

BEFORE THE  
GOVERNING BOARD  
HOPE SCHOOL DISTRICT  
COUNTY OF SANTA BARBARA  
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Kate Barker and Other Certificated  
Employees of the Hope School District,

Respondents.

OAH Case No. L2008040131

**PROPOSED DECISION**

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 23, 2008, in Santa Barbara, California.

Mary L. Dowell, Attorney at Law, represented Gerrie Fausett (Fausett), Superintendent of the Hope School District (District).

Paul D. Powers and Tareq M. Hishmeh, Attorneys at Law, represented Kate Barker, Timothy Barker, Nathan Evans, Cynthia Everman, Cynthia Featherstone, Amanda Graybill, Jill Holmes, Claire Krock, Connie Maday, Lisa Monson, Melissa Rice, Heather Robbins, Elizabeth Russell, Elizabeth Scott, Sarah Suden, and Adrian Talley (Respondents).

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2008-2009 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2008-2009 school year.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. Superintendent Fausett filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.
3. On March 4, 2008, the Governing Board of the District (Governing Board) adopted Resolution number 07/08-06, reducing elementary teaching services by 15 full-time equivalent positions for the 2008-2009 school year.

4. Superintendent Fausett thereafter notified the Governing Board that she had recommended that notice be provided to Respondents that their services will not be required for the 2008-2009 school year due to the reduction of particular kinds of services.

5. On or about March 10, 2008, the District provided notice to Respondents that their services will not be required for the 2008-2009 school year due to the reduction of particular kinds of services.

6. Respondents thereafter requested a hearing to determine if there is cause for not reemploying them for the 2008-2009 school year. All hearing requests were timely filed.

7. On or about March 19, 2008, the District issued the Accusation, and served it on Respondents.

8. Respondents filed timely notices of defense.

9. All prehearing jurisdictional requirements have been met.

10. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.<sup>1</sup>

11. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 primarily because of the uncertainty surrounding future funding. The District estimates a revenue shortfall of approximately \$300,000 for the 2008-2009 school year. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

12. The reduction of services set forth in factual finding number 3 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

13. The District retained four employees junior to Respondents: Superintendent Fausett and three certificated employees who teach special education classes. Respondents do not possess administrative services or special education credentials. No objection was raised to the retention of any of the four individuals. In any event, retaining the four certificated employees is appropriate as the District demonstrated the specific need for their services and the individuals in question have the requisite training and experience.

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<sup>1</sup> All further references are to the Education Code.

14. On March 4, 2008, as part of resolution number 07/08-06, the Governing Board adopted "Tie-breaking criteria for re-employment." The following criteria are contained in the resolution in order of preference or weight: "CLAD or EL certification [¶] Meets Highly Qualified Teacher requirements as per No Child Left Behind [¶] Number of hours completed beyond those required for credential [¶] Possession of Clear Multiple Subject Credential [¶] Possession of additional credential(s) [¶] Experience working in different grade levels within the district [¶] Experience working in more than one school within the district [¶] Lottery." The tie-breaking criteria are reasonable as they relate to the skills and qualifications of certificated employees and to the needs of the District and its pupils.

15. Superintendent Fausett and her staff applied the criteria contained in Resolution number 07/08-06 to break any seniority ties between Respondents who first rendered paid service to the district on the same date. After breaking all necessary ties, the District ranked Respondents in their anticipated date of re-hire. Application of the tie-breaking criteria did not result in any Respondent being selected for layoff over a retained certificated employee.

16. Respondent Nathan Evans was hired on September 7, 2004, and teaches first grade. In terms of the tie-breaking criteria, he expects to complete all the requirements of a clear multiple subject credential by May 2008; holds a Crosscultural, Language and Academic Development (CLAD) or English Learner (EL) certification; has been designated as a highly qualified teacher; holds a Master's degree; has completed all Tier 1 units toward an administrative credential; has experience in different grade levels; and has experience in different schools. He argues that the District had not properly counted all his post-credential hours. However, even if the tie-breaking criteria are applied as he suggests, Respondent Nathan Evans would only move ahead of one other person hired on September 7, 2004, Respondent Jill Holmes, but will still have less seniority than the retained certificated employees not skipped.

17. No certificated employee junior to any Respondent was retained to render a service which any Respondent is certificated and competent to render.

#### LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 9.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 10.



3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 17.

4. Respondents argue that the District failed to properly apply the tie-breaking criteria and urge that the District be ordered to correctly apply it. The District counters that it reasonably exercised its discretion in creating the rehire list. Despite their differing positions, both parties urge the Administrative Law Judge to address the correctness of the derived rehire list. This invitation is declined, as it not necessary to address the matter in order to resolve the issues presented in this case.

The instant proceeding, to determine whether cause exists to reemploy certificated employees for the ensuing school year, is authorized by sections 44949 and 44955. Section 44955 provides: "As between employees who first rendered paid service 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 body shall furnish in writing . . . 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 other employees in the group. . . ." (Emphasis added.) Thus, the plain meaning of the statute directs review of the order of termination, not the order of reemployment. Preferential rehiring is the subject of other statutory provision, such as, for instance, sections 44956 and 44957. Inasmuch as the application of the tie-breaking criteria did not impact the order of termination of any Respondent, it is not necessary to modify, create, or direct the creation or modification of the derived rehire list.

5. Cause exists to terminate the services of respondents Kate Barker, Timothy Barker, Nathan Evans, Cynthia Everman, Cynthia Featherstone, Amanda Graybill, Jill Holmes, Claire Krock, Connie Maday, Lisa Monson, Melissa Rice, Heather Robbins, Elizabeth Russell, Elizabeth Scott, Sarah Suden, and Adrian Talley, by reason of factual finding numbers 1 through 17, and legal conclusion numbers 1 through 4.

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ORDER

The Accusation is sustained and the District may notify Respondents Katie Barker, Timothy Barker, Nathan Evans, Cynthia Everman, Cynthia Featherstone, Amanda Graybill, Jill Holmes, Claire Krock, Connie Maday, Lisa Monson, Melissa Rice, Heather Robbins, Elizabeth Russell, Elizabeth Scott, Sarah Suden, and Adrian Talley that their services will not be needed during the 2008-2009 school year due to the reduction of particular kinds of services.

DATED: \_\_\_\_\_

SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings