

BEFORE THE GOVERNING BOARD  
LOS ALAMOS SCHOOL DISTRICT  
COUNTY OF SANTA BARBARA  
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Certificated Employees of the Los Alamos  
School District,

Respondents.

OAH Case No. L2011040159

**PROPOSED DECISION**

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on May 4, 2011, in Los Alamos, California.

Mary L. Dowell and Meredith G. Karash, Attorneys at Law, represented Ron Barba (Barba), Superintendent of the Los Alamos School District (District).

Terry Welborn, Representative, California Teachers Association (CTA), represented Heidi Schneider and Sherri Morris (Respondents).

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2011-2012 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

The hearing in this matter was initially scheduled for April 18, 2011. On April 12, 2011, Presiding Administrative Law Judge Michael A. Scarlett granted a continuance, thereby extending by 16 days the deadlines set forth in Education Code<sup>1</sup> sections 44949, subdivision (c), and 44955, subdivision (c). (Ed. Code, § 44949, subd. (e).)

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. Superintendent Barba filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.

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<sup>1</sup> All further statutory references are to the Education Code.

3. On February 10, 2011, the Governing Board of the District (Governing Board), following the recommendation of Superintendent Barba, adopted Resolution Number 2011-12, reducing or discontinuing elementary teaching services by 5.4 full-time equivalent positions for the 2011-2012 school year.

4. Superintendent Barba thereafter notified the Governing Board that he had recommended that notice be provided to Respondents that their services will not be required for the 2011-2012 school year due to the reduction of particular kinds of services.

5. On March 11, 2011, the District provided notice to Respondents that their services will not be required for the 2011-2012 school year due to the reduction or discontinuation of particular kinds of services.

6. Respondents thereafter timely requested a hearing to determine if there is cause for not reemploying them for the 2011-2012 school year.

7. On April 8, 2011, the District issued the Accusation, and served it on Respondents. Respondents thereafter filed timely notices of defense.

8. All prehearing jurisdictional requirements have been met.

9. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.

10. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 because of declining financial resources. The District has one school and approximately 200 students in grades Kindergarten through Eighth. It has been losing students in recent years and has had to use emergency funding to provide services. Anticipated additional loss of funding for the 2011-2012 school year led the District to consider drastic options to remain fiscally viable. The District estimates that it can lose up to \$155,000 in the likely event that existing taxes and fees are not extended past June 30, 2011. The District has agreed to merge into the Orcutt Unified School District (Orcutt) in a process referred to as "lapse." <sup>2</sup> The Governing Board concluded that the reductions were necessary regardless of the merger. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

11. The lapse of the District has received all necessary governmental approvals and is scheduled to become effective on July 12, 2011.

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<sup>2</sup> A "lapse" means an action to dissolve a school district and annex the entire territory of that district to one or more adjoining districts." (Ed. Code, § 357.80.1.)

12. Orcutt's Superintendent Bob Bush (Bush) met with District certificated employees and their collective bargaining representatives to provide information about the lapsation process and to answer questions about his plans. Attendees at the meeting who testified on behalf of Respondents, CTA Representative Andrew Oman and Los Alamos Teacher Association President Lisa Wilkanowski, testified that Superintendent Bush said Orcutt School District planned no changes in operations at the District's school. Superintendent Bush testified that he told those at the two meetings he held that he did not anticipate any major changes at the District's school because there would not be much time to make changes for the 2011-2012 school year.

13. The reduction of services set forth in factual finding number 3 is related to the welfare of the District's schools and its pupils, in the context of the potential loss of revenue and the need to continue providing services to students in the District, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

14. On February 10, 2011, the Governing Board adopted criteria for breaking seniority ties for employees with the same first date of paid service. The following criteria were used: CLAD credential, bilingual ability, breadth of credentials, teaching experience in any district, and teaching experience in different subjects. The tie-breaking criteria are reasonable in that they relate to the skills and qualifications of certificated employees. Respondents did not challenge the application of the criteria.

15. No certificated employee junior to any Respondent was retained to render a service which any Respondent is certificated and competent to render.

### LEGAL CONCLUSIONS

1. Despite the pending lapsation, the Governing Board retains all powers and duties to operate the District until the effective date of the merger. (Ed Code, § 35533.)

2. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 8.

3. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 9.

4. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 15.

5. Respondents question the need and motive for the layoff since the District has agreed to its own dissolution. The court in *Campbell Elementary Teachers Association, Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 808, provided the following guidance to evaluate a district's exercise of its discretion: " 'In determining whether the decision of a school board is reasonable as distinguished from fraudulent, arbitrary, or capricious, its action is measured by the standard set by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion on the same subject.' (*Arthur v. Oceanside-Carlsbad Junior College Dist.* (1963) 216 Cal.App.2d 656, 663.) " With respect to the specific facts before it, the court noted that while the district wanted to keep as many certificated employees as possible, it faced many financial uncertainties. The district also desired to maintain maximum flexibility in determining staffing for the ensuing school year in light of available resources and educational needs. The governing board met and consulted with its business manager regarding the district's financial position. In these circumstances, the court concluded, the governing board's decision to reduce particular kinds of services was not arbitrary or capricious.

In the instant case, as in *Campbell*, the District provided sufficient evidence to establish it had not abused its discretion. Despite having found an apparent long-term solution for its precarious financial situation, the Governing Board nevertheless had to make decisions about the 2011-2012 school year while it had the power and duty to act in the face of additional loss of State funding. It was not unreasonable for the Governing Board to meet the challenges it faced by reducing or discontinuing particular kinds of services before the lapsation in light of layoff deadlines. In these circumstances, the Governing Board's decision to choose to undertake a layoff before the implementation of the merger is not arbitrary or capricious.

6. Cause exists to terminate the services of Respondents Heidi Schneider and Sherri Morris, by reason of factual finding numbers 1 through 15, and legal conclusion numbers 1 through 5.

#### ORDER

The Accusation is sustained and the District may notify Respondents Heidi Schneider and Sherri Morris that their services will not be needed during the 2011-2012 school year due to the reduction of particular kinds of services.

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

SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings