

BEFORE THE  
BOARD OF TRUSTEES  
LA CANADA UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In The Matter Of The Accusations Against:

OAH No. L2007040052

JENNIFER BITUIN, MARIE EVELYN,  
JENNY KEENS, NICOLE NEUMANN,  
ERIN O'REILLY, and MICKEY  
REARDON,

Respondents.

**PROPOSED DECISION**

Timothy S. Thomas, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 24, 2007, at the La Canada Unified School District Board Room, La Canada, California.

Martin Fine, Attorney at Law, represented the La Canada Unified School District (LCUSD or the district).

Carlos R. Perez, Attorney at Law, represented all respondents. Respondents Neumann, O'Reilly and Reardon were also present.

The matter was submitted on April 24, 2007.

**FACTUAL FINDINGS**

1. The Governing Board of LCUSD determined to reduce particular kinds of services provided by teachers 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.

2. LCUSD operates three elementary schools, a high school and one special education-only facility. Due to changing demographics, reduced enrollment and reduced funding, the district determined to reduce the number of teaching positions at the elementary school level. Acting on the recommendation of the Superintendent of Schools, the

Governing Board passed Resolution No. 16-06-07, "Reduction of Particular Kinds of Service for the 2007-2008 School Year," on March 6, 2007, and directed the Superintendent to eliminate 5.67 full-time equivalent (FTE) elementary school teaching positions.

3. The services set forth in Finding 2 are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. The reduction of services is related to the welfare of LCUSD and its pupils, and it has become necessary to decrease the number of employees by 5.67 FTE positions. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949. Deputy Superintendent of Fiscal Services and Human Resources William V. Loose carried out the Board's decision by using a selection process involving review of credentials and seniority, "bumping," and breaking ties between employees with the same first dates of paid service. The selection process is not challenged by respondents and was in accordance with the requirements of Education Code section 44955. The need to reduce elementary school teaching staff by 5.67 FTE positions takes into account anticipated attrition before the start of the next school year.

4. LCUSD maintains a seniority list that contains employees' seniority dates (first date of paid service), current assignments and locations, advanced degrees, credentials, and authorizations. Credential and authorization data are obtained from the records of the Los Angeles County Office of Education, where certificated teachers must register such documents. To assure the accuracy of seniority dates and other data, affected employees were notified by mail of the district's records of their first dates of paid service and credentials. LCUSD made the seniority list available to respondents. The letter included a form allowing individuals to challenge that information. No respondent returned the form challenging the information utilized to identify candidates for layoff. Mr. Loose thereafter used the seniority list to develop a proposed layoff list of the employees currently assigned as elementary school teachers. In determining who would be laid off, he first identified the least senior elementary school teachers. In comparing teachers with the same dates of hire, Mr. Loose considered the following criteria, in order of importance: 1) The credential held by the teacher; 2) Supplementary authorizations held; 3) Educational degrees held. Other criteria were available should the first three not break ties, but were not required to be considered in these instances. Utilizing these criteria, the order of termination is based on the needs of the district and the students thereof.

5. Each respondent teacher is classified on the seniority list as a temporary employee, and each holds a preliminary multiple subject credential. Respondents Neumann and Reardon have dates of first paid service of August 29, 2006, and the remaining respondents were hired on August 23, 2005. Respondents challenge the district's layoff and skipping analysis determination only with respect to two teachers with temporary statuses who are to be retained, Andrea Coates and Mary Ellen Walker, who were also hired on August 29, 2006. Ms. Walker and Ms. Coates both hold single-subject credentials in Spanish and are in teaching assignments that require such a credential. Based on their credentials, therefore, these teachers were "skipped" and retained. Tie-breaking criteria were also applied to retain two teachers hired on August 23, 2005. Gregory Hardash holds a clear

credential (as opposed to preliminary) and Amy Sweetnam has a masters degree, whereas the respondents with the same hire date hold bachelors degrees.

6. On or before March 15, 2005, LCUSD served on each employee identified for layoff a written notice that it had been recommended that notice be given to him or her pursuant to Education Code sections 44949 and 44955 that his or her services would not be required for the next school year. Respondents do not dispute the adequacy or timeliness of the notices. The notices stated that the reason for the recommendation was that the services enumerated in Resolution No. 16-06-07, a copy of which was enclosed to each respondent, were to be reduced or discontinued no later than the beginning of the 2007/2008 school year. The notices further represented that "no employee with less seniority than you will be retained to render a service which you are certificated and competent to render."

7. All respondents timely filed requests for hearings. Accusations were filed by LCUSD and respondents timely filed Notices of Defense.

### LEGAL CONCLUSIONS

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

2. The services identified in Board Resolution 16-06-07 are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. A school 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. A reduction of elementary school classes and the number of elementary school teachers is a reduction of a particular kind of service within the meaning of Education Code section 44955. (*California Teachers Association v. Goleta Union School District* (1982) 132 Cal.App.3d 32.)

5. Cause exists to reduce the number of certificated employees of LCUSD 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 directed be reduced or discontinued.



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

7. 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. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.) By virtue of Factual Findings 4 and 5, was established that the junior employees or employees with identical dates of hire who are being retained have been given priority consistent with these authorities and tie-breaking criteria developed by the district.

#### ORDER

1. Notice shall be given to respondents occupying 5.67 full-time equivalent certificated positions that their services will not be required for the 2007-2008 school year because of the reduction and discontinuance of particular kinds of services.

2. Notice shall be given in inverse order of seniority.

DATED: May 3, 2007

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TIMOTHY S. THOMAS  
Administrative Law Judge  
Office of Administrative Hearings