

BEFORE THE  
ORANGE COUNTY SUPERINTENDANT OF SCHOOLS  
STATE OF CALIFORNIA

In the Matter of the Layoff/Accusation  
Against:

OAH NO. L2005020710

54 CERTIFICATED EMPLOYEES,

Respondents.

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, at Costa Mesa, California on April 20, 2005.

David C. Larsen, Esq. of Rutan & Tucker, Attorneys at law, represented the Orange County Superintendent of Schools (complainant).

Paul Crost, Esq. of Reich, Adell, Crost & Cvitan represented all affected certificated employees, with the exception of Mr. Shayne Shearer who chose to represent himself (respondents).

Oral and documentary evidence was received and the matter was submitted.

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## FACTUAL FINDINGS

The ALJ makes the following Factual Findings:

1. On March 3, 2005, complainant found and resolved that a reduction in particular kinds of services (PKS) provided by the Orange County ACCESS Community School Program<sup>1</sup> for the 2005-2006 school year due to a decline in the average daily attendance in ACCESS program<sup>2</sup>. (Exhibit 3.) The resolution called for a reduction in services equaling 74 Full-Time Equivalent (F.T.E.) positions. The resolution called for the following reductions in particular kinds of services:

	<u>FTE</u> <u>Reductions</u>
<u>Programs/Services Reduction</u>	
Contract Learning Classes	57.0
Day School Classes	15.0
Special Education Classes	2.0
<u>Total</u>	<u>74.0</u>

The parties do not dispute the fact that the services listed above are particular kinds of services, which may be reduced or discontinued within the meaning of Education Code section 44955.

2. Complainant's decision to reduce or discontinue the services listed in Finding 1, above, is neither arbitrary nor capricious; rather, it is due to the decline in average daily attendance; and is, therefore, a proper exercise of complainant's discretion.

3. The reduction and discontinuation of services is related to the welfare of the Orange County school system and its pupils, and it has become necessary to decrease the number of certificated employees as determined by complainant.

4. All respondents affected by the layoffs received written notice, on or before March 15, 2005, notifying them that complainant had recommended they not be re-employed in the upcoming, 2005-2006, school year.

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<sup>1</sup> The ACCESS Program is an alternative education program for at-risk youths which consists of two components: Contract learning; and Day School programs.

<sup>2</sup> Average daily attendance in the ACCESS Program fluctuates due to factors such as: school districts served by the Orange County ACCESS Program implementing their own alternative education programs; decline in referrals from law enforcement agencies; and change in demographics, generally.

5. Respondents timely submitted their requests for a hearing to determine if cause exists for not re-employing them.

6. On March 9, 2005 the Orange County Department of Education Assistant Superintendent, Human Resources and Support Services, timely notified respondents, pursuant to California Education Code sections 44949 and 44955, of the district's intent not to reemploy them for the upcoming school year. That same date, March 9, 2005, respondents were also served with a copy of complainant's resolution, a blank "Request for Hearing" and other related materials.

7. Subsequently, on March 28, 2005, the Accusation and related materials were served on each respondent.

8. Each respondent either timely filed Notices of Defense; or, if not, complainant waived his objections to untimely filings.

9. Each respondent was properly noticed of the date, time and place of the instant hearing.

10. All prehearing jurisdictional requirements have been met.

11. At the commencement of the hearing the Accusation was dismissed as to the following five respondents: Joey V. Bahash; Terra D. Bernard; Paul A. Pabian; Michael A. Kashdan; and John M. Wells. Additionally, the number of F.T.E. reductions was reduced from 74 to 54, based on attrition (retirements, non-reelects, etc.).

12. Complainant properly elected to skip all respondents who were specially trained to teach special education programs due to valid needs of the ACCESS Program to continue providing special education programs to its special needs students.

13. The respondents identified in the seniority list, Exhibit 7, have been selected for notice of layoff pursuant to the list, which is based on the first day of paid service of each respondent. The respondents were ranked for layoff in the inverse order of their date of employment. It was not necessary for complainant to apply any tie-breaking criteria to rank these employees.

14. One respondent, Richard Berman, questioned the date used by complainant as his "Seniority Date." Mr. Berman believes that he should have received credit for the time he worked as an "Individual Intern."<sup>3</sup>

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<sup>3</sup> An "Individual Intern" equates with "the old emergency credential."

15. Mr. Berman did not receive any credit for the time he worked under his Individual Intern/emergency credential.

### LEGAL CONCLUSIONS

1. Jurisdiction for the instant proceedings exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided, as required.

2. The services listed in Factual Finding 1 are each determined to be a particular kind of service within the meaning of Education Code section 44955.

3. Based on the Factual Findings, considered in their entirety, cause exists to reduce the number of certified employees of the District by 54.0 full-time equivalent positions, for budgetary reasons. (Finding 11.)

4. Cause to reduce or discontinue services relates solely to the welfare of the Orange County school system and its pupils within the meaning of Education Code section 44949. (Finding 3.)

5. Complainant was correct in not granting respondent Berman credit for the time he worked on an emergency or Pre-Intern basis. For example, under Education Code section 44911 time spent teaching under an emergency credential cannot be counted in computing an employee's progress toward permanent status unless the employee was credentialed in another state and demonstrated adequate basic skills proficiency pending successful completion of the California Basic Educational Skills Test (CBEST). By analogy it seems that the same principles should apply to accruing seniority while working under emergency and Pre-Intern credentials. (See also *Summerfield v. Windsor Unified School District* (2002) 95 Cal.App.4<sup>th</sup> 1026.)

### ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. The Accusation is sustained as to the following respondents and complainant may notify them that their services will not be needed during the 2005-2006 school year due to reduction or discontinuance of particular kinds of services:

1. Lax, Darren A.
2. Jarrett, Vanessa
3. Lasko, Nicole
4. Shearer, Shayne
5. Mahoney, Jennifer L.
6. Monroe, Angel A.

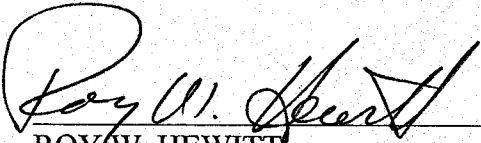
7. Kaliterna, Sylvana G.
8. Lowe, Barbara J.
9. Terborch, Carol D.
10. Nosek, Joseph
11. Berman, Richard M.
12. Cadatal, Allen S.
13. Allen, Patricia
14. Alvarado, Mario E.
15. Asch, Leah
16. Barrientos, Eric E.
17. Bearden, Cliff
18. Carey, Allison
19. Chong, Leonmark H.
20. Davidson, Wayne
21. Francis, Dina M.
22. Garten, Marcia
23. Gunther, Marcus R.
24. Hendrickson, Stacey
25. Hinkle, Ryan W.
26. Hong, Danny J.
27. Hutchison, Stephanie N.
28. Jones, Curits L.
29. Juarez, Martin
30. Kirchner, Judy
31. Ko, Kenneth
32. Kopicki, Susan
33. Lalazarian, David
34. Martinez, Maria D.
35. Mastin, Marilyn K.
36. Mays, Daryl
37. Miller, Ross
38. Puebla, Rebecca A.
39. Rishagen Dana K.
40. Roman, Michael D.
41. Ruiz, Rodney L.
42. Sorrows, Pamela J.
43. Springston, Julie
44. Stoltz, Cheryl A.
45. Sverev, Cathy
46. Thornhill, Steven F.
47. Torres, Alfredo
48. Torres, Sonia M.
49. Valle, David A.
50. Veneroso, Martin

51. Villegas, Marie
52. Vorck, Charles K.
53. Wilkins, Barttina S.
54. Taylor, Benny F.

2. The Accusation is dismissed as to the following respondents, and complainant may not notify those respondents that their services will not be needed during the 2005-2006 school year:

1. Bahash, Joey V.
2. Bernard, Terra D.
3. Pabian, Paul A.
4. Kashdan, Michael A.
5. Wells, John M.

Dated: May 3, 2005.

  
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ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings