

BEFORE THE  
BOARD OF EDUCATION  
ALVORD UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusations against:

RESPONDENTS LISTED ON  
EXHIBIT A,

OAH No. 2008020573

Respondents.

**PROPOSED DECISION**

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard this matter in Riverside, California, on April 23, 2008.

John W. Dietrich, Atkinson, Andelson, Loya, Ruud & Romo, attorneys at law, represented complainant Alvord Unified School District.

Respondents Ina Alexandre and David Rhea appeared and represented themselves at the hearing.

Respondent Julie Mitchell failed to appear.

Respondent Luis Medina did not appear at the hearing since he withdrew his request for a hearing in this matter.

The matter was submitted on April 23, 2008.

**FACTUAL FINDINGS**

1. Diana M. Asseier, the Assistant Superintendent of Instructional Support Services (the Assistant Superintendent) of the Alvord Unified School District, made and filed the Accusation dated March 11, 2008 in her official capacity as the Assistant Superintendent, Instructional Support Services, Alvord Unified School District. The Accusation was filed against the respondents identified in Attachment A that is attached herein and incorporated herein. Subsequently, the Assistant Superintendent filed the Amended Accusation dated March 13, 2008, against respondents identified in Attachment B attached hereto and

incorporated herein. The Amended Accusation was filed in order to add Luis Medina as a respondent.

2. The respondents are all certificated employees of the Alvord Unified School District (the District).

3. At the hearing, the District established that respondent Medina withdrew his request for a hearing in this matter.

4. On March 6, 2008, in accordance with Education Code sections 44949 and 44955, the Assistant Superintendent and Katherine A. Wright, Interim Superintendent (the Superintendent) of the District notified the Board of Education of the District (the Board) in writing of their recommendation that notice be given to respondents that their services would not be required for the 2008-2009 school year. The Superintendent stated the reasons for the recommendation. The Superintendent recommended the reduction of particular kinds of services for the 2008-2009 school year.

5. On March 6, 2008, the Board adopted Resolution No. 31 determining that it is necessary to reduce 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 Kinds of Services</u>	<u>Number of FTE Positions</u>
Elementary P.E. Teachers	3 FTE
Project Connect Alternative Education Teacher	1 FTE
District Office Counselor	1 FTE

The reductions adopted by the Board's resolution totaled 5 FTE positions.

6. The Board further determined in Resolution No. 31 that due to the fact that the District has a significant population of English language learners with special educational needs, it would be necessary to retain certificated employees who possess special training and competency to teach English Learner (EL) students that other certificated employees with more seniority might not possess. The Board also determined that due to the fact that the District has been put on a Program Improvement Plan for not meeting its Adequate Yearly Progress in Math and Language Arts, that there is a significant need to retain certificated employees certified and qualified to teach in those subjects.

7. The Board directed the Superintendent, or her designee, to initiate layoff procedures by determining which employees' services would not be required for the 2008-2009 school year as a result of the reduction of these particular kinds of services. The Board further directed the Superintendent to send the 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.

8. Subsequent to the action the Board took on March 6, 2008 to reduce services by 5 FTE positions, the District continued to evaluate personnel needs in the District. After the Board's action, the District needed to take action to reduce particular kinds of services by a total of 5 FTE positions for the 2008-2009 school year. To accomplish this reduction of services, the District began by giving notices of termination to the three certificated employees listed in Attachment A, but later, it determined it would need to add an additional certificated employee to the layoff list in order to accomplish the necessary reduction of 5 FTE's. Therefore, the District gave notice of layoff to the four certificated employees listed in Attachment B and named as respondents in this proceeding.

9. On or before March 15, 2008, the District timely served a written notice on each of the respondents named herein that the Superintendent of the District had recommended not to re-employ them in the upcoming 2008-2009 school year. The written notice notified respondents that his or her services would not be required for the upcoming 2008-2009 school year. The written notice to respondents set forth the reasons for the recommendation. The recommendation that respondents be terminated from employment was not related to their competency as teachers.

10. Each of the certificated employees given written notice that he or she would not be re-employed for the ensuing school year filed a Request for Hearing and/or a Notice of Defense. Respondents all timely filed either a written Request for Hearing or a Notice of Defense or both requesting a hearing be held in order to determine if there is cause for not reemploying them for the 2008-2009 school year.

11. The District filed and then timely served the Accusation herein, a Notice to Respondent, a blank Notice of Defense form, and relevant Education Code and Government Code sections, upon each of the remaining respondents herein who had timely requested a hearing in this matter. Each of these respondents herein filed a timely Notice of Defense. All pre-hearing jurisdictional requirements were met.

12. The services the Board addressed in Resolution No. 31 are "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 and reasonable exercise of its discretion. The Board's decision to make these cuts was the result of consideration of the necessary cuts in the District's budget for the ensuing school year. The Board's action to reduce services is a proper exercise of its discretion to address the need for budget cuts for the 2008-2009 school year.

13. The reduction or discontinuation of particular kinds of services relates solely to the welfare of the District and its pupils. The District recognizes the high level of dedication and service these respondents have given to the District, but it faces difficult financial times due to proposed state budget cuts. 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.

14. The Board considered all known attrition, resignations, retirements, and vacancies in determining the actual number of necessary layoff notices to be delivered to its employees. At this point in time, the District proposes to send final layoff notices to a total of four certificated employees representing a total of three FTE's as listed in Attachment C attached hereto and incorporated herein.

15. In arriving at the order in which certificated employees should be given notice of layoff, the District used its seniority list of certificated employees to determine who the least senior employees are. In some instances, senior employees have the right to "bump" into other positions held by junior employees. Respondent David Rhea is employed as a Middle School physical education teacher and the District reduced Elementary School physical education teachers. However, respondent Rhea was given a notice of layoff because he was junior to Elementary School physical education teacher Tacy Duncan who is certified and competent to teach in respondent Rhea's position. Similarly, respondents Ina Alexandre and Luis Medina are District Office Counselors who are junior in seniority to Lisa Pynn. Lisa Pynn is certified and competent to serve in Alexandre's and Medina's position and therefore has the right to bump into respondents' part-time positions.

16. The Board adopted Tie-Breaking Criteria, but there was no need to apply the criteria.

17. No certificated employee junior to any respondent was retained to perform any services that 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 those sections were satisfied.

2. Cause exists under Education Code sections 44949 and 44955 for the Alvord Unified School District to reduce particular kinds of services. The cause for the reduction of particular kinds of services is related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the accusations herein. Therefore, cause exists for the Board to give the remaining respondents notice before May 15, 2008, that their services will no longer be required by the District for the 2008-2009 school year.

ORDER

The accusations served on respondents herein are sustained and notice shall be given to the four respondents as listed in Attachment C before May 15, 2008 that their services will not be required in the next school year because of the reduction of particular services as indicated.

DATED: 4(28) 08 .



GREER D. KNOFF

Administrative Law Judge

Office of Administrative Hearings

ATTACHMENT A

ALVORD UNIFIED SCHOOL DISTRICT  
RESPONDENTS LISTED IN ACCUSATION

INA ALEXANDRE

JULIE MITCHELL

DAVID RHEA

ATTACHMENT B

ALVORD UNIFIED SCHOOL DISTRICT  
RESPONDENTS LISTED IN AMENDED ACCUSATION

INA ALEXANDRE

JULIE MITCHELL

DAVID RHEA

LUIS MEDINA

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ATTACHMENT C

ALVORD UNIFIED SCHOOL DISTRICT  
PROPOSED FINAL LAYOFF LIST

INA ALEXANDRE	0.6 FTE
JULIE MITCHELL	1.0 FTE
DAVID RHEA	1.0 FTE
LUIS MEDINA	0.4 FTE