

BEFORE THE  
GOVERNING BOARD  
OF THE  
GROSSMONT UNION HIGH SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of  
Certain Certificated Teachers Employed by  
the Grossmont Union High School District,

Respondents.

OAH No. 2008030147

**PROPOSED DECISION**

Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in El Cajon, California, on April 28 and 29, 2008.

Clifford D. Weiler, Attorney at Law, of Atkinson, Andelson, Loya, Ruud & Romo, APC, represented the Grossmont Union High School District.

Fern M. Steiner, Attorney at Law, of Tosdal, Levine, Smith, Steiner & Wax represented all of the respondent certificated employees of the Grossmont Union High School District who received preliminary layoff notices as indicated in the record.

No appearance was made by or on behalf of the remaining certificated employees of the Grossmont Union High School District who received notice of the recommendation that their services would not be required for the 2008-2009 school year.

The matter was submitted on April 29, 2008.

**FACTUAL FINDINGS**

*The Grossmont Union High School District*

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1. The Grossmont Union High School District (the District or GUHSD) is a public school district located in eastern San Diego County. The District provides educational services and supports for grades 9-12. The District operates 12 high schools (nine regular, two charter, and one continuation).

2. The District is governed by an elected five-member Board of Trustees. The Board's Chief Executive Officer is Robert J. Collins., the Superintendent of Schools. Dr. Collins is supported by an administrative staff including Steve Sonnich, Associate Administrator of Human Resources and Scott Patterson, Deputy Superintendent of Business Services.

#### *The Fiscal Crisis – Economic Layoffs*

3. Proposition 13 limited the imposition of property taxes and reduced a major source of assured revenue for funding public education in California. Since Proposition 13, public school districts have looked primarily to the State of California and to other governmental entities for funding.

A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event usually occurring in late June. Before then, a school district's governing board must take steps to make certain that ends meet if a worst-case financial scenario develops. California's current economic crisis has made budgeting problems far more complicated than they were before.

A school board's legal obligation to balance its budget often requires that some teachers, administrators and/or other certificated employees be given preliminary layoff notices, warning them that their services will not be required for the next school year. Under Education Code section 44949, preliminary layoff notices must be given to affected certificated employees no later than March 15.

The economic layoff statutes found in the Education Code generally require the retention of senior employees over more junior employees and the retention of permanent employees over probationary employees and other employees with less seniority. A public school district may deviate from the general rule requiring termination in reverse order of seniority only if it can demonstrate that identifiable junior employees possess a credential, special training or experience necessary to teach a course of study or to provide services which more senior employees do not possess.

#### *The District's Response*

4. By early 2008, the District's administration (as well as the administrators of most other school districts) was well aware of the State of California's massive economic problems. As a result of the financial crisis and the Governor's proposed budget, the District projected an estimated budget deficit of about \$14.1 million for the 2008-2009 school year. The District was required to look into ways to meet the budget deficit.

Under the Superintendent's direction, budgetary cuts were considered across the board including the elimination and reduction of particular kinds of services provided by the District's certificated employees. On or about March 11, 2008, the Superintendent's office presented to the Board a recommendation concerning the reduction and elimination of



particular kinds of services in the approximate amount of 96.8 FTEs (full time equivalent positions).

5. On March 5, 2008, the Board adopted Resolution #2008-60 recommending a reduction in particular kinds of services provided by District for the 2008-2009 school year, together with the adoption of tie-breaking criteria. The Board's adoption of the resolution and tie-breaking criteria was based on the welfare of the schools and their pupils.

6. Resolution #2008-60 provided as follows:

**GOVERNING BOARD OF THE  
GROSSMONT UNION HIGH SCHOOL DISTRICT**

**RESOLUTION**

(2008-60)

**RESOLUTION REGARDING COMMENCEMENT OF CERTIFICATED LAYOFF:  
DISCONTINUANCES AND REDUCTIONS OF PARTICULAR KINDS OF SERVICES  
(as listed in Exhibit A); DIRECTION TO NOTIFY AFFECTED EMPLOYEES OF  
RECOMMENDATION OF LAYOFF; AND RELATED ACTIONS**

On motion of member Schreiber, seconded by member Urdahl, the following Resolution is adopted:

WHEREAS, because of financial constraints resulting from revenue being insufficient to maintain current levels of programs and services, including particular kinds of certificated services, and it being necessary to commence implementing program changes in a timely fashion within the current structure of the law, this District's Governing Board determines that it is in the best interests of the District and the welfare of the schools and the pupils thereof, to commence certificated layoff proceedings to discontinue and reduce particular kinds of services ("PKS") as hereinafter enumerated and to reduce the corresponding number of certificated staff no later than the beginning of the 2008-2009 school year (in addition to the release of temporary certificated employees and/or the expiration of their contracts without renewals or re-issuances);

WHEREAS, this discontinuance and reduction of certificated services shall result in layoffs of certificated personnel in accordance with Education Code sections 44955 and 44949 which provide a process whereby particular decisions, actions and notifications must be undertaken beginning no later than March 15 of each school year regarding layoffs of certificated personnel in order to reduce the number of certificated staff, and this Board desires to reduce certificated staff as permitted by law;

WHEREAS, this Governing Board desires to discontinue and reduce the particular kinds of certificated services as listed in Exhibit A, attached, and to that extent of full time equivalents ("FTEs") not later than the beginning of the 2008-2009 school

year (in addition to the release of temporary certificated employees and/or the expiration of their contracts without renewals or re-issuances);

WHEREAS, in the opinion of the Governing Board, it will be necessary as a result of the discontinuances and reductions of these particular kinds of services reflected in Exhibit A to decrease the number of certificated permanent and/or probationary employees by a corresponding number of full-time equivalent positions;

WHEREAS, in determining the extent of staff FTE reductions and services to be discontinued and reduced, the Governing Board has considered all assured and/or known attrition as of this time to the extent required by law (including as to the release of temporary certificated employees and the expirations of their contracts), so that the total referenced above and in Exhibit A have already accounted for such attrition; but for that attrition, this Board would have found it necessary to discontinue or reduce additional particular kinds of certificated services and/or full time equivalents;

NOW, THEREFORE BE IT RESOLVED, DETERMINED AND ORDERED by this Governing Board, as follows:

1. All of the above recitals are true and correct;
2. The particular kinds of services as listed in Exhibit A are to be and will be discontinued and reduced and otherwise eliminated to the described extent no later than the beginning of the 2008-2009 school year;
3. It is the opinion of this Governing Board, in view of the discontinuances and reductions of these particular kinds of services, that it is necessary to decrease the number of permanent and/or probationary employees serving in positions requiring certification qualifications within this school district at the close of this school year by a corresponding number of full-time equivalent positions as set forth within Exhibit A;
4. Subject to requirements (if any) within the Educational Employment Relations Act, that for purposes of "bumping" (displacement) rights and the determination of "competency" within the meaning of Education Code section 44955(b), to the extent such might apply, "competency" shall be based upon possession and current filing (no later than March 1, 2008) of a preliminary or clear credential for the subject matter into which the employee would bump for the 2008-2009 school year;
5. For purposes of seniority tie-breaking criteria within the meaning of Education Code sections 44955, subdivision (b) (third paragraph) and section 44846 (second paragraph), the Governing Board determines that seniority ties shall be broken in accordance with the criteria listed within Exhibit B, said criteria being based solely upon the needs of the District and the students thereof;
6. The Superintendent or the Superintendent's designee(s) is(are) instructed to take the steps necessary pursuant to the Education Code including, in part, sections

44955 and 44949, to implement the above and to reduce the certificated staff as set forth hereinabove;

7. The actions of this Governing Board will not, in any way, be considered to prejudice the rights of any certificated employee to whom notice will be given of the superintendent's recommendations, should any employee request a hearing to contest this matter.

**PASSED AND ADOPTED** this 5th day of March, 2008, by the Governing Board of the Grossmont Union High School District of San Diego County, California by the following vote:

AYES: Urdahl, Hoy, Schreiber, Kelly, Shield

NOES: 0

ABSTAIN:

ABSENT:

STATE OF CALIFORNIA       )  
  )  
COUNTY OF SAN DIEGO     )

I, Priscilla Schreiber, Clerk of the Governing Board of the Grossmont Union High School District of San Diego County, California, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the said Board at a special meeting thereof held at its regular place of meeting at the time and by the vote above stated, which resolution is on file in the office of the said Board.

March 5, 2008

Date

Clerk of the Board

7. Exhibit A to the Resolution sets forth a list of the particular kinds of services being reduced and the extent of the reductions measured by FTEs as follows:
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# EXHIBIT A

## IDENTIFICATION OF PARTICULAR KINDS OF SERVICES (PKSs) AND FULL TIME EQUIVALENTS (FTEs) TO BE DISCONTINUED AND REDUCED NO LATER THAN THE BEGINNING OF THE ENSUING SCHOOL YEAR (2008-2009)

<u>Particular Kind of Service</u>	<u>Discontinuance or Reduction</u>	<u>Full Time Equivalents</u>
Math Teaching Services Foundational Credential Level Courses (3.6 FTEs) Introductory Credential Level Courses (1.6 FTEs) Single Subject Credential Level Courses (12.0 FTEs)	Reduction	17.2
English Teaching Services	Reduction	9.4
Physical Science Teaching Services	Reduction	3.6
Life Science Teaching Services	Reduction	6.0
Social Science Teaching Services	Reduction	13.0
Physical Education Teaching Services	Reduction	3.4
Drama/Theatre Teaching Services	Reduction	.4
Instrumental Music Teaching Services	Reduction	1.0
Foreign Language – Spanish Teaching Services	Reduction	2.8
Fine Arts Teaching Services	Reduction	1.0
Counselors' Services	Reduction	3.0
Administrators: Assistant Principals	Reduction	11.0
<b>Special Education Services as follows:</b>		
SAI (Learning Handicapped) Teaching Services	Reduction	10.0
(MH) Transition Program @ El Capitan	Discontinuance	1.0
(MH) Work Adjustment Program	Discontinuance	1.0
	<b>Subtotal FTEs</b>	<b>83.8</b>
<b>Categorically funded services as follows*:</b>		
Counselors	Discontinuance	3.0
English Teachers	Discontinuance	4.0
Math Teachers	Discontinuance	3.0
Biology/Chemistry Teacher	Discontinuance	1.0
Teacher Services for Child Development Course	Discontinuance	1.0
Teacher Services for Contract Course/Program	Discontinuance	1.0
	<b>TOTAL FTEs</b>	<b>96.8</b>

\* Inclusion of categorically funded services within this Resolution is not intended to grant those individuals who are impacted any rights greater than provided by law, nor to nullify any provisions within each impacted individual's employment contract, nor to supersede any other Resolution by this Board to release or otherwise terminate the services of any impacted individual.

8. The Board's tie-breaking criteria provided:

## EXHIBIT B

### CRITERIA FOR BREAKING SENIORITY TIES

Subject to requirements (if any) within the Educational Employment Relations Act, this Governing Board determines, based solely on the needs of this District and the students of this District, that seniority ties within the meaning of Education Code sections 44955, subdivision (b) (third paragraph) and section 44846, shall be resolved by applying the following criteria, to be applied in the following order, one step at a time. Such criteria shall be applied to rank the order of individuals for purposes of layoff and reemployment, subject to exceptions allowed by law. The criteria are as follows:

1. Persons with preliminary or clear credentials or certificates authorizing services in classes for limited or non-English proficient students, priority listed as follows:
  - A. Bilingual Cross Cultural Language and Academic Development (BCLAD)/Cross Cultural Language and Academic Development (CLAD)
  - B. Language Development Specialist Certificate
2. Supplemental Authorization as English as a Second Language Persons with preliminary or clear credentials in the following subjects, in priority order listed:
  - A. Math
  - B. Physical Science
  - C. Life Science
  - D. Foreign Language
  - E. Visual and Performing Arts
  - F. English
  - G. Social Science
  - H. Physical Education
3. Persons with Advancement via Individual Determination (AVID) Training and assigned to teach AVID courses as of March 1, 2008.
4. Persons who are currently assigned, as of March 1, 2008, to one of the following specialized assignments and/or training priority listed as follows:
  - A. Director of Student Activities (Associated Student Body (ASB) Advisor)
  - B. High School Head Coach
  - C. Yearbook or Journalism Sponsor
  - D. Director of Athletics
5. Persons with majors in an academic teaching subject possessing two teaching credentials.
6. A lottery among individuals who remain tied with the GEA President or her designee invited to attend with the first name drawn being most senior down to the last name being drawn being least senior.



The District's tie-breaking criteria were to be applied to certificated employees with the same date of hire. The tie-breaking criteria were prepared specifically to meet the needs of the District and the students and were applied appropriately.

9. Before preliminary layoff notices were served, the administrative staff circulated a certificated seniority list that contained the names of all credentialed employees, ordered in longevity from the most senior employee to the most junior employee; the site where the employee provided services; the subject/grade level in which services were provided; the employee's full time employment status (a "1.0 FTE" indicated full time employment); the employee's credential(s) information; the employee's seniority date (i.e., the employee's first date of paid service with District on a probationary basis); the employee's hire date; and the employee's tenured status (i.e., permanent, probationary 2 or probationary 1). Employees were invited to review the seniority list and to respond to the administrative staff with any changes or corrections.

