

BEFORE THE
BOARD OF TRUSTEES OF THE
ANAHEIM UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Re:

OAH No. L2008030466

The Reduction in Force of 99 Full-Time
Equivalent Positions,

Respondents.

PROPOSED DECISION

David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 14, 2008, in Anaheim, California.

Stutz Artiano Shinoff & Holtz, by Jack M. Sleeth, Jr. and Jeanne Blumenfield, Attorneys at Law, represented the Anaheim Union High School District (District).

Reich, Adell & Cvitan, by Marianne Reinhold and Carlos Perez, Attorneys at Law, represented the respondent teachers on the list attached as Exhibit A, incorporated by reference.

The following respondents appeared at the hearing: Demmi Aphidean, Michelle E. Charboneau, Lara Ashley Cruchley, Robert M. Flores, Erica S. Goodman, Brandie Noel Hayungs, Monique Marie Hernandez, Pamela P. Kung, Caylin J. Ledterman, Pei C. Lee, Garrett R. Long, Tuyen Kim Ly, Cynthia Joan Miceli, Dale Everett Miller, Heenen Pramukh Patel, Ann Meredith Rice, Maria A. Ruvalcaba, Lena Mara Shupper, Pamela Ann Stegall-Chant, Craig Alan Tagler, and Katalin Zsuzsanna Voragen.

The record remained open for the submission of briefs, as follows: Respondents' Brief was received April 15, 2008, and marked for identification as Exhibit F; and the District's Brief was received April 17, 2008, and marked for identification as Exhibit 41. In its brief, the District requested that the record be reopened to add evidence relating to respondent Daniel Kleinschrodt. Respondents objected to that motion on grounds, among others, that there is no explicit authority to reopen the record and no reason was given for the failure to include the evidence at the time of the hearing. Complainant replied that, in the rush to prepare the evidence for hearing, this information was overlooked, and that there is other evidence in the record relating to the same facts. The objections are overruled and the record is reopened. The additional evidence is marked for identification and received in evidence as Exhibit 42. The record was closed and the matter was submitted on April 17, 2008.

SUMMARY OF PROPOSED DECISION

The Board of Trustees (Board) of the District determined to reduce 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 seniority. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

Jurisdictional Facts

1. Joseph M. Farley, Ed.D., is the Superintendent of the District and his actions were taken in that official capacity.
2. Before March 15, 2003, the District personally served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year (notice). Each notice set forth the reasons for the recommendation and noted that the Board had passed a resolution reducing the certificated staff by 99 full-time equivalent (FTE) positions.
3. Notices were properly served and/or respondents signed acknowledgments that the notices had been received. Thirty eight certificated employees each timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.
4. The Superintendent made and filed Accusations against each of the respondents. The Accusations with required accompanying documents and blank Notices of Defense were timely served on the responding employees.
5. Twenty four employees who filed written Requests for a Hearing also filed a Notice of Defense.

Facts Relating to Reduction in Services

6. The District provides educational services for its students in junior high schools and high schools.
7. Respondents in this proceeding are probationary certificated employees of the District employed as school teachers.

8. On March 6, 2008, the Board of the District was given notice of the Superintendent's recommendation that 99 FTE employee teachers be given notice that their services would not be required for the next school year and stating the reasons therefore.¹

9. Board Resolution No. 2007/08-HR-05, adopted on March 6, 2008, proposed a layoff of 99 FTE certificated employees due to the reduction or elimination of the following particular kinds of services: 99 classroom teachers.

10. Tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date are established by the following: the teachers' Collective Bargaining Agreement, Article 9 (Exhibit 2); Board policy 6316.01 (Exhibit 3); and the Memorandum of Understanding between the Board and the teachers' association (Exhibit 4). In total, these documents provide that the order of termination shall be based on the needs of the District and its students in accordance with the criteria stated therein.

11. Denise Selby, Ed.D., Assistant Superintendent of Human Resources established that the Board Resolution was required by the District's fiscal crisis and need to reduce services to balance its budget for the welfare of students. More specifically, the Board received information about the next state budget leading the Board to believe that it was possible that its revenues would be reduced by approximately \$17 million.

12. The Board considered eliminating or reducing educational subject matter courses to meet its expected financial shortfall. However, commensurate with the District's intent to offer a strong instructional program with as many elective and other courses as possible for the coming school year, it decided instead to reduce teaching services in general by eliminating block scheduling, reorganizing alternative education sites, reducing the Community Day School Physical Education Program, and reducing certificated staffing due to "more appropriate staffing ratios," as set forth in the Resolution. The District is increasing the staffing ratios in its schools. In junior high schools, where the ratio had been 1 teacher to 31.5 students, the ratio would now be 1 to 32.5. In high schools, where the ratio had been 1 teacher to 30.5 students, the ratio would now be 1 to 31.5. In this manner the District instituted an approximate 20 percent cut in its budget across all of the instructional programs at all of its sites, without eliminating any instructional program. As a result of the added students in each class, the District would need fewer teachers in general.

13. The decision to reduce services was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

¹ The Superintendent's recommendation, and the Board resolution, also included 18 FTE positions that are not at issue in this matter, such as in administration and pupil services positions.

14. The District maintains a seniority list which contains employees' seniority dates (first date of paid service). The District also maintains records of its teachers' current assignments and credentials.

15. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the teaching positions 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. In analyzing its expected budget for the next school year and the effects upon teachers lowest on the seniority list, the District determined that it would send notices to all certificated probationary staff hired as of the first date of paid service of the current school year; that is, September 4, 2007, or later. Therefore, the District recommended, and the Board approved, the elimination of 99 FTE positions for the teaching staff in general. It was later determined that one teacher who was sent a notice had an earlier seniority date and that the notice had been sent in error.

16. Because of the nature of the services being reduced, it was not necessary for the District to determine whether it would skip over less senior employees who held credentials in another area and could displace more senior employees, or to apply the tie-breaker criteria.

17. The services identified in the Board Resolution are particular kinds of services that could be reduced under Education Code section 44955. The Board's decision to reduce the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. The decision was based on the welfare of the District and its pupils.

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

Respondents' Contentions

19. Respondents raised the following contentions: that the District cannot describe "classroom teachers" as a particular kind of service under the Code; that several teachers should have seniority dates earlier than the dates assigned to them on the District's seniority list; that the District did not comply with the law when it did not consider the credentials or qualifications of the teachers to whom notices were sent; that the District did not consider attrition due to resignations and retirements; and that the District did not prove that it sent a pre-March 15 notice to Daniel Kleinschrodt. The following facts were established with respect to respondents' contentions.

20(a). Dale E. Miller was assigned a seniority date of November 13, 2007, and claims that the date should be September 4, 2007. He began work on September 4, 2007, under an emergency teaching credential in a position as a long term substitute teacher. Respondent Miller was issued an internship single subject teaching credential on October 29, 2007, and signed a contract with the District to begin as a temporary teacher effective

November 13, 2007. Respondent Miller did not work 75 percent or more of the school year in the substitute position.

20(b). Brandie Hayungs was informed by a school principal in late August 2007 that she would be hired as an English teacher. This was later than for most new employees and respondent Hayungs was behind other new employees in getting her paperwork and processing completed by the District. Respondent Hayungs was informed by the school principal's secretary that she should attend the first day of in service training on September 4, 2007, even though her paperwork had not been fully processed. Respondent Hayungs attended that day, and the following days, writing lesson plans for the substitute teacher teaching the class and assisting the head of the English Department. The processing was completed such that respondent Hayungs' first date of paid service was September 10, 2007, the date assigned to her on the seniority list.

