

BEFORE THE  
GOVERNING BOARD  
NUVIEW UNION SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:  
  
Respondents listed in Appendix A.

OAH No. 2011031303

**PROPOSED DECISION**

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Nuvview, California on April 29, 2011.

Todd R. Robbins, Atkinson, Andelson, Loya, Ruud & Romo, Attorneys at Law, represented the Nuvview Union School District.

Kent Morizawa, Reich, Adell & Cvitan, Attorneys at Law, represented the respondents listed in Appendix A.

The matter was submitted on April 29, 2011.

**FACTUAL FINDINGS**

1. David L. Linzey, Superintendent, Nuvview Union School District, made and filed the accusation dated March 11, 2011, in his official capacity.

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

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<sup>1</sup> The District initially identified 18 certificated employees as respondents. One of these individuals (Sandra Otero) did not request a hearing, and two others (Marla Niffen and Erin Richards) were dismissed as respondents during the course of the hearing. By the end of the hearing the number of respondents had thus been reduced to the 15 individuals identified in Appendix A. The term “respondents” as hereafter used in this Proposed Decision refers collectively to these 15 remaining individuals.

3. On March 11, 2011, in accordance with Education Code sections 44949 and 44955, the superintendent notified the Board of Education of the Nuvview Union School District in writing of his 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 10, 2011, the board adopted Resolution No. 030011B, 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 2011-2012 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Elementary K-5 Teaching Services	12
Teacher on Special Assignment – Literacy Coach	1.6
Teacher on Special Assignment – Language Coach	1
Coordinator of Child Development Programs	1
Director of Child Development Programs	1
Elementary Physical Education Teaching Services	1

The proposed reductions totaled 17.6 FTE positions.

5. The board further determined in Resolution 030011B that “competency,” as described in Education Code section 44955, subdivision (b), for the purposes of bumping, “shall necessarily include: (1) possession of a valid credential in the relevant subject matter area; (2) “highly qualified” status under the No Child Left Behind Act in the area to be assigned; and (3) an appropriate EL authorization (if required by the position).”

6. The board directed the superintendent or his designee to determine which employees’ services would not be required for the 2011-2012 school year as a result of the reduction of the foregoing particular kinds of services. The board further directed the superintendent or his 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.

7. On or before March 15, 2011, 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, along with the related accusation. 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 the notice was served, and that the failure to request a hearing would constitute a waiver of the right to a hearing.

8. Respondents timely filed written requests for hearing and notices of defense. All pre-hearing jurisdictional requirements were met.

9. Respondents are probationary or permanent certificated employees of the district.

10. The services the board addressed in Resolution 031011B 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.

11. 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.

12. The board was not aware of any attrition occurring prior to the date of the hearing. If any attrition occurs after the hearing, the district intends to take such attrition into account in determining the need to lay off its certificated employees.

13. The district’s shortfall for the 2011-2012 academic year is presently estimated at about \$1,000,000. The savings expected to be achieved through the present layoff proceeding is between \$750,000 and \$1,000,000. The district’s general fund operating budget for next year is about \$8,000,000. The district intends to meet the statutory minimum three percent reserve fund. The district has not yet decided if it will maintain a reserve fund in an amount greater than the required three percent. The district’s decisions and plans as reflected in this finding are neither arbitrary nor capricious, but instead constitute a reasonable exercise of the district’s discretion.

14. 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 those sections were 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. School districts have broad discretion in defining positions within the district and establishing requirements for employment. This discretion encompasses determining the training and experience necessary for particular positions. Similarly, school districts have the discretion to determine particular kinds of services that will be eliminated, even though a

service continues to be performed or provided in a different manner by the district. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.) School districts retain discretion to determine standards of competency for purposes of teacher layoffs, and those standards will be upheld as long as they are reasonable. (*Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565.)<sup>2</sup>

4. The decision to reduce or discontinue a particular kind of service is not tied in with any statistical computation. It is within the governing authority's discretion to determine the amount by which a particular kind of service will be reduced or discontinued as long as the district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.) A school district has wide discretion in setting its budget and a layoff decision will be upheld unless it was fraudulent or so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law. (*California Sch. Employees Assn. v. Pasadena Unified Sch. Dist.* (1977) 71 Cal.App.3d 318, 322.)

5. Pursuant to section 44995, a senior teacher whose position is discontinued has the right to transfer to a continuing position which he or 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 v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Stated differently, the district has an obligation under section 44955 to determine whether any permanent employee whose employment is to be terminated in an economic layoff possesses the seniority and qualifications which would entitle him/her to be assigned to another position. (*Bledsoe v. Biggs Unified School Dist., supra.* at 136-137.)

6. A preponderance of the evidence sustained the charges set forth in the accusation. 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. Cause exists to reduce the number of certificated employees of the district due to the reduction and discontinuation of particular kinds of services. The district identified the certificated employees providing the particular kinds of services that the Board be directed be reduced or discontinued. It is recommended that the board give respondents notice before May 23, 2011, that their services are no longer required by the district.

#### ADVISORY DETERMINATION

The following advisory determination is made:

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<sup>2</sup> *Duax* involved the layoff of community college teachers pursuant to Education Code section 97743, but is applicable here by analogy.

1. The accusations served on respondents are sustained. Notice may be given to respondents before May 23, 2011, that their services will not be required because of the reduction or discontinuation of particular services as indicated.

DATED: May 3, 2011

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DONALD P. COLE  
Administrative Law Judge  
Office of Administrative Hearings

## Appendix A<sup>3</sup>

1. Megan Coursol
2. Jennifer French
3. Mandy Geminert
4. Holly Gilbreth
5. Stephanie James
6. Blanca Martinez
7. Juliana Murray
8. Holly Newton (0.6)
9. Jessica Ramirez
10. Andrew Ream
11. Kristy Reed
12. Kristen Sayre
13. Clifford Schaeffer
14. Marty Ward
15. Alisha Warth

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<sup>3</sup> Where the lay off of a respondent is less than a full-time-equivalent position, the applicable fraction of a full-time-equivalent position is indicated in parentheses opposite the individual's name.