

BEFORE THE  
BOARD OF EDUCATION  
OF THE  
LAKE ELSINORE UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SHAWN GOFFMAN,

Respondent.

OAH No. L2005040078

**PROPOSED DECISION**

Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Lake Elsinore, California on April 20, 2005.

Mark W. Thompson, Esq., Atkinson, Andelson, Loya, Ruud & Romo, represented the Lake Elsinore Unified School District.

Ronald G. Skipper, Esq., represented Respondent.

The matter was submitted on April 20, 2005.

**FACTUAL FINDINGS**

1. Dr. Sharron E. Lindsay, Superintendent, of the Lake Elsinore Unified School District (District), made and filed the Accusation in her official capacity.

2. Shawn Goffman (Respondent) is a permanent certificated employee of the District.

3. In accordance with Education Code sections 44949 and 44955, the Superintendent notified the Governing Board of Lake Elsinore Unified School District (Board) and Respondent that she recommended that notice be given to Respondent that his services would not be required for the ensuing school year.

On March 11, 2005, the Board adopted Resolution No. 2004-05-092, Reduction of Particular Kinds of Services Pursuant to Education Code Section 44955, reducing or eliminating particular kinds of services for the ensuing school year.

On March 11, 2005, the notice of termination was served on Respondent, either by personal delivery or by depositing the notice of termination in the United States regular mail and certified mail, postage prepaid and addressed to Respondent at his last known address.

The written notice of termination stated that Respondent's services would not be required for the 2005-06 school year and set forth the reasons for the recommendation. The recommendation that Respondent be terminated from employment was not related to his competency as a teacher.

In addition, the notice advised Respondent of his right to a hearing, that the request for hearing must be delivered to the Board on or before April 4, 2005, not less than seven days after the date the notice of termination was served upon him, and that the failure to request a hearing would constitute the waiver of the right to a hearing.

Respondent's attorney filed a written request for hearing to determine if there was cause for not reemploying Respondent for the ensuing year.

An Accusation was timely served on Respondent. His attorney filed a timely Notice of Defense.

4. All prehearing jurisdictional requirements were met.

5. The Board took action to reduce or eliminate the following particular kinds of certificated services commencing in the 2005-2006 school year:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Teachers on Special Assignment	8.0
Adaptive PE Teacher	1.0
Industrial Tech/Construction	0.5

The proposed reductions total 9.5 full-time equivalent (FTE) positions.

According to the evidence, there is a mathematical error in the Board's Resolution; the Board intended to reduce all teachers on special assignment. On the date of the resolution, there were 7.0 FTE teachers on special assignment; as such, the Board intended to reduce 7.0 FTE teachers on special assignment, not 8.0 FTE teachers on special assignment; therefore the proposed reductions should have been 8.5 FTE positions, rather than 9.5 FTE positions.

6. The services were "particular kinds of services" that could 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.

7. The reduction or discontinuance of particular kinds of services related to the welfare of the schools and its pupils and was necessary to decrease the number of certificated employees of the District, as determined by the Board.

8. The District used the Seniority List to develop a proposed layoff and "bumping" 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 service reduced, the District counted the number of reductions not covered by the known vacancies and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other employees.

9. The District has considered attrition in determining the actual number of necessary layoff notices to be delivered to its employees. Based on seniority and credentials, the District determined that the teachers on special assignment and the adaptive physical education teacher were qualified to be assigned to vacant positions during 2005/2006 school year. Based on Respondent's credentials, he could not be retained in a 1.0 FTE position. In consideration of attrition the District concluded that the number of permanent certificated employees required to be terminated pursuant to this proceeding is 0.5 FTE position.

10. No certificated employee junior to Respondent has been retained to perform any services which 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. 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 Lake Elsinore 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 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.

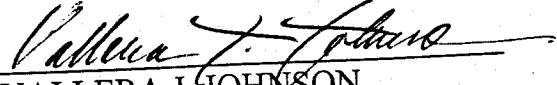
*Lacy vs. Richmond Unified School District* (1975) 13 Cal.3d 469. Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. *Poppers vs. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 vs. Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.

5. No employee with less seniority than Respondent is being retained to render a service which Respondent is certificated and competent to render.

#### ORDER

1. The Accusation served on Shawn Goffman is sustained.
2. Notice shall be given to Respondent Shawn Goffman before May 15, 2005 that 0.5 of his full-time equivalent position will not be required for the 2005-06 school year because of the reduction or discontinuance of particular kinds of services as indicated.

DATED: April 28, 2005

  
VALLERA J. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings