple subject credential, teaches at Joan MacQueen Middle School and contends that she/he has sufficient qualifications to be certified as highly qualified under NCLB to teach Algebra. Each testified regarding their specific qualifications. Among other things, Respondent Jacques has been deemed highly qualified under NCLB in Algebra; Respondent Bordelon has taught in the District’s CDS; and Respondent Hohimer has taught Algebra previously. Respondents Jacques, Hohimer and/or Bordelon are not assigned to teach in the CDS during the current school year and did not establish that she/he is highly qualified to teach Algebra in a “special setting” through the VPSS.

The District established a need for a certificated teacher qualified under VPSS to teach Algebra in the District’s CDS. There is no evidence that any employee more senior to Respondent Monfort satisfies the District’s competency. As such, the District properly skipped and retained Respondent Monfort.

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 that any Respondent was certificated and competent to render.

² 5 C.C.R. §6105

³ 5 C.C.R. §6104

⁴ The following are the seniority dates of the following certificated employees:

- Respondent Jacques – August 23, 2000
- Respondent Hohimer – August 22, 2001
- Respondent Bordelon - August 21, 2002

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 vs. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)
3. Cause exists under Education Code sections 44949 and 44955 for the Alpine Union 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. 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.)
5. The District has the discretion to determine whether teachers are certificated and competent to hold the position for which said teachers have been skipped and retained. (*King v. Berkeley Unified School District* (1979) 89 Cal.App.3d 1016) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831)
6. No employee with less seniority than any Respondent is being retained to perform a service that any Respondent is certificated and competent to render.
7. All arguments not addressed herein are not supported by the evidence and/or the law and therefore rejected.

ORDER

1. The Accusation served on Respondent Jill Anderson is dismissed.
2. The Accusation served on Respondent Robert Monfort is dismissed.
3. The Accusation served on Respondents listed on Exhibit A and Amended Exhibit A, is sustained. Notice shall be given to Respondents before May 15, 2010 that their

services will not be required for the 2010-2011 school year because of the reduction or discontinuance of particular kinds of services.

DATED: _____

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

ALPINE UNION SCHOOL DISTRICT
Certificated Layoff 2009 – 2010
RESPONDENTS
Exhibit “A”

Jill Anderson
Staci Arnold
Robert Bordelon
Michelle Brown
Donna Burton
Aleta Greer
Mary Hoffman
Karen Hohimer
Stephanie Jacques
Lea Ann Jones
Tina Krawczyk
Yvette Maier
Robert Monfort
Shannon McRae
Jennifer Pekar
Tamara Ripke
Louise Sager
Bridget Wetton

ALPINE UNION SCHOOL DISTRICT
Certificated Layoff 2009 – 2010
RESPONDENTS
Amended Exhibit “A”

Staci Arnold
Robert Bordelon
Michelle Brown
Donna Burton
Aleta Greer
Mary Hoffman
Karen Hohimer
Stephanie Jacques
Lea Ann Jones
Tina Krawczyk
Yvette Maier
Shannon McRae
Jennifer Pekar
Tamara Ripke
Louise Sager
Bridget Wetton