

BEFORE THE
GOVERNING BOARD OF THE
HESPERIA UNIFIED SCHOOL DISTRICT

In the Matter of the Reduction in Force
Proceeding Involving:

OAH No. 2011031299

Ryan Antle, Denise Avila, Aaron Blaker,
Willis Booth II, Melanie Butts, Lisa Chavez,
Lauren Cisneros, Amber Derrick, Thomas
Dingeldein, Lori Esparza, Allison Griffin,
Andrew Hammons, Holly Hammons, Camie
Lindley, Christina Maples, Nina McVay,
Stephanie Merenda, Jennifer Mestas, Marisa
Monroe, Yadira Moreno, Sarah Murray,
Tammy Scott, Lauren Torrez, and Jeanne
Wells,

Respondents.

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Hesperia, California, on April 13, 2011.

Mark W. Thompson, Attorney at Law, represented the Hesperia Unified School District. He was assisted by Matt Spencer, HUSD's Assistant Superintendent of Personnel Services, and Cindy Fortin, Assistant Director of Personnel Services.

Carlos Perez, Attorney at Law, represented all respondents appearing at the reduction in force hearing other than Lauren Cisneros. He was assisted by Conrad Ohlson, CTA Professional, and Tom Kirman, President of the Hesperia Teachers Association.

Respondent Lauren Cisneros represented herself and was present throughout the administrative proceeding.

The matter was submitted on April 13, 2011.

FACTUAL FINDINGS

The Hesperia Unified School District

1. The Hesperia Unified School District is located in San Bernardino County's High Desert. It encompasses about 240 square miles and serves approximately 21,000 Kindergarten through 12th grade students residing within the City of Hesperia, portions of the City of Victorville, and unincorporated areas of San Bernardino County. The District maintains 15 elementary schools, three middle schools, three comprehensive high schools, two alternative high schools, and an adult education program. HUSD employs about 2,000 persons, approximately 850 of whom provide certificated services. About 90 percent of the District's annual budget pays the salaries and benefits of HUSD employees.

2. The District is governed by an elected five member Board of Education (the Governing Board). Mark A. McKinney is HUSD's Superintendent of Schools and Chief Executive Officer.

The Fiscal Crisis – Economic Layoffs

3. Since Proposition 13 was implemented in 1978, public schools have obtained financing primarily from the State of California. A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event that is supposed to occur each year in late June. Before then, a school district's governing board must take steps to make certain that ends meet if the worst-case financial scenario develops.

California's continuing budget problems have had a crippling impact on HUSD and other public school districts. With regard to its budget for the 2011-12 school year, HUSD has projected a shortfall of approximately \$7 million. Declining student enrollment was not a factor in HUSD reaching the very difficult decision that it was necessary to reduce staffing to balance its budget.

The District's Response

4. In response to the anticipated budgetary shortfall and after careful study, Superintendent McKinney recommended that HUSD's Governing Board approve a resolution reducing or eliminating 42 full time equivalent (FTE) positions, including 27 elementary FTEs, 20 secondary FTEs, and five pupil personnel services FTEs.

5. On March 7, 2011, the Governing Board adopted Amended Resolution No. 2010/11-30, set forth hereafter as Appendix A. The amended resolution: (1) eliminated 42 full time equivalent (FTE) positions; (2) defined "competency" as described in Education

Code section 44955(b), 44956 and 44957 for the purposes of bumping and reemployment¹; (3) provided that the order of termination for certificated employees with the same seniority date would be determined “solely by the criteria set forth in the Tentative Agreement between the District and the Hesperia Teachers Association dated February 22, 2011 . . .”; and (4) authorized the District Superintendent or designee to initiate layoff procedures and to give notices required by the Education Code before March 15, 2011.

The Particular Kinds of Services

6. The services identified in Amended Resolution No. 2010/11-30, including counseling services, were particular kinds of services that could be reduced or discontinued under the Education Code. The decision to reduce or discontinue those services was neither arbitrary nor capricious, and it was a matter well within the Governing Board’s discretion. No particular kinds of services were lowered to levels below levels required by state or federal law. The recommendation that certain particular kinds of services be reduced or discontinued, and the resolution based upon that recommendation, was related solely to the economic crisis and HUSD’s need to balance its budget.

The Seniority List

7. HUSD maintains a seniority list, a constantly evolving document that is updated as new certificated employees are hired and as other employees resign or retire. The seniority list is a spreadsheet organized from the most senior employee to the most recently hired employee. The spreadsheet contains a seniority number, each employee’s name, the school site where the employee provides services, the employee’s status (permanent or probationary), the employee’s seniority date (the first date of paid service in a probationary capacity), the employee’s assignment, the employee’s credentials, the employee’s English Language authorization (e.g., BCLAD, CLAD, AB 2913, etc.), and bumping notes.

