

**BEFORE THE
GOVERNING BOARD OF THE
FRUITVALE SCHOOL DISTRICT
COUNTY OF KERN, STATE OF CALIFORNIA**

In The Matter of the Accusation Against:

**CALLIE CLANAHAN;
JACLYN DIAZ;
MICHELLE ENGLISH,**

OAH No. 2010040177

Respondents.

PROPOSED DECISION

H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 3, 2010, at the Kern High School District, Bakersfield, California.

Peter C. Carton, Attorney at Law, represented the Kern High School District (District).

Ernest H. Tuttle III, Attorney at Law, represented the respondents.

The matter was submitted on May 3, 2010.

SUMMARY OF PROPOSED DECISION

The Governing Board of the Fruitvale School District (Board) determined to reduce or discontinue particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

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District staff carried out the Board's decision by using a selection process involving review of credentials and seniority, "bumping," and breaking ties between employees with the same first dates of paid service. The selection process was in accordance with the requirements of the Education Code.

FACTUAL FINDINGS

1. Dr. Carl F. Olsen is the Superintendent of the District.
2. On or before March 15, 2010, the District served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Code sections 44949 and 44955 that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that 4.2 full-time equivalent (FTE) positions would be reduced and/or discontinued.
3. Notice was served on all respondents by either personal service or certified mail. Certificated employees timely requested, in writing, a hearing to determine if there is cause for not reemploying them for the ensuing school year.
4. The Superintendent of the District made and filed Accusations against each of the certificated employees who requested a hearing. The Accusations, with required accompanying documents and blank Notices of Defense, were timely served on those certificated employees.
5. A timely Notice of Defense was filed on behalf of those respondents who desired a hearing.
6. Respondents in this proceeding are probationary or permanent certificated employees of the District.
7. On March 9, 2010, the Board took action to reduce or discontinue the following particular kinds of services for the 2010-2011 school year:

SERVICES

NUMBER OF FULL-TIME EQUIVALENT POSITIONS

Self-Contained Classroom Instruction, Grades K-6	4.0
Occupational Therapist	0.2
Total	4.2

8. Subsequent to adoption of the Board's Resolution, the District identified vacancies in School Year 2010-2011 due to retirements, release of temporary teachers, and resignations. The District received one resignation on the morning of the hearing. No resignation or retirement notices were received before March 15, 2010. The retiring teacher, who has a multiple subject credential will complete the current school year.

9. Board Resolution No. 0910-07 established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination shall be based on the needs of the District.

10. The District maintains a seniority list which contains employees' seniority dates (first date of paid service as a probationary employee), current assignments and locations, advanced degrees, credentials, and authorizations. Credential and authorization data are obtained from the records of the County Office of Education, at which certificated employees must register such documents.

11. The District used the seniority list to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the various services being reduced. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other less senior employees.

12. The District used information from its seniority list to apply the tie-breaker criteria of the Board Resolution. However, following the rescission of certain preliminary notices, no tie-breaker issues arose in connection with the layoff process.¹

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. All of the identified services are particular kinds of services that could be reduced or discontinued under Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Code section 44949.

¹ The tie breaker criteria could affect re-hire rights, but that is an issue beyond the scope of this Decision.

3. A District may 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.)

4. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

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

6. 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 is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

7. Respondents argued that the four self-contained classroom instruction FTE positions in the Board’s resolution should be reduced to two because of the retirement of a teacher holding a multiple subject credential. The District received the teacher’s retirement notification on May 3, 2010, the morning of the hearing, and the teacher intends to finish the current school year. The District need not consider any attrition occurring after the March 15 deadline for serving preliminary notices of layoff. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627.)

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ORDER

1. The Accusations against the respondents are sustained. Notice may be given to the respondents that their services will not be required for the 2010-2011 school year because of reduction or discontinuance of particular kinds of services.

2. Notice shall be given in inverse order of seniority.

DATED: May 5, 2010

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings