

BEFORE THE  
OFFICE OF THE SANTA CLARA COUNTY SUPERINTENDENT OF SCHOOLS  
COUNTY OF SANTA CLARA  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

NOLY BALBASTRO, ANGELA DAVIS,  
GRACE PANOSO, YVONNE STEVENS  
and STEPHANIE SY,

OAH No. 2008030669

Respondents.

**PROPOSED DECISION**

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on April 28, 2008, in San Jose, California.

Adam J. Fiss, Esq., of Littler Mendelson, represented the Santa Clara County Superintendent of Schools.

Christopher Schumb, Esq., represented respondents Noly Balbastro, Angela Davis, Grace Panoso, Yvonne Stevens and Stephanie Sy, all of whom were present.

The matter was submitted for decision on April 28, 2008.

**FACTUAL FINDINGS**

1. Laura Kidwiler made and filed the accusation in her official capacity as the Assistant Superintendent for Human Resources at the Santa Clara County Office of Education.

2. Respondents Noly Balbastro, Angela Davis, Grace Panoso, Yvonne Stevens and Stephanie Sy are certificated employees of the County Office.

3. On March 11, 2008, Interim Santa Clara County Superintendent of Schools Joe Fimiani adopted a resolution reducing or discontinuing particular kinds of services no later than June 30, 2008, and directing the Assistant Superintendent for Human Resources to send appropriate notices to effectuate the certificated staff reductions.

4. On or before March 15, 2008, Assistant Superintendent Kidwiler gave written notice to respondents and other certificated employees that they will not be reemployed for the 2008-09 school year.

5. Each respondent filed a timely request for hearing to determine if there is cause for terminating his or her services. An accusation was served on respondents, each of whom filed a timely notice of defense. All prehearing jurisdictional requirements have been met.

6. The County Superintendent took action to reduce or discontinue the following particular kinds of services no later than June 30, 2008:

<u>Position</u>	<u>Department</u>	<u>FTE</u> <sup>1</sup>
Teacher, Alternative Schools	Alternative Schools	4.0
Teacher, Early Childhood, Special Education	Special Education	9.0
Teacher, Severe Disabilities	Special Education	17.0
Teacher, Deaf/Hard of Hearing	Special Education	3.0
Teacher, Emotionally Disturbed	Special Education	2.0
Principal, Special Education	Special Education	1.0
School Nurse	Special Education	1.6
Teacher, Orthopedic Impairments	Special Education	2.0
Audiologist	Special Education	0.5
Total		40.1

7. Even with the reductions in services next year, the County Office of Education will be able to provide all legally mandated services at required levels. There will be adequate staff to meet established program standards for class size.

8. With respect to each respondent, no certificated employee with less seniority is being retained to perform services that respondent is certificated and competent to render.

9. Thanh Nguyen is a tenured teacher with more seniority than any respondent, and she is teaching under an Early Childhood Special Education Waiver that expires August 15, 2008. The services Nguyen performs are services that respondents are certificated and competent to render. Respondents assert that in the absence of evidence that Nguyen will be properly credentialed next year, her position should be considered an opening that could be filled by one of them, thus necessitating one fewer layoff. Respondents' assertion is without merit. Whether Nguyen will be credentialed next year to continue in her current assignment is a matter of speculation. In determining how many employees must be laid off to effectuate the service cuts, the County Superintendent is not required to take into account attrition that is not positively assured, and the potential opening in Nguyen's position falls into this category.

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<sup>1</sup> Full-time equivalent positions.

## LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. Cause exists because of the reduction or discontinuation of particular kinds of services pursuant to section Education Code 44955 to give notice to respondents that their services will be terminated for the 2008-09 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

## ORDER

Notice may be given to respondents Noly Balbastro, Angela Davis, Grace Panoso, Yvonne Stevens and Stephanie Sy that their services will be terminated for the 2008-09 school year, because of the reduction or discontinuation of particular kinds of services.

DATED: April 29, 2008



NANCY L. RASMUSSEN

Administrative Law Judge

Office of Administrative Hearings