¹ The resolution stated that “‘competency’ . . . shall necessarily include: (1) possession of a valid credential and No Child Left Behind (NCLB) Highly Qualified status in the relevant subject matter area; (2) an appropriate English Learner (EL) authorization if required by the position; (3) for bumping a holder of a Single Subject credential in grades 9-12, an equivalent Single Subject credential authorizing service in all grades 9-12; (4) for specialty positions requiring specific training and/or experience including but not limited to High School Music, AVID, and ASB, the specific training and experience necessary to fulfill all of the duties of the position which shall include at least one (1) year of experience in the position within the last five (5) years.”

Prior teaching experience was not required for competency purposes in areas outside the specialty areas of High School Music, AVID, and ASB.

8. In December 2010, when it became apparent that a reduction in force might be required, HUSD circulated a preliminary seniority list to all employees with the request that each employee review the list and verify or update his or her seniority information; if an employee did not return the list with corrections, the administrative staff concluded that the information set forth in the seniority list was correct. HUSD administrative staff accepted new credentials and updated information before the layoff notices were issued, and staff continues to do so.

The Issuance of Layoff Notices

9. Using the updated seniority list, Assistant Director Cindy Fortin and her staff began the process of identifying those certificated employees who should receive preliminary layoff notices as a result of the Governing Board's amended resolution. Whenever an employee was tentatively identified to receive a preliminary layoff notice, that employee's seniority date and credentials were carefully examined to determine if that employee held the credentials and competency to "bump" into a position held by a more junior employee.

For employees who first provided service on the same day, Assistant Director Fortin applied the Governing Board's tie-breaking resolution. The tie-breaking criteria were reasonable, and their application was in the best interest of the District and the students.

Before issuing preliminary layoff notices, the District considered all known positively assured attrition to determine the number of layoff notices that actually needed be served. As a result of attrition occurring after the preliminary layoff notices were sent, a few more layoff notices were served than ultimately were necessary.

10. Taking into account all known positive attrition, the District identified those employees who were impacted by the Governing Board's amended resolution. The District timely served upon each of those employees a written notice advising that the Superintendent had recommended that the employee's services would not be required for the 2011-12 school year. The notice and accompanying documents set forth the reason for the recommendation. The employees served with the preliminary notice were advised of their right to a hearing; the employees were warned that the failure to submit a written request for a hearing by March 28, 2011, would constitute a waiver of the right to a hearing.

Twenty-four certificated employees were served with the preliminary layoff notices; seventeen of these employees requested a hearing.

The Administrative Hearing

11. On April 13, 2011, the record in the layoff proceeding was opened. Jurisdictional documents were introduced. An opening statement was presented on the District's behalf. Opening statements were not provided on behalf of any certificated

employee and were waived. Sworn testimony was taken; documentary evidence was received; a written stipulation was received; closing argument was given; the record was closed; and the matter was submitted.

Amended Resolution No. 2010/11-30 directed that four full time equivalent counseling positions be reduced. In determining who was the most junior employee, HUSD staff looked to the employees first paid date of probationary service as an HUSD employee, and not to the employee's first paid date of service in the capacity of a school counselor. The written stipulation provided that all jurisdictional requirements were met and contained agreement on many evidentiary matters.

The Reduction in Force Proceeding

12. Assistant Superintendent Spencer established that HUSD's proposed reduction in force was the result of a budgetary crisis and was initiated in good faith. This layoff proceeding is unrelated to the professional fitness of any individual who was served with a preliminary layoff notice. HUSD complied with all jurisdictional requirements in bringing this reduction in force proceeding, and the reduction in force proceeding was in the best interest of the District and the students thereof.

Assistant Director Fortin established that whenever a certificated employee was identified to receive a preliminary layoff notice as a result of the reduction or elimination of the particular kind of service, the seniority list was carefully reviewed to determine if that employee was competent to hold a position being held by a more junior employee. HUSD used the seniority list and the Governing Board's amended resolution defining "competency" for "bumping" purposes. Bumping was appropriate in all instances with the exception of Peter Delagardelle, who should not have displaced Ryan Antle.²

13. In preparing for the reduction in force hearing, the District withdrew the preliminary layoff notices served upon Lisa Chavez, Aaron Blaker, Nina McVay, and Marisa Monroe. The withdrawals were based upon the retirement of more senior employees whose positions were filled by these employees by reason of their seniority and credentials. There was no objection to the withdrawal of these preliminary layoff notices served upon these employees.

