

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

In the Matter of the Accusations against:

RESPONDENTS LISTED ON
EXHIBIT A,

Respondents.

OAH No. 2008020563

PROPOSED DECISION

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard this matter in Banning, California, on April 16, 2008.

Mark W. Thompson, Atkinson, Andelson, Loya, Ruud & Romo, attorneys at law, represented complainant Banning Unified School District.

Carlos Perez, attorney at law, represented all 29 respondents present at the hearing as well as two respondents, Linda Arizmendi and Jeffery Martinez who were not present at the hearing.

The matter was submitted on April 16, 2008.

FACTUAL FINDINGS

1. Victor Palmer, the Assistant Superintendent of Human Resources (the Assistant Superintendent) of the Banning Unified School District, made and filed the accusations dated March 13, 2008 in his official capacity as the Assistant Superintendent, Human Resources, Banning Unified School District. The accusations were filed against the respondents identified in Attachment A attached hereto and incorporated herein.

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

3. At the hearing, the District made a motion to dismiss Scott Otis, Manuel Jarvis, and Monica Mendyk as respondents from the accusation and that motion was granted.

4. On March 10, 2008, in accordance with Education Code sections 44949 and 44955, the Superintendent of the District notified the Board of Education of the District (the Board) in writing of his 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 12, 2008, the Board adopted Resolution No. 07-08-22 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>
Curriculum Coaches	3 FTE
Middle School Counselors	1 FTE
Deans	0 FTE
Coordinator of Student Assistance Program	1 FTE
K-6 Classroom Teachers	10 FTE
Middle School Core Teachers	4 FTE
Secondary English Teachers	2 FTE
Secondary Social Science Teachers	2 FTE
Secondary Physical Education Teacher	1 FTE
Resource Specialist	1 FTE

The reductions adopted by the Board's resolution totaled 25 FTE positions.

6. The Board further determined in Resolution No. 07-08-22 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.

7. The Board directed the Superintendent, or his designee, to determine 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 12, 2008 to reduce services by 25 FTE positions, the District continued to evaluate personnel needs in the District. Since the Board's action, after taking into consideration upcoming positively assured attrition, resignations, and retirements, the District continues to believe it can meet its fiscal needs by reducing services by a total of 25 FTE positions for the 2008-2009 school year. To accomplish this reduction of services, the District began by giving notices of termination to the 36 certificated employees listed in Attachment A, but it now has determined it can accomplish the necessary reductions by giving final notices of layoff to 24 of the certificated employees listed in Attachment B 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 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. Some certificated employees given written notice that they would not be re-employed for the ensuing school year did not file a Request for Hearing. Certificated employees Jeannette Anderson, Chris Degonia, Isaac Nelson, and Ezekiel Stear did not submit a Request for a Hearing after receiving the written notice that they would not be re-employed in the next school year. The District declined to waive the requirement that a noticed employee timely file a Request for Hearing. However, each of the remaining respondents herein timely filed a written Request for Hearing to determine if there is cause for not reemploying them for the 2008-2009 school year.

11. Subsequently, 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. 07-08-22 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 requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

15. Several respondents herein share the same first hired date. Between these employees who first rendered paid service to the District on the same date, the District determined their order of termination solely on the basis of needs of the district and the students. On March 10, 2008, the Board adopted Resolution No. 07-08-23 that established specific criteria to be used to resolve ties in seniority between certificated employees. The tie-breaking criteria were applied uniformly and objectively in order to determine the order of termination for any of the employees with a shared seniority date. The criteria were fairly applied to rank those employees hired on the same date and to determine who would be given notice that their services would no longer be required for the ensuing school year.

16. 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.

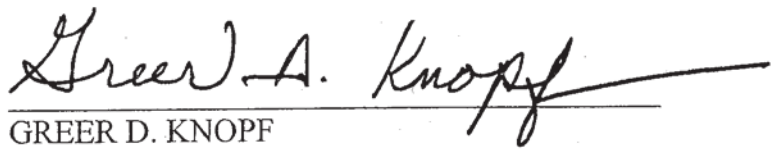
2. Cause exists under Education Code sections 44949 and 44955 for the Banning Unified School District to reduce particular kinds of services. The cause for the reduction of particular kinds of services is related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence 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 24 respondents listed in Attachment B 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: _____

4/23/08



GREER D. KNOPF

Administrative Law Judge

Office of Administrative Hearings

ATTACHMENT A

BANNING UNIFIED SCHOOL DISTRICT--RESPONDENTS LISTED IN ACCUSATION

Joseph Almaraz
Jeannette Anderson
Shara Andrade
Linda Arizmendi
Ligaya Beasley
Jacquelyn Bridges
Colette Burgess
Maria Campos
Eloy Castro
Chris Degonia
Stephanie Dodd
Rayleen Dyke
John Evinger
Jeannine Gibbs
Erica Gore
Guená Gray
Alla Haupin
Manuel Jarvis
Richard Johnson
Kathryn Kaiser
Ann King
Kyle Klonez
April Makin
Alberto Maldonado
Jeffrey Martinez
Nicole Mendyk
Isaac Nelson
Jami Norman
Michael O'Neill
Scott Otis
Ezekiel Stear
Ronnie Stevens
Sarah Teran
Melissa Theriault
Dennis To
Maria Vilde

ATTACHMENT B

BANNING UNIFIED SCHOOL DISTRICT--FINAL LAYOFF LIST

- | | | |
|-----|----------|---------------|
| 1. | Almaraz | Joseph |
| 2. | Andrade | Shara |
| 3. | Beasley | Ligaya |
| 4. | Bridges | Jacquelyn |
| 5. | Campos | Maria |
| 6. | De Goina | Chris |
| 7. | Dodd | Stephanie |
| 8. | Evinger | John |
| 9. | Gore | Erica |
| 10. | Haupin | Alla |
| 11. | Johnson | Richard |
| 12. | Kaiser | Kathryn |
| 13. | King | Ann |
| 14. | Kloncz | Kyle |
| 15. | Makin | April |
| 16. | Martinez | Jeffrey |
| 17. | Mendyk | Monica Nicole |
| 18. | Nelson | Isaac |
| 19. | Norman | Jami |
| 20. | O'Neill | Michael |
| 21. | Stevens | Ronnie |
| 22. | Teran | Sarah |
| 23. | Therault | Meslissa |
| 24. | To | Dennis |