

**BEFORE THE
GOVERNING BOARD OF THE
SIMI VALLEY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In The Matter of the Layoff of:

**CERTIFICATED EMPLOYEES OF
THE SIMI VALLEY UNIFIED
SCHOOL DISTRICT,**

OAH No. 2010030104

Respondents.

PROPOSED DECISION

H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 23, 2010, at the Simi Valley Unified School District Office, Simi Valley, California.

Jacqueline S. McHaney, Attorney at Law, represented the Simi Valley Unified School District (District).

Tareq M. Hishmeh, Attorney at Law, represented all of the respondents except for Ann Cannata. Ms. Cannata did not file a Notice of Defense, and she did not appear at the hearing.

The matter was submitted on April 23, 2010.

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RESCISSION OF PRELIMINARY NOTICES AND DISMISSAL OF ACCUSATION

Prior to commencement of the hearing, the District withdrew the layoff notices of employees, Kenna R. Acquarelli, Nicole A. Barr, Carol Carlson-Smith, Loren A. Dacanay, Lawrence E. De Laittre, Karen Griffin, Laura J. Hofmann, Heidi J. Hubbard, Jeri S. Kerney, Susan D. Lee, Patricia Murphy, Valerie R. Peterson, Stephen J. Pultorak, Randy L. Rogers, Deborah C. Soukup, Alisa A. Speidel, Nicole M. Sullivan, Amy E. Sumpter, Janice E. Tamoto, Terry P. Teague, and Nicole R. Ward. At the hearing, Respondents moved to dismiss the Accusations against those respondents. The motion was unopposed and was granted.

SUMMARY OF PROPOSED DECISION

The Governing Board of the Simi Valley Unified School District (Board) determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, "bumping," and breaking ties between employees with the same first dates of paid service. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. Kathryn Scroggin, Ed.D. is the Superintendent of the District.
2. On or before March 15, 2010, the District served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Code sections 44949 and 44955 that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that 95.95 full-time equivalent (FTE) positions would be reduced and/or discontinued.
3. Notice was served on all respondents by either personal service or certified mail. Certificated employees timely requested, in writing, a hearing to determine if there is cause for not reemploying them for the ensuing school year.

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4. The Superintendent of the District made and filed Accusations against each of the certificated employees who requested a hearing. The Accusations, with required accompanying documents and blank Notices of Defense, were timely served on those certificated employees.

5. A timely Notice of Defense was filed on behalf of those respondents who desired a hearing.

6. Respondents in this proceeding are probationary or permanent certificated employees of the District.

7. On March 9, 2010, in Resolution No. 53-09/10, the Board took action to reduce or discontinue the following particular kinds of services for the 2010-2011 school year:

| <u>SERVICES</u> | <u>NUMBER OF FULL-TIME EQUIVALENT POSITIONS</u> |
|---|---|
| District Coordinator | 2.0 |
| Program Coordinator | 1.0 |
| Program Specialist | 2.0 |
| Psychologist | 4.0 |
| Counselor | 5.25 |
| Elementary Assistant Principal | 1.0 |
| Elementary, Multiple Subject | 50.0 |
| Categorically Funded Special Title 1 Instructor | 4.0 |
| Special Education, Deaf and Hard of Hearing | 1.5 |
| Special Education, Preschool | 3.0 |
| School Nurse | 2.0 |
| Secondary, English/Language Arts | 2.0 |
| Secondary, History/Social Sciences | 1.0 |
| Secondary, Mathematics | 2.0 |
| Secondary, Physical Education | 2.0 |
| Secondary, Science | 3.0 |
| Secondary, Health | 1.0 |
| Secondary, Librarian | 1.0 |
| Adult Education Instructors | |
| Chinese | 0.2 |
| Contractor License | 0.4 |
| Home Economics | 1.0 |
| Independent Study, Diploma | 0.6 |
| Licensed Vocational Nurse Programs | 4.0 |
| Parent Education, Birth to 2 Years | 1.0 |
| Upholstery | 1.0 |
| Total | 95.95 |

8. Subsequent to adoption of the Board's Resolution, the District identified vacancies in School Year 2010-2011 due to retirements, release of temporary teachers, and resignations.

9. Board Resolution No. 54-09/10 established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination shall be based on the needs of the District.

10. The District maintains a seniority list which contains employees' seniority dates (first date of paid service as a probationary employee), current assignments and locations, advanced degrees, credentials, and authorizations. Credential and authorization data are obtained from the records of the County Office of Education, at which certificated employees must register such documents.

11. The District used the seniority list to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the various services being reduced. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other less senior employees.

12. The District used information from its seniority list to apply the tie-breaker criteria of Board Resolution No. 54-09/10.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. All of the identified services are particular kinds of services that could be reduced or discontinued under Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Code section 44949.

3. A District may reduce services within the meaning of Education Code section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

4. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

5. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

6. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

ORDER

1. Except for those that were dismissed following rescission of the preliminary notices of reduction in force, the Accusations against the respondents are sustained. Notice may be given to the respondents that their services will not be required for the 2010-2011 school year because of reduction or discontinuance of particular kinds of services.

2. Notice shall be given in inverse order of seniority.

DATED: April 26, 2010

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings