

**BEFORE THE BOARD OF EDUCATION  
OF THE SANTA BARBARA SCHOOL DISTRICTS**

In the Matter of the Accusation Against:

OAH No. L2008040130

Araujo, Elayne; Bailey, John; Burke, Anais;  
Carmean, Patty Jo; Carson, Tiffany;  
Checketts, Elizabeth; Chiu, Clanci; Claffey,  
James; Cornelius, Ashley; Cruz, Marcelo;  
Cowden, Suzanne; Eisen, Brian; Estes,  
Patrick; Finlay, Krista; Gallardo, Juan;  
Gleason, Ryan; Harbison, Sarah; Hernandez,  
Helen; Lane, Rebecca; Lent, Valerie;  
Marshall, Heather; Martinez, Amanda;  
McLain, Christine; Moran, Matt; Ohm, Luke;  
Ortega, Charles; Rapp, Jessica; Sanchez,  
Francisco; Sheldon, Alexander; Slatius,  
David; Vaa, Jeremy; Vogt, Tracy; Woodard,  
Lindsay; and Zamora, Joseph,

Respondents.

**PROPOSED DECISION**

Chris Ruiz, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on April 22, 2008, in Santa Barbara, California.

Mary L. Dowell, Esq., of Liebert Cassidy Whitmore, represented the Santa Barbara School Districts (District).

Robert A. Bartosh and Jeffrey J. Stinnett, Esqs., of Hathaway, Perrett, Webster, Powers, Chrisman and Gutierrez, represented all Respondent teachers (Respondents).

The District served a Notice of Layoff on each of the teacher Respondents. At the hearing, the District moved to dismiss the Accusation as to all Respondents, with the following exceptions: Araujo, Elayne; Bailey, John; Carson, Tiffany; Cornelius, Ashley; Eisen, Brian; Estes, Patrick; Finlay, Krista; Gallardo, Juan; Gleason, Ryan; Hernandez, Helen; Moran, Matt; Ohm, Luke; Sanchez, Francisco; Sheldon, Alexander; and Vogt, Tracy. The District's motion was granted.

## FACTUAL FINDINGS

1. J. Brian Sarvis, Superintendent of the District, acting in his official capacity, caused all pleadings, notices and other papers to be filed and served upon each Respondent pursuant to the provisions of Education Code sections 44949 and 44955. The parties, by and through their counsel, stipulated that all pre-hearing jurisdictional requirements have been met.

2. Respondents are employed by the District as permanent, probationary, intern, pre-intern, emergency permitted, waiver, and/or temporary certificated employees of the District.

3. On March 11, 2008, pursuant to Education Code sections 44949 and 44955, the Board of Education of the District (Board) was given written notice of the recommendation by the Superintendent that notice be given to Respondents that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

4. On March 15, 2008, Respondents were given written notice of the recommendation that notice be given to Respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

5. On or about March 25, 2008, Respondents requested a hearing.

6. It was established that cause exists, within the meaning of Education Code sections 44949 and 44955, for not re-employing Respondents for the ensuing school year for all of the reasons set forth below.

7. The District decided the following:

The following particular kinds of services of the District will be reduced or eliminated no later than the beginning of the 2008-09 school year:

|                  |                         |
|------------------|-------------------------|
| Art              | (2.0 FTE <sup>1</sup> ) |
| English          | (11.0 FTE)              |
| Foreign Language | (3.0 FTE)               |
| Health           | (1.0 FTE)               |

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<sup>1</sup> FTE is the acronym for Full-Time Employee Position(s).

|                   |           |
|-------------------|-----------|
| Math              | (8.0 FTE) |
| Music             | (1.0 FTE) |
| PE                | (3.0FTE)  |
| Psychologists     | (5.0 FTE) |
| Science           | (5.0 FTE) |
| Social Science    | (6.0 FTE) |
| Special Education | (6.0 FTE) |

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TOTAL CERTIFICATED POSTIONS    51 FTE

8. The Board decided that it is necessary to decrease the number of certificated employees as a result of the reduction in services. These services are "particular kinds of services" that may be reduced or discontinued within the meaning of Education Code section 44955.

9. The reduction or discontinuation of these particular kinds of services is related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services is necessary to decrease the number of certificated employees of the District as determined by the Board. These reductions are necessary because of budget reductions. The District proposed an "across-the-board" two-percent reduction. The Board's decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but rather, constituted a proper exercise of discretion.

10. The Board properly 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 as of March 15, 2008. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App. 3d 627 at 636).

11. The District properly created its seniority list by determining the first date of paid service of each certificated employee and properly utilized reasonable "tie-breaker" criteria when necessary.

*"Skipping" by the District*

12. The District retained, or "skipped", teachers in certain programs, such as CORE Knowledge and La Cuesta Community Day School, contending that those particular positions require special training. Whether or not this "skipping" was done according to the law need not be decided by the ALJ because the "skipping" of these teachers only affected



certain Respondents who were dismissed at the beginning of the hearing. It was not established that the District's "skipping" affected any of the remaining fifteen Respondents. Thus, it was not established that the District gave notice to a Respondent teacher with more seniority in order to retain a more junior teacher.

### CONCLUSIONS OF LAW

1. Jurisdiction for these proceedings exists pursuant to Education Code sections 44949 and 44955.

2. Each of the services set forth in Findings 7-9 is a particular kind of service which may be reduced or discontinued in accordance with applicable statutes and case law.

3. The District's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

4. Cause exists to reduce the District's teaching positions as described above and to give notice to the affected teachers pursuant to Education Code section 44955. (*Campbell v. Abbot* (1978) 76 Cal.App.3d 796; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689). Based on the above Findings, including the preamble to this Proposed Decision, the names of the affected teachers, those as to whom final notices of layoff may be given, are as follows:

Araujo, Elayne; Bailey, John; Carson, Tiffany; Cornelius, Ashley; Eisen, Brian; Estes, Patrick; Finlay, Krista; Gallardo, Juan; Gleason, Ryan; Hernandez, Helen; Moran, Matt; Ohm, Luke; Sanchez, Francisco; Sheldon, Alexander; and Vogt, Tracy.

### ORDER

Because of the reductions of services, the District may give notice to the teachers identified in Legal Conclusion No. 4 that their services will not be required for the 2008-2009 school year.

Dated: April \_\_\_, 2008.

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CHRIS RUIZ  
Administrative Law Judge  
Office of Administrative Hearings