10. On or before March 15, 2008, each certificated employee who is party to this proceeding was given a letter and notice that the Board had recommended that his or her services with the District would be terminated at the conclusion of the current school year. The letter stated the reduction in the District's workforce was due to California's serious budget shortfall. A notice advised each respondent that his or her services would be terminated at the close of the current school year, that the reasons for the termination were set forth in the Board's resolution (which was enclosed), that the employee had the right to request a hearing to determine if there was cause for termination, and specified dates on which the request for hearing had to be filed.

11. Most of the certificated employees served with the preliminary layoff notice requested a hearing. An accusation packet was thereafter served on the certificated employees who requested a hearing.

All jurisdictional requirements were met for the respondents in this proceeding.

#### *The Administrative Hearing*

12. On April 28, 2008, the record in the administrative hearing was opened. It was stipulated that the Accusations filed against Elizabeth Chmiel, Matthew Flisher, Kevin Forster, Daniel Goodrich, Jennifer Johnson, Aamna Kamil, Judie Lincer, Stephanie Macceca, Ashley Ormsby, Carlos Ortiz, Jonathan Owens, Daemein Patterson, Michelle Lein, Kasey Shemwell were withdrawn; the Accusations against these employees were dismissed. Jurisdictional documents were presented. The District gave an opening statement. An opening statement was given on behalf of all respondents represented by counsel. A written stipulation to jurisdictional facts was filed, sworn testimony and documentary evidence was received, closing arguments were given, the record was closed and the matter was submitted.



### *The Particular Kinds of Services*

13. The services identified by the Board for reduction or elimination in Exhibit A (Factual Finding 7) were particular kinds of services that could properly be reduced and discontinued. The reduction and elimination of those services was neither arbitrary nor capricious, and the reduction or elimination of those services constituted a matter well within the proper exercise of the Board's discretion. The layoff related to the welfare of the District, the schools, and the students. No services were reduced below levels required by federal and state laws.

### *The Seniority List*

14. With a few exceptions which do not impact the layoffs in this matter but which possibly could affect the order of rehiring (the order of rehiring is not at issue in this matter), the District's seniority list was accurate. The preponderance of the evidence did not establish that the certificated employees who were the subject to direct and cross-examination were improperly classified. Nevertheless, the District should be available to make corrections to the District's seniority list as may be appropriate following this hearing upon verification of the new information provided.

### *The District's Layoff Procedure*

15. The Board's resolution called for the elimination or reduction of about 96.8 FTEs in particular kinds of services. Using the Board's resolution and the District's seniority list, the District's staff identified the most junior employees providing the particular kinds of services identified in the resolution. For those employees who were displaced, the District attempted to determine if the displaced employee could "bump" a more junior employee by providing a particular kind of service that the displaced senior employee was credentialed and competent to provide.<sup>1</sup> The Board's tie-breaking criteria established a method by which employees having the same seniority date could be ranked for layoff purposes. A preponderance of the evidence established that the tie breaker was applied appropriately. Through the tedious step-by-step elimination process, the District correctly determined which certificated employees should receive preliminary layoff notices. No permanent or probationary employee with less seniority will be retained to render a service any respondent is certificated and competent to provide.

### *Respondent's Contentions*

16. Respondents contended the District retained the services of several junior employees to provide services more senior employees who were laid off were credentialed and competent to provide. The evidence did not support this contention. No junior employee was retained over a more senior employee.

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<sup>1</sup> 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 holds that position.



Respondents suggested that the District may have failed to afford permanent status to some employees who were classified as probationary employees, or may not have provided a correct seniority date for employees who had worked under emergency permits or as teacher interns, or may not have afforded employees providing services in categorically funded programs the seniority rights to which they were entitled. A preponderance of the evidence established that the District properly classified employees providing services in categorically funded programs and their actions in the layoff proceeding were appropriate. No evidence established that any mistake in classifying any certificated employee had any impact in this layoff proceeding. Any error in classification that might impact a certificated employee's rehiring rights was not at issue in this proceeding and was moot.

Respondents argued that, in a global sense, the District acted in an arbitrary and capricious fashion in pursuing and implementing the layoff. They suggested that the district impermissibly over-noticed certificated employees. The District acknowledged this. However, the District did not act inappropriately under the circumstances since the financial uncertainties are grave and the news continues to worsen from Sacramento.

Respondents suggest that the District tap into its reserve fund. Although this might be one option to pursue, the District's choice not to was well reasoned and understandable.

The District also acknowledged that it had approximately 80 teachers who were teaching six-fifths time (1.2 FTE). The District recognized that reducing these teachers to 1 FTE would allow it to layoff fewer teachers. The District has agreed in principle to this and therefore there may be fewer layoffs ultimately than this Proposed Decision mandates.

## 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 as to those respondent certificated employees identified herein.

2. A school board's decision to reduce or discontinue particular kinds of services (PKS) need not be tied to any statistical computation, such as a reduction in the number of students. The number of terminations through PKS reductions depends totally upon the decision about how many services to reduce. A board may consider the school district's economic circumstances in making the determination to eliminate particular kinds of services. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627.)

A school board may "reduce services" by eliminating certain types of service or by reducing the number of district employees providing such services. The decision to reduce or discontinue a particular kind of service is not unfair or improper simply because a school board made a decision it was empowered to make. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)



3. Education Code section 44955, subdivisions (b) and (c), sets forth a general rule requiring school districts to retain senior employees over more junior employees and to retain permanent employees over temporary employees. Any exception to this general rule must be based on statute. For employees hired on the same date, Education Code section 44955, subdivision (d) provides:

“(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.”

4. Seniority determines the order of dismissals; between employees with the same first date of paid service, the order of termination is determined on the “basis of the needs of the district and its students.” Senior employees are given “bumping” rights and will not be terminated if junior employees are being retained to render services which the more senior employee is certificated and competent to render. (*Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567.)

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 holds that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

5. As a result of the District’s lawful reduction of particular kinds of services, cause exists under Education Code section 44955 for the District to give notice to all respondents who were previously served with preliminary layoff notices that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2008-2009 school year, except for those respondents identified in the stipulation resulting in the dismissal of the Accusations.

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This conclusion is based on all Factual Findings and on all Legal Conclusions.


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## RECOMMENDATIONS

It is recommended that the Board dismiss the Accusations filed against Benjamin Instone, Stephanie Macceca, Aamna Kamil, Elizabeth Chmiel, Daemein Patterson, Michelle Lou Lein, Dawna Blomdal-Lomprey, Jeffrey Wolken, Ashley Ormsby, Melanie Sandoval-White, Douglas Babington, Barry Andrews, Randy Melcher, Shelley White, Judie Lincer, Matthew Flisher, Mirna-Araceli Hernandez-Oquendo, Jennifer Johnson, Thomas Schroeder, Daniel Goodrich, Kasey Shemwell, Jonathan Owens, Kevin Forster, Carlos Ortiz, James Sturch.

It is recommended that the Board give notice to all remaining respondents previously served with a preliminary layoff notice that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2008-2009 school year including Nicole Travis, Frank Luera, Kelly McKean, Glenn Melero, Heather Peterson, Emmanuel Pizano, Marc Henning, Pamela Ostermann, Yvonne Duncan, Jessica Fleshner, Imad Nissan, Jason Cook, Mandana Najimi, Jose Garcia, Brandy Bryant, David Crabtree, Ana Duran, Shawn Elam, Amber Garrett, Caralyn Hamilton, Sandra Jenkins, Cody Kuhlken, Douglas Martin, Christopher Muirhead, Jeffery Rollins, Dana West, Ivan Barrera, Cynthia Napoleon, Brie Pagano, John Roberts Jr., Rachel Jackson, Summer Havins, Jessica Hunt, Tiffany Jokerst, Brian Carpenter, Paola Cerezo, Paul Moss Jr., Lucas Olivares, Alisha Sweat, Bryony Kinnear, Marcy Wilson, Ainoha Hogan, Sean McMeeken, Kurt Stalmann, Ral Christman, Nicole Williams, Karl Franz, Jeffrey Hunter, Adrian Pearson, Sara Beth Dion, Lucas Phillips, Andrew Troi, Branden Namimatsu, Luis Montes, Amber Studer, Maria Simonsen, Don Ross Furrow, Jose Guzman, Sarah Provo, Jonathan Geraci, Stephanie Fernandez, Elisa Miller, Ivan Barbera, Amy Blatt, Lauren Aguas, Heather Bowler, Chi-Ping Chang, Anthony Devine, Michelle Ditomaso, Mariah Freese, Kelly Hale, Tania Jackson, Katherine Kipp, Stephanie Picon, Ramey Rahib, Marguerite Rohmer, Natalie Vasquez.

DATED: May 6, 2008



STEPHEN E. HELT

Administrative Law Judge  
Office of Administrative Hearings