

BEFORE THE  
GOVERNING BOARD  
OF THE  
RAMONA UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Employment Status of  
the Certificated Employees of the Ramona  
Unified School District Receiving Notice of  
Recommendation that Services Would Not  
Be Required for the 2008-2009 School Year,

Respondents.

OAH No. 2008030060

**PROPOSED DECISION**

Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Ramona, California, on April 18, 2008.

Anthony P. DeMarco, Attorney at Law, represented the Ramona Unified School District.

Fern Steiner, Attorney at Law, represented respondents, certificated employees, Victoria Barlow, Robyn Bash, Christine Bates, Susan Beffa, Michele Beus, Nicole Brown, Carolyn Budd, Carol Canfield, Marie T. Ellsworth, Gina Gonzalez, Marianne Grisbeck, Christine Hill, Kerri Janak, Ashley Lang, Emily Maehler, Amy McClure, Keven McNees, Griselda Nuno, Elizabeth Ryan, Kimberly Schramm, Adriana Soltero, Tracey Stewart, Kathleen Taber, and September Tamburrino.

No appearance was made by or on behalf of the remaining certificated employees of the Ramona Unified School District who received notice of the recommendation that their services would not be required for the 2008-2009 school year.

The matter was submitted on April 18, 2008.

**FACTUAL FINDINGS**

*The Ramona Unified School District*

1. The Ramona Unified School District (the District) is located in a semi-rural area in northern San Diego County. The District provides educational services and supports

to students from Kindergarten through 12th grades. The District operates five elementary schools, a middle school, one comprehensive high school, and two alternative schools.

2. The District is governed by an elected five-member Board. The Board's Chief Executive Officer is Peter M. Schiff, Superintendent of Schools. Superintendent Schiff is assisted by an administrative staff that includes Joe Annicharico, Jr., Ph.D., the District's Assistant Superintendent of Schools, Human Resources Development.

#### *The Fiscal Crisis – Economic Layoffs*

3. Proposition 13 limited the imposition of local property taxes and reduced a major source of assured revenue for funding public education in California. Since Proposition 13, public school districts have looked primarily to the State of California and to other governmental entities for funding.

A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event usually occurring in late June. Before then, a school district's governing board must take steps to make certain that ends meet if a worst-case financial scenario develops. California's current economic crisis has made budgeting problems far more complicated than they were before.

A school board's legal obligation to balance its budget often requires that some teachers, administrators and/or other certificated employees be given preliminary layoff notices, warning them that their services will not be required for the next school year. Under Education Code section 44949, preliminary layoff notices must be given to affected certificated employees no later than March 15.

The economic layoff statutes found in the Education Code generally require the retention of senior employees over more junior employees and the retention of permanent employees over probationary employees and other employees with less seniority. A public school district may deviate from the general rule requiring termination in reverse order of seniority only if it can demonstrate that identifiable junior employees possess a credential, special training or experience necessary to teach a course of study or to provide services which more senior employees do not possess.

#### *The District's Response*

4. In early 2008, the District's administration (as well as the administrators of most other school districts) became aware of the State of California's massive economic problems. As a result of the financial crisis and the Governor's proposed budget, the District projected a budget deficit of about \$2.9 million for the 2008-2009 school year. The District was required to look into ways to meet the projected budget deficit.

Under the Superintendent's direction, budgetary cuts were considered across the board including the elimination and reduction of particular kinds of services provided by the



District's certificated employees. On March 4, 2008, Dr. Schiff presented to the Board a recommendation concerning the reduction and elimination of particular kinds of services.

5. On March 4, 2008, the Board adopted Resolution No. 2007-08-14, which directed that certain services be reduced or eliminated for the 2008-2009 school year and other matters. The Board's adoption of the resolution was based on the welfare of the schools and their pupils. The resolution provided:

RAMONA UNIFIED SCHOOL DISTRICT

RESOLUTION No. 2007-08-14

*REDUCTION OR ELIMINATION OF CERTAIN CERTIFICATED SERVICES*  
(Education Code Sections 44949 and 44955)

WHEREAS, Sections 44949 and 44955 of the Education Code require action by the Governing Board in order to reduce or eliminate services and permit the layoff of certificated employees and;

WHEREAS, the Superintendent of Ramona Unified School District has recommended to the Governing Board that particular kinds of services be reduced or eliminated no later than the beginning of the 2008-2009 school year; and

WHEREAS, the Governing Board has determined that a reduction or elimination of particular kinds of services is needed no later than the beginning of the 2008-2009 school year; and

WHEREAS, the Governing Board has considered all positively assured attrition which has occurred to date, that is, all deaths, resignations, retirements and other permanent vacancies in reducing these services and, but for the attrition already assured, would have found it necessary to reduce additional particular kinds of services.

NOW, THEREFORE, BE IT RESOLVED by the Governing Board of Ramona Unified School District:

1. That all of the foregoing recitals are true and correct.
2. That because of the financial constraints resulting from revenue being insufficient to maintain the current levels of programs, and necessary program changes resulting therefrom, the Governing Board hereby determines to reduce or eliminate those positions set forth in Exhibit A, attached hereto and incorporated by reference herein, listing by level, subject field or classification, and full-time equivalent, those positions which shall be reduced or eliminated no later than the beginning of the 2008-2009 school year.
3. That because of the elimination and reduction of particular kinds of services listed in Exhibit A it is necessary to terminate at the end of the 2007-2008 school year certificated employees equal in number to the positions affected in the reduction or elimination of the above described service.

4. That the seniority and qualifications of some of the employees in the services being reduced or eliminated are such that they have displacement rights by virtue of seniority, and that no employee will be terminated while a less senior employee is retained to render a service which the more senior employee is both certificated and competent to render.
5. That in selecting those probationary and permanent certificated employees who shall receive notice of termination pursuant to this Resolution, Education Code section 44955 requires the Governing Board to state specific criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the Governing Board in a probationary position on the same date.
6. That the criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the Governing Board in a probationary position on the same date are listed and described in Exhibit B, which is attached hereto and incorporated by reference herein.
7. That the criteria to be used in determining the order of termination of certificated employees who first rendered paid service to the Governing Board in a probationary position on the same date, listed and described in Exhibit B, are based solely on the needs of the Ramona Unified School District and the students thereof.
8. That in selecting those probationary and permanent certificated employees who shall receive notice of termination pursuant to this Resolution, Education Code § 44955 allows the Governing Board to deviate from terminating a certificated employee in order of seniority by virtue of their competence, credential(s), assignment, and the specific needs of the District and its students.
9. That the criteria that will be applied to deviate from terminating certificated employees who may otherwise be terminated by order of seniority will be based on the needs of the students of the District, and will ensure that no employee will be terminated while a less senior employee is retained to render service which the more senior employee is both certificated and competent to render.
10. That the Superintendent or his designated representative will send appropriate notices to all employees possibly affected by virtue of the reduction and elimination of particular kinds of service.
11. That the action of this Governing Board will not, in any way, be considered to prejudice the rights of certificated employees to whom notice will be given as to the Superintendent's consideration of any proposed decision by an administrative law judge in the event a hearing is requested by any employee.

6. Exhibit A set forth a list of the particular kinds of services being reduced and the extent of the reductions measured by full time equivalent positions (FTEs) as follows:

<u>Particular Kind of Service</u>	<u>Grade</u>	<u>FTE</u>
Agricultural Teaching Services	(9-12)	1.0
Core Support Teaching Services	(1- 3)	.49



Core Support Teaching Services	(4- 6)	.49
Counseling Services	(9-12)	1.0
Elementary Classroom Teaching	(K- 6)	9.0
English Teaching	(7- 8)	1.0
English Teaching	(9-12)	1.0
Foreign Language (Spanish) Teaching	(9-12)	1.0
Mathematics Teaching Services	(9-12)	1.0
Physical Education Teaching Services	(7- 8)	1.0
Physical Education Teaching Services	(9-12)	1.0
Social Science Teaching Services	(9-12)	1.0
Social Science Teaching Services	(7- 8)	1.0
Special Education Teaching (RSP)	(9-12)	1.0
Teacher on Assignment (Categorical)	(K-12)	1.0
Teacher on Assignment (Support)	(K-6)	.28

Total 24.26

7. The District established tie-breaking criteria, identified as Exhibit B, to be applied in those instances in which certificated employees with the same date of hire were scheduled to be terminated as a result of the reduction in force. The tie-breaking criteria were prepared specifically to meet the needs of the District and the students. Application of the tie-breaking criteria in this matter was a moot point because no tie that was broken using the tie-breaking criteria resulted in a layoff.

