

**BOARD OF TRUSTEES
ANAHEIM UNION HIGH SCHOOL DISTRICT
501 Crescent Way, P.O. Box 3520
Anaheim, California 92803-3520**

NOTICE OF SPECIAL MEETING

Date: May 10, 2011

To: Jordan Brandman, P.O. Box 3520, Anaheim, CA 92803-3520
Anna L. Piercy, P.O. Box 3520, Anaheim, CA 92803-3520
Jan Harp Domene, P.O. Box 3520, Anaheim, CA 92803-3520
Katherine H. Smith, P.O. Box 3520, Anaheim, CA 92803-3520
Brian O'Neal, P.O. Box 3520, Anaheim, CA 92803-3520

Orange County Register, 1771 S. Lewis, Anaheim, CA 92805
Anaheim Bulletin, 1771 S. Lewis, Anaheim, CA 92805
News Enterprise, P.O. Box 1010, Los Alamitos, CA 90720
Los Angeles Times, 1375 Sunflower, Costa Mesa, CA 92626
Event News, 9559 Valley View Street, Cypress, CA 90630
Excelsior, 523 N. Grand Avenue, Santa Ana, CA 92701

You are hereby notified that a special meeting of the
Board of Trustees of the Anaheim Union High School District
is called for

Wednesday, May 11, 2011

in the District Board Room, 501 Crescent Way, Anaheim, California.

5:00 p.m.

**Adoption of the Decision of Administrative Law Judge Daniel Juarez,
Concerning the Reduction in Force of Non-Management Certificated
Employees, per the Office of Administrative Hearing Case Number
2011030667**


The Board of Trustees took action to reduce particular kinds of services provided by certificated employees. This action was necessitated by the state-wide budget crisis and significant reductions in District revenue. The decision to reduce services was not related to the competency and dedication of the individuals whose services are to be eliminated. District staff carried out the Board's decision by using a selection process that involved seniority, in accordance with the requirements of the Education Code.

On March 8, 2011, the Board took action to eliminate 80 management and non-management certificated positions and to notify staff members of possible layoff. Certificated employees were issued preliminary notification of possible layoff. When 23 of the non-management certificated employees requested a hearing before an administrative law judge, the District was required to defend its procedures, steps, and processes of layoff. The administrative law judge ordered on May 2, 2011, that the District may proceed with notices to these non-management certificated employees, that their services will not be required for the 2011-2012 year because of the reduction of particular kinds of services; and ruled on seniority date issues and skipping of a less senior employee. The Board of Trustees must now formally accept

the judge's decision to proceed with the reduction in force of the designated non-management certificated employees.

Resolution No. 2010/11-HR-07 Reduction in Force Certificated Management and Non-Management Employees

The Board of Trustees is requested to formally adopt the recommendation of Superintendent Elizabeth I. Novack to notify 49 certificated employees they will be laid off from employment, effective the last working day of the current school year, as a result of a reduction in force per Board of Trustees' Resolution No. 2010/11-HR-04, adopted on March 8, 2011. Employees who have rights based on seniority and credential, per education code, will be reassigned to another certificated position within the District.



Elizabeth I. Novack, Ph.D.
Superintendent

ANAHEIM UNION HIGH SCHOOL DISTRICT

501 Crescent Way, P.O. Box 3520, Anaheim, California 92803-3520, www.auhsd.us

**BOARD OF TRUSTEES
Special Meeting Agenda
Wednesday, May 11, 2011
5:00 p.m.**

Some items on the agenda of the Board of Trustees' meeting include exhibits of supportive and/or background information. These items may be inspected in the superintendent's office of the Anaheim Union High School District, at 501 Crescent Way in Anaheim, California. The office is open from 7:30 a.m. to 5:00 p.m., Monday through Friday, and is closed for most of the federal and local holidays. These materials are also posted with the meeting agenda on the District web site, www.auhsd.us, at the same time that they are distributed to the Board of Trustees.

Meetings are recorded for use in the official minutes.

1. **CALL TO ORDER—ROLL CALL** ***ACTION ITEM***
2. **ADOPTION OF AGENDA** ***ACTION ITEM***
3. **PLEDGE OF ALLEGIANCE** ***ACTION ITEM***

Board President Jordan Brandman will lead the Pledge of Allegiance to the Flag of the United States of America.

