

BEFORE THE GOVERNING BOARD  
SAN MIGUEL JOINT UNION SCHOOL DISTRICT  
COUNTY OF SAN LUIS OBISPO  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
	)	
NANCY HAMMONS; SHANNON	)	Case No. L2004030585
HATTAR; DENISE PETERSON; and	)	
ANGEL REED,	)	
	)	
Respondents.	)	
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**PROPOSED DECISION**

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Paso Robles, California.

Peter Carton, Attorney at Law, represented Vera Wallen, Interim Superintendent ("Superintendent"), of the San Miguel Joint Union School District ("District").

Dawn K. McGee, Attorney at Law, represented Respondents.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing and the matter was submitted for decision.

The District has determined to lay off Respondents, certificated employees, following its decision to reduce particular kinds of services pursuant to section 44955. Respondents seek a determination regarding whether cause exists to terminate their services for the 2004-05 school year and specifically argue that the District is seeking to layoff a greater number of certificated employees than authorized by its governing board.

**FACTUAL FINDINGS**

1. Superintendent Wallen filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District. They all hold clear multi-subject teaching credentials. In addition, Respondent Angel holds a supplemental authorization in English and Respondent Hammons holds a supplemental authorization in social sciences.
3. Respondents are all permanent employees of the District.

4. In March 2003, the Superintendent recommended to the Governing Board of the District ("Board") the reduction or discontinuation of particular kinds of services for the 2004-05 school year.

5. The Board adopted Resolution Number 04-3 on March 10, 2003, approving the Superintendent's recommendation.

6. On March 11 and 12, 2004, the District gave each Respondent written notice of the Superintendent's recommendation that Respondents' services will not be required for the 2004-05 school year due to the reduction or elimination of particular kinds of services.

7. Respondents filed timely requests for hearing to determine if there is cause for not reemploying them for the 2004-05 school year.

8. The District filed and served the Accusation on each Respondent.

9. Respondents filed timely Notices of Defense.

10. All prehearing jurisdictional requirements have been met.

11. In adopting Resolution Number 04-3, the Board took action to reduce the following services for the 2004-05 school year:

<u>Service</u>	<u>Full Time Equivalent Positions</u>
Grade 7-8 Fundamentals Class	.65
Departmentalized Electives	.50
Leave of absence	.50
Self-contained elementary classroom	<u>4.0</u>
Total	5.65

12. With the exception of "Leave of absence," the services set forth in factual finding number 11 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955. The "leave of absence" refers to an individual who is on approved leave, not to any particular service to students. The individual in question did not perform any services during the 2003-04 for the .5 FTE being reduced and thus no services are being discontinued. Accordingly, only the services of 5.15 FTE certificated employees may be reduced.

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

14. The reduction of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees by 5.15 FTE positions as determined by the Board.

15. District issued preliminary layoff notices to Respondents and to Deanna Ramos ("Ramos"), Sean True ("True"), and James Woods ("Woods"), certificated employees who did not request a hearing.

16. Woods is the District's only probationary employee and its most junior --his seniority date is August 19, 2000. He teaches the four periods of Grade 7-8 Fundamentals Class (.65 FTE).

17. True, who has a seniority date of August 24, 1998, holds a single subject credential in social science. He taught the elective courses being eliminated. He is a full-time employee not being retained.

18. Ramos is the Title I Resource Teacher for half of her time and is on leave for the remaining .5 FTE. She has taught First Grade and a Kindergarten-First Grade combination class.

19. Respondents teach elementary school classes. In laying off Woods (.65 FTE) and True (1 FTE), the District only needs to reduce 3.50 FTE to achieve the required 5.15 FTE reductions.

20. Respondents and Ramos are credentialed and competent to teach elementary school. The order of seniority for these teachers is as follows: Respondent Hattar (August 22, 2001); Respondent Reed (August 22, 2001); Ramos (August 21, 2000); Respondent Hammons (August 21, 2000); and Respondent Peterson (August 24, 1998).

21. The District can achieve the necessary 3.5 FTE reduction with the layoff of Respondents Hammons, Hattar, and Reed (1 FTE position each) and Ramos (.5 FTE). It is therefore unnecessary, and cause does not exist, to layoff an additional teacher. Respondent Peterson is the most senior elementary school teacher and therefore shall be retained.

22. No certificated employee junior to Respondents Hammons, Hattar, or Reed was retained to render a service for which these Respondents are certificated and competent to render.

### LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 10.

2. With the exception of "Leave of absence," the services listed in factual finding number 11 are each determined to be a particular kind of service within the meaning of section 44955, by reason of factual finding numbers 11 and 12.

3. Cause exists to reduce the number of certificated employees of the District by 5.15 FTE positions due to the reduction of the services described in factual finding number 11, by reason of factual finding numbers 11 through 13.

4. Cause for the reduction of the services set forth in factual finding number 11, except for "Leave of absence," relates to the welfare of the District's schools and pupils within the meaning of section 44949, by reason of actual finding numbers 11 through 14, and legal conclusion numbers 1 through 3.

5. Cause does not exist to terminate the services of Respondent Peterson, by reason of factual finding numbers 11 through 21.

6. Cause exists to terminate the services of Respondents Hammons, Hattar, and Reed, by reason of factual finding numbers 1 through 22.

7. The District may give final layoff notices to Respondents Hammons, Hattar, and Reed.

#### ORDER

1. The Accusation is sustained against Respondents Hammons, Hattar, and Reed and the District may notify them that their services will not be needed during the 2004-05 school year due to the reduction of particular kinds of services.

2. The Accusation is not sustained against Respondent Peterson and the District may not terminate her services for the 2004-05 school year.

DATED: \_\_\_\_\_

SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings