



BOARD OF EDUCATION

Special Board Meeting

May 12, 2009

5:30 p.m. – Public & Closed Sessions

Public Comment to Follow Closed Session

Prior to Action Session

***Location: Colton JUSD Student Services Center
Board Room
851 South Mt. Vernon Avenue
Colton, California***

AGENDA

I. CALL TO ORDER

Roll Call

- Mrs. Marge Mendoza-Ware (President) _____
- Mr. Mel Albiso (Vice President) _____
- Mr. David R. Zamora (Clerk) _____
- Mr. Robert D. Armenta, Jr. _____
- Mrs. Patt Haro _____
- Mr. Frank A. Ibarra _____
- Mr. Kent Taylor _____

- Mr. James A. Downs _____
- Mr. Jerry Almendarez _____
- Mrs. Yolanda Cabrera _____
- Mr. Mike Snellings _____
- Mr. Jaime R. Ayala _____
- Mrs. Bertha Arreguín _____
- Mrs. Mollie Gainey-Stanley _____
- Mrs. Alice Grundman _____
- Mr. Todd Beal _____
- Mrs. Ingrid Munsterman _____
- Ms. Sosan Schaller _____
- Mrs. Chris Estrada _____

II. PUBLIC SESSION 5:30 p.m. Renewal of the Pledge of Allegiance

An interpreter is available for Spanish-speaking persons wanting assistance.

Announcement Regarding Public Comment for Items on the Agenda and Items Not on the Agenda (Gov. Code 54954.3[a])

The Board President clarifies the process regarding public comment and requests that the appropriate "Public Comment Card" be filled out *completely*. At the appropriate time during the Hearing Session, each speaker will be invited to the podium and should begin by stating his or her name and residing city. *No more than three minutes will be allotted to any speaker and no more than fifteen minutes per subject unless authorized by the Board President* (BP 1245).

Blue card—Specific Action Item

White card—Items/Topics Not on the Agenda: Please list topic / subject

III. CLOSED SESSION Board Room, Student Services Center, 851 So. Mt. Vernon Ave., Colton, California (Government Code 54950 et seq.)

1. Personnel

♦ Public Employee: Discipline / Dismissal / Release / Reassignment (Gov. Code 54957)

2. Conference with Labor Negotiator

Agency: Jerry Almendarez Assistant Superintendent, Human Resources
Ingrid Munsterman, Director, Human Resources
Employee Organizations: Association of Colton Educators (ACE)
California School Employees' Assoc. (CSEA)
Management Association of Colton (MAC)

IV. HEARING SESSION

1. Public Comment: Specific Action Item (*blue card; list agenda item subject*)
2. Public Comment: Item Not on the Agenda (*white card; list topic*)

V. ACTION SESSION

1. Adoption of Resolution 09-23, Terminating Services of Certificated Employees as a Result of Reduction or Discontinuance of Particular Kinds of Services (Acting on Proposed Decision of the Administrative Law Judge) for the 2009-10 School Year

VI. ADJOURNMENT

BOARD AGENDA

SPECIAL MEETING
May 12, 2009

ACTION ITEM

- TO:** Board of Education
- PRESENTED BY:** Jerry Almendarez, Assistant Superintendent, Human Resources Division
- SUBJECT:** Adoption of Resolution 09-23 Terminating Services of Certificated Employees as a Result of Reduction or Discontinuation of Particular Kinds of Services (Acting on Proposed Decision of the Administrative Law Judge) for 2009-10
- GOAL:** Personnel Development
- STRATEGIC PLAN:** Strategy #1: We will establish an effective internal and external communications system to keep all partners informed about our mission, objectives, strategies, policies, successes and strengths.
- BACKGROUND:** Pursuant to Resolution 09-12 for Reduction of Particular Kinds of Certificated Services which was adopted by the Board on February 19, 2009, the attached resolution approves the termination of services of certificated employees as a result of reduction or discontinuation of particular kinds of services (acting on proposed decision of the administrative law judge) for 2009-2010.
- BUDGET IMPLICATIONS:** Decrease in general fund expenditures is estimated at \$3.2 million.
- RECOMMENDATION:** That the Board adopt Resolution 09-23 for Terminating Services of Certificated Employees as a Result of Reduction or Discontinuation of Particular Kinds of Services (Acting on Proposed Decision of the Administrative Law Judge) for 2009-2010. Further, the Administration will provide the appropriate notice to the affected employees on or before May 14, 2009.
- ACTION:** On motion of Board Member _____ and _____, the Board approved the above recommendation.

**BEFORE THE GOVERNING BOARD OF THE
COLTON JOINT UNIFIED SCHOOL DISTRICT
COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA**

RESOLUTION NO. 09-23

**RESOLUTION TERMINATING SERVICES OF CERTIFICATED
EMPLOYEES AS A RESULT OF REDUCTION OR
DISCONTINUATION OF PARTICULAR KINDS OF SERVICES**

(ACTING ON PROPOSED DECISION OF THE ADMINISTRATIVE LAW JUDGE)

WHEREAS, on February 19, 2009, the Superintendent served notice to this Board recommending that 52 certificated positions be reduced or eliminated, and that a corresponding number of certificated employees receive notice that their services will not be required for the ensuing 2009-10 school year, pursuant to Education Code sections 44949 and 44955;

WHEREAS, on February 19, 2009, this Board adopted Resolution No. 09-12 to reduce or discontinue 52 certificated positions not later than the beginning of the 2009-10 school year, as set forth therein;

WHEREAS, the particular kind of services to be reduced or discontinued as set forth in Resolution No. 09-12 are determined to be particular kinds of services within the meaning of Education Code section 44955;

WHEREAS, the particular kinds of services referenced in Resolution No. 09-12 will be reduced or discontinued within the meaning of Education Code section 44955 not later than the beginning of the 2009-10 school year;

WHEREAS, on or before March 15, 2009, the Superintendent or the Superintendent's designee served notice to 35 certificated employees and precautionary notice to 3 certificated employees that it has been recommended that their services will not be required for the ensuing 2009-10 school year, pursuant to Education Code sections 44949 and 44955;

WHEREAS, the notices served upon the employees advised them that they may request a hearing to determine if there was cause for not reemploying them for the ensuing 2009-10 school year, and that if they failed to timely request a hearing, that failure shall constitute a waiver of their right to a hearing;

WHEREAS, certificated employee Eduardo Martinez did not request a hearing and, pursuant to Education Code sections 44949, he therefore waived his right to a hearing; certain other employees did request a hearing, and accordingly an evidentiary hearing was scheduled for April 28, 2009, pursuant to Education Code sections 44955 and 44949 before an Administrative Law Judge;

WHEREAS, on May 6, 2009, the Administrative Law Judge submitted a proposed decision related to those proceedings which was received by the District on May 6, 2009;

WHEREAS, this Board has received and considered the proposed decision of the Administrative Law Judge, a copy of which is attached hereto, and any arguments submitted by or on behalf of the parties regarding that proposed decision;

WHEREAS, during the evidentiary hearing, the District dismissed the accusations as to certificated employee Paul Dubois;

WHEREAS, in his proposed decision, the Administrative Law Judge endorsed the layoff with respect to the 34 certificated employees named in the Final Layoff List attached hereto;

WHEREAS, Education Code section 44949, subdivision (c)(3), provides that this Board shall make the final determination as to the sufficiency of the cause and disposition of the layoff;

WHEREAS, Education Code section 44955, subdivision (c), requires final Board action and notifications to employees no later than May 14, unless that date is extended within a hearing pursuant to Education Code section 44949, subdivision (e);

WHEREAS, the services of no permanent or other employee are being terminated while any probationary employee or any other employee with less seniority is being retained to render a service which the permanent or other employee is certificated and competent to render, within the meaning of, and except as permitted by, Education Code section 44955; the individuals whose employment is being terminated are not certificated and competent (within the meaning of, and except as permitted by, Education Code section 44955) to render the service being performed by any employee with less seniority who is being retained;

WHEREAS, the jurisdictional and statutory prerequisites have been satisfied as to the individuals named in the final layoff list, to the extent required by law; sufficient cause exists for such employees' termination of employment after consideration of facts including but not limited to the employees' seniority and scope of credentials; and that cause relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949, subdivision (c)(3), to the extent that provision applies; and

WHEREAS, rights to reemployment pursuant to Education Code section 44956 and/or 44957 shall be provided to the certificated employees whose services are terminated as a result of this layoff;

NOW, THEREFORE, BE IT RESOLVED that this Board accepts the proposed decision of the Administrative Law Judge and adopts as its own that proposed decision;

BE IT FURTHER RESOLVED that the employment of the 34 certificated employees named on the Final Layoff List attached hereto is hereby terminated effective upon the close of the current school year (i.e., the end of such employees' last working day prior to July 1, 2009);

BE IT FURTHER RESOLVED that the employment of the certificated employee that failed to timely request a hearing is hereby terminated effective upon the close of the current school year (i.e., the end of such employees' last working day prior to July 1, 2009);

BE IT FURTHER RESOLVED that this decision is effective immediately and that the certificated employees named on the Final Layoff List be given appropriate notice by the Superintendent or the Superintendent's designee(s) of the termination of their services, with said notice to be given on or before May 14, 2009, in the manner prescribed by law; and finally

BE IT FURTHER RESOLVED that reemployment rights shall be afforded in accordance with and to the extent applicable by the Education Code, if and when reemployment is available.

PASSED AND ADOPTED at the special meeting of the Governing Board held on May 12, 2009, at Colton, California.

AYES: _____

NOES: _____

ABSENT: _____

ABSTENTIONS: _____

Marge Mendoza-Ware, President
Board of Education

I hereby certify under penalty of perjury that the foregoing is a full, true, and correct copy of the Board Resolution duly adopted by the Governing Board on May 12, 2009.

Dated: May 12, 2009

James A. Downs
Superintendent

COLTON JOINT UNIFIED SCHOOL DISTRICT

FINAL LAYOFF LIST

The following certificated personnel will receive a final layoff notice:

- | | | | |
|-----|--------------------|-----|-----------------------|
| 1. | Carpenter, Monica | 18. | Matheson, Keri |
| 2. | Castro, Benjamin | 19. | Mezzanatto, Yvette |
| 3. | Coronado, Anthony | 20. | Minjares, Alycia |
| 4. | Emmerson, Kathrine | 21. | Negrete, Teresa |
| 5. | Flores, Kirstin | 22. | Preston, Holly |
| 6. | Fraijo, Edrina | 23. | Ramirez, Xochitl |
| 7. | Gaytan, Gabriel | 24. | Ruiz, Jesus |
| 8. | Gonzalez, Patricia | 25. | Sanchez, M. Guadalupe |
| 9. | Gudgeon, Kelli | 26. | Sandoval, Mark |
| 10. | Harworth, Sandra | 27. | Spencer, Debra |
| 11. | Hepler, Amy | 28. | Strauss, Tiffany |
| 12. | Johnston, Amber | 29. | Swanson, Janice |
| 13. | Jones, Alisha | 30. | Vidovich, Nicholas |
| 14. | Kappmeyer, Julie | 31. | Viselli, Cassandra |
| 15. | Laska, Jennifer | 32. | Walker, Tim |
| 16. | Martin, Heather | 33. | Williams, Coy |
| 17. | Martinez, Eduardo | 34. | Yang, Sharon |

BEFORE THE
BOARD OF EDUCATION
COLTON JOINT UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2009030484

Respondents listed on Exhibit A

Respondents.

PROPOSED DECISION

On April 28, 2009, in Colton, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

John W. Dietrich, Attorney at Law, represented the Colton Joint Unified School District.

Carlos Perez, Attorney at Law, represented the respondents set forth on Exhibit A attached hereto except Eduardo Martinez, who did not appear at the hearing.

During the hearing, the District withdrew the layoff notice for and dismissed the accusation against Paul Dubois.

The matter was submitted on April 28, 2009.

FACTUAL FINDINGS

1. On or about March 12, 2009, Jerry Almendarez, Assistant Superintendent, Human Resources Division of the Colton Joint Unified School District (hereafter, "the District"), made and filed the accusations against respondents in his official capacity.

2. Respondents are certificated employees of the District.

3. Before March 15, 2009, pursuant to Education Code sections 44949 and 44955, James A. Downs, Superintendent of the District, notified the Board of Education of the District of the Superintendent's recommendation that respondents be notified their services will not be required for the ensuing school year. The Superintendent's notification to the Board of Education set forth the reasons for the recommendation.

4. On or before March 15, 2009, each respondent was given written notice that the Superintendent had recommended that notice be given to respondents, pursuant to Education Code sections 44949 and 44955, that their services will not be required for the ensuing year. Each written notice set forth the reasons for the recommendation. The notices satisfied the requirements of sections 44949 and 44955. *San Jose Teachers Association, Inc. v. Allen* (1983) 144 Cal.App.3d 627, 632; *Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 803-04, distinguishing *Karbach v. Board of Education* (1974) 39 Cal.App.3d 355, 360-63.

5. Each respondent timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year. Accusations were timely served on respondents, and each respondent except Eduardo Martinez filed a timely Notice of Defense. All pre-hearing jurisdictional requirements have been met.

6. The Board of Education of the District took action in Resolution No. 09-12 to discontinue the following services for the 2009-10 school year:

1.	Counselor, DATE	1.0	F.T.E.
2.	Counselor, Elementary	1.0	F.T.E.
3.	Counselor, High School	3.0	F.T.E.
4.	Counselor, Middle School	1.0	F.T.E.
5.	Curriculum Program Specialist, District Office level	7.0	F.T.E.
6.	Drafting Teacher, High School	1.0	F.T.E.
7.	Elementary Teacher, K-6	20.0	F.T.E.
8.	Health Teacher, Middle School	2.0	F.T.E.
9.	Home Choice Teacher	1.0	F.T.E.
10.	Home Economics Teacher, High School	1.0	F.T.E.
11.	Home Economics Teacher, Middle School	1.0	F.T.E.
12.	Independent Study Teacher	1.0	F.T.E.
13.	Librarian, Middle School	4.0	F.T.E.
14.	P.E. Teacher, High School	2.0	F.T.E.
15.	P.E. Teacher, Middle School	1.0	F.T.E.
16.	Wood Shop Teacher, High School	2.0	F.T.E.
17.	Work Experience Teacher, High School	1.0	F.T.E.
18.	Principal, Elementary	1.0	F.T.E.
19.	Assistant Principal, Middle School	1.0	F.T.E.
	Total	52.0	F.T.E.

The resolution contained the following:

That "competency" as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include: (1) possession of a valid credential in the relevant subject matter area; (2) academic training as evidenced by "highly qualified" status under the No Child Left Behind Act and an appropriate EL

authorization (to the extent required by the position); and (3) one year of full-time experience in the relevant subject matter area.

The services set forth above are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955. *California Teachers Association v. Board of Trustees of the Goleta Union School District* (1982) 132 Cal.App.3d 32, 34-37 and cases cited therein. *See also San Jose Teachers Association v. Allen, supra* at 635-38, in which the court specifically rejected the reasoning of *Burgess v. Board of Education* (1974) 41 Cal.App.3d 571; *Zalac v. Governing Board* (2002) 98 Cal.App.4th 838, 853-54.

Furthermore, these services may be reduced because of budgetary difficulties. *Zalac v. Governing Board, supra*, and cases cited therein. The decision to reduce or discontinue the services is neither arbitrary nor capricious but rather a proper exercise of the District's discretion.

7. No certificated employee junior to any respondent is retained to perform services which any respondent is certificated and competent to render.

8. The reduction or discontinuation of services is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees of the District as determined by the Governing Board.

9. The Board considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

10. The Board of Education established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date.

11. The District created a Seniority List which contains employees' seniority dates (first date of paid service), current site, credentials, ELL, and authorizations. The District used the Seniority List to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the two services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. 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 employees.

12. The Board of Education of the District reduced a particular kind of service described as "Curriculum Program Specialist, District Office level" by seven full-time equivalent positions. The "bump analysis" that was prepared by District staff identified eight teachers filling seven full-time equivalent positions who performed this service. Their seniority dates ranged from January 1991 to August 2003. Each of them bumped into

another position, and six of the seven positions were created by attrition. Only one of the curriculum program specialists bumped another teacher, Holly Preston, who was in turn laid off.

Susan Reed from the District's Human Services Division testified that there were some curriculum program specialists employed by the District who were not listed on the bump analysis. She pointed out that the Board of Education in its resolution drew a distinction between curriculum program specialists who worked at the District Office level and those who did not. Those who did not appear on the bump analysis provided pupil personnel services and performed services that served the entire district. She testified that a curriculum program specialist who worked at the District Office level performed services that were different from the curriculum program specialists who provided pupil personnel services.

Ms. Reed did not indicate during her testimony how many curriculum program specialists the District employed who did not work at the District Office level. Two were identified during the hearing, and the seniority list reflects several other curriculum program specialists who were not listed on the bump analysis. All of the curriculum program specialists employed by the District were senior to Ms. Preston.

Kathryn Walck is a curriculum program specialist for special education and has worked for the District in that capacity for four years. She testified her duties included staff development, new teacher support, and providing training for different types of special education teachers. She further testified that there were approximately 20 curriculum program analysts who worked for the District and they all held the same title, but they provided different services. She indicated they all specialized, worked at different sites throughout the District, and had different managers.

13. Nicholas Vidovich has a seniority date of September 19, 1996, and teaches three classes of study hall and two classes of woodshop at Colton High School. He has a clear single subject credential in industrial and technical education. The District reduced woodshop teachers at the high school level by two full-time equivalent positions, resulting in the loss of his two woodshop classes. Consequently, he has been laid off by 0.4 FTE.

Mr. Vidovich testified his credential allowed him to teach computer science and technology, as well as photography and graphic arts. He pointed to several keyboarding or computer literacy classes that he could teach which were taught by teachers with less seniority than he has. He has never taught keyboarding, computer literacy, or any other subject he pointed to for one full year.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter relating to the elimination of 52 full-time equivalent positions exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

2. Respondents challenge the decision of the District to differentiate between curriculum program specialists who work at the District Office level, who were reduced by seven FTE positions, and other curriculum program specialists who were not reduced. The basis for the challenge is unclear and speculative, and seeks to undo the reduction of this service. The District is granted the authority to make decisions regarding the types of services to be reduced, and it exercised that authority here in a reasonable manner. The testimony established curriculum program specialists performed different services, and those employed at the District Office level were different from such specialists who performed pupil personnel services.

Furthermore, there is no evidence to suggest that had the District not differentiated between the two types of curriculum program specialists, there would have been any different result in the lay off process. As a consequence of the reduction of seven FTE positions, no curriculum program specialists of any kind were laid off, and only one teacher, Ms. Preston, who was not a curriculum program specialist, was laid off. She was junior to all the curriculum program specialists listed on the bump analysis who worked at the District Office level as well as other curriculum program specialists listed on the seniority list. Thus, she would have been subject to layoff regardless of how the District decided to reduce the number of curriculum program specialists. Ms. Preston did not testify, and no other evidence was offered, to demonstrate that had the District not made the distinction as to which curriculum program specialists positions to eliminate, Ms. Preston would not have been laid off. Respondents' challenge to the layoff of curriculum program specialists must be rejected.

3. The District defined competency in part as "one year of full-time experience in the relevant subject matter area." Because Mr. Vidovich did not have one year of full-time experience teaching keyboarding, computer literacy, or any other subject permitted by his credential beyond woodshop, he cannot be considered competent for purposes of bumping a more junior teacher. A District is permitted to establish a standard of competency that includes prior teaching experience in the relevant subject area. *Duax v. Kern Community College Dist.*, (1987) 196 Cal.App.3d 555, 562-67. Accordingly, Mr. Vidovich's layoff of 0.4 FTE must be upheld.

4. Cause exists under Education Code sections 44949 and 44955 for the District to discontinue particular kinds of services relating to the 52 full-time equivalent positions. The cause for the reduction or discontinuation of particular kinds of services related solely to the welfare of the schools and the pupils thereof. A preponderance of the evidence sustained the charges set forth in the Accusation. It is recommended that the Board give respondents notice before May 15, 2009, that their services will no longer be required by the District.

ORDER

1. The accusation served on respondent Paul Dubois is dismissed.
2. The Accusations served on the remaining respondents listed on Exhibit A are sustained. Notice shall be given to each respondent before May 15, 2009 that his or her services will not be required for the 2009-10 school year pursuant to the Governing Board's resolution because of the reduction of particular kinds of services.

Notice shall be given in inverse order of seniority.

DATED: _____

5/5/09



ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A

COLTON JOINT UNIFIED SCHOOL DISTRICT

The following certificated personnel will receive a layoff notice:

1	Carpenter	Monica
2	Castro	Benjamin
3	Coronado	Anthony
4	Emmerson	Katherine
5	Flores	Kirstin
6	Frajjo	Edrina
7	Gaytan	Gabriel
8	Gonzalez	Patricia
9	Gudgeon	Kelli
10	Harworth	Sandra
11	Hepler	Amy
12	Johnston	Amber
13	Jones	Alisha
14	Kappmeyer	Julie
15	Laska	Jennifer
16	Martin	Heather
17	Martinez	Eduardo
18	Matheson	Keri

19	Mezzanatto	Yvette
20	Minjares	Alycia
21	Negrete	Teresa
22	Preston	Holly
23	Ramirez	Xochitl
24	Ruiz	Jesus
25	Sanchez	M. Guadalupe
26	Sandoval	Mark
27	Spencer	Debra
28	Strauss	Tiffany
29	Swanson	Janice
30	Vidovich	Nicholas
31	Viselli	Cassandra
32	Walker	Tim
33	Williams	Coy
34	Yang	Sharon