

BEFORE THE
GOVERNING BOARD
CULVER CITY UNIFIED SCHOOL DISTRICT
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Candice Baker, and Other
Certificated Employees of the
Culver City Unified School District,

Respondents.

OAH Case No.: L2008030144

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 10, 2008, in Culver City, California.

Aaron V. O'Donnell, Attorney at Law, represented the Culver City Unified School District (District).

Lawrence Rosenzweig, Attorney at Law, represented Kelly Nolan (Nolan).

Candice Baker (Baker), Kathleen Griffin (Griffin), and Martin Miramontes (Miramontes) represented themselves. Eunice Vines (Vines) did not appear at the hearing.

The District has decided to reduce or discontinue certain educational services and has given Baker, Griffin, Miramontes, Nolan, and Vines (Respondents) and other certificated employees of the District notice of its intent not to reemploy them for the 2008-2009 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2008-2009 school year.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Myrna Rivera Coté (Coté), Superintendent of the District, filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.

3. On March 4, 2008, the Governing Board of the District (Governing Board) adopted Resolution number 21, reducing or discontinuing the following services for the 2008-2009 school year:

<u>Service</u>	<u>Full-Time-Equivalent Positions</u>
AB 1802 academic counseling services	2
At-risk behavioral counseling services	1
Child welfare and attendance counseling services	1
Elementary school counseling services	1
School psychologist services	1
Elementary school assistant principal services	1
Assistant high school principal on special assignment services	1
Teacher on special assignment services	10
Elementary school intervention specialist services	.5
Middle school reading specialist services	1
Middle school algebra readiness services	1
Middle school math intervention services	1
Middle school reading intervention services	.6
Middle school English language development teaching services	.5
Middle school language arts teaching services	2
Middle school physical education teaching services	1
Middle school social science teaching services	2
Middle school physical science teaching services	1
Middle school biological science teaching services	1
Middle school math teaching services	2
Middle school home economics teaching services	1
High school English teaching services	2
High school physical education teaching services	2
High school Spanish teaching services	1
High school social science teaching services	1
High school geological science teaching services	1
Elementary classroom teaching services	<u>3</u>
Total	42.6

4. On March 12, 2008, Superintendent Coté notified the Governing Board that she had recommended that notice be provided to 49 certificated employees of the District, including Respondents, that their services will not, and in the case of Julie Groya, Scott Monroe, Jenny Ta, and Aaron Tano may not, be required for the 2008-2009 school year due to the reduction of particular kinds of services.

5. On March 13, 2008, the District provided notice to Respondents that their services will not be required for the 2008-2009 school year due to the reduction of particular kinds of services.

6. Respondents requested a hearing to determine if there is cause for not reemploying them for the 2008-2009 school year. All hearing requests were timely filed.

7. On March 27, 2008, the District issued the Accusation, and served it on Respondents on or about March 28, 2008.

8. Respondents Nolan and Miramontes filed notices of defense, and the District treated the other Respondents as having filed notices of defense. All notices of defense were timely filed or treated as if timely filed.

9. All prehearing jurisdictional requirements have been met.

10. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.¹

11. The Governing Board took action to reduce the services set forth in factual finding number 3 primarily because of the uncertainty surrounding State funding. The District believes that it may lose as much as \$3.3 Million for 2008-2009 school year. The decision to reduce or discontinue the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

12. The reduction or discontinuance of services set forth in factual finding number 3 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

13. On March 4, 2008, the Governing Board adopted Resolution No. 22, setting forth the criteria to determine seniority among employees who first rendered paid service in a probationary position on the same date (tie-breaking criteria). On April 1, 2008, the Governing Board adopted Resolution No. 28, to provide additional tie-breaking criteria. The tie-breaking criteria are reasonable as they relate to the skills and qualifications of certificated employees. Neither the criteria nor their application were challenged by Respondents.

¹ All further references are to the Education Code.

14. Respondents Baker and Vines hold pupil personnel services credentials and work as counselors in the middle school. Their seniority dates are October 1, 2007, and September 13, 2006, respectively. Although middle school counseling services were not reduced or discontinued, the jobs of these two Respondents will be performed by more senior counselors being displaced by reductions in other counseling services. The more senior counselors are certificated and competent to perform the jobs of Respondents Baker and Vines.

15. Respondent Griffin is also a counselor of the middle school, except that the funding for her position is provided pursuant to the requirements of Assembly Bill (AB) 1802. The program is intended to provide additional counseling services, not to supplant local district resources. The District has not received AB 1802 funding for the 2008-2009 school year, and decided to discontinue the services until funding becomes available. Respondent Griffin has a seniority date of August 13, 2007, and among those credentialed to provide counseling services she is senior only to Respondent Baker.

16. Respondent Miramontes holds a school psychologist credential. He performs required psychoeducational assessments, and is the District's behavior specialist. He also discharges the functions of District Behavior Case Intervention Manager, which services were performed by an outside vendor before Respondent Miramontes was hired, and will likely again be performed by such vendor. The District reduced school psychologist services by one FTE position and Respondent Miramontes was the last school psychologist hired, on November 14, 2007.

17. Respondent Nolan has a seniority date of August 28, 2007, and holds a single subject credential (English). She teaches language arts in the middle school, services that suffered a two full-time-equivalent position reduction.

18. No certificated employee junior to any Respondent was retained to render a service which any of Respondents is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 9.

2. The services listed in factual finding number 3 are particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 10.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 18.

4. Respondent Miramontes argues that the District will end up paying more to provide the behavior case intervention services. He did not contend, nor was it established, that his layoff will result in the District's failure to fulfill any State-mandated obligations. Courts have permitted districts to discontinue particular kinds of services, including those of school psychologists, as long as the mandated services continue to be performed. (See, e.g., *Gallup v. Alta Loma School District Board of Trustees* (1996) 41 Cal.App.4th 289 (*Gallup*); *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 639-640.) In *Gallup*, the court upheld the district's layoff of its certificated school psychologists, where the district had rehired one of them as an administrative psychologist to oversee the hiring of contract psychologists and other program details, and where it planned to use contract psychologists to provide the mandated services. Similarly, the District previously utilized private vendors to perform the functions required by State law, and is likely to do so again if Respondent Miramontes is ultimately laid off.

5. Cause exists to terminate the services of respondents Candice Baker, Kathleen Griffin, Martin Miramontes, Kelly Nolan, and Eunice Vines for the 2008-2009 school year due to the reduction or discontinuance of particular kinds of services, by reason of factual finding numbers 1 through 18 and legal conclusion numbers 1 through 4.

ORDER

The Accusation is sustained and the District may notify Respondents Candice Baker, Kathleen Griffin, Martin Miramontes, Kelly Nolan, and Eunice Vines that their services will not be needed during the 2008-2009 school year due to the reduction of particular kinds of services.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings