

BEFORE THE  
BOARD OF TRUSTEES  
OF THE  
CALEXICO UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusations for Layoff  
Against:

HERB COFFER,  
JOSE JAIME,  
BERTHA ROMANDIA,  
DAVID COLE,  
SONDRA MENDOZA,

Respondents,

OAH Case No. L2004030636

**PROPOSED DECISION**

On April 26, 2004, Steven V. Adler, Presiding Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Calexico, California.

Clifford D. Weiler, Esq. of Atkinson, Andelson, Loya, Ruud & Romo represented the Calexico Unified School District.

Jon Vanderpool, Esq. of Tosdal, Levine, Smith, Steiner & Wax represented respondents.

The matter was submitted on April 26, 2004, at 7:00 p.m.

**FACTUAL FINDINGS**

*The Calexico Unified School District<sup>1</sup>*

1. The District is mid-size, with about 8,600 students. Calexico is a city located in the Imperial Valley, directly across the border from Mexicali, *Baja California Norte*,

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<sup>1</sup> Official notice is taken of the Proposed Decision in OAH Case No. L-2003030718, *In the Matter of the Accusation for Layoff of Certificated Employees of Calexico Unified School District*, for some of the background information in Paragraph 1 of this Proposed Decision.

Mexico. Were it not for the border, the two cities would be one. The District is isolated in that it does not have any significant urban area within 100 miles (San Diego is 120 miles away). The District employs about 1,000 persons, including about 500 certificated employees. It has 10 schools: 6 elementary schools (grades K-6), two junior high schools (grades 7-9), one high school with about 1,800 pupils and one continuation high school with around 200 pupils. Ninety-eight percent (98%) of the students are of Mexican or Hispanic heritage, and more than 80% are English language learners.

The District is academically ranked among the lowest in California. It is trying to improve and reform with the assistance of various organizations and San Diego State University. However, the Imperial Valley is and continues to be a predominantly agricultural area. Although there is some increase in income from import/export business, the general lack of opportunity in the valley makes it difficult for the District to find funds to improve its services. The median income in the District is far below the State median income; the number of students eligible for free lunches also exceeds the state average.

2. Calexico High School's academic standing is the current focus of the District's attention. Last year, the school was in the third year of "Program Improvement Status" with the State of California. This means that unless graduation rates and test scores improve, the school would be taken over by the state, or "re-constituted." There was an improvement last year, so Calexico High was "promoted" to second year level of "Program Improvement Status." If the school does not continue to improve, however, it will again be danger of being re-constituted. "Re-constituted" means that the District is taken over by the state and the local Board loses control.

There was convincing evidence to prove the dire academic straits in which the District finds itself. Among sophomores at the school, 39% score "below basic" or "far below basic" in English, and 52% score "below basic" or "far below basic" in math. Juniors fare worse: 52% have below basic scores in English, and 65% fall below basic level in math. Last year, about 110 graduating seniors did not meet the requirement that they pass an Algebra I class. They were graduated because the District received a waiver from the state.

Just under 20% of the students in the graduating class are in danger of failing to meet minimum high school graduation requirements. In addition, the University of California Chancellor's Office has notified the District that there has been a steep decline in the number of Calexico High graduates eligible for entry into the U.C. system.

The administration has met with the "core curriculum" departments (English/language arts, mathematics, social sciences, and science) and concluded that many of the District's high school students need to take extended math and English courses of one and one-half to two years duration in order to pass the courses and the state examinations. Those departments simply do not have enough staff to meet the student demand for their courses and current course enrollments are at maximum levels. Similarly, these departments lack sufficient staff to offer the longer-duration courses that would be most effective. This evidence was uncontradicted and convincing.

3. On April 1, 2004, David Groesbeck, Assistant Superintendent and Director of Personnel of the Calexico Unified School District (District or CUSD), made and filed the accusations against respondents in his official capacity.

4. All respondents are certificated employees of the District.

5. Before March 15, 2003, pursuant to Education Code sections 44949 and 44955,<sup>2</sup> the Superintendent's designee notified the Governing Board of the District of his recommendation that respondents be notified their services would not be required for the ensuing school year. The notification to the Board set forth the reasons for the recommendation.

6. On or before March 15, 2003, each respondent was given written notice by the Superintendent as follows: that it has been recommended notice be given to respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing year. Each written notice set forth the reasons for the recommendation.

7. Each respondent timely made a written request for a hearing to determine if there was cause for not reemploying him/her for the ensuing school year. Accusations were timely served on respondents. Each respondent filed a timely Notice of Defense. All pre-hearing jurisdictional requirements were met.

8. The Board of Trustees (Board) of the District took action to reduce or discontinue the following particular kinds of services for the 2004-2005 school year:

<u>Particular Kinds of Services</u>	<u>Full Time Equivalent Positions</u>
Discontinue all ROP Medical Assistant Teaching Services	0.6
Discontinue all ROP Law Enforcement Teaching Services	0.6
Discontinue all ROP Business Teaching Services	1.2
Subtotal of services discontinued:	2.4 FTE

<sup>2</sup> Unless otherwise specified, all statutory references are to the Education Code.

Reduce business education high school regular  
program teaching services (Microsoft office  
courses)

2.4

Subtotal of services reduced:

2.4 FTE

TOTAL SERVICES:

4.8 FTE

The services set forth above are particular kinds of services which may be reduced or discontinued within the meaning of Section 44955. Although complainant alleged that the decision to reduce or discontinue the services was neither arbitrary nor capricious but rather a proper exercise of the District's discretion, respondents challenged this claim. The reasonableness of the cuts proposed by the District will be discussed below.

9. Complainant asserted that no certificated employee junior to any respondent was retained to perform services which any respondent is certificated and competent to render. Respondents challenged this assertion. This issue will likewise be discussed below.

10. It is claimed that the reduction or discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees of the District as determined by the Board. The need to decrease services as resolved by the Board will be discussed below.

11. The Board considered all known attrition including resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees; the parties entered into a stipulation to establish these facts.

12. Respondent David Cole's first date of paid service was August 29, 1988. He has a clear, designated subject credential in Police Science, an emergency single subject credential in social sciences and a 30-day substitute credential. He is teaching Police Science in the Regional Occupational Program (ROP) for four periods a day and U.S. History for one period. Cole is listed on the seniority list as a temporary employee. As to his Police Science teaching position, it was not established that Cole is a senior employee entitled to "bumping" rights or that his services should be retained over more senior employees certificated and competent to provide teaching services being continued by the District. However, the propriety of the decision to discontinue this particular kind of service will be discussed below.

The District considers that Cole is not subject to this layoff proceeding because he is an ROP teacher and not protected by the provisions of Education Code section 44955. This argument will be discussed below.

13. Respondent Jose A. Jaime's first date of paid service was August 25, 1994. He has a clear, designated subject credential in vocational education and computer

occupations. He is teaching ROP Computer Occupations, ROP Desktop Publishing and Keyboarding at the Aurora Continuation High School.

Jaime is listed on the seniority list as a permanent employee. There was no evidence that this employee received notification that his present position was temporary.

It was not established that Jaime is a senior employee entitled to "bumping" rights or that his services should be retained over more senior employees certificated and competent to provide services being continued by the District. However, the propriety of the decision to discontinue this particular kind of service will be discussed below.

14. Respondent Herb Coffey's first date of paid service was August 31, 1992. He is teaching Microsoft Office and Academic Support in Technology. He has a clear, single subject credential in Industrial and Technical Education. He is listed as a permanent employee on the seniority list. There was no evidence that this employee received notification that his present position was temporary.

With the exception discussed below, it was not established that Coffey is a senior employee entitled to "bumping" rights or that his services should be retained over more senior employees certificated and competent to provide services being continued by the District. However, the propriety of the decision to discontinue this particular kind of service will be discussed below.

15. Respondent Bertha Romandia's first date of paid service was November 16, 1999. She teaches Nursing in the ROP and has a clear, designated subject credential in vocational nursing. She is designated as a permanent employee on the District's seniority list. There was no evidence that this employee received notification that her present position was temporary.

It was not established that Romandia is a senior employee entitled to "bumping" rights or that her services should be retained over more senior employees certificated and competent to provide services being continued by the District. However, the propriety of the decision to discontinue this particular kind of service will be discussed below.

The District considers that Romandia is not subject to this layoff proceeding because she is an ROP teacher and not protected by the provisions of section 44955. This argument will be discussed below.

16. Respondent Sondra Mendoza's first date of paid service was October 10, 1994. She is teaching Accounting, Business English and Academic Support and has a clear, single subject credential in business. She is designated as a permanent employee on the District's seniority list. There was no evidence that this employee received notification that her present position was temporary.

It was not established that Mendoza is a senior employee entitled to "bumping" rights or that her services should be retained over more senior employees certificated and

competent to provide services being continued by the District. However, the propriety of the decision to discontinue this particular kind of service will be discussed below.

The District considers that Mendoza is not subject to this layoff proceeding because she is an ROP teacher and not protected by the provisions of section 44955. This argument will be discussed below.

17. Evidence was received regarding the Imperial County Regional Occupational Program. All respondents and Mr. Groesbeck provided some information about the program and its Director, Mary Ann Camacho, described the ROP.

The Imperial County ROP is a joint powers authority, not associated with any District or with the County Office of Education. The ROP receives money from various sources and distributes it to the participating school districts based on average daily attendance (ADA).

ADA in ROP classes is generally down in the county; Calexico is no exception. In Calexico, ROP classes are offered both at the regular high school and at Aurora Continuation High School. ROP classes enable students to obtain certifications or accreditations. These certifications are often job requirements for the occupations or professions that graduates enter.

If ROP courses are not offered in one district and are offered in another, ROP is funded to provide transportation to wherever the course is offered. So, for example, if ROP nursing is eliminated in Calexico, the students can take the classes in Brawley where they will still be offered. ROP will transport Calexico students to Brawley to take the nursing classes.

All ROP courses are electives. Students get credit for taking the courses, but none are "A-G" courses<sup>3</sup> required for admission into the University of California/California State University systems.

When enrollments in ROP courses fall around the state, teachers are let go.

Calexico is considering opening a vocational charter school in December, 2005, where some or all of the ROP courses now being eliminated might be offered. The District Superintendent has been giving presentations on these plans at some board meetings and around the community. This school would be focused on career training and preparation, rather than on academics. However, the charter school is still in the planning stages. The proposed charter school had no part in the Board's decision to reduce particular kinds of services for the 2004-2005 school year.

18. There was conflicting evidence regarding student interest in ROP classes. Apparently, there have been surveys of student interest in various classes in years past. Such

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<sup>3</sup> The University of California (UC) supplies a list of courses required for entrance. This list apparently bears the letters "A-G" and these letters are used as shorthand to refer to courses required by UC for entrance.

surveys were not done this year for ROP classes. There was evidence regarding the level of student interest in the ROP classes selected for elimination by the Board. Generally, it appears that enrollment in those classes is somewhat lower than in past years.

There was also suggestion by some witnesses that the administration was somehow involved in reducing student interest in ROP courses and/or reducing class size. The evidence was conflicting, the persons who so testified did not provide substantial testimony about how they learned these alleged facts, and this testimony is given little weight.

19. The District is in severe academic difficulty. Because of this and because the Board concluded that additional classes needed to be offered in core curriculum subjects, most ROP classes were selected for elimination. Physical education classes were considered for elimination but rejected because studies have established that those classes strengthen student ties to school. In Calexico, where student dropout is a problem, keeping students in school is a high priority.

The District also considered eliminating fine arts classes, but decided against that option. Fine arts are among the "A-G" subjects required by the University of California system for admission.

The District concluded that there was simply no other area to cut in order to get additional funds to increase classes in core curriculum subjects.

20. Respondent Herb Coffey testified at the hearing. He had originally been hired to teach wood shop and drafting, and has been a teacher for 12 years. He was never informed that he was a temporary teacher after he worked his first two years. He recited a number of employment documents that list his status as permanent. It was established that he was not informed that his work as an ROP teacher did not qualify to move him towards permanent status.

Mr. Coffey testified that there was a great deal of student interest in, and demand for his Microsoft Office course, as well as his two courses in computer graphics and one in academic support. He feels that he is competent to teach math, although he does not have a California credential to teach that subject. He is credentialed to teach some courses being offered in the junior high schools.

It was established that Mr. Coffey was a competent and valuable teacher, well-qualified to teach the courses that were being eliminated.

21. Respondent Sondra Mendoza also testified at the hearing. She works at Calexico High School and teaches three periods of banking and finance, one period of accounting, and one period of academic support. She feels that her class generates \$36,000.00 in ADA revenue from ROP for the District, and that it does not make economic sense to eliminate her position. She is credentialed to teach some courses being offered in the junior high schools.

Ms. Mendoza feels that ROP courses were not being promoted by the District; they were left out of the course catalog for this school year. She is working on a multiple subject elementary school credential, and will receive it in July 2004.

It was established that Ms. Mendoza was a competent and valuable teacher, well-qualified to teach the courses that were being eliminated.

22. Respondent Jose Alex Jaime testified at the hearing. He will have taught for the District for ten years this June. He teaches ROP Computer Occupations, ROP Desktop Publishing and keyboarding classes. He teaches 0.8 FTE ROP classes and 0.2 FTE at Aurora Continuation School.

Mr. Jaime has proven his capabilities and his value to the District and the community in many ways. This year, he received the Golden Apple award from the state as the Teacher of the Year in District 8. He has provided computer training to staff at other schools, at the college level, and has trained the Human Resources staff of the District. He was originally hired by the District as a non-ROP teacher, then moved into ROP classes.

Many students are interested in his classes; they are full with waiting lists. Students have told him that his courses are the only thing keeping them in school. His classes provide them with the practical skills they need after they leave school.

It was established that Mr. Jaime was a competent and valuable teacher, well-qualified to teach the courses that were being eliminated. He has received a "Golden Apple" award: objective evidence that he is an outstanding teacher and a valuable District employee.

### LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955 and all notices and other requirements of those sections have been provided as required.

2. Cause exists because of the reduction or discontinuation of particular kinds of services pursuant to section 44955 to give notice to respondents as set forth in these Factual Findings. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of section 44949.

3. Section 44955 provides in relevant part:

*(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.*

*(b) . . . [W]henver a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of*



*the governing board of the district it shall have become necessary . . . to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render. . . . As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.*

*(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year. The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. . . .*

*(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. Respondents contend that the District's layoffs are arbitrary and capricious. Layoffs pursuant to sections 44949 and 44955 must be reasonable and may not be fraudulent, arbitrary and capricious. The decision to lay off certificated employees must be measured by

the standard set by reason and reasonable people, bearing in mind that such a standard may permit a difference of opinion on the same subject. *Arthur v. Oceanside-Carlsbad Junior College Dist.* (1963) 216 Cal.App.2d 656, 663 (*Arthur*). The decision must not be arbitrary, arrived at through the exercise of mere caprice, but rather should be a decision supported by a fair and substantial reason. *Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 808 (*Campbell*).

Measured by the standards set in *Arthur* and *Campbell*, the decision to lay off the five ROP teachers is not arbitrary and capricious. There was uncontradicted evidence that the District needs to strengthen its instructional program in the "A-G" subjects, and that ROP is one place to find the funds to offer longer courses needed by the District's students. This constitutes a fair and substantial reason for the decision made by the District. Although there may be other places to make cuts, the decision regarding where to cut is the District's to make. The preponderance of evidence establishes that cutting most ROP offered in the District is neither arbitrary nor capricious.

5. The District argues that the teachers identified as "Precautionary Respondents," Ms. Romandia, Mr. Cole and Ms. Mendoza, are not protected by the provisions of section 44955. It bases the contention on section 44910, which provides:

*Service by a person as an instructor in classes conducted at regional occupational centers or programs, as authorized pursuant to Section 52301, shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district.*

*This section shall not be construed to apply to any regularly credentialed teacher who has been employed to teach in the regular educational programs of the school district and subsequently assigned as an instructor in regional occupational centers or programs, nor shall it affect the status of regional occupational center teachers classified as permanent or probationary at the time this section becomes effective.*

Section 44910 became effective on April 30, 1977.<sup>4</sup> There was no evidence that any "Precautionary Respondent" was classified as permanent or probationary at that time.

Among the respondents and precautionary respondents, only one, Mr. Cole, is listed on the District's seniority list as "temporary." All others are listed as "permanent." Respondents apparently contend that this categorization estops the District from applying the provisions of Education Code section 44910. The argument is rejected. The respondents did not explain nor provide authority for the proposition that an apparent mistake on the seniority list binds the District and requires that it ignore the plain command of law. The Court of Appeal has found that a similar mistake did not bind a district in *Summerfield v. Windsor Unified School District* (2002) 95 Cal.App.4<sup>th</sup> 1026, 1035, n. 6.

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<sup>4</sup> Section 44910 was signed by the Governor as Statutes 1977, Chapter 1010, §2, and became operative on April 30, 1977.

The fact that the District mistakenly listed respondents Romandia and Espinoza as "permanent" does not entitle them to the protections of section 44955 because ROP teachers cannot become permanent.

