

BEFORE THE BOARD OF EDUCATION
THE HEMET UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Certificated Employees Identified in
Exhibit A,

Respondents.

OAH No. 2010030135

PROPOSED DECISION

Greer D. Knopf, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Hemet, California on April 19, 2010.

William A. Diedrich, Adkinson, Andelson, Loya, Ruud & Romo, Attorneys at Law, represented the Hemet Unified School District.

Jon Y. Vanderpool, Tosdal, Smith, Steiner & Wax, Attorneys at Law, represented the respondents.

The matter was submitted on April 19, 2010.

FACTUAL FINDINGS

1. Lafaye Platter, Assistant Superintendent of Human Resources (Assistant Superintendent) of the Hemet Unified School District (the District), made and filed the accusation dated March 11, 2010, in her official capacity as the Assistant Superintendent of the District and as the duly appointed designee of the Superintendent of the District. The accusation was originally filed against 158 respondents identified in Exhibit A to the accusation.

2. The respondents are all certificated employees of the District.

3. On March 9, 2010, in accordance with Education Code section 44949 and 44955, Dr. Philip O. Pendley, Superintendent of the District (Superintendent), notified the Board of Education for the District (the Board) in writing of his recommendation to reduce or discontinue services for the ensuing school year. The Superintendent stated the reasons

for the recommendation. The Superintendent recommended the reduction of particular kinds of services for the 2010-2011 school year.

4. On March 9, 2010, the Board adopted Resolution No. 1962 Reduction of Particular Kinds of Certificated Services (the Resolution to Reduce Services) determining that it is necessary to reduce particular kinds of services at the end of the current school year. The Board determined that the particular kinds of services that must be reduced for the 2010-2011 school year are the following full time equivalent (FTE) positions:

| | | |
|--|-----|--------|
| Elementary Music Teaching Services | 7 | F.T.E. |
| Reading First Teaching Coaching Services | 15 | F.T.E. |
| Elementary (K-5) Classroom Teaching Services | 63 | F.T.E. |
| Middle School Core Teaching Services | 6 | F.T.E. |
| Middle School Social Science Teaching Services | 3 | F.T.E. |
| Middle School Language Arts Teaching Services | 3 | F.T.E. |
| Middle School Science Teaching Services | 2 | F.T.E. |
| Middle School Physical Education Teaching Services | 4 | F.T.E. |
| High School Social Science Teaching Services | 3 | F.T.E. |
| High School English/Language Arts Teaching Services | 3 | F.T.E. |
| High School Life Science Teaching Services | 3 | F.T.E. |
| High School Physical Science Teaching Services | 1 | F.T.E. |
| High School Physical Education Teaching Services | 3 | F.T.E. |
| High School Art Teaching Services | 1 | F.T.E. |
| High School Theatre (including Theatre, Theatre Makeup, and Acting) Teaching | 1 | F.T.E. |
| High School Spanish Teaching Services | 1 | F.T.E. |
| High School Home Economics Teaching Services | 1 | F.T.E. |
| High School Computer Teaching Services | 1 | F.T.E. |
| Resource Specialist Teaching Services | 1 | F.T.E. |
| High School Librarian Services | 3 | F.T.E. |
| Counseling Services | 10 | F.T.E. |
| Subtotal | 135 | F.T.E. |
| Categorically funded temporary services as follows: | | |
| Elementary K-5 Classroom Teaching Services | 3 | F.T.E. |
| Reading First Coaching Services | 3 | F.T.E. |
| Reading First English <i>Learners Coaching Services</i> | 1 | F.T.E. |
| High School English Teaching Services | 1 | F.T.E. |
| Elementary Language Arts Teaching Services | 1 | F.T.E. |
| Subtotal | 9 | F.T.E. |

| | | |
|-------|-----|--------|
| Total | 144 | F.T.E. |
|-------|-----|--------|

5. The reductions adopted by the Board's resolution totaled 144 FTE positions. Of the total number of FTE's reduced, 18 FTE's were reduced in categorically funded temporary services. The Board resolution stated with respect to the categorically funded temporary services as follows: "Inclusion of categorically funded services within this Resolution is not intended to grant those individuals who are impacted any rights greater than provided by law, nor to nullify any provisions within each impacted individual's employment contract, nor to supersede any other Resolution by this Governing Board to release or otherwise terminate the services of any impacted individual."

6. The Board directed the Superintendent or his designee to determine which employees' services would not be required for the 2010-2011 school year as a result of the reduction of these particular kinds of services. The Board further directed the Superintendent or his designee to send the appropriate notices to all certificated employees of the District who would be laid off as a result of the reduction of these particular kinds of services. On March 11, 2010, the Superintendent executed a Non-Exclusive Delegation of Authority designating the Assistant Superintendent as the District administrator charged with implementing the layoff.

7. On or before March 15, 2010, the Assistant Superintendent notified the Board of the District's intent to issue preliminary layoff notices.

8. On or before March 15, 2010, the District timely served, by either personal delivery or by registered mail, a written notice to each of the respondents herein that the Superintendent had recommended not to re-employ them in the upcoming 2010-2011 school year. The written notice notified respondents that his or her services would not be required for the upcoming 2010-2011 school year. The written notice to respondents set forth the reasons for the recommendation. Each written notice advised respondents of their right to a hearing, that each respondent had to deliver a Request for Hearing in writing to the District by March 24, 2010, and that the failure to deliver a Request a Hearing would constitute the waiver of the right to a hearing. The recommendation that respondents be terminated from employment was not related to their job performance as teachers.

9. Some certificated employees given written notice that they would not be re-employed for the ensuing school year did not file a Request for Hearing. However, each of the 158 respondents named in Exhibit A to the accusation herein timely filed a written Request for Hearing to determine if there is cause for not reemploying them for the 2010-2011 school year.

10. Subsequently, on March 11, 2010, the District filed and then timely served the Accusation dated March 11, 2010, a Notice to Respondent, a blank Notice of Defense form, a Notice of Hearing, and relevant Education Code and Government Code sections, upon each

of the 158 respondents listed in Exhibit A to the accusation herein who had timely requested a hearing in this matter. 142 of the named respondents herein filed a timely Notice of Defense and a Request for Hearing. Respondents Pamela Barret, Megan Coursol, Karina Curl, Nicole Downer, Jaime Gaines, Megan Haley, Lauri Hatcher, Stephanie James, Mark Ketchem, Adrienne Leal, Craig Miller, Sharon Riddle, Jessica Ruiz, Sharon Russell, Kari Sanchez, and Brent Wells did not submit a timely submit a Notice of Defense requesting a hearing in this matter.

11. All pre-hearing jurisdictional requirements were met by the District.

12. The services the Board addressed in the Resolution to Reduce Services are “particular kinds of services” that can be reduced or discontinued within the meaning of Education Code section 44955. The Board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper and reasonable exercise of its discretion. The Board’s decision to make these cuts was the result of deliberation and consideration of the necessary cuts in the District’s budget for the ensuing school year. The District is facing a significant budget deficit in the next school year. The Board’s action to reduce services is a proper exercise of its discretion to address the need for budget cuts for the 2010-2011 school year.

13. The reduction or discontinuation of particular kinds of services relates solely to the welfare of the District and its pupils. The District faces extremely difficult financial times due to the current state budget crisis. While it may not be desirable to cut back staff, the District is facing a grave financial situation in the coming year. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

14. Some of the employees named as respondents were hired on the same date. Between these employees who first rendered paid service to the district on the same date, the Board determined their order of termination solely on the basis of needs of the district and the students. The specific criteria used to determine the order of termination was set forth by the Board in Resolution No. 1959 Resolution to Adopt Criteria For Resolving Ties in Seniority Related To Certificated Layoffs (Tie Breaking Criteria). The specific criteria to be used are set forth in the Tie Breaking Criteria. The District fairly applied the Tie Breaking Criteria to rank those employees hired on the same date. Under these criteria the District properly retained certain employees while the respondents were properly given notice that their services would no longer be required for the ensuing school year.

15. Subsequent to the Board action and filing and service of the accusations, the District worked with the Hemet Teachers’ Association (the Association) to further evaluate personnel needs in the District in an effort to reduce the number of respondents that would need to be given final layoff notices. The District and the Association entered into a tentative agreement that now enables the District to significantly reduce the number of layoff notices that need to be delivered to its employees. The District has reduced the number of necessary layoff notices to the 26 employees who are listed in Exhibit B attached hereto.

The District will be releasing an additional nine temporary employees who are working in services being reduced without the need to issue them a final layoff notice.

16. The Board considered all known attrition, resignations, and retirements in determining the actual number of necessary layoff notices to be delivered to its employees.

17. Some of the respondents at the hearing raised individual factual issues as to their particular circumstances as follows:

Respondent Jason Luna (Luna) asserted at the hearing that he might have been able to displace or “bump” another teacher to move into a position that is not being reduced. He claims he would have been credentialed and competent to teach in that position because last year he had a board authorization to teach the subject. However, Luna’s board authorization was for one year only. He did not have the same board authorization to teach the subject this school year and therefore he did not qualify under the terms of the Resolution to Reduce Services that defined “competency” under Education Code section 44955, subdivision (b).

Respondent Andre Williams (Williams) is a counselor. Williams asserted at the hearing that he should be able to bump another less senior employee to move into a position that is not being reduced. He is credentialed to teach special education and he claims he taught special education for one year during the last five years in another state which would qualify him under the board’s Resolution to Reduce Services as competent to teach in that area under Education Code section 44955, subdivision (b). The District did consider this experience, but Williams taught special education for only one semester in the last five years which does not satisfy the competency standard.

Respondent Michelle Serrano (Serrano) shares the same date of first paid service with numerous other employees and she asserted at the hearing that tie breaker criteria should have taken into consideration that the only reason she did not have the same experience teaching a particular course was due to scheduling in the last year. However, the District properly applied the tie breaker criteria in the order designated by the Board.

Respondent Chonalyn Guilas (GUILAS) shares the same date of first paid service with numerous other employees and she asserted at the hearing that her prior teaching experience should have broken the tie in her favor. However, the District properly applied the tie breaker criteria in the order designated by the Board and the tie between Guilas and others was broken at the point of determining the date Guilas obtained her Master’s Degree so her other teaching experience was no longer relevant.

Respondents Rebekah Finn (Finn) and Andrew Ream (Ream) both asserted at the hearing that they had credentials and experience that would potentially qualify them to bump a less senior employee to move into a position that is not being reduced. However, prior to March 15, 2010, the District sent all the employees possibly slated for layoff, including Finn and Ream, a verification of each employee’s seniority information asking that each employee either verify the information as correct or notify the District of any appropriate corrections.

Finn and Ream both returned their verifications indicating that all the information the District had was correct. In Ream's case, his credential was actually cleared on March 9, 2010, but he did not notify the District until March 18, 2010. The District is entitled to rely on the verification from the employee sent in before March 15, 2010 so that the District may accurately determine the order of layoff and send out the notices of layoff by March 15, 2010 as required by law.

Respondent Anna Cadle (Cadle) asserted at the hearing that she should be higher on the seniority list. However, Cadle is not being laid off by the District so the issue of her order on the seniority list is not at issue in this proceeding.

Respondent Colleen Sanden (Sanden) asserted at the hearing that she worked as an hourly employee and was not sure she should have been working as an hourly employee. However, this issue of whether or not Sanden was properly employed as an hourly employee is not an issue in this proceeding and does not change the order of layoff.

Respondent David Kirkendall asserted at the hearing that he is concerned that counselors are being reduced while there is a great need for counselors in the District. However, this concern, while a valid concern, is not at issue in this proceeding and does not change the order of layoff.

18. No certificated employee junior to any respondent is being retained to perform any services which any respondent is certificated and competent to render. The Board appropriately set forth the criteria to determine whether an employee is deemed "competent" to render services, within its discretion, as part of the Resolution to Reduce Services and the District properly applied those criteria.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Cause exists under Education Code section 44949 and 44955 for the Hemet Unified School District to reduce particular kinds of services. The cause for the reduction of particular kinds of services is related solely to the welfare of the schools and the pupils thereof.

3. A preponderance of the evidence sustained the charges set forth in the accusations herein. Therefore, cause exists for the Board to give the respondents listed in Exhibit B final notice before May 15, 2010, that their services will no longer be required by the District for the 2010-2011 school year.

ORDER

1. The accusation served on the respondents listed in Exhibit B herein are sustained and notice shall be given to those remaining respondents listed in Exhibit B before May 15, 2010 that their services will not be required in the next school year because of the reduction of particular services as indicated.

Dated: _____

GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A

| | NAME | | FTE |
|----|-----------|----------|-----------------------------|
| 1 | ADAMS | RACHEL | 1.0 |
| 2 | ADLER | MICHELLE | 1.0 |
| 3 | AJA | KAREN | 1.0 |
| 4 | ARNETT | PATRICIA | 1.0 |
| 5 | AYOTTE | PATRICIA | 1.0 |
| 6 | BEGA | FAIZA | 1.0 |
| 7 | BERKOWSKY | RYAN | 0.2 |
| 8 | BETTS | DANIEL | 1.0 |
| 9 | BORDEN | CHELSIE | 0.5 |
| 10 | BOWEN | TAMI | 1.0 |
| 11 | BROGAN | SUSANNE | 1.0 |
| 12 | BROWN | BRITTANY | 0.8 |
| 13 | CADLE | ANNA | 1.0 |
| 14 | CARPENTER | JENNIFER | 1.0 |
| 15 | CARR | ERIN | 1.0 |
| 16 | CHEEK JR | CHARLES | 1.0 |
| 17 | CHRISTIE | SHANNON | 1.0 |
| 18 | CIAMPA | STACY | .2 (plus .8 Precaut.) |
| 19 | CONANT | TAMMY | 1.0 |
| 20 | CONTI | LESLIE | 1.0 |
| 21 | COYLE | AARON | 0.3 |
| 22 | CRAIN | BREANN | 1.0 |
| 23 | DAVIS | MICHAEL | 1.0 |
| 24 | DEEMY | JAMIE | 1.0 |
| 25 | DOHERTY | VALRIE | 1.0 |
| 26 | EASTERLY | DEE | 1.0 |
| 27 | ENSMINGER | MARK | 0.8 |
| 28 | ESPINOZA | ERICA | 1.0 |
| 29 | FARLEY | KRISTINE | 1.0 |
| 30 | FARMER | AMBER | 1.0 |
| 31 | FEDRIZZI- | CARRIE | 1.0 |
| 32 | FEIGUM | MIKE | 1.0 |
| 33 | FINALE | RODOLFO | 1.0 |
| 34 | FINN | REBEKAH | 0.5 |
| 35 | FORD | LEZLI | 1.0 |
| 36 | GRAY | KIMBERLY | 1.0 |
| 37 | GREGOVICH | DENNIS | 1.0 |
| 38 | GUILAS | CHONALYN | 1.0 |
| 39 | HALEY | MEGAN | 0.5 |
| 40 | HALLBERG | CHELSEY | 1.0 |
| 41 | HANSON | GORDON | 1.0 |

| | NAME | | FTE |
|----|------------|------------|-----|
| 44 | HOLSAPPLE | DUSTIN | 1.0 |
| 45 | HUBER | SUZANNE | 1.0 |
| 46 | HULSTROM | EMILY | 1.0 |
| 47 | HULSTROM | JASON | 1.0 |
| 48 | HUSBY | CASIE | 1.0 |
| 49 | HYLAND | MARVA | 0.5 |
| 50 | JENNINGS | TESSA | 1.0 |
| 51 | JOHNSON | MELANEE | 1.0 |
| 52 | KHOURY | AZURE | 1.0 |
| 53 | KILLIEN | KRISTINA | 1.0 |
| 54 | KING | ANDREA | 0.5 |
| 55 | KIRKENDALL | DAVID | 1.0 |
| 56 | KLING | BARRY | 1.0 |
| 57 | KNIPPLE | STEFANIE | 1.0 |
| 58 | LANNAMANN | JACQUELINE | 1.0 |
| 59 | LARIOS | HOPE | 1.0 |
| 60 | LAZIO | JANICE | 1.0 |
| 61 | LEWIS | CAROL | 1.0 |
| 62 | LOPEZ | MYRNA | 1.0 |
| 63 | LUNA | JASON | 0.8 |
| 64 | MACIVER | MARYBETH | 1.0 |
| 65 | MARTINEZ | BRENDA | 1.0 |
| 66 | MCFARLAND | CAROLYN | 1.0 |
| 67 | MCGOWAN | KARI | 1.0 |
| 68 | MERCER | DARLENE | 1.0 |
| 69 | MISCHEL | DAVID | 1.0 |
| 70 | MOLLON | ELONA | 1.0 |
| 71 | MUDRA | TAMI | 1.0 |
| 72 | MUIZELAAR | TAMARA | 1.0 |
| 73 | MURRAY | DIANA | 1.0 |
| 74 | NIES | LOUISA | 1.0 |
| 75 | NUNEZ | LAURA | 1.0 |
| 76 | ORTIZ | AMELIA | 1.0 |
| 77 | PERSEK | DAWN | 1.0 |
| 78 | PIPITT | SANDRA | 1.0 |
| 79 | POLLOCK | AMBER | 1.0 |
| 80 | PRIEFER | BRENNEN | 1.0 |
| 81 | RAMIREZ | JANEL | 1.0 |
| 82 | RAMIREZ | XOCHITL | 1.0 |
| 83 | RAY | TRACY | 1.0 |
| 84 | REA | DAGMAR | 1.0 |

| | | | |
|-----|-------------|-----------|------------|
| 42 | HARRIS | CYNTHIA | 1.0 |
| 43 | HILL | FELICE | 1.0 |
| | NAME | | FTE |
| 87 | ROMERO | JOSEPH | 1.0 |
| 88 | ROMERO | PAULA | 1.0 |
| 89 | ROTSOLK | ROSANNE | 1.0 |
| 90 | ROWE | MEGAN | 1.0 |
| 91 | RUIZ | JESSICA | 1.0 |
| 92 | SALISBURY | ROBIN | 1.0 |
| 93 | SANCHEZ | KARI | 1.0 |
| 94 | SANDEN | COLLEEN | 0.5 |
| 95 | SERRANO | MICHELLE | 1.0 |
| 96 | SIMPSON | CHRISTINE | 1.0 |
| 97 | SOLO | ROCHELLE | 1.0 |
| 98 | SPERO | CRYSTAL | 1.0 |
| 99 | SPRAGG | JASON | 1.0 |
| 100 | STRAWTER | BRIAN | 1.0 |
| 101 | THOMPSEN | JENNIFER | 1.0 |

| | | | |
|-----|--------------|----------|------------|
| 85 | REAM | ANDREW | 1.0 |
| 86 | REYNAGA | CLARISSA | 1.0 |
| | NAME | | FTE |
| 102 | TIELENS | THEODORE | 1.0 |
| 103 | TRENCH | BECKY | 1.0 |
| 104 | TRENCH | LAWRENCE | 1.0 |
| 105 | TRINH-ROSELI | JESSICA | 1.0 |
| 106 | VILTE | HORACIO | 1.0 |
| 107 | VOSS | KRISTIN | 1.0 |
| 108 | WELLS | JARED | 1.0 |
| 109 | WESTMORELAND | ALYSSA | 1.0 |
| 110 | WHITE | DANIELLE | 0.5 |
| 111 | WIESE | BRIDGET | 1.0 |
| 112 | WILLIAMS | ANDRE | 1.0 |
| 113 | WOOD | KRISTIN | 1.0 |
| 114 | WOODS | SHELI | 1.0 |
| 115 | ZIMMERMAN | DERRICK | 1.0 |

| | | | |
|-----|--------------|-----------|------------|
| | NAME | | FTE |
| 116 | BAILEY | JULIE | 1.0 |
| 117 | BARRET | PAMELA | 1.0 |
| 118 | BOGGESS | APRIL | 1.0 |
| 119 | BUCKLER | ALISON | 1.0 |
| 120 | CAWTHON | JAYNE | 1.0 |
| 121 | CHAVEZ | PATRICIA | 1.0 |
| 122 | COURSOL | MEGAN | 1.0 |
| 123 | CURL | KARINA | 1.0 |
| 124 | DOWNER | NICOLE | 1.0 |
| 125 | ELSMORE | BENJAMIN | 1.0 |
| 126 | FLAVIN | COLLEEN | 1.0 |
| 127 | GAINES | JAIME | 1.0 |
| 128 | GONGAWARE | JOYANN | 1.0 |
| 129 | GOROSAVE | HUGO | 1.0 |
| 130 | HATCHER | LAURI | 1.0 |
| 131 | HEIN | JEAN | 1.0 |
| 132 | HENTON | ERIN | 1.0 |
| 133 | HEPBURN | THOMAS | 1.0 |
| 134 | HIGGINBOTTOM | TERI | 1.0 |
| 135 | HOGAN | JASON | 1.0 |
| 136 | HOLMES | DWIGHT | 1.0 |
| 137 | HOLSAPPLE | CHRISTINE | 1.0 |

| | | | |
|-----|-------------|-----------|------------|
| | NAME | | FTE |
| 138 | JAMES | STEPHANIE | 1.0 |
| 139 | KETCHEM | MARK | 1.0 |
| 140 | LEAL | ADRIENNE | 1.0 |
| 141 | MILLER | CRAIG | 1.0 |
| 142 | OLSEN | RICHARD | 1.0 |
| 143 | PAILES | MATTHEW | 1.0 |
| 144 | PHAM | ERIKA | 1.0 |
| 145 | PRATER | JULIE | 1.0 |
| 146 | RANNEY | ANDREA | 1.0 |
| 147 | RIDDLE | SHARON | 1.0 |
| 148 | RUSSELL | SHARON | 1.0 |
| 149 | SIMS | MICHAEL | 1.0 |
| 150 | SMITH | MELISSA | 1.0 |
| 151 | STEWART | MELINDA | 1.0 |
| 152 | STIFLE | TONNA | 1.0 |
| 153 | TORRES | MELISSA | 1.0 |
| 154 | TRENCH | GABRIEL | 1.0 |
| 155 | URIBE | BENJAMIN | 1.0 |
| 156 | WELLS | BRENT | 1.0 |
| 157 | WINDMILLER | THOMAS | 1.0 |
| 158 | ZIMMER | AARON | 1.0 |

EXHIBIT B

1. Michelle Adler
2. Daniel Betts
3. Chelsie Borden
4. Tami Bowen
5. Jennifer Carpenter
6. Tammy Conant
7. Rebekah Finn
8. Chonalyn Guilas
9. Marva Hyland
10. Andrea King
11. David Kirkendall
12. Jason Luna
13. Louisa Nies
14. Amber Pollock
15. Andrew Ream
16. Dustin Holsapple
17. Jessica Ruiz
18. Colleen Sanden
19. Michelle Serrano
20. Jennifer Thompsen
21. Lawrence Trench
22. Jessica Trinh
23. Danielle White
24. Andre Williams
25. Derrick Zimmerman
26. Kristen Voss