4. **PUBLIC COMMENTS, OPEN SESSION ITEMS** ***INFORMATION ITEM***

Opportunities for public comments occur at the beginning of each agenda item. Persons wishing to address the Board of Trustees should complete a speaker request form, available on the information table, at the back of the room, and submit it to the executive assistant prior to the meeting. Each speaker is limited to a maximum of five minutes; each topic or item is limited to a total of 20 minutes. Board members cannot immediately respond to public comments, as stated on the speaker request form.

5. **ITEMS OF BUSINESS**

- 5.1 ***Adoption of the Decision of Administrative Law Judge Daniel Juarez, Concerning the Reduction in Force of Non-Management Certificated Employees, per the Office of Administrative Hearing Case Number 2011030667*** ***ACTION ITEM***

The Board of Trustees took action to reduce particular kinds of services provided by certificated employees. This action was necessitated by the state-wide budget crisis and significant reductions in District revenue. The decision to reduce services was not related to the competency and dedication of the individuals whose services are to be eliminated. District staff carried out the Board's decision by using a selection process that involved seniority, in accordance with the requirements of the Education Code.

On March 8, 2011, the Board took action to eliminate 80 management and non-management certificated positions and to notify staff members of possible layoff. Certificated employees were issued preliminary notification of possible layoff. When 23 of the non-management certificated employees requested a hearing before an administrative

law judge, the District was required to defend its procedures, steps, and processes of layoff. The administrative law judge ordered on May 2, 2011, that the District may proceed with notices to these non-management certificated employees, that their services will not be required for the 2011-2012 year because of the reduction of particular kinds of services; and ruled on seniority date issues and skipping of a less senior employee. The Board of Trustees must now formally accept the judge's decision to proceed with the reduction in force of the designated non-management certificated employees. **[EXHIBIT A]**

Recommendation:

It is recommended that the Board of Trustees formally accept the decision of the Administrative Law Judge concerning the reduction in force of certificated employees, per the Office of Administrative Hearing Case Number 2011030667, with said adoption of the decision effective immediately.

5.2 **Resolution No. 2010/11-HR-07 Reduction in Force Certificated Management and Non-Management Employees (Roll Call Vote)** **ACTION ITEM**

The Board of Trustees is requested to formally adopt the recommendation of Superintendent Elizabeth I. Novack to notify 49 certificated employees they will be laid off from employment, effective the last working day of the current school year, as a result of a reduction in force per Board of Trustees' Resolution No. 2010/11-HR-04, adopted on March 8, 2011. Employees who have rights based on seniority and credential, per education code, will be reassigned to another certificated position within the District. **[EXHIBIT B]**

Recommendation:

It is recommended that the Board of Trustees formally adopt Resolution No. 2010/11-HR-07, by a roll call vote.

6. **ADJOURNMENT** **ACTION ITEM**

In compliance with the Americans with Disabilities Act, individuals with a disability who require modification or accommodation in order to participate in this meeting should contact the executive assistant to the Board of Trustees at (714) 999-3503 by noon on May 11, 2011.



OFFICE OF ADMINISTRATIVE HEARINGS

320 West Fourth Street, Room 630, Los Angeles, CA, 90013
213 576-7200 phone | 213 576-7244 fax
www.oah.dgs.ca.gov

EXHIBIT A
State of California

Department of General Services

May 2, 2011

Governing Board
Anaheim Union High School District
501 Crescent Way
P.O. Box 3530
Anaheim, CA 92803-3520
Attn: Russell Lee-Sung, Assistant Superintendent
Human Resources

By Facsimile

Re: In the Matter of the Accusations Against Certain Certificated Employees –
OAH No. 2011030667

Dear Board Members:

Enclosed with this letter is a copy of the administrative law judge's proposed decision in the above-referenced case and two copies of the agency order of adoption. Please return one copy of the order of adoption after the Board adopts its Decision. This office will be promptly mailing the original of the proposed decision and all exhibits to you by overnight mail.

On or before May 7, 2011, the Governing Board must submit a copy of the proposed decision to all teachers who were respondents in the hearing, in accordance with Education Code section 44949.

Very truly yours,

ROSARIO FRANCISCO, Legal Secretary
Office of Administrative Hearings

Regional Offices

320 West Fourth Street
Suite 630
Los Angeles, CA 90013
213 576-7200 phone
213 576-7244 fax

1350 Front Street
Room 6022
San Diego, CA 92101
619 525-4475 phone
619 525-4419 fax

1515 Clay Street
Suite 206
Oakland, CA 94612
510 622-2722 phone
510 622-2743 fax

BEFORE THE
GOVERNING BOARD OF THE
ANAHEIM UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

OAH No.: 2011030667

CERTAIN CERTIFICATED EMPLOYEES,

Respondents.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Anaheim Union High School District as its Decision in the above-entitled matter.

This Decision shall become effective _____.

IT IS SO ORDERED _____.

ANAHEIM UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

By _____

ref

BEFORE THE
GOVERNING BOARD OF THE
ANAHEIM UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

CERTAIN CERTIFICATED EMPLOYEES,

Respondents.

OAH No.: 2011030667

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Anaheim Union High School District as its Decision in the above-entitled matter.

This Decision shall become effective _____.

IT IS SO ORDERED _____.

ANAHEIM UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

By _____

ref

BEFORE THE GOVERNING BOARD OF THE
ANAHEIM UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

CERTAIN CERTIFICATED EMPLOYEES,

Respondents.

OAH No. 2011030667

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 20, 2011, in Anaheim, California.

Stutz Artiano Shinoff & Holtz, and Jack M. Sleeth, Jr, Esq., and Jeanne Blumenfeld, Esq., represented the Anaheim Union High School District (AUHSD).

Reich, Adell, Crost & Cvitan, and Carlos Perez, Esq., represented Respondents listed in Appendix A.

Respondents Victor Barrios, Michael Avram, and R. Scott Morgan each represented themselves individually.

The parties submitted the matter for decision on April 20, 2011.

FACTUAL FINDINGS

1. Russell Lee-Sung, AUHSD Assistant Superintendent for Human Resources (sometimes hereafter "Lee-Sung"), filed the Accusations in his official capacity.
2. Respondents are presently certificated employees of AUHSD.
3. On March 8, 2011, the AUHSD Governing Board (Governing Board) adopted Resolution 2010/11-HR-04 to reduce and discontinue particular kinds of certificated services no later than the beginning of the 2011-2012 school year. The particular kinds of certificated services total 80 full time equivalent (FTE) positions. The Governing Board further determined that it was necessary because of those reductions or discontinuances to, among other things, decrease the number of certificated employees at the close of the present school year by a corresponding number of FTE positions and directed the Superintendent to notify the appropriate employees to implement the Governing Board's determination.
4. By March 15, 2011, and pursuant to Education Code sections 44949 and 44955, the Superintendent recommended to the Governing Board that it notify Respondents

that Respondents' services will not be required for the ensuing school year, and inform Respondents of the underlying reasons for such notification.

5. By March 15, 2011, the Governing Board notified Respondents of its determination to terminate Respondents' services for the ensuing school year and the underlying reasons for termination, in accordance with Education Code sections 44949 and 44955.

6. In response to the written notice, each Respondent timely requested a hearing to determine if there is cause to not reemploy him or her for the 2011-2012 school year.

7. AUHSD served the Accusation and other required documents timely on each Respondent.

8. AUHSD offered the seniority list into evidence. The seniority list contains all certificated employees that are members of the teachers' union and are affected by AUHSD's proposed layoff. However, Lee-Sung acknowledged that the seniority list is not a complete list of all AUHSD employees. For example, the seniority list does not contain management positions, or positions held by counselors or teachers in the adult education program, as these employees are not members of the teachers' union

9. Respondents' counsel argued that AUHSD did not meet its jurisdictional requirements in this matter by offering an incomplete seniority list. Respondents' counsel explained that without a complete seniority list, Respondents could not assess whether any of them were improperly displaced. In his testimony, Assistant Superintendent Lee-Sung further acknowledged that in determining which employees to layoff, some management employees, who were former teachers, were returned to teacher positions. In this process, Lee-Sung explained, some of these management employees displaced other non-management employees. Respondents' counsel highlighted this circumstance to emphasize his argument.

