

**BEFORE THE GOVERNING BOARD OF
THE CONEJO VALLEY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

OAH No. 2010031396

Certificated Employees of the Conejo
Unified School District,

Respondents.

PROPOSED DECISION

Chris Ruiz, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), heard this matter on May 10, 2010, in Thousand Oaks, California.

Mary L. Dowell and Danielle G. Eanet, Attorneys at Law, represented the Conejo Valley Unified School District (District).

Tareq M. Hishmeh, Attorney at Law, represented all Respondents, as stated in exhibit 3, which is hereby incorporated by reference as if fully set forth herein.

The District served a Notice of Layoff on 99 teachers. Of those, 44 teachers filed a Notice of Defense and requested a hearing. The Respondent teachers are listed, in order of seniority, in exhibit 7, which is hereby incorporated by reference as if fully set forth herein.

This matter was originally scheduled for hearing on April 5, 2010. However, the hearing date was continued until May 10, 2010. On May 10, 2010, the District again moved for a continuance and requested that the parties be allowed to file closing briefs. That motion was granted and the matter was continued until the briefs were received and reviewed. The District's closing brief was received and marked as exhibit 14 and Respondents' closing brief was received and marked as exhibit A. The matter was submitted for decision on May 20, 2010. Accordingly, and pursuant to Education Code section 44949, subdivision (e), the dates mandated by the Legislature, and set forth in Education Code section 44949, subdivision (c)(3), are extended by a period of time equal to the continuance.

FACTUAL FINDINGS

1. Mario Contini, Superintendent of the District, acting in his official capacity, caused all pleadings, notices, and other papers to be filed and served upon each Respondent

pursuant to the provisions of Education Code sections 44949 and 44955. All pre-hearing jurisdictional requirements were met.

2. Respondents are employed by the District as permanent, probationary, intern, pre-intern, emergency permitted, waiver, and/or temporary certificated employees of the District.

3. On March 2, 2010, pursuant to Education Code sections 44949 and 44955, the Governing Board of the District (Board) issued Resolution number 09/10-19, which approved the recommendation by the Superintendent that notice be given to Respondents that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

4. On February 16, 2010, the Board issued Resolution number 09/10-15, which adopted tie-breaking criteria.

5. On March 8, 2010, Respondents were given written notice of the recommendation that notice be given to them, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing school year and stating the reasons for that recommendation.

6. It was established that cause exists, within the meaning of Education Code sections 44949 and 44955, for not reemploying Respondents for the ensuing school year for all of the reasons set forth below. The District has decided that particular kinds of services of the District will be reduced or eliminated no later than the beginning of the 2010-2011 school year. Specifically, the District decided to eliminate 99 Full-Time Equivalent (FTE) positions in 17 separate categories. The specific categories and number of positions for each category are identified in exhibit 2, which is hereby incorporated by reference as if fully set forth herein.

7. The Board decided that it is necessary to decrease the number of certificated employees as a result of the reduction in services. 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 rather, constituted a proper exercise of discretion. The Board is faced with a budget shortfall and declining enrollment.

8. The reduction or discontinuation of these particular kinds of services is related to the welfare of the District and its pupils. Due to the reduction or discontinuation of particular kinds of services, it is necessary to decrease the number of certificated employees of the District as determined by the Board. This reduction is necessary because of budgetary issues.

9. The Board properly considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be

delivered to its employees as of March 8, 2010. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App. 3d 627 at 636).

10. The District properly created its seniority list by determining the first date of paid service of each certificated employee and properly utilized reasonable “tie-breaker” criteria when necessary. The District only “skipped” one teacher, and Respondents did not challenge that “skip.”

11. At the hearing, the District withdrew the “Notice of Recommendation Not To Re-Employ” and dismissed the Accusation as to three Respondents. Those Respondents names have been deleted, by interlineation, on exhibit 3. The 41 remaining Respondents whose positions are at issue are listed in exhibit 3, which is hereby incorporated by reference as if fully set forth herein.

High School English

12. The Board’s resolution authorized a reduction in high school English teachers by 12 FTE positions. Richard Urias (Urias) was employed during the present school year as an administrator. The District will not retain Urias as an administrator for the 2010-2011 school year. Urias also holds a credential authorizing him to teach high school English. The District listed his name in the “bump chart” (exhibit 8) under the 12 FTE high school English teachers. Respondents contend that the District is improperly laying off 13, rather than 12, English teachers. However, Urias is being laid-off from his administrator position, not as an English teacher. Thus, the District’s conclusion is appropriate.

Lucia Lemieux

13. Lucia Lemieux (Lemieux) is presently employed as a librarian. She holds a single subject credential in English and an emergency teacher librarian services permit. Her emergency permit expires in October 2010. Lemieux contended that she should be retained as a librarian, because the District has retained a less-senior librarian. The District contended that only Lemieux’s English credential should be considered, which subjects Lemieux to lay off. The District contended that Lemieux’s librarian permit expires in October 2010, and thus Lemieux is not presently credentialed to serve as a librarian for the whole 2010-2011 school year. While Lemieux’s permit was issued in 2008, and renewed in 2009, the District may only consider a teacher’s credentials at the time it sends lay-off notices. In this case, Lemieux was, and is, not presently credentialed to serve as a librarian for the complete 2010-2011 school year. Thus, the District’s conclusion is appropriate.

Nicole Piuze

14. Nicole Piuze (Piuze) holds a multiple subject credential which authorizes her to teach from kindergarten to sixth grade. In the 2005-2006 school year, the Board authorized Piuze to teach seventh grade social science. For the next two school years, Piuze also taught seventh grade social science. In the 2009-2010 school year, Piuze was reassigned

to teach sixth grade. Piuze does not have a credential to teach social science. If she did, her position would be saved. Piuze contended that she relied on the District to apply for a social science credential for her. However, Piuze did not establish that she detrimentally relied on the District such that the District should be estopped from laying Piuze off. As a credentialed teacher, Piuze should have been aware of the credentialing process. She could not have reasonably assumed that the District had permanently credentialed her to teach beyond sixth grade. While the District allowed her to teach subjects and grade levels beyond what her credential authorized, such conduct does not equate to a credential being issued by the State of California. Thus, the District's conclusion is appropriate.

Christopher Catalano

15. The District designated Christopher Catalano (Catalano) for layoff. The District's conclusion is appropriate because Catalano can not "bump" into any other position and because no junior physical education teacher is being retained.

Other Findings

16. As to all other arguments and contentions, they were not established with sufficient evidence or legal authority.

CONCLUSIONS OF LAW

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

2. Each of the services set forth in Findings 5 and 6 is a particular kind of service which may be reduced or discontinued in accordance with applicable statutes and case law.

3. 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.

4. Cause exists to reduce the District's teaching positions as described above 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). Based on the above Findings, including the preamble to this Proposed Decision, the names of the affected teachers, those as to whom final notices of layoff may be given, are as follows:

All Respondent teachers listed in exhibit 3.

ORDER

Because of the reductions of services, the District may give notice to the teachers identified in Legal Conclusion No. 4 that their services will not be required for the 2010-2011 school year.

Dated: May ____, 2010.

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings