

BEFORE THE
GOVERNING BOARD
OF THE
CALEXICO UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations against:

CERTAIN CERTIFICATED EMPLOYEES
LISTED IN EXHIBIT A,

OAH No. 2008030957

Respondents.

PROPOSED DECISION

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard this matter in Calexico, California, on April 21, 2008.

Darren C. Kameya, Lozano Smith, attorneys at law, appeared and represented complainant Calexico Unified School District.

John W. Breeze, Plourd & Breeze, attorneys at law, appeared and represented all 22 respondents listed in Exhibit A to the Accusation.

The matter was submitted on April 21, 2008.

FACTUAL FINDINGS

1. David Alvarez, the Superintendent of the Calexico Unified School District, made and filed the accusation herein in his official capacity as the Superintendent, Calexico Unified School District. The accusation was filed against the 22 respondents (respondents) identified in Attachment A attached hereto and incorporated herein.
2. The respondents are all certificated employees of the Calexico Unified School District (the District).
3. On March 11, 2008, in accordance with Education Code sections 44949 and 44955, the Superintendent of the District notified the Governing Board of the District (the Board) in writing of his recommendation that notice should 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.

4. On March 11, 2008, the Board adopted Resolution No. 16-03-08 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 are the following full time equivalent (FTE) positions:

| <u>Particular Kinds of Services</u> | <u>Number of FTE Positions</u> |
|-------------------------------------|--------------------------------|
| Elementary School Teachers | 13 FTE |
| Single Subject Social Science | 3 FTE |
| Adult Education | 9 FTE |
| Continuation High School | 2 FTE |
| Psychologist | .5 FTE |

These reductions adopted by Board's resolution 16-03-08 totaled 27.50 FTE positions.

5. Subsequently, on March 13, 2008, the Board adopted an additional Resolution determining that it is necessary to reduce an additional particular kind of service at the end of the current school year. The Board determined that the additional particular kind of service that must be reduced for the 2008-2009 school year is the following full time equivalent (FTE) positions:

| <u>Particular Kinds of Services</u> | <u>Number of FTE Positions</u> |
|-------------------------------------|--------------------------------|
| Counselor | .5 FTE |

The final total reductions adopted by the Board's two resolutions are 28.0 FTE positions.

6. 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.

7. Based on the plan to reduce particular kinds of services by a total of 28 FTE positions, the District determined it needed to give notice to 29 certificated employees that their services would be terminated for the upcoming school year.

8. Thereafter, 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 has now determined it can meet its fiscal needs by reducing services by a total of 22 FTE positions for the 2008-2009 school year. To accomplish this reduction of services, the District needs to give final notices of termination to the 22 certificated employees, all of whom are 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. Each of the respondents named 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 22 respondents herein who had timely requested a hearing on this matter. Thereafter, all but five of the respondents herein filed a timely Notice of Defense. The respondents who failed to file a timely Notice of Defense were: Thomas Drake, Rodrigo Figueroa, Eliza Pereda, Yordan Rivera, and Karla Valdez. The District declined to waive this time requirement as to these five employees and therefore these five respondents did not participate in this proceeding.

12. At the hearing, the District moved to dismiss two named respondents Maria Elena Paola Sanchez-Romero and Yordan Rivera because they are employed as university interns. Although the District included them initially on the list of respondents, it moved for dismissal of these two respondents since Education Code section 44464 clearly provides that the rights given under Education Code sections 44498 and 44494 to the proceeding herein are not afforded to interns. The District's motion was granted at the hearing. The list of the 20 remaining respondents is identified in Attachment B and incorporated herein.

13. All pre-hearing jurisdictional requirements were met by the District.

14. The services the Board addressed in Resolution No. 17-03-08 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 action was taken after input and evaluation from administrative staff of the District. The reductions of service have nothing to do with the performance of the certificated employees. This was a difficult decision for the District to have to make, but it was necessary due to budgetary constraints. 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.

15. The District currently provides adult education to the community, but the Board decided that 9 FTE positions in adult education will be reduced in the next school year. The District has not yet determined how, if at all, it will continue to provide adult education next year. The District would not be permitted to layoff employees based on a reduction of particular kinds of services if the District is in fact going to continue that identical kind and level of service next year. However, the District does not plan to continue the adult education services in the same method or manner next year. The District is hopeful it will still be able to provide this community service in some other form, but at this time it has properly determined that adult education services will be reduced by 9 FTE positions for the next school year.

16. The reduction or discontinuation of particular kinds of services relates solely to the welfare of the District and its pupils. The District clearly 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. In no event, will these reductions result in a reduction of services below that of any state mandates. 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.

17. The Board considered all positively assured attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

18. No certificated employee junior to any respondent is being retained to perform any services which any respondent is 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.

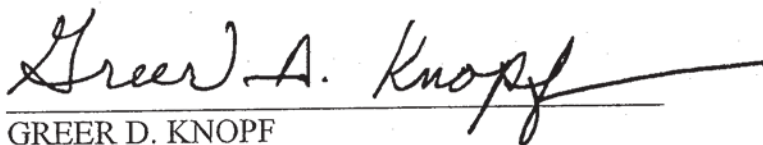
2. Cause exists under Education Code sections 44949 and 44955 for the Calexico Unified School District to reduce particular kinds of services. The cause for the reduction of particular kinds of services is related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the accusations herein. Therefore, cause exists for the Board to give 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 20 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: _____

5/2/08



GREER D. KNOPF

Administrative Law Judge

Office of Administrative Hearings

ATTACHMENT A
CALEXICO UNIFIED SCHOOL DISTRICT
RESPONDENTS INITIALLY NAMED IN ACCUSATION

1. Kenia A. Gomez
 2. Jose Alex Jaime
 3. Arturo Medina
 4. Florencia G. Nogales
 5. Zahiro A. Melendez
 6. Yesenia Campos
 7. Jorge Rosiles
 8. Rodrigo Figueroa
 9. Carmen Moncada
 10. Eliza Pereda
 11. Thomas S. Drake
 12. Armida Romero-Polkinhorn
 13. Lillian L. Centeno
 14. Martin Leyva
 15. Kristine E. Morales
 16. Sophia Ramirez
 17. Maria Elena Paola Sanchez-Romero
 18. Karla J. Valdez
 19. Kristina Costa
 20. Maura Perez
 21. Mike Martinez
 22. Yordan Rivera
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ATTACHMENT B
CALEXICO UNIFIED SCHOOL DISTRICT
REMAINING RESPONDENTS IN ACCUSATION

1. Kenia A. Gomez
2. Jose Alex Jaime
3. Arturo Medina
4. Florencia G. Nogales
5. Zahiro A. Melendez
6. Yesenia Campos
7. Jorge Rosiles
8. Rodrigo Figueroa
9. Carmen Moncada
10. Eliza Pereda
11. Thomas S. Drake
12. Armida Romero-Polkinhorn
13. Lillian L. Centeno
14. Martin Leyva
15. Kristine E. Morales
16. Sophia Ramirez
17. Karla J. Valdez
18. Kristina Costa
19. Maura Perez
20. Mike Martinez