20(c). Demmie Apahidean was assigned a seniority date of September 4, 2007. She had prior service to the District in long term substitute positions in the school years from 2001/2002 through 2005/2006, sometimes for just one semester of a school year. Respondent Apahidean did not work 75 percent or more of a school year in any of these substitute positions.

20(d). Respondent Craig Tagler was assigned a seniority date of September 4, 2007. He was told by the head of the Math Department to attend departmental meetings, which he did on the morning of August 30, 2007. Also on August 30, 2007, respondent Tagler worked as a coach for the girls' golf team of the school to which he was assigned, which had a tournament that day. Respondent Tagler worked the rest of the semester as a golf team coach, for which he received a stipend from the District.

20(e). Respondents Robert Flores and Caylin Ledterman hold credentials and/or supplemental authorizations in geoscience and the District employed them to teach earth science. Based upon their credentials, these respondents are considered to be highly qualified teachers under the federal No Child Left Behind law.² The District hired these respondents in September 2007 to teach earth science and the District intends to have most high school freshmen take this course in the next school year. The District has sent notices to these respondents.

20(f). With respect to respondent Daniel Kleinschrodt, the District's evidence at hearing did not include a proof of service or signed acknowledgment of receipt indicating that the respondent had been properly served with a notice. The District subsequently submitted evidence that such notice was received by respondent Kleinschrodt before the March 15 deadline. (Exhibit 42.)

² The "No Child Left Behind Act," 20 U.S.C. sections 6319 and 6311(g)(2). Under this law, school districts receive financial incentives for offering a quality education and when students attain certain levels of proficiency.

20(g). After the notices were sent to respondents, the District has approved the resignations or retirements of several other employees, 26 as of the hearing. More are scheduled for consideration at subsequent Board meetings. The District did not rescind any notices based upon these retirements or resignations.

LEGAL CONCLUSIONS AND DISCUSSION

1. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met.³

2. The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Board's decision was a proper exercise of its discretion. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction."

3. 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.)

4. Respondents' contention that no particular kind of service has been properly identified by the Board is rejected. Respondents cite to numerous cases wherein courts have approved the practice of identifying particular types of services to be reduced or eliminated at the junior and senior high school level by the nature of the subject taught (e.g., English, math, science). (See, e.g., *Campbell Elementary Teachers Assn v. Abbott* (1978) 76 Cal.App.3d 796; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.) In these instances, specific curricular offerings were identified as the particular kinds of services identified in the statute as providing a basis for layoffs.

Because elementary school teachers do not require the same types of teaching credentials as do teachers at secondary schools and, more importantly, because they usually teach all curricular subjects to their students, case law developed that allowed school districts to identify classroom teachers as a particular kind of service that satisfies the statutory requirements. Although the initial case of *Burgess v. Board of Education* (1974) 41 Cal.App.3d 571 initially found that this was not permitted, in later cases the same court that decided *Burgess*, and others, declined to follow *Burgess* and approve the practice of using

³ All citations are to the Education Code.

the general description for elementary school teachers subject to layoff. (See, e.g., *Degener, supra*; *Campbell, supra*.)

Neither the statutory language nor the cases approving of the use of specific curricular descriptions requires such specificity. The cases relating to elementary school teacher layoffs make it clear that a reduction in particular kinds of services takes place in an elementary school setting when increasing the student teacher ratio results in the need for fewer teachers. As stated in *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32, quoting from *Rutherford, supra* at p.178-179:

Appellants argue that, even if elementary classes are a particular kind of service, reducing the number of classes in order to maintain the same level of service is not the "reduction" of services required by Education Code section 44955. This contention has been rejected. "A board may 'reduce services' . . . by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with pupils involved. [This] determination falls within the statutory language."

Other cases have come to the same conclusion. (*Zalac v. Governing Board of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838; *Gallup v. Board of Trustees* (1996) 41 Cal.App.4th 1571.) Specific positions to be eliminated do not need to be identified. As long as there is a change in the method of teaching, the layoff can proceed. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627.) The different systems of credentialing of teachers at the two different levels do not justify any different result. Section 44955 relates to the conditions that must be met by a district to layoff teachers, and there is nothing in the statute to suggest that an increased ratio of students to teachers would be a reduction in a particular kind of service only at the elementary school level. As the case law approves of such a particular kind of service at the elementary school level, it is also permissible at the secondary school level.

5. Under section 44845, a probationary or permanent employee is deemed to have been employed "on the date upon which he first rendered paid service in a probationary position." Respondent Tagler was not rendering "paid service in a probationary position" when he attended departmental meetings or coached the golf team before the District's first paid in-service training day of September 4, 2007. Similarly, respondent Hayungs was not being paid for her attendance prior to her approval to start paid service on September 10, 2007. Under section 44918, a substitute teacher who serves less than 75 percent of the school year is not entitled to the same rights as a full time teacher hired as a probationary employee. As there was no evidence that respondents Miller or Apahidean had sufficient service under their contracts as substitute teachers to qualify for an earlier seniority date. None of these respondents submitted sufficient evidence to affect a change in the seniority dates assigned to them by the District. See Factual Findings 14, 15 and 20.

6. Respondents Flores and Ledterman established that, by virtue of their credentials, the District may be entitled to additional funding under the federal No Child Left Behind Act. However, the District is not mandated to provide services at that level, nor did these respondents establish that their being laid off would result in the District being unable to provide instruction at any level mandated by law. See Factual Finding 20.

7. Respondents did not establish facts or submit applicable authorities concerning their contention that the District did not consider teaching credentials or qualifications of the employees who received notices. The District determined that, as one particular kind of service to be reduced, it would increase the teacher to student ratios in all programs and across all school sites, thereby reducing the number of teachers needed. Such a determination does not require a further examination of credentials or qualifications, nor is any such examination required by the applicable statutes.

8. Respondents did not establish that the District incorrectly considered attrition in determining the number of employees to be laid off, or that it was the District's burden to disprove this contention. While such attrition must be considered when a lay off is caused by a reduction in average daily attendance, this requirement does not apply when the lay off is based upon a reduction in a particular kind of service.

9. Cause exists to reduce the number of certificated employees of the District due to the reduction of particular kinds of services. The District's decision to the identified services was neither arbitrary nor capricious, and relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. See Factual Findings 1 through 18.

ORDER

1. The District may give notices to employees occupying 98 full-time equivalent certificated positions that their services will not be required for the 2008-2009 school year because of the reduction of particular kinds of services. Such notices may be given to the following employees on the attached list.

2. Notice shall be given in inverse order of seniority. Each respondent shall receive such a notice.

DATED: April 25, 2008.

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

List of Respondents, Accusations before the Board of Trustees of the
Anaheim Union High School District,
OAH case no. L2008030466, administrative hearing April 14, 2008.

Aphidean, Demmi
Blackshear, Sherrita Rose
Charboneau, Michelle E.
Cruchley, Lara Ashley
Flores, Robert M.
Goodman, Erica S.
Hayungs, Brandie Noel
Hernandez, Monique Marie
Karels, Laura M.
Keiser, Derek L.
Kleinschrodt, Daniel Joseph
Kung, Pamela P.
Ledterman, Caylin J.
Lee, Pei C.
Loeper, Alison Perez
Long, Garrett R.
Ly, Tuyen Kim
McDaid, Eileen Mary
Mendiola, Trina
Miceli, Cynthia Joan
Miller, Dale Everett
Patel, Heenen Pramukh
Rice, Ann Meredith
Ruvalcaba, Maria A.
Shupper, Lena Mara
Smith, Stephen G.
Stegall-Chant, Pamela Ann
Surratt, Rodney Raymond
Tagler, Craig Alan
Tsai, Rosemary Chun-Han
Voragen, Katalin Zsuzsanna

Exhibit A