

BEFORE THE
BOARD OF EDUCATION
SAN CARLOS SCHOOL DISTRICT

In the Matter of the Accusation Against:

AUDREY CHAN, et al.,

Respondents.

OAH No. 2009030022

PROPOSED DECISION

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on April 3, 2009, in San Carlos, California.

Chesley D. Quaide, of Atkinson, Andelson, Loya, Ruud & Romo, represented the San Carlos School District.

Christopher Schumb, Attorney at Law, represented respondents Audrey Chan, Julie Jobak, Shannon Lynch and Jessica K. Melton, who were present at the hearing, and respondents Jennifer Crettol, Julie A. Fox, Vivian Garlick and Logan C. Hiroshima, who were not present.

There was no appearance by or on behalf of respondents Linda Dunn, Laura Macfarlane and Brandon Roslin.

The matter was submitted for decision on April 3, 2009.

FACTUAL FINDINGS

1. Steve Mitrovich made and filed the accusation in his official capacity as Superintendent of the San Carlos School District.
2. Respondents Audrey Chan, Jennifer Crettol, Linda Dunn, Julie A. Fox, Vivian Garlick, Logan C. Hiroshima, Julie Jobak, Shannon Lynch, Laura Macfarlane, Jessica K. Melton and Brandon Roslin are certificated employees of the district.
3. On March 5, 2009, the district's Board of Education adopted Resolution No. 12:08/09 reducing or discontinuing particular kinds of services and directing the

Superintendent to give appropriate notices to certificated employees whose positions will be affected by the action.

4. On or before March 15, 2009, Superintendent Mitrovich gave written notice to respondents and other certificated employees of the recommendation that their services will not be required for the 2009-2010 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

5. Respondents filed timely requests for a hearing to determine if there is cause for terminating their services for the 2009-2010 school year. (The other employees did not file requests for hearing.) An accusation was served on each respondent. All respondents except Linda Dunn and Logan C. Hiroshima filed timely notices of defense. All prehearing jurisdictional requirements have been met.

6. In order to address a projected shortfall in the district's budget, the board took action to reduce or discontinue the following particular kinds of services (PKS) for the 2009-2010 school year:

<u>SERVICES</u>	<u>FTE</u> ¹
K-3 Teacher	9.4
Middle School Assistant Principal	2.0
Middle School Counselor	2.0
Middle School Counselor Intern	0.8
K-4 Counselor	1.0
Middle School Literacy	2.4
5 th Grade Core	<u>1.4</u>
Total	20.2

7. Before issuing the preliminary layoff notices, the district took into account all positively assured attrition.

8. Before the hearing, the district rescinded the preliminary layoff notices issued to respondents Linda Dunn, Julie A. Fox, Logan C. Hiroshima and Brandon Roslin.

9. During the hearing, the parties stipulated to change the seniority date of respondent Jessica Melton from August 15, 2008 to November 1, 2007.

10. New teachers who were hired for the 2008-2009 school year were required to attend training before school started, on August 15, 2008. Those teachers with fewer than two years in the teaching profession were required to attend additional training on August 12, 13 and 14, 2008. This resulted in giving less experienced teachers an earlier date of first paid

¹ Full-time equivalent positions.

service (i.e., more seniority) than more experienced teachers. For example, respondent Audrey Chan had six years of teaching experience in other districts, so she was not required to attend the training which began on August 12, 2008. Her seniority date of August 15, 2008 puts her lower on the seniority list than respondent Shannon Lynch, who had to attend the August 12, 2008 training because she had only one year and eight months of prior teaching experience. This result is ironic because one of the district's tie-breaking criteria ranks teachers with more teaching experience outside the district higher than teachers with less outside service. Chan feels the district's training schedule placed her at a disadvantage compared to her less experienced colleagues.

Under Education Code section 44845, a certificated employee's seniority begins with the date the employee "first rendered paid service in a probationary position." Because new teachers were paid to attend the mandatory training, the district assigned seniority dates according to the date they first attended training. The district's training schedule failed to effectuate its goal (as evidenced in the tie-breaking criteria) of according more experienced teachers greater seniority than less experienced teachers, but this does not invalidate the seniority dates for any of the affected teachers.

11. The district is eliminating all counseling positions for next year. Any mandated services currently performed by counselors (e.g., sitting in on 504 meetings and IEP meetings) will be performed by others in the special education department or the administration, although the district has not yet worked out the details of who will be doing what. Counselors provide social, emotional and academic counseling to students, and these non-mandated services will not be provided next year. In addition to assisting with STAR testing and class scheduling, counselors coordinate numerous projects and events. Chief Business Official Kelly Price, who testified for the district, was not familiar with all the projects and events with which counselors are involved, and she did not know what will happen next year. It can be presumed that if the projects and events are not discontinued, other district employees will perform the duties currently performed by counselors. A school district is authorized to eliminate a particular kind of service even though the service continues to be performed or provided in a different manner.² By utilizing non-counselors instead of counselors, the district will be providing services in a different manner. The fact that the district does not yet have a plan specifying how some of the counselors' duties will be performed next year does not mean that the district's elimination of counseling positions is arbitrary and capricious, as respondents assert.

12. The district has seven temporary employees in positions totaling no more FTE's than the FTE's of teachers on leaves of absence this year. The district notified all temporary teachers that they will not be reemployed for the 2009-2010 school year. (Some temporary teachers also received a preliminary layoff notice, either as a precaution or by

² *Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 812; *Rutherford v. Board of Trustees* (1976) 64 Cal. App.3d 167, 177.

mistake.) The PKS reductions did not include the temporary positions, presumably because those positions are offset by employees on leave with a right to return next year.

13. The district has not finalized its course offerings and electives for next year or worked out the details of the reassignments necessitated by the PKS reductions. Lengthy questioning of Kelly Price about specific positions, teachers and FTE calculations led to some rather confusing testimony. Respondents argue that the district's proposed layoffs must fail because of the lack of specificity in their plan to implement the reductions. This argument does not have merit. The district has established that particular kinds of services will be reduced or discontinued in accordance with the board's resolution, and that 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. It was not established that the district is seeking to lay off any more employees than necessary to implement the PKS reductions.

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

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. Cause exists to dismiss the accusations filed against respondents Linda Dunn, Julie A. Fox, Logan C. Hiroshima and Brandon Roslin.

3. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2009-2010 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

1. The accusations against respondents Linda Dunn, Julie A. Fox, Logan C. Hiroshima and Brandon Roslin are dismissed.

2. Notice may be given to respondents 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: _____

NANCY L. RASMUSSEN
Administrative Law Judge
Office of Administrative Hearings