

BEFORE THE
BOARD OF TRUSTEES
SAN JACINTO UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2010030630

Respondents listed in Appendix A.

PROPOSED DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Jacinto, California on April 22, 2010.

Mark W. Thompson, Atkinson, Andelson, Loya, Ruud & Romo, Attorneys at Law, represented the San Jacinto Unified School District.

Ronald G. Skipper, Attorney at Law, represented the respondents listed in Appendix A.¹

The matter was submitted on April 22, 2010.

FACTUAL FINDINGS

1. Diane Perez, Assistant Superintendent, Personnel Services of the San Jacinto Unified School District, made and filed the accusation dated March 11, 2010, in her official capacity as the designee of Dr. Shari L. Fox, Ed.D., District Superintendent.

2. Respondents² are certificated district employees.

3. On March 2, 2010, in accordance with Education Code sections 44949 and 44955, the superintendent notified the Board of Trustees of the San Jacinto Unified School

¹ Respondents' counsel also represents three other individuals, Alan Fischer, Wendy Morphew, and Kelly Tysen Stokes, who did not request a hearing and thus are not respondents in this matter.

² The district also designated a number of employees for precautionary layoff, in the event that the district's proposed actual layoff list was not upheld in its entirety. Prior to the conclusion of the hearing, the district's motion to dismiss these individuals from this layoff proceeding was granted. Accordingly, they are excluded from the list of respondents listed in Exhibit A.

District in writing of her recommendation to reduce or discontinue particular kinds of services for the upcoming school year. The superintendent stated the reasons for the recommendation. The recommendation that respondents be terminated from employment was not related to their competency as teachers.

4. On March 2, 2010, the board adopted Resolution No. 09-10-19, determining that it would be necessary to reduce or discontinue 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 were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u> ³	<u>Full-Time Equivalent</u>
K-5 Elementary Teaching Services	11
Elementary Categorical Intervention Services	5
TOSA Services (Instructional Coach)	1
TOSA Services (ASES)	1
TOSA Services (Assistant to the Principal)	1
TOSA Services (Enrichment)	3
MS Reading/Language Arts Teaching Services	2
MS Math Teaching Services	1
MS Art Teaching Services	1
MS Core Teaching Services	1
MS Categorical Intervention Math Teaching Services	2
MS Bobcat Academy Teaching Services	1
MS Science Teaching Services	1
HS Freshman Seminar/Computer Literacy/Computer Essentials Teaching Services	1
HS Math Teaching Services	1
HS English/Language Arts Teaching Services	3
HS English Language Development Teaching Services	1
HS Social Science Teaching Services	3
HS Agriculture Teaching Services	1
HS Freshman Seminar Health/Psychology Teaching Services	1
HS Home Economics Teaching Services	1
HS Industrial Tech/Photography Teaching Services	1
HS CAHSEE Math Teaching Services	1
HS CAHSEE English Language Arts Teaching Services	1
HS Alternative Education Warrior Academy English/Social Studies Teaching Services	1

³ TOSA refers to Teacher on Special Assignment. MS and HS refer to middle school and high school, respectively.

HS Alternative Education Math/English Teaching Services	1
Special Education Teaching Services	2
School Counseling Services	2
Counselor on Special Assignment Services	1

The proposed reductions totaled 53 FTE positions.

5. The board further determined in Resolution No. 09-10-19 that “competency,” as described in Education Code section 44955, subdivision (b), for the purposes of bumping, “shall necessarily include possession of a valid credential in the relevant subject matter area, ‘highly qualified’ status under the No Child Left Behind Act, appropriate EL authorization (if required by the position), special training and experience to teach AVID classes, special training and experience to teach Advanced Placement classes, special training and experience to teach Theater classes, special training and experience to serve as a Teacher on Special Assignment, and special training and experience.”

6. The board further determined in Resolution No. 09-10-19 that it would be necessary to retain certificated employees who possess special training and competency that other certificated employees with more seniority might not possess, to wit: certificated employees who possess the training and experience to teach Advanced Placement and AVID classes. The board’s determinations in this regard were neither arbitrary nor capricious, and constituted a reasonable exercise of the board’s discretion.

7. The board directed the superintendent or her designee to determine which employees’ services would not be required for the 2010-2011 school year as a result of the reduction of the foregoing particular kinds of services. The board further directed the superintendent or her designee to send 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.