10. Respondents did not offer testimony or other evidence of any individual who challenged their layoff by specifically challenging their displacement. No Respondent testified he or she was being displaced, or he or she thought they were being displaced, by a more junior employee, or that, due to the incomplete seniority list, he or she could not conclude whether he or she was being displaced in any improper manner.

11. All jurisdictional requirements were met.

12. Resolution 2010/11-HR-04 reduces or discontinues 80 FTE positions for the 2011-2012 school year.

13. The 80 FTE positions at issue in this matter are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955.

14. The Governing Board's decision to reduce or discontinue the particular kinds of services at issue in this matter was due to the anticipated decline in State funding; the Governing Board's decision was not arbitrary or capricious, but constituted a proper exercise of discretion.

15. The reduction or discontinuation of particular kinds of services related to the welfare of AUHSD and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of AUHSD, as determined by the Governing Board.

16. AUHSD identified the certificated employees providing the particular kinds of services that the Governing Board directed to be reduced or discontinued.

17. The recommendation that Respondents be terminated from employment was not related to their performance as teachers.

18. AUHSD seeks to "skip" the layoff of one respondent, Kerri Fenton (Respondent Fenton). By "skipping" Respondent Fenton, AUHSD seeks to exempt her from layoff.

19. According to Assistant Superintendent Lee-Sung, Respondent Fenton teaches in AUHSD's dance program. Lee-Sung asserted that Respondent Fenton has specialized skills, expertise, and experience to teach dance. Without the specialized services of Respondent Fenton, Lee-Sung asserted that AUHSD's dance program would end.

20. No Respondent asserted through testimony or other evidence that he or she was competent to teach dance for AUHSD. No Respondent contested the assertion that Respondent Fenton has specialized skills, expertise, and experience to teach dance. No Respondent contested the proposed "skipping" of Respondent Fenton.

21. Respondent Roberta Dieter (Respondent Dieter) disagreed with her seniority date of October 15, 2008. She argued that her seniority date should be September 3, 1996.

22. Respondent Dieter began working as a teacher for AUHSD on approximately September 3, 1996, but tendered her resignation in 2007. Before leaving AUHSD pursuant to her resignation, Respondent Dieter asked her school's principal if she would be able to return to AUHSD. The principal informed Respondent Dieter she could return to AUHSD if she returned within 39 months. The principal did not inform her that, upon resigning, she would lose her 1996 seniority date, nor did the principal inform her whether she could have requested a leave of absence instead of resigning. Respondent Dieter did not ask the principal about her seniority date or whether there were leave alternatives to resignation. Respondent Dieter argued that the principal should have informed her of these consequences.

23. Alternatively, Respondent Dieter argued that her seniority date should be October 13, 2008, because this earlier date was when she reported for teaching duty in the

2008-2009 school year, pursuant to the direction of her principal. Respondent Dieter asserted that she started on October 13, 2008, by assisting a long-term substitute teacher in the class she eventually took over. She recalls being paid out of a petty cash fund at an "extra duty pay amount," but does not recall how much she was paid. Nevertheless, according to Respondent Dieter, her employment contract was not signed until October 15, 2008. At that time, she did not agree that October 15, 2008, was the appropriate start date of her contract, but because she was just beginning her employment again, she felt uncomfortable insisting on the earlier October 13th date, and allowed the October 15, 2008 dated to stand.

24. Respondent Heather Gruenthal (Respondent Gruenthal) testified about her concern that AUHSD's reductions for the 2011-2012 school year will damage AUHSD's library system.

25. In his direct examination, Assistant Superintendent Lee-Sung explained that AUHSD's reductions will leave only one librarian for all of AUHSD's 18 school sites. According to Lee-Sung, while acknowledging that one librarian is far from optimal, the decrease in funding necessitates such a reduction and one librarian will have to travel to each school site and provide the most minimal of services to maintain AUHSD's libraries.

26. Respondent Gruenthal has been a librarian for AUHSD since September 2000. She described the reduction in librarian services as a mistake. She is dubious that AUHSD will be able to meet library-related program requirements and meet California information literacy standards. Respondent Gruenthal cited Education Code section 18100 et seq. in support of her testimony.

27. Respondent Dale Miller (Respondent Miller) disagreed with his seniority date of November 13, 2007. He argued that his seniority date should be September 4, 2007.

28. Respondent Miller started teaching as a health science teacher for AUHSD in the 2007-2008 school year as a long-term substitute. He offered into evidence an AUHSD "Personnel Request Form" that documented his long-term substitute assignment in health began on September 4, 2007. The form contains the signatures of the "Principal/Program Director," dated August 21, 2007, and the "Assistant Superintendent Human Resources," dated August 31, 2007. The form does not contain Respondent Miller's signature. The form shows Respondent Miller's "Current Credential or Permit," as an "Emergency 30-day Permit." Respondent Miller argued that the Personnel Request Form was an employment contract, but the evidence was insufficient to establish that assertion. He also offered into evidence a "Progress Report Register," dated October 17, 2007, showing that Respondent was a health teacher on that date. However, the Progress Report Register did not establish that Respondent Miller was a teacher within AUHSD or that AUHSD paid him on October 17, 2007. Respondent Miller asserted that he began teaching on September 4, 2007, and had no break in service thereafter. He presented no documentary evidence of payment.

29. Respondent Victor Barrios (Respondent Barrios) is a teacher in the AUHSD adult education program. His seniority date is September 7, 2004. Respondent Barrios has a Clear Crosscultural, Language and Academic Development Certificate (issued on July 1, 2003), and a Clear Single Subject Teaching Credential in Physical Education (valid through July 1, 2012). He argued that he should be able to transfer into the regular (kindergarten through 12th grade) education program based on his credentials. Respondent Barrios also argued that his ability to present an adequate defense was inhibited by the lack of legal representation. Assistant Superintendent Lee-Sung acknowledged that if Respondent Barrios were not in the adult education program, but in the regular education program, given his credentials and seniority date with AUHSD, it was probable that Respondent Barrios would not be subject to lay-off.

30. Respondent Barrios argued that his seniority date should be the beginning of the 2001-2002 school year, however, he could not establish a specific date, nor did he have any persuasive evidence establishing a first date of paid service in the 2001-2002 school year.

31. Respondent Michael Avram (Respondent Avram) is a teacher in the AUHSD adult education program. He argued that due to his credentials and seniority date, he should be able to transfer to the regular education program. In his Notice of Defense, Respondent Avram asserted that he began teaching in AUHSD on approximately September 8, 1998, although in a separate document from Respondent Avram to Lee-Sung, dated February 28, 2011, Respondent Avram asserted that he began teaching adult education in 1993. He holds a Clear Standard Secondary Teaching Credential in Health Science and Physical Education, and Clear Supplementary Authorizations in Biological Sciences, Introductory English, and Computer Concepts and Applications (issued January 11, 2000). Respondent Avram further argued in his Notice of Defense, that AUHSD acted deceptively in establishing his job classification, and noted that his ability to present an adequate defense was inhibited by the exclusion of adult education teachers from the AUHSD's teachers' union. The evidence did not establish any deception on the part of AUHSD in establishing Respondent Avram's job classification.

32. Respondents Barrios, Avram, and R. Scott Morgan (Respondent Morgan) presented a collective argument regarding the elimination of the adult education program. Respondent Morgan is a teacher in the AUHSD adult education program. Respondent Morgan presented the three Respondents' collective argument. Assistant Superintendent Lee-Sung testified that the proposed reductions will completely eliminate the adult education program. Respondents Barrios, Avram, and Morgan acknowledge that the statewide financial difficulties require drastic reductions. However, they question whether the adult education program should be completely eliminated. Respondent Morgan described the numerous benefits of the adult education program and asserted their collective concern that without the program, many adults will have no access to education. Respondent Morgan has contributed a great number of unaccounted-for hours in preparing to teach and in teaching students. He has given of his free time to AUHSD and his students and explained that by

AUHSD's layoff action, he feels the three adult education respondents and their program are improperly expendable and underappreciated.

33. The parties agreed that Respondent Bruno Preciado's correct seniority date is August 27, 2009, and that his status is probationary II.

34. No certificated employee junior to any Respondent was retained to render a service that any Respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. AUHSD bears the burden of proof by a preponderance of the evidence.
2. Respondents' argument regarding the incomplete seniority list was unpersuasive. By offering the seniority list of all certificated employees within the teachers' union who were affected by the layoff process, AUHSD met its requirements. Respondents provided no evidence that any Respondent required a more complete seniority list to prepare his or her defense. No Respondent challenged their displacement in a manner that would have required a more complete seniority list. As such, AUHSD's seniority list was sufficient evidence.
3. The parties met all notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955.
4. It is appropriate to amend Respondent Bruno Preciado's seniority date to August 27, 2009.
5. Education Code section 44955, subdivision (d)(1) provides that a school district "may deviate from terminating a certificated employee in order of seniority" when the school district "demonstrates a specific need for personnel to teach a specific course or course of study . . . and that the certificated employee has special training and experience necessary to teach that course."
6. AUHSD provided evidence, albeit limited, of the special training and experience of Respondent Kerri Fenton. No Respondent contested the proposed skip. There was no evidence that any other Respondent more senior than Respondent Fenton had the training, experience, or credentials to teach dance. AUHSD established that it has a specific need for dance instruction and that Respondent Fenton has that training and experience. Considered in total, the evidence constituted a preponderance of the evidence sufficient to sustain her proposed skipping.
7. Respondent Dieter's argument to change her seniority date to September 3, 1996, was unpersuasive. AUHSD was under no obligation to advise her of the consequences her resignation would have on her seniority date, or of alternatives to resignation. Upon resigning, Respondent Dieter lost her initial employment date with AUHSD, in accordance

with the law. While Respondent Dieter's circumstances are unfortunate, the law is nonetheless clear. Education Code section 44848 provides that, "[w]hen any certificated employee shall have resigned . . . and shall thereafter have been reemployed by the board, his date of employment shall be deemed to be the date on which he . . . rendered paid service after his reemployment."

8. Respondent Dieter's argument to change her seniority date to October 13, 2008, was also unpersuasive. Respondent Dieter provided no persuasive evidence of payment or of beginning her teaching services on either October 13 or 14, 2008. Her testimony alone was insufficient evidence to conclude that she worked and was paid for teaching services on either of those dates.

9. Respondent Gruenthal's implicit argument that librarian services should not be reduced as proposed was unpersuasive. Nothing in the Education Code requires any particular ratio of librarians to school libraries. While it is reasonable to be dubious about the ability of one librarian to serve all 18 of AUHSD's school sites, the Governing Board is allowed the discretion to decide whether to reduce or eliminate librarian services. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, 718; *Campbell Elementary Teachers Association Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 811-812.)

10. Respondent Miller's argument that his seniority date should be September 4, 2007, was unpersuasive. The Personnel Request Form is not a contract. It does not bear Respondent Miller's signature, and fails to establish payment to him. This document, together with Respondent Miller's testimony, was insufficient to establish an earlier first date of paid service.

11. Education Code section 44929.25 provides that a school district may reduce the services of tenured adult education teachers in accordance with the layoff provisions.

12. Education Code section 44929.26 provides in part, "[n]othing in Sections 44929.20 to 44929.23, inclusive, shall be construed to give permanent classification to a person in the adult school who is already classified as a permanent employee in the day school." The same provision further provides:

Notwithstanding any other provision to the contrary, service in the evening school shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee in the day school Service in the day school shall not be included in computing service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee in the evening school.

13. The Legislature has therefore provided for two distinct teacher categories, day school (kindergarten through 12th grade or regular school) and evening school (adult school). Subject to certain exceptions that are not relevant to this matter, service in one category does not count toward service in the other. Pertinent here, service in the adult

school is not counted toward service in the regular school. Thus, adult school teachers do not have tenure or seniority in regular school and cannot bump into the regular school program and regular school teachers do not have tenure or seniority in adult school and cannot bump into the adult school program.

14. Respondent Morgan eloquently and passionately described the contributions he and the other adult school Respondents have made to the adult school program over their various years of service. However, despite his genuine concern for the adult school students and his and the other Respondents' (Avram's and Barrios's) efforts and contributions to the adult school program, there was no evidence or persuasive legal argument that would prohibit or minimize the elimination of the adult school program, as determined by the Governing Board.

15. The services identified in the Governing Board's resolution number 2010/11-HR-04 are particular kinds of services that the Governing Board can reduce or discontinue under Education Code section 44955. The Governing Board's decision to reduce or discontinue the identified services was not arbitrary or capricious; it was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of AUHSD's schools and pupils within the meaning of Education Code section 44949.

16. AUHSD properly identified the certificated employees providing the particular kinds of services that the Governing Board directed to be reduced or discontinued.

17. A school district may reduce services within the meaning of Education Code 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 v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

18. AUHSD established cause to not reemploy Respondents for the 2011-2012 school year; it further established cause to skip the layoff of Respondent Fenton.

19. No junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render.

20. Cause exists to sustain AUHSD's action to reduce or discontinue the full-time equivalent positions set forth in AUHSD's Resolution 2010/11-HR-04 for the 2011-2012 school year, pursuant to Education Code sections 44949 and 44955, as set forth in Factual Findings 1-17, 21-34, and Legal Conclusions 1-4, and 7-19.

21. Cause exists to skip the layoff of Respondent Kerri Fenton for the 2011-2012 school year, pursuant to Education Code section 44955, subdivision (d)(1), as set forth in Factual Findings 18-20, and Legal Conclusions 5 and 6.

ORDER

1. The Anaheim Union High School District shall amend Respondent Bruno Preciado's seniority date to August 27, 2009.

2. With the exception of Respondent Kerri Fenton, the Accusations served on Respondents Michael Avram, Victor Barrios, Justin Buz'Zard, Anita D. Byers, Roberta L. Dieter, Yolanda Flores-Smith, Breysi Garcia, Laura Gonzalez, Heather Gruenthal, Linda Hodgins, William Hoffman, Lauren Klatzker, Marilyn Konowal, Erin McCown, Jennifer Mele, Dale Everett Miller, R. Scott Morgan, Wendy L. Parent, Bruno Preciado, Laura Quan, J. Suzanne Rahn, and Zachary Tilson, providing the particular kinds of services that the Governing Board of the Anaheim Union High School District directed to be reduced or discontinued, are sustained.

3. With the exception of Respondent Kerri Fenton, notice shall be given to Respondents Michael Avram, Victor Barrios, Justin Buz'Zard, Anita D. Byers, Roberta L. Dieter, Yolanda Flores-Smith, Breysi Garcia, Laura Gonzalez, Heather Gruenthal, Linda Hodgins, William Hoffman, Lauren Klatzker, Marilyn Konowal, Erin McCown, Jennifer Mele, Dale Everett Miller, R. Scott Morgan, Wendy L. Parent, Bruno Preciado, Laura Quan, J. Suzanne Rahn, and Zachary Tilson, that their services will be terminated at the close of the 2010-2011 school year.

4. The AUHSD shall "skip," that is, exempt Respondent Kerri Fenton from layoff.

Dated: April 29, 2011



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings

Appendix A
OAH Case No. 2011030667
Respondents Represented by Reich, Adell, Crost & Cvitan

Buz'Zard, Justin
Byers, Anita D.
Dieter, Roberta L.
Fenton, Kerri
Flores-Smith, Yolanda
Garcia, Breysi
Gonzalez, Laura
Gruenthal, Heather
Hodgin, Linda
Hoffman, William
Klatzker, Lauren
Konowal, Marilyn
McCown, Erin
Mele, Jennifer
Miller, Dale Everett
Parent, Wendy L.
Preciado, Bruno
Quan, Laura
Rahn, J. Suzanne
Tilson, Zachary

**RESOLUTION OF THE BOARD OF TRUSTEES
OF THE ANAHEIM UNION HIGH SCHOOL DISTRICT**

**REDUCTION IN FORCE
CERTIFICATED MANAGEMENT AND NON-MANAGEMENT EMPLOYEES**

RESOLUTION NO. 2010/11-HR-07

May 11, 2011

On the motion of _____, duly seconded and carried, the following resolution was adopted:

WHEREAS, the Board of Trustees of the Anaheim Union High School District determined that there is a budgetary need to reduce or eliminate particular kinds of services provided by management and non-management certificated employees; and

WHEREAS, district staff carried out the board's decision by using a selection process involving a review of seniority, in accordance with the requirements of the Education Code for the non-management employees; and

WHEREAS, before March 15, 2011, the district personally served each employee impacted by the reduction of particular kinds of services, a notice that his or her services may not be required for the next school year; and

WHEREAS, each employee's notice set forth the reasons for the recommendation to reduce or eliminate services and noted that the board had passed a resolution reducing the certificated staff by 80 full-time equivalent (FTE) positions, 21 management positions, 1 GASELPA Autism Program Specialist, 36 classroom teachers, 4 counselors, 8 librarians, 5 curriculum specialists, 2 pregnant minor program teachers, and 3 adult education teachers; and

WHEREAS, notices were properly served and/or respondents signed acknowledgments that the notices had been received; and

WHEREAS, 23 non-management certificated employees each timely requested, in writing, a hearing to determine if there was cause for not reemploying them for the ensuing school year; and

WHEREAS, Superintendent Elizabeth I. Novack filed accusations against each of the respondents, and timely served upon the responding employees the accusations, with required accompanying documents and Notices of Defense; and

WHEREAS, Administrative Law Judge Daniel Juarez of the Office of Administrative Hearings, in an order dated May 2, 2011, ordered that the district may give notices to employees occupying the following full-time equivalent non-management certificated positions, that their services will not be required for the 2011-2012 school year because of the elimination or reduction of particular kinds of services; and

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WHEREAS, employees who have rights based on seniority and credential, per Ed Code, will be reassigned to another certificated position within the District; and

WHEREAS, the district has considered positively assured attrition to determine the exact number of certificated employees that their services will not be required for the 2011-2012 school year and applied tie-breaking criteria.

NOW, THEREFORE, BE IT RESOLVED that the Board of Trustees determined that the services of 49 certificated employees listed below shall be laid off at the close of the current school year. In accordance with the law governing these procedures, said notice shall be served upon the respondents. This decision of the Board of Trustees is effective immediately.

Management

Brian Bannon
Judy Bright
Janet Chenlee
Charles Clint Collins
Diane Donnelly-Toscano
Darrick Garcia
Matthew Griffin
Kristin Hawks
Melissa Hilken
Ron Hoshi
Jeffrey Kim
Alison Konrad
Cherylin Lew
Joan McGhee
Sussanne Miranda
Yousef Nasouf
Ramon Palomino, Jr.
Shaylynn Pulido
Roberto Saldivar, Jr.
Rafael Santiago
Eva Valencia

Teachers

Jeffrey Clement
Roberta Dieter
Yolanda Flores-Smith
Breysi Garcia
Jamie Keledjian
Dale Miller
Mary Nafis
Bruno Preciado
Steven Scanlon
Roger Whalen

Adult Ed. Teachers

Michael Avram
Victor Barrios
Scott Morgan

Counselors

Panayiota Hatzis
Diane Kuramoto
Tisa Read-Bottorff

Curriculum Specialists

Krystal Allan
Jackie Counts
Wendy Criner
Laura Quan
Jeanne Sesky

Librarians/Media Specialists

Anita Buers
Justin Buz'zard
Heather Gruenthal
Deanna Guzman
Linda Hodgkin
Marilyn Konowal
Suzanne Rahn

The foregoing resolution was passed and adopted at the regular meeting of the Board of Trustees, on May 11, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

STATE OF CALIFORNIA)
)
) SS
)
COUNTY OF ORANGE)

I, Elizabeth I. Novack, Superintendent of the Anaheim Union High School District of Orange County, California, and Secretary to the Board of Trustees, thereof, hereby certify that the above foregoing resolution was duly and regularly adopted by the said Board of Trustees at the special meeting thereof held on the 11th of May 2011 and passed by a roll call vote of all members of said board.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 11th day of May 2011.

Elizabeth I. Novack, Ph.D.
Superintendent and
Secretary to the Board of Trustees