

BEFORE THE  
GOVERNING BOARD  
OXNARD SCHOOL DISTRICT  
COUNTY OF VENTURA  
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

MARITZA AVILA and Other  
Certificated Employees of the  
Oxnard School District,

Respondents.

OAH Case No.: L2007040053

**PROPOSED DECISION**

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 24, 2007, in Oxnard, California.

Nitasha K. Sawhney and Darren C. Kameya, Attorneys at Law, represented Sean Goldman (Goldman), Assistant Superintendent of the Oxnard School District (District).

Robert Bartosh and Alexis Ridenour, Attorneys at Law, represented respondents.

District has decided to reduce certain educational services and has given respondents notice of its intent not to reemploy them for the 2007-2008 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2007-2008 school year.

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

**FACTUAL FINDINGS**

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

3. On February 21, 2007, District Superintendent Richard L. Miller, Ph.D. (Superintendent) recommended to the Board of Trustees of the District (Governing Board) the reduction of services set forth in factual finding number 4.

4. On February 21, 2007, the Governing Board approved the Superintendent's recommendation and adopted Resolution number 06-04, reducing the following services for the 2007-2008 school year:

<u>Service</u>	<u>Full-Time-Equivalent Positions</u>
K-6 Classroom Teaching	41
Math	2
Physical Education	2
Social Studies	3
Language Arts	<u>4</u>
Total	52

5. a. On March 12, 2007, the Superintendent notified the Governing Board and provided written notice, via certified mail sent to the last known address, to 52 certificated employees of the District, including those set forth in factual finding number 6, that their services will not be required for the 2007-2008 school year due to the reduction of particular kinds of services.

b. Respondent Julie Gould, formerly known as Julie Sakamoto, testified that she first learned about the proposed reduction in force at a meeting with representatives of her union. She admitted receiving the letter from the District, and a postal receipt confirms receipt on April 6, 2007.

c. No evidence was presented that respondent Michelle Burd had actually received the March 12, 2007 notice.

6. The following respondents requested a hearing to determine if there is cause for not reemploying them for the 2007-2008 school year: Maritza Avila; Michelle Bennett; Gregg Brisbane; Kristin Brown; Jesus Cahue; Kristin Chacon; Julia Cirincione; Kristen Davis; Maribel DeLoa; Raquel Dominguez; Sandra Garcia; Julie Gould; Stephanie Kates; Melissa LeMay; Susan Mares; Summer McMeekin; Carol Miller; Maria Ortiz; Samuel Reveles; Brandee Scoggin; Christine Simonson; Dennis Smathers; Brad Tiemeyer; and Sylvia Valencia. All hearing requests were timely made or deemed by the District to have been timely made. Although not actually receiving a hearing request from respondent Michelle Burd, the District treated her as having requested a hearing.

7. The District filed the Accusation on April 2, 2007, and on April 6, 2007, all respondents set forth in factual finding number 6, by counsel, filed a timely Notice of Defense.

8. All prehearing jurisdictional requirements have been met.

9. The services set forth in factual finding number 4 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.<sup>1</sup>

10. The Governing Board took action to reduce the services set forth in factual finding number 4 based on an analysis of enrollment projections and loss of categorical program funding. The decision to reduce the services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

11. The reduction of services set forth in factual finding number 4 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

12. In Resolution 06-34, the Governing Board declared its specific needs in special education, administrative services, sciences, and bilingual education, and expressed its desire to retain employees with special training and experience in those areas. As pertinent to this proceeding, the resolution provides: "The District shall retain certificated employees, regardless of their seniority (unless the employee is bumped by a more senior and competent employee), to the extent one or more of their assignments meet any of the following criteria: [¶] . . . [¶] 4. Employees who possess a Bilingual Cross-Cultural Language and Development certificate, are teaching one or more bilingual classes for the District in the 2006-2007 school year, and are expected to teach one or more bilingual classes for the District in the 2007-2008 school year." The resolution also contains the following unnumbered paragraph, which applies to all areas of specific need, not just bilingual education: "Employees who meet any of the foregoing criteria for some but not all of their assignment(s) shall be retained as to that portion of their assignment(s) in 2006-2007 that meets the foregoing criteria."

13. Respondent Jesus Cahue is a permanent employee of the District with a seniority date of August 18, 2004. He holds a preliminary multiple subject credential and a Bilingual Cross-Cultural Language and Development (BCLAD) certificate. He currently teaches five periods of reading and social studies. Three of those periods involve bilingual instruction to students learning the English language and RESPONDENT Jesus Cahue is required a BCLAD certificate to teach the classes.

---

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



Respondent Jesus Cahue should be skipped from the reduction in force, as he teaches in an area exempted from layoff by the District's specific need and he possesses the required credential and experience. In addition, at least on employee junior to respondent Jesus Cahue, R.Q.<sup>2</sup>, was skipped and retained to render a service which respondent Jesus Cahue is certificated and competent to render.

District argues that respondent Jesus Cahue should only be retained to teach a part-time assignment consistent with his present bilingual teaching assignment. As set forth in factual finding number 12, only that portion of the teacher's present covered assignment is skipped. However, by virtue of his seniority, certification and competency, respondent Jesus Cahue can bump R.Q. for two periods to achieve a full-time-equivalent position.

14. Respondent Susan Mares is a probationary employee teaching a bilingual Kindergarten class. Her seniority date is November 19, 2004. She holds a preliminary multiple subject teaching credential and an emergency BCLAD certificate. The BCLAD certificate is valid from August 29, 2006 to September 1, 2007. She is making progress toward obtaining a clear BCLAD certificate and expects to complete the required work by the end of the year. She also has more seniority than R.Q. Respondent Susan Mares is thus teaching in an area of special District need and is presently competent and certificated to teach in the area. However, she has not established her certification for the requisite period, namely the 2007-2008 school year, as her qualifying credential, the BCLAD, expires September 1, 2007; her certificate's renewal is uncertain because it is subject to conditions, such as completion of class work, passage of exams, and District certification. Respondent Susan Mares, therefore, has not established that she is certificated to teach a bilingual class in the 2007-2008 school year.

15. With the exception of respondent Jesus Cahue, no certificated employee junior to any respondent was retained to render a service which 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 8.

2. The services listed in factual finding number 4 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 4 and 9.

---

<sup>2</sup> Initials have been used to protect the privacy of certificated employees not involved in this proceeding.

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

Respondents argue that the District failed to establish the necessity for the reduction of the particular kinds of services set forth in factual finding number 4. In addressing a similar challenge to a reduction in force, the court provided the following guiding rule in *Campbell Elementary Teachers Association, Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 808: " '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 *CSEA v. Pasadena USD* (1977) 71 Cal.App.3d 318, 322, involving a related exercise of discretion in the operation of a school district, the court held that the governing board's determination as to the amount of general reserves "could not be set aside by the court unless it was 'fraudulent or so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law.' "

In the instant case, as in *Campbell* and *Pasadena USD*, the District provided sufficient evidence to establish it had not abused its discretion, which evidence was not contradicted. Its concern about future enrollment and availability of resources to fulfill its educational mandate is reasonable. In these circumstances, the District's decision to discontinue the particular kinds of services set forth in factual finding number 4 is not arbitrary or capricious.

4. Section 44949, subdivision (d), provides that "Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee." This statutory requirement was deemed satisfied where the District mailed the letter to the respondent's old address on March 9 and the post office forwarded the letter, on March 15, to the correct address. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627.)



In this case, as set forth in factual finding number 5, the District deposited the layoff notice in the mail, postage prepaid, addressed to respondent Michelle Burd's last known address, in compliance with the requirements of section 44949, subdivision (d). Despite not having received confirmation of receipt from respondent Michelle Burd or a request for hearing from her, the District treated her as having requested a hearing. Although she did not appear at the hearing, respondent Michelle Burd was represented at the hearing and the legal issue regarding receipt of the notice was presented. The District, therefore, served on respondent Michelle Burd the required layoff notice.

5. Section 44955 directs that certificated permanent and probationary employees are to be laid off by seniority, consistent with their qualifications and status. Thus, subsection (c) provides, in pertinent part: "[t]he governing board shall make assignments and reassignments in such manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render." The statute, in subsection (b), gives preference to permanent employees: "Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render." Districts are permitted to disregard seniority as set forth in subdivision (d): "Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons: (1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course of study or to provide those services, which others with more seniority do not possess. . . ."

6. In order to retain her position, respondent Susan Mares must show that she is "certificated and competent" to teach an assignment that a more junior employee has been retained to teach, as required by section 44955. As set forth in factual finding number 14, respondent Susan Mares has more seniority than a retained employee, R.Q. Respondent Mares is competent to teach in a bilingual elementary classroom, in accordance with the District's competency criteria set forth in factual finding number 12, because she has taught in such a classroom, as set forth in factual finding number 14.

The requirement of certification was addressed by the court in *Campbell Elementary Teachers Association, Inc. v. Abbott* (1978) 76 Cal.App3d 796. The court held that the district was not required to recognize a certificate unless it had been recorded with the county board of education prior to March 15th, the date the district had to issue preliminary layoff notices. In this case, respondent Susan Mares has not established that, prior to March 15, 2007, she held a credential, permit or authorization that would enable her to teach in a bilingual classroom during the 2007-2008 school year, as her provisional BCLAD expires September 1, 2007.

7. Cause exists to terminate the services of respondents Maritza Avila, Michelle Bennett, Gregg Brisbane, Kristin Brown, Michelle Burd, Kristin Chacon, Julia Cirincione, Kristen Davis, Maribel DeLoa, Raquel Dominguez, Sandra Garcia, Julie Gould, Stephanie Kates, Melissa LeMay, Susan Mares, Summer McMeekin, Carol Miller, Maria Ortiz, Samuel Reveles, Brandee Scoggin, Christine Simonson, Dennis Smathers, Brad Tiemeyer, and Sylvia Valencia for the 2007-2008 school year due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 12, 14, and 15, and legal conclusion numbers 1 through 6.

8. Respondent Jesus Cahue teaches in an area of the District's special need, bilingual education. He is certificated and competent to teach in a bilingual classroom during the 2007-2008 school year. He is thus subject to retention in accordance with the District's skipping criteria. In any event, he is senior to an employee, R.Q., retained to provide a service that respondent Jesus Cahue is certificated and competent to render. Therefore, cause does not exist to terminate the services of respondent Jesus Cahue, by reason of factual finding numbers 12 and 13.

#### ORDER

1. The Accusation is sustained, in part, and the District may notify respondents Maritza Avila, Michelle Bennett, Gregg Brisbane, Kristin Brown, Michelle Burd, Kristin Chacon, Julia Cirincione, Kristen Davis, Maribel DeLoa, Raquel Dominguez, Sandra Garcia, Julie Gould, Stephanie Kates, Melissa LeMay, Susan Mares, Summer McMeekin, Carol Miller, Maria Ortiz, Samuel Reveles, Brandee Scoggin, Christine Simonson, Dennis Smathers, Brad Tiemeyer, and Sylvia Valencia that their services will not be needed during the 2007-2008 school year due to the reduction of particular kinds of services.

2. The Accusation against respondent Jesus Cahue is not sustained and the District may not terminate his services for the 2007-2008 school year due to the reduction of particular kinds of services.

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

SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings