

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

In the Matter of the Accusation Against:

Respondents Listed on Exhibit “A.”

OAH No. 2010020345

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in Oceanside, California on April 1, 2010.

Kelly R. Minnehan, Esq., Fagen, Friedman & Fulfrost LLP, represented Luis Ibarra, Ed.D., Associate Superintendent, Human Resources, Oceanside Unified School District.

With the exception of Respondent Marjorie Schlosser, Jon Y. Vanderpool, Esq., Tosdal, Smith, Steiner & Wax, represented Respondents.

There was no appearance by or on behalf of Respondent Marjorie Schlosser.

The matter was submitted on April 1, 2010.

SUMMARY OF PROPOSED DECISION

The Governing Board of the Oceanside Unified School District determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

District staff carried out the Board’s decision by using a selection process involving review of credentials and seniority, “bumping,” and breaking ties between employees with the same first dates of paid service. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. Respondents listed on Exhibit “A” (Respondents) are probationary or permanent certificated employees of the Oceanside Unified School District (District).

2. On March 9, 2010, the District’s Governing Board (Board) adopted Resolution number 21 (09-10) reducing or eliminating particular kinds of services for the ensuing school year and establishing “competency” for purposes of Education Code section 44955. Further, the Board directed the Superintendent to determine which employees’ services would not be required for the 2010-2011 school year and to take all necessary steps under the law “not to employ those certificated employees of the District” because of the reduction and elimination of these programs and services.

3. On March 10, 2010, Luis Ibarra, the District’s Associate Superintendent, Human Resources (Associate Superintendent) served Respondents with written notice that he recommended not to re-employ them in the 2010-2011 school year and stated the reasons therefor. In addition, the notice advised Respondents of the right to hearing, that the request for hearing must be delivered to the District’s office no later than March 17, 2010, and that the failure to request a hearing would constitute waiver of the right to a hearing.

Each Respondent submitted a timely request for hearing to determine if there was cause for not re-employing him or her for the ensuing school year.

4. On March 19, 2010, the Associate Superintendent made, filed and timely served an Accusation for lay-off of certificated employees and related materials on each Respondent. In the packet of materials, the District informed Respondents that the Notice of Defense must be delivered to the Board no later than March 24, 2010.

Michele Diekelman filed a Request for Hearing but failed to file a Notice of Defense in a timely manner. She made a motion to be allowed to participate in the hearing. The District objected. After considering the facts, the law and arguments of counsel, the District’s objection was overruled, and Michele Diekelman (Respondent Diekelman) was allowed to participate as a Respondent in the hearing.

With the exception of Respondent Diekelman, each Respondent filed a timely Notice of Defense.

5. All pre-hearing jurisdictional requirements were met.

6. On March 9, 2010, the Board adopted Resolution No. (09-10) and thereby took action to reduce or eliminate the following particular kinds of certificated services commencing the 2010-2011 school year:

<u>Services</u>	<u>Number of Full-time Equivalent¹ Positions</u>
Teacher – Elementary Grades	69
Teacher – CORE Teaching Services (Grades 6 -8)	20
Teacher – Art (Secondary Grades)	1.2
Teacher – Biology (Secondary Grades)	4
Teacher – Intro to Computer Applications (Secondary Grades)	1
Teacher – English (Secondary Grades)	6
Teacher – Independent Study (Secondary Grades)	1
Teacher – Industrial Technology	2
Teacher – Music (Secondary Grades)	1
Teacher Physical Education (Elementary Grades)	6
Teacher – Social Science (Secondary Grades)	4
Teacher – Spanish (Secondary Grades)	2
Total FTE ²	117.2

The proposed reductions totaled 117.2 full-time equivalent (FTE) positions.

7. The District considered all known attrition, including retirements, resignations and deaths, in determining the actual number of final layoff notices to be delivered to its certificated employees.

8. The Associate Superintendent was responsible for implementing the technical aspects of the layoff. The District developed a seniority list that contained, among other matters, each employee's name, seniority date, tie-breaker points, credentials, supplemental authorizations, No Child Left Behind (NCLB) Certifications, site and assignment.

² Full-time Equivalent.

The seniority date was based on the first date of paid service rendered in a probationary position.³

9. In reducing or eliminating particular kinds of services, the services of no permanent employee may be terminated while retaining any employee with less seniority to render a service that said permanent employee is certificated and competent to render.⁴ The District used the seniority list for permanent and probationary certificated employees to develop a proposed order of layoff and “bumping” list to determine the least senior employees currently assigned in the various services being reduced. Then, the District determined whether the least senior employees held credentials in another area that would entitle them to “bump” other junior employees. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals to determine whether they could “bump” other employees. The District retained employees who satisfied “competency” criteria established by the Board in its resolution, which states, in pertinent part:

“WHEREAS, it will be necessary to retain certificated employees who possess special training or experience, which other certificated employees with more seniority do not possess, to teach a specific course of study:

1. Six or more certificates within the “core” subject areas of science, English, math, or social science, which certificates demonstrate “Highly Qualified” status as contemplated in the No Child Left Behind Act;
2. Completion of “Paxton Patterson Modules” training seminar within the past four school years, together with implementation of the Paxton Patterson Modules concepts in the employee’s assigned area of teaching within the past two years;
3. Possession of a single subject teaching credential in Physical Education and a Supplemental Authorization in Dance issued by the California Commission on Teacher Credentialing, together with two years of teaching experience, within the past six years, in a specialized dance program at the 9th – 12th grade level;
4. Demonstrated experience, knowledge and skills in the area of assisting teachers, planning and implementing in-service trainings, planning, implementing, and evaluating the school plan, coordinating parent advisory groups, and assisting in the referral process for remediation together with three years of teaching experience and current experience as a School-Based Resource Teacher.

³ Education Code section 44845.

⁴ Education Code section 44955, subdivision (b).

5. Demonstrated experience, knowledge and skills in the area of curriculum and instruction as evidenced by completion of the following activities during one of the two most recent school years; participating in developing and drafting the language arts scope and sequences of document for grades K-10; participation in developing and drafting the mathematics scope and sequences for grades K-7; possession and utilization of knowledge of all core standards in all K-12 grades; led multiple staff development trainings concerning professional development presentations, including but not limited to implementation of language arts and mathematics scope & sequences; navigation and utilization of the Follett Library System computer program; navigation and utilization of the ESCAPE computer system to order district consumable core materials; and acted as a liaison to the science center and warehouse.”

10. The District asserts that no junior employee is being retained to perform a service that a more senior employee is certificated and competent to render. Certain Respondents disagreed.

11. The District skipped and retained Bradley Hamby (Hamby). The Associate Superintendent testified that the District did not notice Hamby because he possesses the competency described in paragraph 2 of the Board’s Resolution (Finding 10), and no certificated employee with more seniority does.

The Associate Superintendent explained that the “Paxton Patterson Modules” are integrated in the Career Tech Lab course at Chavez Middle School (Chavez) — and no other middle school in the District — because of the relationship between the ROP program at Chavez and El Camino High School (El Camino). Chavez is the District’s newest middle school, now three years old. Students who take the career tech lab course at Chavez are introduced to a variety of career technical pathways in 20-day modules. For example, students at Chavez may take a 20-day computerized architectural design module at Chavez, and thereafter take a one-year course as an elective at El Camino. In other words, the modules provide the students an opportunity to explore a range of interests to assist in identifying which courses to take in high school.

The Associate Superintendent described the training and skills necessary to teach the “Paxton Patterson Modules.” No special credential or qualification under NCLB is required. However, a five-day course in Michigan is necessary; thereafter, the teacher receives a certificate. In the training, the teacher learns to use the modules and the intricacies of the program. Company staff provides hardware and software and assists with setting up the school’s lab and troubleshooting issues. In the classroom, the teacher facilitates the use of computer software as students work through various modules, troubleshooting and assisting them. The teacher is in contact with the company’s staff as changes and improvements are made to the program.

Hamby has a seniority date of August 25, 2000, and holds a multiple subject credential. For at least the past two years, he has been assigned to Chavez, teaching Computer Tech Lab and READING 180. He has taken the “Paxton Patterson Modules”

training seminar within the past four school years and has implemented the Paxton Patterson concepts in his assigned area of teaching within the past two years.

