

BEFORE THE  
SAN BERNARDINO COUNTY  
SUPERINTENDENT OF SCHOOLS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CHJENE CHHOR,

Respondent.

OAH No. 2008040235

**PROPOSED DECISION**

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California on May 5, 2008.

Sharon J. Ormond, Atkinson, Andelson, Loya, Ruud & Romo, Attorneys at Law, represented the San Bernardino Superintendent of Schools.

Carlos R. Perez, Reich, Adell & Cvitan, represented respondent Chjene Chhor.

The matter was submitted on May 5, 2008.

**FACTUAL FINDINGS**

1. Herbert R. Fischer, Ph.D., San Bernardino County Superintendent of Schools, made and filed the accusation dated April 14, 2008 in his official capacity.

2. Respondent<sup>1</sup> is a certificated employee of the Superintendent.

3. On March 10, 2008, in accordance with Education Code sections 44949 and 44955, Walter D. Schwartz, Assistant Superintendent, Human Resources, notified the Superintendent in writing of his recommendation to reduce or discontinue particular kinds of services for the upcoming school year. The Assistant Superintendent stated the reasons for the recommendation.

<sup>1</sup> Other individuals besides respondent were served with layoff notices. However, at this point respondent is the only individual whose layoff remains to be adjudicated in this proceeding.

4. On March 10, 2008, the Superintendent adopted a Resolution, determining that it would be necessary to reduce or discontinue particular kinds of services at the end of the current school year. The Superintendent determined that the particular kinds of services that were required to be reduced for the 2008-2009 school year were the following full time equivalent (FTE) positions:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Juvenile Court School classroom teaching services	3.0 FTE
Community Day School classroom teaching services	11.0 FTE
Teacher: Adapted Physical Education	1.0 FTE
Teacher: Orientation and Mobility	1.0 FTE
Pre-Kindergarten classroom teaching services	8.0 FTE
Teacher: Mild/Moderate disabilities	2.0 FTE
Teacher: Moderate/Severe disabilities	3.0 FTE
Teacher: Emotionally Disturbed	4.0 FTE

The proposed reductions totaled 33 full-time equivalent (FTE) positions.

5. The Superintendent directed the Assistant Superintendent of Human Resources or his designee to determine which employees' services would not be required for the 2008-2009 school year as a result of the reduction of the foregoing particular kinds of services. The Superintendent further directed the Assistant Superintendent or his designee to send appropriate notices to all certificated employees of the Superintendent who would be laid off as a result of the reduction of these particular kinds of services.

6. On or before March 15, 2008, the Superintendent timely served on respondent a written notice that the Superintendent had recommended that her services would not be required for the upcoming school year. The notice set forth the Superintendent's reasons for the recommendation. The notice advised respondent of her right to a hearing, that she 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 was more than seven days after the notice was served, and that her failure to request a hearing would constitute a waiver of the right to a hearing.

The recommendation that respondent be terminated from employment was not related to her competency as a teacher.

7. Respondent timely filed a written request for hearing to determine if there was cause for not reemploying her for the upcoming school year. The accusation was thereafter timely served on respondent. Respondent timely filed a notice of defense. All pre-hearing jurisdictional requirements were met.

8. The services the Superintendent addressed in the Resolution were "particular kinds of services" that could be reduced or discontinued within the meaning of Education Code section 44955. The Superintendent'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.<sup>2</sup>

9. The reduction or discontinuation of particular kinds of services related to the welfare of the pupils of the Superintendent. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the Superintendent as determined by the Superintendent.

10. The Superintendent considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

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

### 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 sections 44949 and 44955 for the Superintendent 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. A preponderance of the evidence sustained the charges set forth in the accusation. It is recommended that the Superintendent give respondent notice before May 15, 2008, that her services are no longer required by the Superintendent.

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<sup>2</sup> Respondent's testimony reflected her belief that the Superintendent needs more, rather than fewer, teachers to provide orientation and mobility services to the blind and visually impaired students of which her caseload is comprised. She testified, for example, that other teachers providing orientation and mobility services had caseloads (i.e., numbers of students) far in excess of certain recommended guidelines specified by the California Department of Education. No evidence or authority was presented, however, that such guidelines constituted legally-mandated levels of service. Further, respondent was unable to state the actual level of service (e.g., the number of minutes or hours per day, week or month) that other orientation and mobility teachers provided to each of the students in their caseload. The District's testimony established that no reductions in services below levels required by law would result from the proposed elimination of one FTE orientation and mobility teacher position.

ORDER

The accusation served on respondent Chjene Chhor is sustained. Notice shall be given to respondent Chjene Chhor before May 15, 2008, that her services will not be required because of the reduction or discontinuation of particular services as indicated.

DATED: 5-6-08

A handwritten signature in black ink, appearing to read "Donald P. Cole", written over a horizontal line.

DONALD P. COLE  
Administrative Law Judge  
Office of Administrative Hearings