

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

In the Matter of the Employment Status of:

Certificated Employees Listed in Exhibit A,

Respondents.

OAH No. L2004030275

PROPOSED DECISION

Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Riverside, California on April 29, 2004.

Mark W. Thompson, Esq., Atkinson, Andelson, Loya, Ruud & Romo, represented the Fontana Unified School District.

Emma Leheny, Esq., Rothner, Segall & Greenstone, represented Respondents Rachelle Benavides, Cheryl Gonzales, Debra Hornaday, Melia Kiggins, Stacey Koolis, Beverly McConnell, Robert Nava and Eduardo Valencia.

The matter was submitted on April 29, 2004.

FACTUAL FINDINGS

1. On March 5, 2004, Debra A. Bradley, Ed.D., Superintendent (Superintendent), Fontana Unified School District (District), made and filed the Accusation in her official capacity.

2. Respondents listed in Exhibit A are probationary or permanent certificated employees of the District.

3. In accordance with Education Code sections 44949 and 44955, on March 3, 2004, the Superintendent notified the Governing Board of the Fontana Unified School District (Board) and Respondents that she recommended that notice be given to Respondents that their services would not be required for the ensuing school year.

On March 3, 2004, the Board adopted Resolution No. 04-19, Reduction of Services, reducing or eliminating particular kinds of services for the ensuing school year.

On or before March 15, 2004, the District served Respondents with written notice, in accordance with Education Code section 44949.

The written notice of termination stated that each Respondent's services would not be required for the 2004-05 school year and set forth the reasons for the recommendation. The recommendation that each Respondent be terminated from employment was not related to his/her competency as a teacher.

In addition, the notice advised Respondents of the right to hearing, that the request for hearing must be delivered to the Board of Education on or before March 29, 2004, not less than seven days after the date the notice of termination was served upon them, and that the failure to request a hearing would constitute the waiver of the right to a hearing.

With the exception of Respondent Gregg Sherwood, each Respondent filed a written Request for Hearing and Notice of Defense, to determine if there was cause for not reemploying each Respondent for the ensuing year.

Respondent Gregg Sherwood did not file a Request for Hearing and/or Notice of Defense and thereby waived his right to hearing.

With the exception of Respondent Gregg Sherwood, an Accusation was timely served on each Respondent.

4. All prehearing jurisdictional requirements were satisfied.

5. The Board took action to reduce or eliminate the following particular kinds of certificated services commencing in the 2004-05 school year:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>
Elementary Counselors	9 FTE
High School Building Construction Teacher	1 FTE

The proposed reductions total 10.0 full-time equivalent (FTE) positions.

6. Respondents assert that the District is reducing the elementary counselor positions, not elementary counseling services because these services will be provided by site administrators or classroom teachers. Sherri Black, the District's Director of Certificated Human Resources, described the general duties of elementary counselors, e.g., to meet with students, identified by the principal or teachers, regarding behavioral or academic issues, and to make presentations to small groups of students in the classroom on topics such as anger management or conflict resolution. During the 2004-05 school year, it is anticipated that site

administrators and teachers will provide some but not all of the counseling services to the students. There will be a reduction of services provided by fewer employees in a different manner. Given the foregoing, Respondents' argument is found to be without merit and therefore rejected.

7. The services that the District proposed to reduce were "particular kinds of services" that could 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 constituted a proper exercise of discretion.

8. The reduction or discontinuance of particular kinds of services related to the welfare of the schools and its pupils and was necessary to decrease the number of certificated employees of the District, as determined by the Board.

9. Between the employees who first rendered paid service to the District on the same date, the Board determined their order of termination solely on the basis of needs of the District and the students. The Board adopted specific criteria and provided instructions for implementation of the criteria. The order of termination is based on the needs of the District and its students. Respondents Eduardo Valencia, Debra Hornaby and Cheryl Gonzales have the same first date of paid service, i.e., March 21, 2003, are temporary employees and are being layed off simultaneously.

Respondents argued that the District adopted tie-breaker criteria but did not establish an actual list of termination order for Respondents Eduardo Valencia, Debra Hornaby and Cheryl Gonzales. Education Code section 44955(b) is applicable to probationary and permanent employees and requires the District to establish an order of termination, not a list. In this case, no evidence was offered regarding the application of the criteria to Respondents Eduardo Valencia, Debra Hornaby and Cheryl Gonzales. Therefore it cannot be determined whether the application of the criteria would result in a termination order. More significantly, as temporary employees, the District is not required to afford the rights set forth in Education Code section 44955(b) to them. Respondents Eduardo Valencia, Debra Hornaby and Cheryl Gonzales were properly given notice that their services would not be required for the ensuing school year.

No Respondent was terminated as a result of the application of the tie-breaker criteria.

10. No certificated employee junior to any Respondent has been retained to perform any services that any Respondent was certificated and competent to render.

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.

2. A District may reduce services within the meaning of 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 vs. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.

3. Cause exists under Education Code sections 44949 and 44955 for the Fontana Unified School District to reduce or discontinue particular kinds of services. The cause for the reduction or discontinuance of particular kinds of services is related solely to the welfare of the schools and the pupils thereof.

4. 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 vs. 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. *Poppers vs. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 vs. Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.

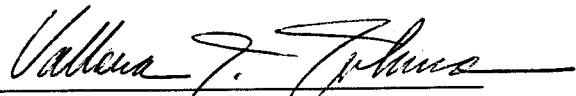
5. No employee with less seniority than any Respondent is being retained to render a service which any Respondent is certificated and competent to render.

ORDER

1. The Accusation served on Respondents Rachelle Benavides, Cheryl Gonzales, Debra Hornaday, Melia Kiggins, Stacey Koolis, Beverly McConnell, Robert Nava, Gregg Sherwood and Eduardo Valencia is sustained. Notice shall be given before May 15, 2004 that their services will not be required for the 2004-05 school year because of the reduction or discontinuance of particular kinds of services as indicated.

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

DATED: May 6, 2004


VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

FONTANA UNIFIED SCHOOL DISTRICT

EXHIBIT "A"

The following certificated personnel will receive a layoff notice:

Rachelle Benavides
Stacey Koolis
Beverly McConnell
Robert Nava
Gregg Sherwood

The following certificated personnel will receive a precautionary layoff notice:

Cheryl Gonzales
Debra Hornaday
Melia Kiggins
Eduardo Valencia