

BEFORE THE  
GOVERNING BOARD OF THE  
JEFFERSON SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of Accusation Against:

ANN AGUIRRE and various other  
certificated employees of the District,

OAH No. N 2004030162

Respondents.

**PROPOSED DECISION**

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Daly City, California on April 14, 2004.

Namita S. Brown, Attorney at Law, Lozano Smith, represented Governing Board of the Jefferson School District.

Sheila K. Sexton, Attorney at Law, Beeson, Tayer & Bodine, represented respondents Mercado and Martinez.

Stewart Weinberg, Attorney at Law, Weinberg, Roger & Rosenfeld, represented all the remaining respondents.

The matter was submitted on April 14, 2004.

**FACTUAL FINDINGS**

1. Dr. Barbara Wilson made this accusation in her official capacity as the Superintendent of the Jefferson School District and not otherwise.

2. Each of the named respondents was at all times mentioned herein, and now is, a certificated employee of the Jefferson School District.

3. On February 25, 2004, the Governing Board of the Jefferson School District adopted Resolution No. 04 02 25 as set forth below, directing the Superintendent or her designee to give notices to certificated employees that their services will not be required for the 2004-2005 school year.

The programs to be reduced or eliminated are as follows:

1.	Reduction in Kindergarten	15 FTE
2.	Reduction in First Grade	15 FTE
3.	Reduction in Second Grade	15 FTE
4.	Reduction in Third Grade	15 FTE
5.	Reduction in Fourth Grade	2 FTE
6.	Reduction in Fifth Grade	2 FTE
7.	Reduction in Sixth Grade	2 FTE
8.	Elementary Glee Teacher	1 FTE
9.	Elementary Art Teacher	1 FTE
10.	Elementary Assistant Principal	1 FTE
11.	Preschool Coordinator	0.35 FTE
12.	Newcomer Program Reduction	2 FTE
13.	Librarians	2 FTE
14.	Intermediate Music Program	3 FTE
15.	BTSA Provider	0.60 FTE
16.	Reading Coordinator	1 FTE
17.	Director of Special Education	1 FTE
18.	Assistant Superintendent-Human Resources	1 FTE
19.	Director of Curriculum and Instruction	1 FTE
20.	Math Noyce Administrator	1 FTE
21.	Elementary Principal	2 FTE

For a total of 83.95 FTE

4. On March 12, 2004, respondents and the Governing Board of the Jefferson School District were given written notice by certified mail that it has been recommended that Notice be given respondents pursuant to Education Code sections 44949 and 44955 that their services would not be required for the ensuing school year and setting the reasons therefor. The parties stipulated that Kristen Ugrin was not properly noticed and the layoff notice was rescinded by the district. The remaining issues concerning the March 15<sup>th</sup> Notice will be discussed below.

5. Pursuant to Education Code section 44949, respondents, in writing, duly required a hearing to determine if there is cause for not reemploying them for the ensuing school year.

6. Cause exists within the meaning of Education Code sections 44949 and 44955 for not reemploying respondents for the ensuing school year. In the opinion of the Governing Board, it will be necessary to decrease the number of certificated employees in the District on account of the above reduction or discontinuance of services. As a consequence, the Board has determined that the services of a corresponding number or less<sup>1</sup> of the certificated employees of the District shall be terminated at the close of the current 2003-2004 school year.

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<sup>1</sup> There is a possibility that there will be five more certificated employees leaving District employment. The District has indicated that if this occurs a corresponding number of layoff notices will be rescinded.

7. The Governing Board has further determined that, as between employees who first rendered paid service on the same date, the order of termination listed on the corrected seniority list<sup>2</sup> has been based solely on the basis of the needs of the District and the students thereof.

8. No permanent or probationary certificated employee with less seniority is being retained to render a service, which the respondents, or any of them, are certificated and competent to render.

9. The cause for not reemploying respondents relates solely to the welfare of the schools in the District and the pupils thereof.

10. It was stipulated by the parties that Jeanne Conroy retains a .05 FTE

11. It was stipulated by the parties that the notices issued to Mercado, Mattos (transferred to middle school), Dzwonek (special education ), Cohan (transferred to middle school) and Wilson (changed seniority date) are rescinded.

12. Friedberg did not get her March 12<sup>th</sup> Notice until March 19, 2004. It was established by the District that the Notice was mailed by certified mail on March 12, 2004. Therefore, the District met the Notice requirement under Education Code section 44949.

13. Several respondents<sup>3</sup> did not receive an accusation package. However, they were represented by counsel and had a full and fair opportunity to present any issues of relevance to their layoff. This constitutes a non-substantial procedural error.

14. The greatest number of reductions or eliminations in particular kinds of service is a result of increasing class size in grades K through 6. The respondents claim that this violates the collective bargaining agreement.<sup>4</sup> That is irrelevant to these proceedings.

15. If the Math Noyce program that is funded by a special grant is retained, the Math Noyce administrator (Borda) will also be retained.

16. The respondents expressed concern that music might be taught as part of the classroom program or that the music program might be contracted-out. The district can deliver services to their students in a different manner should they decide to do so as long as no permanent or probationary certificated employee with less seniority is retained or hired to render a service which any of the respondents is certificated and competent to render.

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<sup>2</sup> The seniority list was corrected on the record and was entered as Exhibit # 4. Mizzi, Matelli, Draper, Benson, Spusta, Hirshhorn, Dressler, Koerinch, Bower, Mercado, Iwanga, Nicora, Sanchez Forbes, and M. Pon had corrected dates.

<sup>3</sup> Price, Domine and Mogannam

<sup>4</sup> The agreement with the union provides that the district will provide the best instructional program possible within the financial limitations of the district. This issue will have to be determined in a different forum.

## LEGAL CONCLUSIONS

Cause for the termination of the particular kinds of service listed in Finding 3 and the corresponding positions exists in accordance with Education Code sections 44949 and 44955. It is determined that the cause relates solely to the welfare of the schools and their pupils.

## ORDER

Except as set forth above, and in accordance with the seniority list, Notice may be given to respondents that their services will not be required for the 2004-2005 school year.

DATED: April 20, 2004

Ruth S. Astle

RUTH S. ASTLE  
Administrative Law Judge  
Office of Administrative Hearings