

BEFORE THE
BOARD OF TRUSTEES OF THE
BUTTEVILLE ELEMENTARY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Non-Reemployment of:

EDWARD KEELAN,

Respondent.

OAH No. 2009020794

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings on April 21, 2009, in Edgewood, California.

Erin Holbrook, Attorney at Law, appeared on behalf of the Butteville Elementary School District.

Donald A. Selke, Jr., Attorney at Law, represents respondent Edward Keelan.¹ However, neither Mr. Selke nor Mr. Keelan appeared on the scheduled hearing date. The matter proceeded as a default hearing under Government Code section 11520.

The case was submitted for decision on April 21, 2009.

FACTUAL FINDINGS

1. Cynthia McConnell is the Superintendent of the Butteville Elementary School District (District). She is also the principal of Butteville Union Elementary School. Ms. McConnell made and filed the Accusation in her official capacity.

2. Edward Keelan (respondent) is a permanent or probationary certificated employee of the District. On March 12, 2009, the District served on respondent a written notice that it had been recommended that notice be given to him pursuant to Education Code sections 44949 and 44955 that his services in a music teaching position would be reduced or would not be required for the 2009-2010 school year. The written notice set forth the reasons for the recommendation and noted that the District's Board of Trustees had passed a

¹ At the time of hearing, the District provided an April 20, 2009 letter addressed to Ms. Holbrook from Mr. Selke indicating that he represented Mr. Keelan, but that he did not intend to appear, and that he understood that this hearing would proceed by way of default. (See Gov. Code, § 11520.)

Resolution reducing the certificated staff by 1.72 full-time equivalent (FTE) positions. Respondent timely requested in writing a hearing to determine if there is cause for not reemploying him for the ensuing school year.

3. The Superintendent made and filed an Accusation against respondent. The Accusation with required accompanying documents and blank Notice of Defense were personally served on respondent on April 3, 2009. Respondent timely filed a Notice of Defense to the Accusation.² All pre-hearing jurisdictional requirements were satisfied. The District complied with all service requirements under the Administrative Procedure Act. This matter proceeded by way of default against respondent under Government Code section 11520.

4. On March 10, 2009, at a regular meeting, the District's Board of Trustees was given notice of the Superintendent's recommendation that certificated employees holding 1.72 FTE positions be given notice that their services would be reduced or not required for the next school year, and stating the reasons for that recommendation.

5. On March 10, 2009, the District's Board of Trustees determined that it was necessary to decrease programs and services and thus it was necessary to reduce teaching and other certificated services affecting employment of 1.72 FTE positions. The District's Board of Trustees adopted a Resolution Adopting Seniority List and providing for the reduction or elimination of the following particular kinds of services (PKS):

	<u>Services</u>	<u>FTE</u>
a.	Teachers	1.36
b.	School Counselor	0.16
c.	Technology Coordinator	0.20
	Total Full-Time Equivalent Reduction	1.72

The total number of positions to be reduced or discontinued under this resolution is 1.72 FTE certificated positions. The Board has determined that the services of a corresponding number of certificated employees shall be terminated at the close of the current 2008-2009 school year.

6. The District consists of a single school (K-8) with 157 students. Instruction for each grade is provided via self-contained classrooms. The District requires that all teachers assigned to self-contained classroom hold a multiple subject credential.

² The District did not receive respondent's Notice of Defense. However, a Fax copy of his Notice of Defense was provided to District counsel confirming that he did timely file a Notice of Defense. The District is not contesting jurisdiction.

7. The District maintains a Certificated Seniority List which contains employees' seniority dates (Original Date of Hire), credentials, permits and special authorizations. All certificated employees were provided access to this list and asked to correct their seniority date and any information related to their credentials/authorizations. The District used the seniority list to develop a proposed layoff list of the least senior employees assigned in the various services being reduced.

8. In determining the two teachers to be laid off, the District skipped seven teachers believed necessary to teach a specific course or course of study.³ They include:

- a. Lindsay Pappas. She has a District seniority date of August 15, 2006, and holds a preliminary multiple subject credential, as well as a CLAD. She is a third grade teacher. A multiple subject credential is needed to teach the third grade class. No one senior to her was noticed and who is so credentialed.
- b. Deborah Deany. She has a District seniority date of August 15, 2006. She holds a preliminary multiple subject credential, as well as a CLAD. She is a fourth grade teacher. A multiple subject credential is needed to teach the fourth grade class. No one senior to her was noticed and who is so credentialed.
- c. Cynthia Pierce. She has a District seniority date of August 15, 2005. She holds a clear multiple subject credential, as well as a CLAD. She is also a fourth grade teacher. A multiple subject credential is needed to teach the fourth grade class. No one senior to her was noticed and who is so credentialed.
- d. Kristian Wolmar. He has a District seniority date of August 15, 2005. He holds a clear multiple subject credential, as well as a CLAD. He is a seventh grade teacher in a self-contained classroom. No one senior to him was noticed and who is so credentialed.
- e. Chester Kyle. He has a District seniority date of August 15, 2005. He holds a clear multiple subject credential. He is a sixth grade teacher in a self-contained classroom. No one senior to him was noticed and who is so credentialed.
- f. Matthew Falconer. He has a District seniority date of January 9, 2003. He holds a clear multiple subject credential, as well as a CLAD. He also holds a Preliminary Level 1 Educational Specialist

³ Leonard May was also noticed. He has a District seniority date of August 14, 2007. He did not request a hearing.

credential and is a special education teacher. No one senior to him was noticed and who is so credentialed.

- g. Jennifer Blankenship. She has a District seniority date of September 4, 2002. She holds a clear multiple subject credential, as well as a CLAD. She is a kindergarten teacher. A multiple subject credential is needed to teach the kindergarten. No one senior to her was noticed and who is so credentialed.

9. Respondent has a District seniority date of September 1, 1999. He holds a clear single subject credential in social science. This credential does not allow him to teach in any of the self-contained classrooms. Respondent is a music teacher. He teaches three days per week, four hours per day. He is neither certificated nor competent to bump into any of the positions of junior certificated employees retained by the District.

10. Except as provided by statute, no permanent or probationary certificated employee with less seniority is being retained to render a service which respondent is certificated and competent to render. As between employees who first rendered paid service to the District on the same date, the order of termination will be based solely on the needs of the District and the students thereof. The District was not required to apply tie-break criteria as part of the layoff process.

11. The reduction or discontinuation of the particular kinds of services set forth in the Resolution are related to the welfare of the school and the students thereof within the meaning of Education Code sections 44949 and 44955. The decision to reduce or discontinue these services is neither arbitrary nor capricious, but rather a proper exercise of discretion of the District.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. The notice sent to respondent indicated the statutory basis for the reduction of services and, therefore, was sufficiently detailed to provide him due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Board Resolution and in the notice, adequately described particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

2. The services identified in the Board Resolution are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The District Board of Trustee's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion.

3. Cause exists to reduce the number of certificated employees of the Butteville Elementary School District due to the reduction and discontinuation of particular kinds of services. Cause for reduction or discontinuation of services relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

4. As set forth in the Factual Findings, the District applied skipping rules with consistency and care. It allowed skipping only after demonstrating that the skipped teachers could teach a specific course or course of study in which they had special training and experience, and which others with more seniority did not possess. (Ed. Code, § 44955, subd. (d)(1).)

ORDER

Notice shall be given to respondent and others occupying up to 1.72 FTE that their services will not be required for the 2009-2010 school year because of the reduction or discontinuation of particular kinds of services.

DATED: April 28, 2009

JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings