

BEFORE THE GOVERNING BOARD OF THE  
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Employment Status of:

OAH No. L2004030356

Teachers of the Santa Monica-Malibu  
Unified School District

Respondents.

PROPOSED DECISION

Ralph B. Dash, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on April 19, 2004, at Santa Monica, California.

James Baca, Attorney at Law, represented Santa Monica-Malibu Unified School District (hereinafter "District").

Lawrence Trygstad, Attorney at Law, represented Respondents Laura Alexander, Julie Bushman, Maritess Dolloso, Thor Evensen and Emily Kariya, certificated employees (teachers) of the District, the only teachers receiving notices of layoff that filed a Notice of Defense. All Respondents except Mr. Evensen were present at the hearing.

Oral and documentary evidence having been received and the matter submitted, the Administrative Law Judge makes the following Finding of Facts.

1. Joseph Quarels, Deputy Superintendent-Chief of Staff of the District, acting in his official capacity, caused all pleadings, notices and other papers to be filed and served upon Respondents pursuant to the provisions of Education Code Sections 44949 and 44955. The parties, by and through their counsel, stipulated that all pre-hearing jurisdictional requirements have been met.

2. On March 11, 2004, the District's Governing Board adopted a Resolution to reduce and discontinue the services of 24.9 Full Time Equivalent (FTE) certificated positions as follows:

Woodshop  
Art

.2 FTE  
2.0 FTE

English	7.0 FTE
Industrial Technology	0.5 FTE
Music	1.2 FTE
P.E.	4.0 FTE
Spanish	2.0 FTE
French	1.0 FTE
Japanese	1.0 FTE
Math	6.0FTE

TOTAL SERVICES REDUCED = 24.9 FTE

3. 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 constituted a proper exercise of discretion.

4. The reduction or discontinuation of these particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

5. The Board properly considered all known attrition, resignations, retirements, deaths and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees as of March 15, 2003. San Jose Teachers Association v. Allen, 144 Cal.App. 3d 627 at 636 (1983).<sup>1</sup>

6. The District created two separate "seniority" lists. The first list named teachers who were temporary, interns or emergency permit holders by hire date (Exhibit 19). The second list named all probationary and permanent teachers in order of each one's first date of paid service. The teachers on the first list who were credentialed to teach the above described services have not been re-employed for the ensuing school year. They were each given all notices required by law. Counsel for Respondents stipulated that both seniority lists were properly drawn.

#### Conclusions of Law

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

2. The services set forth in Finding 2 are particular kinds of service which may be reduced or discontinued in accordance with applicable statutes and case law. A District may

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<sup>1</sup> All layoffs were for particular kinds of service and not "average daily attendance" which might require positively assured attrition to be considered through May 15.

reduce services within the meaning of Education Code 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.

3. Cause exists because of the reduction in particular kinds of services to reduce the District's teaching positions by 24.9 Full Time Equivalents 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).

4. 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.

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

#### ORDER

As a result of the reductions of services, the District may give notice to teachers Laura Alexander, Julie Bushman, Maritess Dolloso, Thor Evensen and Emily Kariya that their services will not be required for the 2004-2005 school year.

Dated: April 28, 2004

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RALPH B. DASH  
Administrative Law Judge  
Office of Administrative Hearings