Respondent Rachel Chambers (Respondent Chambers) argued that she is certificated and competent to teach the “Paxton Patterson Modules.” She has the same seniority date as Hamby, holds a multiple subject credential, a supplemental authorization in Introduction to English, is highly qualified under NCLB in English and “RDG/LA.”⁵ She has not taken the training necessary to teach the “Paxton Patterson Modules” nor has she taught the program in the District. However, she is ready and willing to do so.

Given the foregoing facts, the District established that it has a need for a certificated teacher who has the training and skills to incorporate the “Paxton Patterson Modules” in the Career Tech Lab class at Chavez and has experience doing so. By this standard, Hamby is competent. Neither Respondent Chambers nor any other Respondent established that he/she is competent to perform the service that Hamby is being retained to perform. There is no more senior employee who is competent to displace Hamby.

12. The District skipped and retained Justin Kern (Kern), Dana Spencer (Spencer), Jonathan Stone (Stone) and Donna Wilkins (Wilkins) because these are the most senior certificated teachers who satisfy the competency criteria described in paragraph 4 of the Board’s resolution.

The Associate Superintendent testified regarding the District’s need for the School Based-Resource Teacher (SBRT), the special skills and training required and the service provided.

An SBRT is a teacher (because he/she is part of the bargaining unit) and quasi-administrator, and the position requires a wide range of knowledge, demonstrated leadership skills, and performance of a variety of duties. In order to become an SBRT, the teacher applies for the position and is interviewed by the principal, based on the principal’s criteria. If selected, the SBRT receives a stipend. In this District, the SBRT is typically assigned to an elementary school; however, one is assigned to King Middle School.

The District seeks to retain any SBRT who has “demonstrated experience, knowledge and skills in the area of assisting teachers, planning and implementing in-service trainings, planning, implementing, and evaluating the school plan, coordinating parent advisory groups, and assisting in the referral process for remediation together with three years of teaching experience and current experience” as an SBRT.

The District provided evidence to establish its need to retain experienced SBRTs. Among other things, the Associate Superintendent testified that retention of experienced SBRTs would assist in reducing the “damage” associated with the reduction or elimination of particular kinds of services in the District. Further, both the Associate Superintendent and Rand Johnston (Johnston), a principal in the District, explained that the District is a program

⁵ No evidence was offered to establish the meaning of “RDG/LA.”

improvement year three district and concerning the significance of the foregoing. Johnston testified that his school is a program improvement year one, likely to go to program improvement year two; as a result, the District has an effective schools plan (ESP) that was developed by the District in conjunction with the San Diego County Office of Education. Johnston described the elements of the ESP and explained that the goal of the ESP is to remove the District and its schools from program improvement status. The SBRTs (along with administrators) are instrumental in working on the school site plan to achieve the goals established in the ESP. If the District is not removed from program improvement status, administrators and staff can be removed and/or the District can be taken over by the State of California. Given the foregoing, the District does not have time for teachers to be trained and gain experience as SBRTs.

13. According to the evidence, Kern, Spencer, Stone, and Wilkins are certificated teachers who have various seniority dates and credentials, but all satisfy the Board's competency criteria as SBRTs.

Respondents Chambers and Valerie Hillhouse-Shokes (Respondent Hillhouse-Shokes) each testified that she has the skills, and, therefore, is qualified to be assigned as an SBRT. In fact, the parties stipulated that there are noticed Respondents more senior to Kern, Spencer, Stone and Wilkins who have "demonstrated experience, knowledge and skills in the area of assisting teachers, planning and implementing in-service trainings, planning, implementing, and evaluating the school plan, coordinating parent advisory groups, and assisting in the referral process for remediation." However, there is no Respondent who has current experience and assignment as an SBRT.

Given the facts in Findings 13 and 14, the District established that it has a need for certificated teachers who have the training, skills, and current experience as a SBRT. Kern, Spencer, Stone and Wilkins are each certificated and competent to serve as SBRT. There is no more senior employee who possesses the competency to bump Kern, Spencer, Stone and/or Wilkins.

14. The Board adopted tie-breaker criteria (Board Resolution No. 14 (09-10) to determine the order of termination of employees with the same seniority date, as follows:

"The governing board of the district hereby adopts the following resolution regarding tie-breaking criteria for seniority order in reduction in service layoff. The Education Code, section 44955, provides for the reduction of permanent certificated staff under certain conditions, and further provides that, "As between employees who first rendered service to the district on the same date, the governing board shall determine the order of termination solely on the basis of the needs of the district and the students thereof." In order to prepare for the possibility of such an event, the governing board adopts the following criteria for the determination of the order of termination of employees who first rendered service to the district on the same date. The employee with the most points is entitled to preference in seniority, but only as between two people who first rendered service on the same date.