8. The District's amended seniority list contained the names of all credentialed employees from the most senior employee to the most junior employee in descending order of longevity of service, the extent of the employee's full time employment (with the maximum being expressed as 1.0 FTE), the site where the employee provided services, the employee's hire date (i.e., the employee's first date of paid service with the District on a probationary basis), whether the employee was permanent, probationary 2, or probationary 1, the employee's credential(s), the employee's field, any supplemental authorizations, whether the employee held CLAD, SDAIE, ELD, LDS, BCLAD, BCC certifications, whether the employee was bilingual, whether the employee held a master's degree, and the department to which the employee was currently assigned.

9. The Board's resolution called for the elimination or reduction of 24.26 FTEs in particular kinds of services. Using the Board's resolution and the District's seniority list, Dr. Annicharico and his staff identified the most recently hired certificated employees providing the services that were scheduled to be eliminated under the resolution. Preliminary notices of termination were sent to 52 permanent or probationary certificated employees on the basis that the budget was uncertain and the District needed to maintain maximum flexibility to meet unexpected shortfalls. In deciding who to serve with the preliminary notices, Dr. Annicharico did not consider positive attrition because particular kinds of services were being reduced, a type of reduction in force that did not require consideration of positive attrition. A notice of the District's decision to release from employment was sent to



24 temporary certificated employees. The District does not intend to reemploy these temporary employees.

10. On or before March 15, 2008, each certificated employee who is a party to this proceeding was given notice that the Board had recommended that his or her services with the District would be terminated at the conclusion of the current school year "as a result of financial constraints resulting from revenue being insufficient to maintain current levels of programs, and necessary program changes resulting therefrom" A copy of the Board's resolution was attached to the notice, as was a copy of the particular kinds of services being reduced and the tie-breaking criteria. A request for hearing and an acknowledgment of receipt accompanied the notice. 47 of the certificated employees served with the preliminary layoff notice requested a hearing. An accusation packet was served on those employees requesting a hearing, and 46 of those employees with the accusation packet filed a notice of defense. All jurisdictional requirements were met.

#### *The Administrative Hearing*

11. On April 25, 2008, the record in the administrative hearing was opened.

It was stipulated that the Accusations filed against Damon Baldwin, Victoria Barlow, William Clark, Joyce Evans, Tiffany Giles, Ashley Gotowala, Susan Henderson, Larry Hofer, Sandra Jimenez, Goldie Kakacek, Jaime King, Jeff Klauda, Jane Lynnell Knauer, Joseph Krainock, Toccara Maytrott, Cori McDonald, Jaime Parsley, Jeremy Patenaude, Kathryn Reeves, Marie Antoinette Rodriguez, Courtney Sawada, Joyce Schildhouse, Tracy Stephens, and Laura Worthen be dismissed.

The District gave an opening statement. An opening statement was given on behalf of all respondents who were represented by counsel. Several trial briefs were submitted. Jurisdictional documents were presented, a written stipulation to jurisdictional facts was received, sworn testimony and documentary evidence was received, closing arguments were given, the record was closed and the matter was submitted.

#### *The Particular Kinds of Services*

12. The services identified by the Board for reduction or elimination in Exhibit A (Factual Finding 6) were particular kinds of services that could properly be reduced and discontinued. The reduction and elimination of those services was neither arbitrary nor capricious and the reduction or elimination of those services constituted a matter well within the proper exercise of the Board's discretion. The layoff related to the welfare of the District, the schools, and the students. No services were reduced below levels required by federal and state laws.

#### *The Seniority List*

13. With few exceptions, which do not impact the layoffs in this matter, but which could affect the order of rehiring (which are not at issue in this matter), the District's



seniority list was accurate. The preponderance of the evidence did not establish that the certificated employees who were the subject of direct and cross-examination were improperly classified. Nevertheless, the District should be available to make corrections to the seniority list, as may be appropriate following this hearing upon verification of the new information provided.

#### *The District's Layoff Procedure*

14. According to Dr. Annicharico, after the Board's resolution was adopted, the District decided not to reduce 2.0 FTEs related to Physical Education and 1.0 FTE related to Categorical Teacher on Assignment. The District also decided not to reduce the 1.0 FTE regarding Special Education Teaching Services.

The District's staff reviewed the Board's resolution and determined the most junior employees providing the particular kinds of services identified in the Board's resolution. For those employees, the District attempted to determine if a displaced employee could "bump" a more junior employee providing a service that the "bumped" senior employee was credentialed and competent to provide.<sup>1</sup> The Board tie-breaking criteria established a method by which employees having the same seniority date could be ranked for layoff purposes. The tie-breaking criteria were based on the welfare and needs of the students. However, the use of the tie-breaking procedure was not necessary to resolve any dispute related to the layoffs in this matter. Through this elimination process, the District correctly determined which certificated employees should receive preliminary layoff notices. No permanent or probationary employee with less seniority is being retained to render a service any respondent is certificated and competent to provide.

#### *Respondent's Contentions*

15. Respondent contended the District skipped junior employees to provide services more senior employees were credentialed and competent to provide. The evidence did not support his contention. No junior employee was skipped over a more senior employee.

Respondent suggested that the District may have failed to afford permanent status to some employees who were classified as probationary employees, or may not have provided a correct seniority date for employees who had worked under emergency permits or as teacher interns, or may not have afforded individuals providing services in categorically funded programs the rights to which they were entitled. No evidence established that any mistake in classifying any certificated employee had any impact on this layoff proceeding. Any error in classification that might impact a certificated employee's rehiring rights is not at issue in this proceeding and was moot.

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<sup>1</sup> 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 holds that position.



16. The District is, at the time of hearing, aware that there will be some resignations/retirements and anticipates taking this into consideration before final decisions are made about staffing for 2008-2009.

## LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied as to those respondent certificated employees identified herein.

2. A school board's decision to reduce or discontinue particular kinds of services (PKS) need not be tied to any statistical computation, such as a reduction in the number of students. The number of terminations through PKS reductions depends totally upon the decision about how many services to reduce. A board may consider the school district's economic circumstances in making the determination to eliminate particular kinds of services. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627.)

A school board may "reduce services" by eliminating certain types of service or by reducing the number of district employees providing such services. The decision to reduce or discontinue a particular kind of service is not unfair or improper simply because a school board made a decision it was empowered to make. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

3. Education Code section 44955, subdivisions (b) and (c), sets forth a general rule requiring school districts to retain senior employees over more junior employees and to retain permanent employees over temporary employees. Any exception to this general rule must be based on statute. For employees hired on the same date, Education Code section 44955, subdivision (d) provides:

"(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. Seniority determines the order of dismissals; between employees with the same first date of paid service, the order of termination is determined on the "basis of the



needs of the district and its students.” Senior employees are given “bumping” rights and will not be terminated if junior employees are being retained to render services that the more senior employee is certificated and competent to render. (*Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 567.)

A senior teacher whose position is discontinued has the right to transfer to a continuing position that he or she is certificated and competent to fill. In doing so, the senior employee may displace or “bump” a junior employee who holds that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.)

5. As a result of the District’s lawful reduction of particular kinds of services, cause exists under Education Code section 44955 for the District to give notice to all respondents who were previously served with preliminary layoff notices that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2008-2009 school year, except for those respondents identified in the stipulation resulting in the dismissal of the Accusations.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

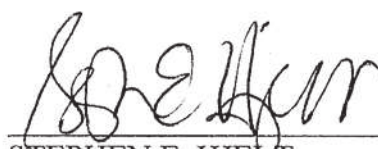
#### RECOMMENDATION

It is recommended that the Board give notice to all respondents previously served with a preliminary layoff notice that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2008-2009 school year except for those respondents identified in Factual Finding 11. These employees to receive final notices include:

Bash	Robyn	325	8/24/06
Bates	Christine	375	N/A
Beffa	Susan	367	N/A
Beus	Michele	352	8/23/07
Brown	Nicole	351	8/23/07
Budd	Carolyn	358	8/23/07
Canfield	Carol	357	8/23/07
Ellsworth	Marie Therese	353	8/23/07
Gonzalez	Gina	348	8/23/07
Hill	Christine	360	8/23/07
Janak	Kerri	363	N/A
King	Jaime	297	8/23/05
Klauda	Jeff	300	8/26/04
Knauer	Jane Lynnell	153	8/29/94
Krainock	Joseph	177	8/28/96
Lang	Ashley	370	N/A
Maehler	Emily	339	8/24/06

McNees	Kevin	361	8/23/07
Nuno	Griselda	382	N/A
Ryan	Elizabeth	372	N/A
Schramm	Kimberly	329	8/24/06
Soltero	Adriana	327	8/24/06
Stewart	Tracey	326	8/24/06
Taber	Kathleen	376	N/A
Tamburrino	September	328	8/24/06

DATED: 5-5-08



STEPHEN E. HJELT  
Administrative Law Judge  
Office of Administrative Hearings