

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

In the Matter of the Accusation Against:

ROZANNA BENSON and various other  
certificated employees of the District,

Respondents.

OAH No. N 2005010581

**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, 2005.

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

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

The matter was submitted on April 14, 2005.

**FACTUAL FINDINGS**

1. Dr. Barbara B. Wilson made this accusation in her official capacity as the Superintendent of the Jefferson School District (District) and not otherwise.
2. Each of the named respondents<sup>1</sup> was at all times mentioned herein, and now is, a certificated employee of the District.
3. On March 9, 2005, the Governing Board of the District adopted Resolution No. 05-03-09 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 2005-2006 school year.

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<sup>1</sup> The names appear on the 2005 Layoff List attached to Exhibit 2

The programs to be reduced or eliminated are as follows:

1.	Reduction in Kindergarten	3.0 FTE
2.	Reduction in First Grade	5.0 FTE
3.	Reduction in Second Grade	1.0 FTE
4.	Reduction in Third Grade	14.0 FTE
5.	Reduction in Fourth Grade	2.0 FTE
6.	Reduction in Fifth Grade	1.0 FTE
7.	Reduction in Sixth Grade	2.0 FTE
8.	Reduction in Social Science	2.0 FTE
9.	BTSA Provider	0.6 FTE
10.	Vice Principal	1.0 FTE
11.	Director of Special Education	1.0 FTE
12.	Preschool/ELL Director	1.0 FTE

For a total of 33.6 FTE

4. On March 10, 2005, respondents and the Governing Board of the 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 will not be required for the ensuing school year and setting the reasons therefore.

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 except as noted in Finding 7, below. 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>2</sup> of the certificated employees of the District shall be terminated at the close of the current 2004-2005 school year.

7. The Governing Board by Resolution number 05-01-26A, dated January 26, 2005, has further determined that, as between employees who first rendered paid service on the same date, the order of termination listed on the seniority list has been based solely on the basis of the needs of the District and the students thereof, except that a lottery was used when the tie-breaking criteria resulted in more than one employee with the same date of hire being found to have the same number of points under the tie-breaking criteria. This occurred for

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<sup>2</sup> The District has taken into account positive attrition so that at the time of the hearing 24 employees were subject to layoff.

three employees who were hired August 19, 2002. Each of the three employees received 4 points so the District conducted a lottery ranking the employees, Vizcarra, Rivera and Link, in descending order. The notices for Vizcarra and Rivera were rescinded leaving Link on the layoff list. Education Code section 44955, subdivision (b), requires, in part, that "As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district . . . ." The Governing Board's resolution did not call for a lottery as the final tiebreaker. The District acted without proper authority from the Governing Board when a lottery was used to determine the ranking of employees with the same date of service after other criteria failed to rank order the employees. Therefore, district employee Link cannot be laid off under these circumstances.

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 except as noted above.

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

10. The District rescinded the notices sent to Eikrem, Rivera, Vizcarra, and Walden.

11. The greatest number of reductions or eliminations in particular kinds of service is a result of increasing class size and collapsing classes in grades K through 6. The respondents claim that this violates the collective bargaining agreement. That is irrelevant to these proceedings.

### LEGAL CONCLUSIONS

1. Except as set forth in Finding 7, cause for the termination of the particular kinds of service listed in Finding 3 and the corresponding positions exists in accordance with Education Code section 44949 and 44955. It is determined that the cause relates solely to the welfare of the schools and their pupils.

2 By reason of the matters set forth in Finding 7, employee Link cannot be given a layoff notice. Pursuant to Education Code section 44955, subdivision (b), only the Governing Board can determine the order of termination for employees who first rendered paid service to the district on the same date. Since three employees are equally senior and two of them are being retained, cause does not exist to layoff the third employee.

ORDER

Except as set forth above, and in accordance with the seniority list, notice may be given to respondents except Link, that their services will not be required for the 2005-2006 school year.

DATED: April 27, 2005

Ruth S. Astle  
RUTH S. ASTLE  
Administrative Law Judge  
Office of Administrative Hearings