

**BEFORE THE GOVERNING BOARD OF
THE EL SEGUNDO UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

OAH No. 2010030321

Certificated Employees of the El Segundo
Unified School District,

Respondents.

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, heard this matter on April 20, 2010, in El Segundo, California.

Salvador O. Holguin, Jr., Esq., represented the El Segundo Unified School District (District).

Daniel J. Kolodziej, Esq., represented Respondents.

FACTUAL FINDINGS

1. Dr. Geoff Yantz, Superintendent of the District, acting in his official capacity, caused all pleadings, notices and other papers to be filed and served upon each Respondent pursuant to the provisions of Education Code sections 44949 and 44955. The “layoff packet” sent to all Respondents included a Notice of Recommendation That Services Will Not Be Required, the Accusation, and all other forms required to be sent with the Accusation. All pre-hearing jurisdictional requirements were met.

2. Respondents are employed by the District as permanent, probationary, intern, pre-intern, emergency permitted, waiver, and/or temporary certificated employees of the District. There are 14 Respondents’ positions at issue. Those 14 teachers’ names are listed on Exhibit 7, page 3, which is hereby incorporated by reference as if fully set forth herein.

3. On March 9, 2010, pursuant to Education Code sections 44949 and 44955, the Governing Board of the District (Board) issued Amended Resolution number 11/2009-10, which approved the recommendation by the Superintendent that notice be given to

Respondents that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

4. On March 12, 2010, Respondents were given written notice of the recommendation that notice be given to Respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

5. It was established that cause exists, within the meaning of Education Code sections 44949 and 44955, for not reemploying Respondents for the ensuing school year for all of the reasons set forth below.

6. The District decided the following:

The following particular kinds of services of the District will be reduced or eliminated no later than the beginning of the 2010-2011 school year:

K-5 Instruction	12	FTE ¹
Elementary Physical Education	1	FTE
Elementary Assistant Principal	1	FTE
Elementary Special Education	.5	FTE
Middle School Physical Education	1	FTE
Middle School Art	1	FTE
High School Intervention Counseling	1	FTE
High School Math	.8	FTE
High School English	2	FTE
High School Drama	.2	FTE
High School Dance	.4	FTE
High School Academic Decathlon	.2	FTE
High School Journalism	.2	FTE
High School French	.8	FTE

¹ Full- Time Equivalent position(s).

High School Choir	.4	FTE
High School Physical Education	1	FTE
High School Social Science	2.2	FTE
High School Earth Science	.4	FTE
High School AVID	.8	FTE
Elementary Music	.5	FTE
High School Yearbook	.2	FTE
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TOTAL CERTIFICATED POSITIONS	27.6	FTE

7. The Board decided that it is necessary to decrease the number of certificated employees as a result of the reduction in services. These services are “particular kinds of services” that may 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 rather, constituted a proper exercise of discretion. The Board is faced with a budget shortfall and with the potential loss of additional State funding.

8. The reduction or discontinuation of these particular kinds of services is related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services is necessary to decrease the number of certificated employees of the District as determined by the Board. This reduction is necessary because of budget reductions.

9. The Board properly 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 as of March 13, 2010. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App. 3d 627 at 636). The District further stated its intent to withdraw layoff notices to the most senior teachers if additional attrition occurs.

10. The District properly created its seniority list by determining the first date of paid service of each certificated employee and properly utilized reasonable “tie-breaker” criteria when necessary. The District did not “skip” any teachers and the District properly utilized a “bump” list whereby a displaced teacher can “bump” a more junior teacher who is teaching a subject for which the more senior teacher is credentialed. Respondents did not challenge the seniority list or the “bumps” which the District utilized.

11. Respondents raised three challenges at hearing and those challenges are discussed below.

Notice /Layoff Package

12. In order to simplify the process, for both the District and its personnel, the District simultaneously served the Accusation, the resolutions, the request for hearing forms, and the Notice of Defense forms on Respondents, along with the notice that their services would not be required. The 14 Respondents timely requested hearings and filed notices of defense. Respondents contended that the District's service method did not comply with Education Code sections 44955 and 44949. Respondents did not show that the District failed to comply with the Education Code; nor did they demonstrate that they suffered actual prejudice from its use of simultaneous service. Accordingly, the District's service was proper. (See *California Teachers Assn. v. Butte Community College Dist.* (1996) 48 Cal.App.4th 1293, 1305-06.)

The Budget

13. It was established that the District has financial reserves in excess of the minimum required by the State. Respondents contended that those reserves should be utilized to save Respondents' positions. However, it was not established that the District lacks discretion to spend, or save, its financial resources as it believes are in its best interest. Respondents' did not offer any authority that would require the District to reduce its financial resources to the State "minimum" before being allowed to proceed with layoffs. It was not established that the District's decision to maintain its reserves was arbitrary or capricious.

No Child Left Behind Requirements

14. Respondents contended that the District will be unable to comply with "No Child Left Behind" (NCLB) requirements if the layoffs at issue occur. While it was established that the District did not consider the effect of the layoffs on its ability to meet NCLB requirements, it was not established that the District will be unable to meet said requirements. The only person who testified was David Lubs, Director of Human Resources and Maintenance. He testified that he "expects" the District can comply with its NCLB obligations despite the layoffs, but he also testified that he "was not really familiar" with said requirements. While his testimony did reveal that the District did not specifically consider how it will meet its obligations under NCLB, his testimony did not establish that the District will be unable to meet said obligations.

CONCLUSIONS OF LAW

1. Jurisdiction for these proceedings exists pursuant to Education Code sections 44949 and 44955.

2. Each of the services set forth in Findings 5 and 6 is a particular kind of service which may be reduced or discontinued in accordance with applicable statutes and case law.

3. The District's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

4. The District's service method did comply with Education Code sections 44955 and 44949. Respondents did not show that the District failed to comply with the Education Code; nor did they demonstrate that they suffered actual prejudice from its use of simultaneous service. Accordingly, the District's service was proper. (See *California Teachers Assn. v. Butte Community College Dist.* (1996) 48 Cal.App.4th 1293, 1305-06.)

5. Cause exists to reduce the District's teaching positions as described above and to give notice to the affected teachers pursuant to Education Code section 44955. (*Campbell v. Abbot* (1978) 76 Cal.App.3d 796; *Degener v. Governing Board* (1977) 67 Cal.App.3d 689). Based on the above Findings, including the preamble to this Proposed Decision, the names of the affected teachers, those as to whom final notices of layoff may be given, are as follows:

All 14 Respondent teachers listed in exhibit 7, page 3, may be laid off by the District.

ORDER

Because of the reductions of services, the District may give notice to the teachers identified in Legal Conclusion No. 5 that their services will not be required for the 2010-2011 school year.

Dated: April __, 2010.

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings