

BEFORE THE BOARD OF EDUCATION  
MARTINEZ UNIFIED SCHOOL DISTRICT

In the Matter of the Layoff of:

Certificated Employees,

Respondents.

OAH No. N2004030296

**PROPOSED DECISION**

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on April 20, 2004, in Martinez, California.

Elizabeth B. Mori, Assistant General Counsel, School and College Legal Services, represented the Martinez Unified School District.

Dale L. Brodsky of Beeson, Tayer & Bodine represented all the respondents, of whom John Buschiazzo, Joan Dakin, Kristen Holmberg, Amilia Maggi and Jan Robertson were present at the hearing.

The matter was submitted on April 20, 2004.

**FACTUAL FINDINGS**

1. Dan White made and filed the accusation in his official capacity as Superintendent of the Martinez Unified School District (District).
2. Respondents are listed on Appendix A, attached hereto and by this reference incorporated herein. They are certificated employees of the District.
3. On March 8, 2004, pursuant to the recommendation of Superintendent White, the District's Board of Education (Board) adopted Resolution No. 2004-11 reducing or discontinuing particular kinds of services and directing the Superintendent to send appropriate notices to certificated employees that their services will not be required for the 2004-05 school year.
4. On or before March 15, 2004, District Director of Personnel Services Robert Thompson gave written notice to 27 certificated employees, including the 21 respondents, of

the recommendation that their services will not be required for the 2004-05 school year. Each notice set forth the reasons for the recommendation.

5. Respondents filed timely requests for hearing to determine if there is cause for terminating their services for the 2004-05 school year. An accusation was served on respondents, all of whom are deemed to have filed timely notices of defense. All prehearing jurisdictional requirements have been met.

6. The Board took action to reduce or discontinue the following particular kinds of services for the 2004-05 school year:

<u>SERVICES</u>	<u>FTE<sup>1</sup></u>
Secondary Counselor	1.0
Secondary Math	2.0
Secondary English	2.0
Secondary Social Science/History	2.0
Secondary Physical Science	2.0
Secondary General Science	2.0
Secondary Physical Education	1.0
Secondary Art	.4
French	.2
Spanish	.2
Secondary Industrial Arts	.4
AVID	.4
Elementary PE Specialists	3.8
Elementary Science Specialists	3.8
Elementary Music Specialists	3.8
K-5 Multiple Subject	3.0
PAR Consulting Teacher	.2
TOTAL	28.2

7. By the time of the hearing, the District had rescinded the layoff notices sent to Sonia Ryan and Sandra Swidler.

8. The District has taken into account all positively assured attrition.

9. For the 2003-04 school year there are 16 certificated employees on full or partial leaves of absence totaling 7.7 FTE. In determining how many layoff notices to issue, the District assumed all these employees would return from leave next year, since they have the right to do so. If some employees extend their leave to the 2004-05 school year the District will rehire to fill the vacancies.

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<sup>1</sup> Full-time equivalent positions.

10. In a March 8, 2004 letter to the "School Community," Superintendent White discussed the financial problems facing school districts statewide and the budget shortfall in the District. He stated, in pertinent part:

In the Martinez Unified School District, we have already made some tough budget cuts. During the past couple of years, we have made as many cuts away from the classroom as possible. Last spring, for example, we cut \$1.7 million from the district's operating budget. Even with the passage of Proposition 57, we are presently faced with needing to cut another \$600,000 for 2004-2005. At this time, finding cuts away from the classroom has become increasingly more difficult. We have no choice but to consider cuts that are closer to the classroom.

It is important for us to balance our budget in Martinez. Our expenses need to not exceed our income, and at the present time, expenses do exceed income. During the current year, even with the cuts we have made, we are spending in excess of \$100,000 more than we receive, and next year, this gap grows to over \$600,000. ...

Robert Thompson explained that \$600,000 was a "ballpark" estimate at that time, but the District has since learned that the cost of employee benefits may go up 20% or 30% next year instead of the 10% budgeted. The District now pays approximately \$2 million per year for benefits, so a 10% increase amounts to about \$200,000. For this reason Thompson believes the budget shortfall for the 2004-05 school year could be as high as \$1 million. Although the District is considering cuts to classified personnel and services, Thompson maintains that previous reductions in these areas have left little room for further cuts. Closing the budget gap will be largely accomplished through the layoff of certificated employees.

11. Respondents assert that it is not necessary to cut 28.2 FTE in services to address the budget shortfall for next year. By respondents' calculation (using the District's numbers), the layoffs will save the District between \$900,000 and \$1 million, almost the entire amount of the worst-case scenario \$1 million shortfall. Respondents contend that by imposing an unnecessarily large burden of cuts on certificated employees the District has acted arbitrarily and capriciously and its reduction or discontinuation of services should be disallowed.

Respondents' contention is without merit. In determining how to allocate its resources, a school district is given broad discretion to reduce or discontinue particular kinds of services. Reasons for such service cuts may be other than financial, as long they are "related to the welfare of the schools and the pupils thereof." (Ed. Code, § 44949.<sup>2</sup>)

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<sup>2</sup> All statutory references are to the Education Code.

Although reasonable minds may differ about how the District should allocate its resources and address its fiscal problems, the District's action to reduce or discontinue the services set forth in Finding 6 is related to the overall welfare of the schools and its pupils. The District has not acted arbitrarily or capriciously.

12. The District plans to eliminate for the 2004-05 school year the physical education, science and music specialists who currently teach those subjects to elementary school students. These specialty classes afford the students' classroom teachers a preparation period. The collective bargaining agreement now in effect provides for this "prep" period. The District has not formulated a plan for how physical education, science and music will be taught next year, but it recognizes that any plan that requires classroom teachers to teach these subjects and give up their prep period will entail negotiation with their union.

Respondents argue that the elimination of elementary specialists should be disallowed as contrary to public policy because the District will have to violate the collective bargaining agreement to effectuate the cuts. This argument is rejected. It is beyond the scope of this proceeding to address possible violations of the collective bargaining agreement.

13. Respondent John Buschiazzo is one of the elementary music specialists whose positions will be eliminated next year. He has taught music in the District since 1988, and he had nine years of experience teaching music before he came to the District. Buschiazzo testified that music is a core subject under the State Framework (and the District Framework adapted from the State Framework) and the No Child Left Behind program. The State Framework and the District Framework apparently state that music should be taught by a credentialed music teacher, only one of whom will be left in the District next year. One music teacher can not effectively teach music to all students in the District. In Buschiazzo's opinion, music instruction meets the creative and expressive needs of children and is an essential part of a complete education. The District has not decided how music instruction will be provided next year, but the frequency of this service will probably be reduced.

Respondents challenge the District's elimination of elementary music specialists, claiming that the District will be unable to meet the needs of the students in this important subject area. This challenge is rejected. While the quality of music instruction will undoubtedly suffer without specialists like Buschiazzo, the law does not require the District to employ credentialed music teachers to provide such instruction. It is within the District's discretion to discontinue the services of elementary music specialists and provide music instruction in a different manner.

14. One of the services being discontinued is the .2 FTE position of the PAR (Peer Assistance and Review) Consulting Teacher. The California Peer Assistance and Review Program for Teachers, established by statute in 1999 (§ 44500, et seq.), provides state funds to school districts that participate in the program. The PAR program provides mentoring and remediation to any teacher who has received an unsatisfactory performance evaluation and to any teacher who requests assistance. Respondent Jan Robertson currently holds the position

of PAR Consulting Teacher, reporting to Robert Thompson, in addition to her duties as an elementary teacher in a .4 FTE position. During this school year there have been no teachers who required or requested PAR services, but as the PAR Consulting Teacher Robertson also coordinates activities for the BTSA (Beginning Teacher Support and Assessment) program and serves as District Liaison with the County Office of Education for BTSA. She has trained seven teachers to be mentors and she herself mentors two beginning teachers. Other teachers need release time to act as mentors, but because Robertson teaches part-time she is able to arrange her schedule so her mentoring duties do not take her away from her classroom. (She ends up working more than the .6 FTE for which she is paid.) Robertson believes that the BTSA funding received through the County Office of Education, along with a \$7,500 grant she obtained from the Johnson Fund this year, covered the District's costs for her .2 FTE PAR Consulting Teacher position. The BTSA funding is assured for next year, but the application to renew the Johnson Fund grant is still pending along with a number of other grant applications Robertson has submitted. The Johnson Fund grant requires that the District have a consulting teacher. It was not established that BTSA funding requires that there be a consulting teacher. Robertson testified that if the PAR Consulting Teacher position is eliminated the PAR program could not be conducted as it now is done.

Robert Thompson testified that if the PAR program mandates are not eliminated next year, as he has heard they may be, he will perform the required services. It was not clear whether he meant that he would act as a consulting teacher and prepare peer review reports for teachers receiving PAR services. (Section 44501 sets forth qualifications for a consulting teacher that Thompson might not meet.) In any event, the District could have a consulting teacher available to provide PAR services without maintaining a separate position for this teacher. Thompson considers it a luxury to have a PAR consulting teacher released for those duties on an ongoing basis.

Respondents challenge the elimination of the .2 FTE PAR Consulting Teacher position on the basis that this position reflects the District's commitment to statutory requirements for the PAR program. And for very little cost to the District the PAR Consulting Teacher provides important services to beginning teachers and other teachers in need of assistance. While it seems clear that the District is getting a real bargain having Jan Robertson in this position, elimination of the position will not prevent the District from meeting PAR program mandates. It is within the District's discretion to eliminate the PAR Consulting Teacher position.

15. All contentions made by respondents not specifically addressed above are found to be without merit and are rejected.

16. No certificated employee junior in seniority to any respondent is being retained by the District to perform services that any respondent is certificated and competent to render.


## LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.
2. Cause exists because of the reduction or discontinuation of particular kinds of services pursuant to section 44955 to give notice to respondents that their services will not be required for the 2004-05 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of section 44949.

## ORDER

Notice may be given to respondents that their services will not be required for the 2004-05 school year because of the reduction or discontinuation of particular kinds of services.

DATED: April 22, 2004

  
NANCY L. RASMUSSEN  
Administrative Law Judge  
Office of Administrative Hearings

## RESPONDENTS

Allen-Kirkhouse, Dee  
Buschiazzo, John  
Dakin, Joan  
DeBritz, Natalie  
Edgecomb, Laurel  
Frazer, Kathleen  
Galletti, Pam  
Gliatto, Rebecca  
Graziano, Gina  
Holmberg, Kristen  
Hunter, Tracy  
Hussey, Ryan  
Maggi, Amilia  
Potter, Joni  
Remy, Brett  
Robertson, Jan  
Rones, Ronnie  
Ryan, Sonia  
Stafford, Sara  
Swidler, Sandra  
Yunis, Amy

Appendix A