8. On or before March 15, 2010, the district timely served on respondents a written notice that the superintendent had recommended that their services would not be required for the upcoming school year, along with the related accusation. The notice set forth the reasons for the recommendation. The notice advised respondents of their right to a hearing, that each respondent had to deliver a request for a hearing in writing to the person sending the notice by the date specified in the notice, a date which in each case was more than seven days after the notice was served, and that the failure to request a hearing would constitute a waiver of the right to a hearing.

The recommendation that respondents be terminated from employment was not related to their competency as teachers.

9. Respondents timely filed written requests for hearing and notices of defense. All pre-hearing jurisdictional requirements were met.

10. Respondents are probationary or permanent certificated employees of the district.

11. The services the board addressed in Resolution No. 09-10-19 were “particular kinds of services” that could 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 and constituted a proper exercise of discretion. No particular kinds of services were lowered to levels less than those levels mandated by state or federal law.

12. The reduction or discontinuation of particular kinds of services related to the welfare of the district and its pupils. 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.

13. The board considered all positively assured attrition, including resignations, retirements and requests for transfer, in determining the actual number of necessary layoff notices to be delivered to its employees.

14. No certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render.

15. Sally Aspril teaches freshman seminar health and psychology. She holds a single subject credential in health science, and a supplementary authorization in psychology. She testified concerning the critical importance of providing health education to ninth graders, and she expressed concern about the district’s ability to provide this education if she is laid off.

A teacher is not authorized to teach a health class unless he or she holds a health science credential. However, a teacher need not hold such a credential in order to teach health education as a component of another course. The district currently employs only one other individual besides Ms. Aspril who holds a health science credential; that individual is also slated for lay off. The district does not presently know how it will provide health education to its students if these two teachers are laid off. However, the district is not legally required to teach a health science course per se.

Ms. Aspril’s sincere testimony reflected a profound commitment to teaching and to the wellbeing of her students. However, the board’s decision to identify freshman seminar health/psychology as a particular kind of service to be reduced or eliminated was neither arbitrary nor capricious, but instead constituted a proper exercise of the board’s discretion.

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. A district may reduce services within the meaning of 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.)

3. Pursuant to section 44995, 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; *Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 134-135.)

The district has an obligation under section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possesses the seniority and qualifications which would entitle him/her to be assigned to another position. (*Bledsoe v. Biggs Unified School Dist.*, *supra*, at 136-137.)

4. The decision to reduce or discontinue a particular kind of service is not tied in with any statistical computation. It is within the governing authority’s discretion to determine the amount by which a particular kind of service will be reduced or discontinued as long as the district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.) A school district has wide discretion in setting its budget and a layoff decision will be upheld unless it was fraudulent or so palpably unreasonable and arbitrary as to indicate an abuse of discretion as a matter of law. (*California Sch. Employees Assn. v. Pasadena Unified Sch. Dist.* (1977) 71 Cal.App.3d 318, 322.)

5. School districts have broad discretion in defining positions within the district and establishing requirements for employment. This discretion encompasses determining the training and experience necessary for particular positions. Similarly, school districts have the discretion to determine particular kinds of services that will be eliminated, even though a service continues to be performed or provided in a different manner by the district. (*Hildebrandt v. St. Helena Unified School Dist.* (2009) 172 Cal.App.4th 334, 343.)

6. A preponderance of the evidence sustained the charges set forth in the accusation. Cause exists under Education Code sections 44949 and 44955 for the district to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. 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 be directed be reduced or discontinued. It is recommended that the board give respondents notice before May 15, 2010, that their services are no longer required by the district.

ADVISORY DETERMINATION

The following advisory determination is made:

The accusations served on respondents are sustained. Notice may be given to respondents before May 15, 2010, that their services will not be required because of the reduction or discontinuation of particular services as indicated.

DATED: _____

DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings

Appendix A

1. Sally Aspril
2. Bill Boggess
3. Annette Doyle
4. Kami Johnston
5. Angela Lepale
6. Susan Lopez
7. Katheryne McGregor
8. Christi McKiney
9. Tamara Meadows
10. Sheela Miller
11. Gloria Ohair
12. April Phillips
13. Gloria Solorio-Valenzuela
14. Scott Stewart