- | | <u>Points</u> | |
|--|---------------|-----------------------|
| 1. Certification authorization in areas of critical needs: | | |
| a. Special Education | 20 | |
| b. Single Subject Math (Primary Credential) | 15 | |
| Need: Staff with appropriate credentials and training to meet program requirements | | |
| 2. Special skills and experience: | | |
| a. National Board Certified Teacher | 10 | |
| Need: Broadly trained staff with wide experience | | |
| 3. Advanced degree(s) | 10 | Per additional degree |
| Need: Staff that keeps current with subject matter and trends | | |
| 4. Breadth of teaching experience: | | |
| a. Each additional primary credential | 15 | |
| b. Each supplemental credential | 5 | |
| Need: Flexibility in difficult times; staff able to teach several subjects on several levels. | | |
| 5. Service to the school and students: | | |
| a. Recent service (within last three years) as: | 10 | |
| Department Chair – High School | | |
| Grade Level Team Leader – Middle School | | |
| Head Teacher – Elementary School | | |
| b. Co- or Extra-curricular activities (within last three years) as listed below | | |
| (per activity, up to 15 points) | 5 | |
| <u>*Item 5 only pertains to permanent employees.</u> | | |
| Need: Staff that will support students, student activities, and provide leadership to students and staff | | |

COACHES

Head Varsity Football
Boys Athletic Trainer (fall, winter, spring)
Girls Athletic Trainer (fall, winter, spring)
Boys Head Varsity Baseball
Boys Head Varsity Basketball
Girls Head Varsity Basketball
Boys Head Varsity Cross Country
Girls Head Varsity Cross Country
Boys Head Varsity Golf
Girls Head Varsity Golf
Girls Head Varsity Gymnastics
Boys Head Varsity Soccer

ADVISORS

Director – Athletics
Director – Marching Band
Director – Student Activities
Forensics Coach
Debate Coach
Director – Choir (fall, spring)
Director – Drill Team/Color Guard
Drama Coach
Asst. Director – Marching Band (fall, spring)
Choir Accompanist (fall, spring)
Director – Dance (fall, spring)
Director – Orchestra

Girls Head Varsity Soccer
 Girls Head Varsity Softball
 Boys Head Varsity Swimming
 Girls Head Varsity Swimming
 Boys Head Varsity Tennis
 Girls Head Varsity Tennis
 Boys Head Varsity Track
 Girls Head Varsity Track
 Boys Head Varsity Volleyball
 Girls Head Varsity Volleyball
 Boys Head Varsity Water Polo
 Girls Head Varsity Water Polo
 Head Varsity Wrestling
 Boys Assistant Varsity Baseball
 Boys Head Freshman Baseball
 Boys Head J.V. Baseball
 Boys Assistant Varsity Basketball
 Boys Head Freshman Basketball
 Boys Head J.V. Basketball
 Girls Assistant Varsity Basketball
 Girls Head Freshman Basketball
 Girls Head J.V. Basketball
 Assistant Varsity Football
 Head Freshman Football
 Boys Head J.V. Football
 Boys Head J.V. Golf
 Girls Head J.V. Golf
 Head J.V. Gymnastics
 Assistant Varsity Soccer
 Boys Head Freshman Soccer
 Girls Head Freshman Soccer
 Boys Head J.V. Soccer
 Girls Head J.V. Soccer
 Girls Assistant Varsity Softball
 Girls Head Freshman Softball
 Girls Head J.V. Softball
 Assistant Varsity Swimming
 Boys Head J.V. Tennis
 Girls Head J.V. Tennis
 Boys Assistant Varsity Track
 Girls Assistant Varsity Track
 Boys Assistant Varsity Volleyball
 Girls Assistant Varsity Volleyball
 Boys Head J. V. Volleyball
 Boys Head Freshman Volleyball
 Girls Head Freshman Volleyball

Director – Percussion (fall, spring)
 Director – Rally Group (fall, winter)
 Director – Tall Flags (fall, spring)
 Varsity Academic League Coach
 Asst. Academic League Coach
 Asst. Director – Rally Group (fall)
 Director – Stage/Concert Band
 Journalism Advisor
 Show Choir Choreographer (fall, spring)
 Yearbook Advisor
 Middle School Advisors
 Designated Advisors:
 Band
 Choir
 Orchestra
 ASB
 Yearbook
 Safety Patrol

Girls Head J.V. Volleyball
Head Freshman Wrestling
Head J.V. Wrestling
Assistant Freshman Football
Assistant J.V. Football
Weight/Strength Coach (fall, winter,
spring)
Middle School Coaches

Lottery / Number Drawing Provision

If, after application of the above-listed tie-breaking criteria, any two or more certificated employees who first rendered paid service in a probationary position to the district (“FDPS”) on the same date also have the same number of tie-breaking points, the following procedure will be applied to determine the order of layoff of those employees: there shall be one numbered ticket in the “hat” for each person who has both the same “FDPS” and number of tie-breaking points. Each of these employees shall draw a ticket from the hat, until all of the tickets are gone. The employees shall draw in alphabetical order (by last name and then first name). The order of layoff shall be arranged according to the numbers drawn by these employees, with the employees being laid off in numerical order, from lowest number to highest. For example, the person who drew the number “1” will be the first to be laid off, followed by the person who drew number “2,” and so on. For any person for whom a number needs to be drawn but who is not present when it is their turn to draw, the Superintendent’s designee shall draw for the absent person.”

For purposes of determining the order of layoff, the District has the discretion to establish criteria for purpose of breaking ties. There is insufficient evidence in the record to establish that application of the District’s tie-breaker criteria was unfairly applied or is otherwise arbitrary or capricious.

15. The services that the District proposed to reduce were “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 exercise of discretion.

16. The District’s reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. 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. No certificated employee junior to any Respondent was retained to perform services that any Respondent was 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 these sections are satisfied.
2. A District may reduce services within the meaning of section 44955, subdivision (b), “either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may ‘reduce services’ by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved.” (*Rutherford vs. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)
3. Cause exists under Education Code sections 44949 and 44955 for the Oceanside Unified School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuance of particular kinds of services is related solely to the welfare of the schools and the pupils thereof.
4. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he/she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy vs. Richmond Unified School District* (1975) 13 Cal. 3d 469.)
5. No employee with less seniority than any Respondent is being retained to render a service that any Respondent is certificated and competent to render.
6. All arguments not addressed herein are not supported by the evidence and/or the law and therefore rejected.

ORDER

The Accusations served on Respondents listed on Exhibit “A” are sustained. Notice shall be given to Respondents before May 15, 2010 that their services will not be required for the 2010-2011 school year because of the reduction or discontinuance of particular kinds of services.

DATED: _____

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

Respondents
Oceanside Unified School District
Exhibit "A"

1. Bouret, Tara
2. Chambers, Rachel
3. Doyle, Becky
4. Dudley, Lisa
5. Fairchild, Nicole
6. Flanagan, Teresa
7. Fruin, Johanna
8. Gonzales, Lisa
9. Hillhouse-Shokes, Valerie
10. Hogue, Lorrh
11. Hovenden, Matthew
12. Hueth, Dave
13. Hutchison, Timothy
14. Kassis-Dikiy, Stephani
15. Leaverton, Sheri
16. Lindsey, Bonnie
17. Luft, Jeffrey
18. Luther, Julie
19. Mackenzie, Suzanne
20. Madueno, Marcelina
21. McConchie, Briar
22. McGuire, Patricia
23. McNaughton, Paula
24. Messerschmitt, Diane
25. Methven, Keith
26. Meza-Magallanes, Lydia
27. Mossa-Mariani, Victoria
28. Murchison, Constance
29. Obrite, Lynn
30. Riley, Jacqueline
31. Rockdale, Kristy
32. Schlosser, Marjorie
33. Shaw, Holly
34. Steiner, Patricia
35. Thielen, Karyn
36. Windham, Daniel
37. Wright II, Kenneth
38. Zendejas, Kristin
39. Zimny, H. Carmel
40. Johnson Cynthia
41. Diekelman, Michele