The Bumping of Peter Delagardelle

14. Mr. Delagardelle's position as Director of Athletics was eliminated under the amended resolution. Administrative staff determined that Mr. Delagardelle (seniority number 30) was senior to Ryan Antle (seniority number 887) and that he was competent to assume the physical education instructor position that Mr. Antle held.

² This matter is discussed in Factual Finding 14.

Under the Governing Board's amended resolution, "competency" for bumping purposes required that Mr. Delagardelle hold "an appropriate English Learner (EL) authorization if required by the position." Mr. Delagardelle did not hold any kind of EL authorization. It is likely that Mr. Delagardelle was not required to have any kind of EL authorization to serve as Athletic Director since he was not engaged in the delivery of instruction to students. That is not the case if he delivers instructional services to just one EL student, however.

Notice is taken that *all* Kindergarten through 12th grade teachers who have one or more EL students in one of their classes *must* hold EL certification, including PE teachers.

In reviewing the seniority list, it is evident that every other HUSD PE teacher holds an EL authorization. There is a reason for this – they deliver instruction to some EL students. It is highly unlikely that if he were assigned to serve as a PE teacher, Mr. Delagardelle would not have to instruct at least one EL student. Mr. Delagardelle was required to hold an EL authorization to be deemed "competent" for bumping purposes.

The decision to bump Mr. Delagardelle into Mr. Antle's position was mistaken and likely the result of an oversight. As a consequence of this erroneous determination, Mr. Delagardelle was not served with a preliminary layoff notice and, thus, he is not subject to this layoff proceeding. The remedy for the erroneous determination is to rescind the improper bump and to rescind the preliminary layoff notice that was served on the most junior employee who suffered prejudice as the result of the improper bumping decision, in this case Ryan Antle.³

Treatment of Counselors

15. HUSD employs many school counselors, each of whom must hold a pupil personnel services (PPS) credential. Some school counselors were employed by HUSD as classroom teachers before they became school counselors. The seniority date for school counselors is calculated from the counselor's first paid date of probationary service, whether that employment was in the capacity of a classroom teacher or as a school counselor. Some counselors hold a teaching credential in addition to holding a PPS credential.

³ Mr. Antle did not file a request for a hearing and there is no jurisdiction over him in this proceeding; however, that has nothing to do with the administrative law judge's legal obligation to prepare a proposed decision, containing findings of fact and a determination as to whether the charges were sustained by the evidence. The evidence did not support Mr. Antle being served with a preliminary layoff notice because no certificated employee was senior and competent to replace him under the statutes and the amended resolution.

Amended Resolution No. 2010/11-30 required that four FTE counseling positions be discontinued. It is well settled that “counseling” is a particular kind of service that the governing board of a school district may reduce or discontinue. District staff identified Patricia Chandler (seniority number 737), Lauren Cisneros (seniority number 738), Lori Esparza (seniority number 742), and Yadira Moreno (seniority number 744) as the most junior counselors.

Ms. Chandler and Ms. Cisneros held the same seniority date, February 20, 2007. Ms. Chandler held a single subject teaching credential which authorized her to teach physical education and adaptive PE. Ms. Cisneros did not hold any credential besides the PPS counseling credential.

By reason of Ms. Chandler’s seniority and possession of a single subject teaching credential in physical education, Ms. Chandler bumped into a physical education teaching position that was held by Willis Booth II (seniority number 873), a probationary teacher.

16. Ms. Cisneros expressed concern in this proceeding that HUSD had improperly determined the “seniority” of counselors employed by the District. She observed that school counselors are not members of the Hesperia Teachers Association, hold positions with duties that are quite different from their teaching counterparts, and have a different pay scale.

Ms. Cisneros observed that the District provides counselors with a seniority date that is based on the employee’s first paid date of probationary service in any capacity, rather than providing counselors with seniority date that is based on the employee’s first paid date of service with the District in the capacity of a school counselor. Under the present system, the services of an HUSD school counselor with less counseling service than another school counselor, but who has more seniority as a result of teaching experience with the District, will be retained over a school counselor with more counseling service.

Ms. Cisneros believed that the District improperly set seniority dates for counselors because those seniority dates were based upon a first paid date of service with the District in any credentialed capacity, and she suggested that the Governing Board could remedy this improper and inequitable situation by using Education Code section 44955, subdivision (d)(1) to skip counselors with more seniority as counselors over counselors who had more seniority by reason of teaching experience.

Ms. Cisneros offered a letter from Kim Falahee, a counselor, and a 2003 memo from (then) Deputy Superintendent Bill Freeman to support the merits of her position and to establish how counselors were previously treated. She implied that the District changed its policy in determining the seniority date of counselors and in the treatment and retention of counselors. Ms. Cisneros did not establish that any specific promises were made to her concerning her seniority date or her retention as a counselor. No evidence supported the application of an estoppel doctrine.

17. Counseling is a particular kind of service under the Education Code. The District established the seniority of HUSD certificated employees – teachers and counselors alike – in accordance with the provisions of Education Code section 44845⁴, as was required.

The term “skipping” involves a school district’s decision to retain the services of a junior employee to provide specific services when that a junior employee has special qualifications, training and/or experience that is required that more a senior employee does not possess. An employee has no right to skip; only a school district has the authority to skip a junior employee over a senior employee, and only then upon a showing of good cause.

18. HUSD’s determination of the seniority dates of school counselors was in accordance with the Education Code. HUSD was under no duty to skip school counselors with more counseling experience over counselors with less counseling experience but more seniority with the District. School counselors with appropriate teaching credentials and more seniority with the District were properly bumped into positions that were being held by more junior teachers.

LEGAL CONCLUSIONS

Statutory Authority for Reduction in Force Proceedings

1. Education Code section 44949 provides in part:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

. . .

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the

⁴ Education Code section 44845 provides: “Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position.”

ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing . . .

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural

errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds . . .

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee. . . .

(e) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

2. Education Code section 44955 provides in part:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified . . . and no probationary employee shall be deprived of his or her position for cause other than as specified . . .

(b) Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no

permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render . . .

As between employees who first rendered paid service to the district 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 board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, 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 the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the

governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(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.

Jurisdiction

3. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements set forth in those statutes were satisfied as to all respondent certificated employees.

The Reduction of Particular Kinds of Services

4. A school board may determine whether a particular kind of service is to be reduced or discontinued, and it cannot be concluded that the board acted unfairly or improperly simply because it made a decision that it was empowered to make by statute. (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 174.) A school board's decision to reduce or discontinue a particular kind of service is not tied in with any statistical computation. It is within the discretion of a school board to determine the amount by which it will reduce or discontinue a particular kind of service as long as a district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.)

Competence

5. The Education Code leaves to a school board's discretion the determination of whether in addition to possessing seniority an employee is also "certificated and competent"

to be employed in a vacant position. The term “competent” relates to an individual’s specific skills or qualifications including academic background, training, credentials, and experience, but it does not include evidence related to on-the-job performance. (*Forker v. Board of Trustees* (1984) 160 Cal.App.3d 13, 18-19.) In addition to seniority, the only other limitation in placing a teacher in a vacant position is that the teacher be “certificated and competent” to render the service required by the vacant position. Among employees who meet this threshold limitation, there is no room for comparative evaluation. (*Martin v. Kentfield School Dist.* (1983) 35 Cal.3d 294, 299.) An employee who holds a special credential or needed skill, if such credentials or competence are not shared by a more senior employee, may be retained even though it results in termination of a senior employee. (*Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648, 655.)

Seniority, Bumping, and Skipping

The Statutory Scheme

6. Education Code section 44955 - the economic layoff statute - provides in subdivision (b), in part, as follows:

Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while . . . any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

Subdivision (b) provides “bumping” rights for senior employees, and “skipping” authority that enables a school district to retain junior employees who are certificated and competent to render services which more senior employees are not. Subdivision (d)(1) of section 44955 provides an exception to subdivision (b) where a district demonstrates specific need for personnel to teach a specific course of study and that a junior certificated employee has special training and experience necessary to teach that course that the senior certificated employee does not possess. (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 134-135.)

Bumping

7. The district has an obligation under section 44955, subdivision (b), to determine whether any permanent employee whose employment is to be terminated in an economic layoff possesses the seniority and qualifications which would entitle him/her to be assigned to another position. (*Bledsoe v. Biggs Unified School Dist.*, *supra.* at pp.136-137.)

Skipping

8. Subdivision (d)(1) of section 44955 expressly allows a district to demonstrate its specific “needs” and there is nothing in the statute that requires that such needs be evidenced by formal, written policies, course or job descriptions, or program requirements. (*Bledsoe v. Biggs Unified School Dist.*, *supra.*, at p. 138.)

Cause Exists to Give Notice to Certain Employees

9. As a result of the Governing Board’s lawful reduction of particular kinds of service, cause exists under the Education Code for the District to give final notice to the respondents who are identified hereafter that their employment will be terminated at the close of the current school year and that their services will not be needed by the District for the 2011-2012 school year.

