

BEFORE THE GOVERNING BOARD OF THE  
WEST SONOMA COUNTY UNION HIGH SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Andy Del Monte,

Respondent.

OAH No. N2005030694

**PROPOSED DECISION**

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Windsor, California, on April 25, 2005.

Noel J. Shumway, General Counsel, School and College Legal Services, represented the West Sonoma County Union High School District.

Respondent Andy Del Monte was present and represented by James D. Allen, Esq.

The matter was submitted on April 25, 2005.

**FACTUAL FINDINGS**

1. David Wheeler, Superintendent, West Sonoma County Union High School District, made and filed the accusation in his official capacity.
2. Respondent Andy Del Monte is a certificated employee of the district. He holds a 1.0 FTE (full-time equivalent) position, of which 0.6 FTE is teaching music. Respondent works at Analy High School.
3. On March 9, 2005, upon the recommendation of Superintendent Wheeler, the governing board adopted Resolution 13.MAR.2004/05, in which it resolved to reduce or discontinue the following particular kinds of services (PKS) for the 2005-2006 school year and directed the superintendent or his designee to initiate and pursue procedures necessary to

not reemploy the equivalent of three full-time equivalent certificated employees of the district:

Secondary Home Economics/Independent Study	0.8 FTE
Secondary Business/Home Economics	0.6 FTE
Secondary Social Science/Leadership	0.6 FTE
Secondary English/Yearbook	0.2 FTE
Secondary Art	0.2 FTE
Music	<u>0.6 FTE</u>
TOTAL	3.0 FTE

4. The governing board considered attrition that occurred up to March 9, 2005, in its decision to reduce or discontinue particular kinds of services. Three teachers, none of whom teaches music, had informed the district that they would be retiring. There has been no attrition after March 9, 2005.

5. At its March 9, 2005, meeting, the governing board also decided to release all temporary and non-probationary teachers.

6. The superintendent recommended the reduction or discontinuance of services because a parcel tax that provided funding to the district had not been renewed in a March 2005 election. Another effort to renew the parcel tax is pending in an upcoming June 2005 election, which if successful may obviate the need for some or all of the proposed reductions.

7. The superintendent timely served respondent with a notice of layoff. Respondent was timely served an accusation, statement to respondent, notice of defense, notice of hearing, and relevant statutes. Respondent made a timely request for hearing and timely notice of defense.

8. Respondent was previously a tenured employee of the district, but resigned his position on August 1, 2000, shortly after the birth of his son. Respondent returned to the district on February 28, 2001.

9. Education Code section 44848 provides that when an employee such as respondent shall have resigned and thereafter been reemployed, his date of employment shall be deemed to be the date he first rendered paid service after his reemployment. In respondent's case, that date was February 28, 2001. That date is respondent's correct seniority date.

10. In January every year, the district circulates its seniority list to its teachers, and asks teachers to raise any issues or questions they might have about their listed seniority dates or credentials. Respondent has received the seniority list and has not previously questioned his February 28, 2001, seniority date.

11. Respondent was under the impression from conversations he had with Analy High School principal Martin Webb that he would return to the district with his previous seniority date. Principal Webb did not recall telling respondent that he would come back with his previous seniority date. Webb doubts that he would have said anything about the seniority issue, since he typically defers such questions to the district's human resources office. The evidence did not establish that Webb made any representations to respondent about his seniority date. In any event, Education Code section 44848 is controlling on the matter.

12. Respondent holds a 1.0 FTE position, of which 0.6 is for teaching music. He will be retained in a 0.4 FTE non-music position. No permanent or probationary employee with less seniority is being retained to render a service for which respondent is certificated and competent.


### LEGAL CONCLUSIONS

Cause exists within the meaning of Education Code sections 44949 and 44955 for not reemploying respondent in a 0.6 FTE music position for the 2005-2006 school year. The cause for not reemploying respondent relates solely to the welfare of the district and the pupils thereof.

### ORDER

Notice may be given to respondent that his services will not be required for a 0.6 FTE music position for the 2005-2006 school year.

DATED: May 4, 2005

  
STEVEN C. OWYANG  
Administrative Law Judge  
Office of Administrative Hearings