

**BEFORE THE  
BOARD OF TRUSTEES  
CARPINTERIA UNIFIED SCHOOL DISTRICT**

In the Matter of the Accusations Against:

**AMBER CROYMANS and ELIZABETH  
AGUILAR,**

Respondents.

OAH No. L2006031008

**PROPOSED DECISION**

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 17, 2006, in Carpinteria.

Pamela A. Dempsey, Esq., Parham & Rajcic, represented Complainant.

Lawrence Rosenzweig, Esq., represented Respondent Amber Croymans, who was present. Respondent Elizabeth Aguilar did not appear at the hearing.

Oral and documentary evidence was received and argument given. The record was closed and the matter submitted for decision at the conclusion of the hearing.

**FACTUAL FINDINGS**

*Parties & Jurisdiction*

1. Complainant Paul A. Cordeiro is the Superintendent of the Carpinteria Unified School District (District) and he signed the Accusations in that official capacity.
2. Respondents were at all times mentioned certificated District employees.
3. On March 9, 2006, the Board of Trustees of the District (Board) adopted Board Resolution No. 06-513, which proposed to reduce or discontinue the particular kinds of services encompassing 5.00 Full-Time Equivalent (FTE) positions at the end of the current school year.
4. On March 9, 2006, the Board recommended that notice be given to Respondents and others that their services will not be required for the ensuing school year, pursuant to Education Code sections 44949 and 44955.

5. Before adoption of Board Resolution No. 06-513, the Board considered all known assured attrition.

6. Prior to March 15, 2006, the two Respondents, as well as Laurie Richards, John Fowler, and Peter Cotte, were each given written notice that it had been recommended, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing school year.

7. Of the five persons to whom the above-described notice was given, only Respondents Amber Croymans and Elizabeth Aguilar timely requested a hearing to determine if there is cause for not requiring their services for the ensuing school year.<sup>1</sup> Respondents Croymans and Aguilar were thereafter timely served with an Accusation.

*The District's Layoff Decision*

8. Board Resolution No. 06-513 provides for the reduction or elimination of the following particular kinds of services:

<u>Particular Kinds of Service</u>	<u>Full-Time Equivalent (FTE) Positions</u>
<i>Secondary</i>	
Health	1.0 FTE
Spanish	1.0 FTE
Math	1.0 FTE
<i>Middle School</i>	
Social Studies	2.0 FTE
Total Reduction	<u>5.0 FTE</u>

9. Board Resolution No. 06-513 also established tie-breaking criteria to determine the relative seniority of certificated employees who first rendered paid service on the same date.

10. The reduction or elimination of the 5.0 FTE positions will not reduce services below mandated levels.

<sup>1</sup> By failing to request a hearing, Laurie Richards, John Fowler, and Peter Cotte each waived the right to a hearing, pursuant to Education Code section 44949, subdivision (b).

11. The decision was made to reduce or eliminate the 5.0 FTE positions because of financial constraints resulting from revenue being insufficient to maintain the current levels of programs, and necessary program changes resulting therefrom, including six years of declining student enrollment.

12. The District compiled a Seniority List for the 2005-2006 school year that contains certificated personnel seniority dates, current assignments and locations, credentials and other authorizations and employment status. The Seniority List is accurate.

13. 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. In determining who would be subject to layoff for each kind of particular service reduced, the District counted the number of reductions not covered by the known vacancies or attrition, and determined the impact on incumbent staff in inverse order of seniority.

14. With regard to the 4.0 FTE positions other than the 1.0 FTE health position, it was established that those are particular kinds of services being reduced or eliminated.

15. The 1.0 FTE health position is currently performed by Respondent Amber Croymans, who is in her first year teaching at the District and is thus a probationary employee. She has a preliminary single subject credential in health science. Respondent Croymans is a full-time employee and is the only person who teaches health classes at Carpinteria High School (CHS) this school year. There are no other certificated District employees with a health science credential.

16. Certificated District employees Richard Olmstead and Debra Leiter are permanent employees who have more seniority than Respondent Croymans. It was established that both are competent and credentialed to teach health classes at CHS next school year. Mr. Olmstead was issued a standard secondary physical education credential before 1981.<sup>2</sup> Mr. Olmstead has also taught health classes at CHS for many years in the past, including at least as late as 1997. Ms. Leiter has a professional clear single subject life science credential.<sup>3</sup>

17. There currently exists uncertainty regarding how many health classes at CHS will be needed next school year. Respondent Croymans was advised by District counselors that the number of pupils taking health classes next school year will probably increase. Complainant did not present evidence contradicting the counselors' current estimates. In fact, as discussed below, Complainant has planned for the contingency of the same number of pupils or more being enrolled in health classes next school year.

---

<sup>2</sup> Pursuant to California Code of Regulations, title 5, section 80004, subdivision (b)(3), the holder of a single subject teaching credential in physical education (issued before January 1, 1981) is authorized to teach health science.

<sup>3</sup> Pursuant to California Code of Regulations, title 5, section 80004, subdivision (b)(2), the holder of a single subject teaching credential in life science is authorized to teach health science.

18. If three health classes or less are needed next school year, the plan is for Mr. Olmstead to teach them; he would also act as the CHS Athletic Director (AD), which would be a part-time position. Mr. Olmstead is currently the AD at CHS, which is now a full-time position. If more than three health science classes are needed next school year, Complainant testified that Ms. Leiter would teach the additional classes. Ms. Leiter currently teaches science classes at the Carpinteria Middle School (CMS). She is a part-time employee, i.e. she teaches 60% of a full-time teacher's schedule. The specifics were not established of how Ms. Leiter will be available next year to teach CHS health classes. It is presumed that for each CHS health class she would assume next year, she would drop a CMS science class.

19. With regard to the 1.0 FTE health position which Respondent Croymans currently performs, it was not established that the service next year will be performed in a different method or manner, or that there will be a change in the service itself.

20. The Board's decision to reduce or discontinue the above-described particular kinds of services, other than the 1.0 FTE health position, was neither arbitrary nor capricious, but instead was a proper exercise of its discretion.

21. The cause for reducing and/or eliminating the above-described particular kinds of services, other than the 1.0 FTE health position, relates solely to the welfare of the schools in the District and its pupils.

22. Except as otherwise provided, no permanent certificated employee with less seniority will be retained to render a service that those subject to the notice of this proceeding are certificated and competent to render.

### LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met. (Factual Findings 1-7.)

2. The party asserting a claim or making charges in an administrative hearing generally has the burden of proof. (*Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155.) For example, in administrative hearings dealing with personnel matters, the burden of proof is ordinarily on the agency prosecuting the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113.) In personnel matters concerning the dismissal of a teacher for cause, the burden of proof is similarly on the discharging school district. (*Gardner v. Commission on Prof. Competence* (1985) 164 Cal.App.3d 1035.) Thus, in this case, the Complainant has the burden of proof of establishing cause to reduce the number of certificated employees.

3. A school district has broad discretion in making economic decisions regarding eliminating and/or reducing particular kinds of services pursuant to Education Code section 44955. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796.) Such decisions may be overruled if proven to be arbitrary or capricious. (*Id.* at p. 808.)

4A. Moreover, a school district can terminate a certificated employee when the particular kind of service performed by that employee will continue the following school year in a different manner. (*Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571, 1584.)

4B. For example, in *Gallup*, a school district was allowed to layoff psychologists employed by the district in favor of hiring independent contractors to do the same work. The court found this was a reduction of a particular kind of service because there was a change in the manner in which the services would be delivered, i.e. from in-house certificated employees to outside contractors, even though the work done was essentially the same. (*Gallup v. Board of Trustees, supra*, 41 Cal.App.4th at 1587-1588.) In *Zalac v. Governing Board of Ferndale Unified School District* (2002) 98 C.A.4th 838, 854, the court found a reduction of particular services existed where one, less senior, employee's position was subsumed by making classes larger or regrouping them. In *Davis v. Berkeley School Dist.* (1934) 2 Cal.2d 770, the school district discontinued the service of traveling art teachers, experts who traveled to various schools to teach art. The school district continued thereafter to offer art instruction by regular departmental teachers who were not experts and who did not travel to the schools. The *Davis* court found that the school district had discontinued a particular service, i.e. art taught by traveling experts.

4C. However, a school district may not dismiss an employee and yet continue the identical kind of service and position held by the terminated employee. (*Santa Clara Federation of Teachers, Local 2393 v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 844.) In *Santa Clara*, the district had decided to reduce or discontinue health services, necessitating the termination of 5.4 FTE positions that were held by nurses. The court found that such was not a reduction of a particular kind of service, because there was nothing in the record demonstrating that there would "be a difference in the method or manner of providing these health services, or in the services themselves[.]" and because "the difference is only that a person other than the nurses will provide these services." (*Id.* at p. 844.)

5A. With regarding to Respondent Croymans, it was not established that cause exists to give her notice that her services will not be required for the 2006-2007 school year, in that Complainant did not meet his burden of establishing that there will be a reduction of the 1.0 FTE health position that she now performs. The record does not indicate that the manner or method of that service next school year will be any different, other than the fact that two different people would be teaching the health classes next year. It was not established that fewer classes will be offered next year. In fact, it appears that the same or more pupils will take health classes next year. Put another way, one teacher this year has taught health classes at CHS; next year, one or two teachers would teach it. There appears to be no other difference in the health position next year. (Factual 1-22.)

5B. This situation is not similar to that presented in the *Gallup* case, in that District employees would replace a District employee. This situation is not similar to the *Zalac* case, because there was no evidence indicating that the health classes next year will be made larger, smaller, or different. In fact, it appears that the class sizes will remain at current levels. This situation is not similar to the *Davis* case, in that there is no evidence that the health classes will be taught in a different manner. This situation is more akin to the *Santa Clara* case, in that the only difference in the health classes will be who teaches them. In this case, Complainant argued that though the credentials of Mr. Olmstead and Ms. Leiter were different than Respondent Croymans', they were still credentialed and competent to teach the health classes next year. Thus, the difference in credentials does not appear to be an important distinction.

5C. The record in this case indicates that there will be a reduction in the AD position at CHS next year; and that if pupil enrollment in health classes remains at or above the current levels, there will also be a reduction in Ms. Leiter's CMS science position. Yet neither of those two reductions is reflected in the Board's Resolution No. 06-513.

6. The services identified in Board Resolution No. 06-513, other than the 1.0 FTE health position, are particular kinds of services that can be reduced or discontinued under Education Code section 44955. The Board's decision to reduce or discontinue those identified services was neither arbitrary nor capricious, but was a proper exercise of its discretion. Services will not be reduced below mandated levels. However, as to the 1.0 FTE health position, it was not established that such is a particular kind of service that will be reduced or discontinued. The Board's decision in that regard was not demonstrated to be a reasonable exercise of its discretion, but rather is arbitrary and capricious. (Factual Findings 1-22.)

7. Cause for the reduction or discontinuation of the particular services, other than the 1.0 FTE health position, relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949. (Factual Findings 1-22.)

8. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services, other than the 1.0 FTE health position. (Factual Findings 1-22.)

9. Except as otherwise provided, no junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render. (Factual Findings 1-22.)

///

///

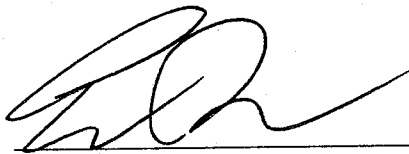
///

ORDERS

1. The Accusation is DISMISSED as against Respondent Amber Croymans. Notice shall NOT be given that her services will not be required for the 2006-2007 school year.

2. The Accusation is SUSTAINED as against Respondent Elizabeth Aguilar. Notice SHALL be given to her, as well as the other certificated employees to whom notice of this proceeding was given (other than Respondent Croymans), that their services will not be required for the 2006-2007 school year, and such notice SHALL be given in inverse order of seniority.

Dated: May 3, 2006

A handwritten signature in black ink, appearing to read "Eric Sawyer", written over a horizontal line.

ERIC SAWYER  
Administrative Law Judge  
Office of Administrative Hearings