It is also argued that the District should have notified the ROP teachers of the provisions of section 44910 and admonished them that they could not be probationary or permanent as long as they taught only ROP classes. It certainly would have been preferable for the District to categorize these employees properly on its seniority list and make it clear that they were temporary. For example, the teachers could have been initially informed in writing that ROP positions are temporary, and the teacher only had a right to return if the position and its funding were both renewed. The teachers could have been given notices that they were being fired at the end of each school year, and hired at the beginning of the next school year.

There is no evidence that the District did any of these things. However, the District's failure to communicate well with the ROP teachers does not change the clear command of section 44910. No matter what a District does, ROP teachers cannot become permanent employees unless they leave ROP and teach in some other part of the school program.

6. Respondents presented evidence that some computer and business classes were still to be taught in the District's junior high schools by teachers with less seniority. Although the evidence was somewhat confusing, the argument appears to be that teachers with less seniority than some respondents are teaching one period each of some sort of computer class as well as core curriculum subjects. The teachers identified by respondents are Lucio Padilla, Jr.,<sup>5</sup> David Gastelum,<sup>6</sup> and Fernando L. Arguelles.<sup>7</sup>

Mr. Groesbeck testified that respondent Coffey (# 176 on the seniority list) is senior to Padilla, Gastelum and Arguelles. Mr. Coffey is credentialed to teach one period of Computer 7 currently being taught by Mr. Padilla; he is not credentialed to teach the balance of classes taught by Padilla. Mr. Groesbeck pointed out that the District prefers that Padilla teach the computer course for "continuity of programming." However, the computer course is a 7<sup>th</sup> grade course and the balance of Mr. Padilla's work is with 9<sup>th</sup> graders. "Continuity of programming" was not explained, and does not make sense given Padilla's assignments.

Mr. Gastelum teaches in a resource position which focuses on integrating computers into language arts teaching. It was not established by a preponderance of the evidence that the District was seeking to lay off any more senior teacher credentialed to teach his classes.

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<sup>5</sup> Padilla, number 246 on the seniority list, is a permanent teacher with a clear multiple subject credential. He teaches one period of "Computer 7" as well as language arts, English and "HSEE" at a junior high school.

<sup>6</sup> Gastelum, number 252 on the seniority list, is a permanent teacher with a clear multiple subject credential. He teaches "computer technology/resource technology" at a junior high school.

<sup>7</sup> Arguelles, number 284 on the seniority list, is a permanent teacher with a clear multiple subject credential. He teaches "reading tech 8/computers" at a junior high school.

The contrary testimony by Mr. Coffey is rejected because there was insufficient foundation to support his assertion that his credential permits him to teach Mr. Gastelum's class.

Mr. Arguelles is teaching "reading tech 8/computers." Mr. Coffey is credentialed to teach the "computers" portion of the teaching load carried by Arguelles, and is senior to Arguelles.

A preponderance of evidence established that Mr. Coffey is credentialed to teach 0.4 FTE consisting of one period currently being taught by Mr. Padilla and one period currently being taught by Mr. Arguelles. Accordingly, sections 44955(b) and (c) require that Mr. Coffey be retained to the extent of 0.4 FTE.

7. With the exception discussed above, a preponderance of the evidence sustained the charges set forth in the Accusations against all certificated employees against whom Accusations were neither dismissed nor withdrawn.


### ORDER

1. The Accusation served on respondent Jose Jaime is sustained. The Accusation served on respondent Herb Coffey is sustained as to 0.6 FTE. Notice shall be given to each respondent before May 15, 2004 that his/her services will not be required for the 2004-05 school year pursuant to the Board's resolution because of the reduction of particular kinds of services.

2. The Accusations served on respondents Bertha Mendoza, David Cole and Sondra Mendoza are dismissed; these respondents are employed as ROP teachers and are not entitled to the protections afforded by sections 44949 and 44955.

3. The Accusation served on respondent Herb Coffey is not sustained by the evidence to the extent of 0.4 FTE, and the Accusation is dismissed as to Mr. Coffey to that extent. The evidence established that Mr. Coffey is credentialed to teach 0.4 FTE in courses currently being taught by teachers junior to him.

DATED: MAY 5, 2004



STEVEN V. ADLER  
Presiding Administrative Law Judge  
Office of Administrative Hearings