Determination

10. All charges set forth in the Accusation were sustained by the preponderance of the evidence and were related to the welfare of the Hesperia Unified School District and its pupils. Other than the issuance of the preliminary layoff notice to Ryan Antle, the District’s administrative staff made necessary assignments and reassignments in such a manner that the most senior employees were retained to render services which their seniority and competency entitled them to render. No employee with less seniority than any respondent identified hereafter will be retained to render a service which any respondent is certificated, competent and qualified to render.

RECOMMENDATION

It is recommended that the Governing Board withdraw the layoff notices served upon respondents Lisa Chavez, Aaron Blaker, Nina McVay, Marisa Monroe, and Ryan Antle and that it dismiss the accusations filed against these respondents.

It is recommended that the Governing Board issue final notices to the following certificated employees: Denise Avila, Willis Booth II, Melanie Butts, Lauren Cisneros, Amber Derrick, Thomas Dingeldein, Lori Esparza, Allison Griffin, Andrew Hammons, Holly Hammons, Camie Lindley, Christina Maples, Nina McVay, Stephanie Merenda, Jennifer Mestas, Yadira Moreno, Sarah Murray, Tammy Scott, Lauren Torrez, and Jeanne Wells.

Dated:

JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

Appendix A

HESPERIA UNIFIED SCHOOL DISTRICT
AMENDED RESOLUTION No. 2010/11-30
REDUCTION OR DISCONTINUANCE OF PARTICULAR KINDS OF SERVICES

WHEREAS, the State budget crisis has forced the Board of Education of the Hesperia Unified School District to implement cost saving measures; and

WHEREAS, the Board has determined that it is in the best interests of the District and the welfare of the schools and the pupils thereof that the particular kinds of services set forth herein must be reduced or discontinued due to financial conditions; and

WHEREAS, it is the opinion of the Board that because of the aforementioned reason, the number of certificated employees of the District must be reduced; and

WHEREAS, this Board does not desire to reduce the services of regular certificated employees based upon reduction of average daily attendance during the past two years.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Hesperia Unified School District as follows:

- A. That the particular kinds of services set forth below be reduced or discontinued commencing in the 2011-2012 school year.

Elementary Classroom Teachers	17	F.T.E.
Elementary Intervention Teachers (Title I Funded)	9	F.T.E.
Data Analysis Teacher on Assignment (Title I)	1	F.T.E.
Middle School Math/Science Core Teacher	1	F.T.E.
Middle School English Teacher (includes	1	F.T.E.
Middle School Math Teacher	1	F.T.E.
Middle School Social Science Teacher	1	F.T.E.
Middle School Choir/Music Appreciation Teacher	1	F.T.E.
Middle School P.E. Teacher	1	F.T.E.

Middle School Home Economics Teacher	1	F.T.E.
High School Work Experience Teacher	1	F.T.E.
High School Night Program Teachers	2	F.T.E.
High School Athletic Director	1	F.T.E.
Counselors	4	F.T.E.
TOTAL CERTIFICATED POSITIONS	42	F.T.E.
SUB-TOTALS: Elementary	27	F.T.E.
Secondary	10	F.T.E.
Pupil Personnel Services	5	F.T.E.
TOTAL CERTIFICATED POSITIONS	42	F.T.E.

- B. That due to the reduction or discontinuance of particular kinds of services, the corresponding number of certificated employees of the District shall be terminated, pursuant to Education Code sections 44949 and 44955.
- C. That the reduction or discontinuance of particular kinds of services must be achieved by the reduction or discontinuance of regular certificated positions and not by the termination of temporary and substitute employees.
- D. That "competency" as described in Education Code section 44955(b), 44956 and 44957 for the purposes of bumping and reemployment shall necessarily include: (1) possession of a valid credential and No Child Left Beyond (NCLB) Highly Qualified status in the relevant subject matter area; (2) an appropriate English Learner (EL) authorization if required by the position; (3) for bumping a holder of a Single Subject credential in grades 9-12, an equivalent Single Subject credential authorizing service in all grades 9-12; (4) for specialty positions requiring specific training and/or experience including but not limited to High School Music, AVID, and ASB, the specific training and experience necessary to fulfill all of the duties of the position which shall include at least one (1) year of experience in the position within the last five (5) years.
- E. That, as between certificated employees with the same seniority date, the order of termination shall be determined solely by the criteria set forth in the *Tentative* Agreement between the District and the Hesperia Teachers Association dated February 22, 2011, which is hereby adopted by the Board.
- F. That the District Superintendent or designee is directed to initiate layoff procedures and give appropriate notice, pursuant to Education Code sections 44955 and 44949, prior to March 15, 2011.

PASSED AND ADOPTED at the regular meeting of the Board of Education held on March 7, 2011, in the County of San Bernardino, California.