

BEFORE THE  
GOVERNING BOARD OF THE  
CORNING UNION HIGH SCHOOL DISTRICT  
STATE OF CALIFORNIA

In The Matter of the Accusations against:

OAH No. N2008031006

JASON ARMSTRONG  
LOUIS BURAN  
JARED CAYLOR  
MICHAEL COSTANZA  
ROBERT H. DAVIS  
FLOYD GREEN  
BRADLEY MARTIN  
JEFF N. NELSON  
MARCI L. O'SHEA  
LINDSAY REIMERS  
ARMANDO ROMO  
CLEMENTINA TORRES,

Respondents.

**PROPOSED DECISION**

Trevor Skarda, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 24, 2008, in Corning, California.

Roman J. Muñoz, Attorney at Law, of Kronick, Moskovitz, Tiedemann & Girard, represented the Corning Union High School District.

All named respondents, excluding Louis Buran, were present and represented themselves. Donald A. Selke, Jr., Attorney at Law, was present but did not represent respondents because of undisclosed potential and actual conflicts.

The matter proceeded in respect to the Lay Off Notices issued to all named respondents, as these employees had filed Requests For Hearing, been issued Accusations, and had filed Notices of Defense to the Accusation.

During the Hearing, the District dismissed the Accusation against Louis Buran.

The matter was submitted and the record closed on April 24, 2008.

### FACTUAL FINDINGS

1. The Corning Union High School District (District) operates three high schools, Corning High School, Centennial High School, and the Center of Alternative Learning (C-CAL). Of the three high schools in the District, only Corning High School is a "comprehensive" high school. Centennial is a "continuation" high school and C-CAL is the District's community day school (serving students who cannot attend the comprehensive high school for various reasons, including behavioral problems).

2. Bruce Cole is the Superintendent of the District. His actions, and the actions of the Board, were taken in their official capacities.

3. On March 12, 2008, the District personally served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that the Board had passed Resolutions reducing the certificated staff by 5.5 full-time equivalent (FTE) positions.

4. Respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

5. The Superintendent made and filed Accusations against each of the employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense were served on those employees in a timely manner.

6. Respondents timely filed Notices of Defense.

7. Respondents in this proceeding are permanent or probationary certificated employees of the District.

8. On March 11, 2008, at a meeting of the District's Board of Trustees (Governing Board), the Governing Board of the District was given notice of the Superintendent's recommendations that certificated and other employees holding 5.5 FTE positions be given notice that their services would not be required for the next school year and stating the reasons for that recommendation.

9. On March 11, 2008, the Board adopted Resolution No. 293, providing for the reduction or elimination of the following particular kinds of services, and to decrease a corresponding number of certificated employees in the District, as follows:

- A. Reduce 0.5 FTE Physical Education.
- B. Reduce 1.0 FTE Social Science.
- C. Reduce 1.0 FTE Special Education.
- D. Reduce 1.0 FTE Mathematics.
- E. Reduce 1.0 FTE Industrial & Technology Education.
- G. Reduce 1.0 FTE English.

10. On March 11, 2008, the Board adopted Resolution No. 295, in which the Governing Board established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. The criteria include:

- 1. Total years of teaching experience in the profession. If these factors are identical then;
- 2. Fulfillment of the requirements under No Child Left Behind Act to be deemed "highly qualified." If these factors are identical then;
- 3. Multiple credentials/authorizations allowing for staffing flexibility and versatility in the Grades 9-12 teaching positions. If these factors are identical then;
- 4. Post-graduate degrees. If these factors are identical then;
- 5. BCLAD/CLAD Certification. If these factors are identical then;
- 6. In the event that any employees having the same seniority date are equal after the application of the above-mentioned criteria, the District will then break ties by lot.

11. The District is in a state of financial crisis caused by the State budget proposal. Thus, the Governing Board resolved to reduce teaching services, affecting employment of 5.5 FTE teaching positions and a total of 12 employees. The Board's resolution to eliminate and reduce teaching services was made in order to balance its budget for the welfare of students.

12. Superintendent Cole and other District employees were responsible for implementation of the technical aspects of the layoff.

13. The District maintains a Certificated Seniority List which contains employees' seniority dates (first date of service), status as tenured, probationary or temporary, credentials and authorizations. The District circulated a seniority list in anticipation of issuing layoff notices.

14. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. In determining who would be laid off for each kind of affected service, the District determined the impact on staff in inverse order of seniority. The District checked the credentials of affected individuals to determine whether



they could "bump" other employees who were junior to them. The District then looked at employee competence for certain positions as opposed to other positions.

15. Thirteen people received layoff notices: Jason Armstrong, Louis Buran, Jared Caylor, Michael Costanza, Robert Davis, Floyd Green, Bradley Martin, Jeff Nelson, Marci O'Shea, Lindsay Reimers, Armando Romo, Clementina Torres and Larry Gimble (who was not named in the Accusation).

Larry Gimble did not request a hearing.

The District determined after the layoff notices were sent out that it would not reduce 1.0 FTE English as it had previously determined. As a result, Louis Buran's layoff notice was rescinded by the District.

Jason Armstrong, Jared Caylor, Michael Costanza, Bradley Martin, Jeff Nelson, and Clementina Torres received what the District characterized as "precautionary layoff notices" because they are junior teachers/counselors to Robert Davis; the District seeks to "skip" all of these named respondents because it maintains that Mr. Davis does not meet the District's competency criteria and as such, he lacks "bumping" rights as to these junior employees.

The remaining respondents, Davis, Green, O'Shea, Reimers and Romo are all individuals whom the District seeks to layoff due to reductions in particular kinds of services. They represent the remaining 4.5 FTE of particular kinds of services the District seeks to reduce.

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

*WAS THE BOARD'S DECISION TO GIVE ROBERT DAVIS A LAYOFF NOTICE ARBITRARY AND/OR CAPRICIOUS?*

17. Robert Davis is currently assigned to teach at C-CAL. He has taught there since the 2001-2002 school year in a self-contained classroom, teaching multiple subjects. Prior to that, he taught at Centennial during the 1999-2000, and 2000-2001 school years. He has never taught at Corning High School.

18. Mr. Davis' seniority date for layoff purposes is August 1, 1989. He holds a Pupil Personnel Services (PPS), Physical Education (PE), and a Biological Sciences credential.

19. Mr. Davis is currently involved in a lawsuit with the District now pending before the Superior Court of the State of California, County of Tehama, *Davis v. Corning Union High School District*, Case No. 59863. The lawsuit involves a writ of mandate

related to Mr. Davis' assignment to teach at C-CAL from 2001-2002 to the present. He maintains that he never consented to such an assignment and as such, it was unlawful.

20. The District's decision to give Mr. Davis a layoff notice was not arbitrary or capricious. As previously determined, the District's decision to eliminate particular kinds of services affecting numerous employees was made for the welfare of the students due to the State budget crisis. There was no contrary evidence.

*IS ROBERT DAVIS COMPETENT TO TEACH SCIENCE OR PHYSICAL EDUCATION, OR TO PROVIDE COUNSELING SERVICES TO STUDENTS AT CORNING HIGH SCHOOL?*

21. The Governing Board adopted "competency criteria" on March 11, 2008, in Resolution 294. The criteria are as follows:

For purposes of making assignments and reassignments of certificated employees the Governing Board has determined competency shall mean, at a minimum, possession of a preliminary, clear, professional clear, lifetime, or other full credential, **and** at least one complete school year actual teaching experience in a comprehensive high school assignment within the last five years. [Emphasis in the original.]

22. Superintendent Cole testified persuasively that the second "competency" criteria, that an employee have at least one complete year actual teaching experience in a comprehensive high school assignment within the last five years, is essential because the District has moved to a "standards-based" model in the last five years. He explained that academics, physical education and counseling services are all standards-based and that an individual who lacks the requisite one-year of experience will not be able to provide standards-based instruction to students. The continuation high school (Centennial) and day school (C-CAL) do not provide standards-based services; as such, an individual who has only provided services in those environments in the past five years is not competent to teach at Corning High School.

23. The District's competency criteria are not arbitrary or capricious. They represent a rational response to the increasing pressure to align all high school curriculum, including supportive services such as counseling services, to State standards in an effort to ensure that the maximum number of students pass the California State High School Exit Exam (CASHEE).

24. Robert Davis does not meet the District's competency criteria to teach biological sciences, PE, or to provide counseling services at Corning High School because he has not provided those services for one complete year in the past five years. He may not "bump" more junior teachers who teach those subjects at Corning High School.



*APPLICATION OF THE TIE BREAKER CRITERIA FOR TEACHERS WHO FIRST SERVED THE DISTRICT ON AUGUST 21, 2007*

25. The District applied the tie-breaking criteria for employees whose first date of services was August 21, 2007. After application of the tie-breaking criteria, the District determined that seniority of those teachers was as follows: (1) Jared Caylor, (2) Armando Romo.

26. There was no persuasive evidence that the tie-breaking criteria were applied inappropriately as to the above-listed individuals.

*OTHER MATTERS*

27. Armando Romo testified that his services are essential to the District because he has a Bilingual, Cross-cultural, Language and Academic (BCLAD) certificate, and the District has a significant number of English Language Learner (ELL) students.

28. While Mr. Romo presented as an impassioned, competent and caring social science teacher, he is the most junior teacher teaching that subject in the District, and the District properly gave him a layoff notice.

29. There was no evidence that the Governing Board's decision to eliminate the particular kinds of services listed in Factual Finding 9 was arbitrary or capricious.

30. There was no evidence that the Governing Board's decision to reduce the particular kinds of services listed in Factual Finding 9 will cause it to reduce its offerings in code mandated courses below the level required by law.

*LEGAL CONCLUSIONS AND DISCUSSION*

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction." The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Governing Board's decisions were a proper exercise of its discretion.

3. The services identified in Board Resolution No. No. 293, are particular kinds of services that could be reduced or discontinued under section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

4. 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 v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

5. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen*, supra, 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838; see, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

6. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

7. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or 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 v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers v. Governing Board*, supra, 116 Cal.App.3d 831.)

8. The District may deviate from terminating certificated employees in order of seniority, pursuant to Education Code section 44955, subdivision (d).<sup>1</sup> The District must

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<sup>1</sup> Education Code section 44955, subdivision (d) states:

Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:  
(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and



prove that it has a specific need for personnel to teach a specific course and that certificated employees it seeks to retain have special training and experience necessary to teach that course of study, which others with more seniority do not possess.

9. The District did not have to demonstrate a specific need to retain the teachers junior to Mr. Davis because Mr. Davis was not competent to teach any of the subjects for which he possesses credentials at the comprehensive high school.

10. Services reduced below the level mandated by law are not "particular kinds of services" under Education Code section 44955. So long as a school district does not reduce its offerings in a code mandated course below the level required by law, that reduction should be considered a reduction of a particular kind of service. (*Degener v. Governing Board*, supra, 67 Cal.App.3d 689.)

11. It was not established that the District will reduce its course offerings below mandated levels by reducing the particular kinds of services identified in Factual Finding 9.

12. Education Code section 44955, subdivision (b) states, in relevant part, as follows:

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 and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

13. The District's application of the tie breaking criteria as to all affected respondents was appropriate.

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experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.



ORDER

1. Notice shall be given to employees occupying 4.5 full-time equivalent certificated positions that their services will not be required for the 2008-2009 school year because of the reduction and discontinuance of particular kinds of services, including the following respondents: Robert Davis, Floyd Green, Marci O'Shea, Lindsay Reimers, and Armando Romo.

2. The Accusation against Louis Buran is dismissed as the District rescinded its layoff notice to Mr. Buran, representing 1.0 full-time equivalent certificated position.

3. The Accusations against all remaining respondents are dismissed.

DATED: April 30, 2008



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TREVOR SKARDA  
Administrative Law Judge  
Office of Administrative Hearings