BEFORE THE
GOVERNING BOARD OF THE
SIERRA SANDS UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter Of The Layoffs Of: Alison Bachety, and Other Certificated Employees of the Sierra Sands Unified School District, Respondents.	OAH No. L2009030156

PROPOSED DECISION

This matter was heard by Mark E. Harman, Administrative Law Judge of the Office of Administrative Hearings, State of California, on April 28, 2009, in Ridgecrest, California.

Dean T. Adams, Attorney at Law, represented the Sierra Sands Unified School District (District). Paul A. Welchans, Attorney at Law, represented all 22 Respondents who requested a hearing in this matter.

The District decided to reduce or discontinue certain educational services and gave Respondents and other certificated District employees notice of its intent not to reemploy them for the 2009-2010 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2009-2010 school year.

Oral and documentary evidence was received. Exhibits 14 and 15, which contain confidential college transcripts, are ordered sealed and are not to be made public. The matter was submitted for decision on April 28, 2009.

FACTUAL FINDINGS

1. The District operates seven elementary schools, two intermediate schools, one high school, and one continuation high school, for approximately 5,208 students.

2. Respondents in this proceeding are permanent and probationary certificated employees of the District.

3. Joanna Rummer (Rummer) is the Superintendent of the District. Ernie Bell (Bell) is the Assistant Superintendent for Human Resources. Rummer filed the Accusation in her official capacity. Bell and his staff were responsible for implementation of the technical aspects of the layoff.

4. The Governing Board of the District (Governing Board) adopted Resolution No. 33-0809 on March 6, 2009, reducing or eliminating the following services for the 2009-2010 school year:

PARTICULAR KINDS OF SERVICES (PKE)	NO. OF FULL TIME EQUIVALENT (FTE) POSITIONS
Elementary Education (K-5)	
Elementary teaching	20.0
Special Education Day Class	1.0
Middle School Education (Grades 6 - 8)	
8th Grade Core	1.0
Mathematics	1.0
English	2.0
High School Education (Grades 9 - 12)	
English	2.0
Social Studies	0.6
Drivers Education	0.4
Athletic Director	0.4
Physical Education	0.6
Mathematics	2.0
Navy Jr. ROTC Program	2.0
Foreign Language-Spanish	0.8
Special Education Day Class	1.0
Special Education Specialist	1.0
School Counselor	1.0
Alternative Education Programs	
Community Day School	1.0
Special Education/SELPA	
School Psychologist	1.0
Program Specialists	2.0
Itinerant DIS Intervention	1.0

Management Positions	
Burroughs Dean of Students	1.0
Net Reductions District Wide	42.8

5. On March 13, 2009, the Superintendent notified the Governing Board of the names of the 26 certificated employees, including Respondents, who would be noticed that the Superintendent had recommended not to re-employ them in the 2009-2010 school year because of the elimination or reduction of particular kinds of services.

6. On March 15, 2009, the District timely served a written "reduction in force" notice (RIF notice) on 26 certificated employees, including Respondents, that the Superintendent had recommended to the Governing Board not to re-employ them for the 2009-2010 school year.

7. There are 22 employees who timely filed a request for hearing, and who participated in this proceeding through their attorney. They are Alison Bachety (Bachety), Leandra Bischak (Bischak), Mary Beth Boss (Boss), Jennifer Brown (Brown), Kiera Buriak (Buriak), Stacey Crow (Crow), Maureen Flatebo (Flatebo), Joy Cathy Heseman (Heseman), Amy Hillygus (Hillygus), Rebekah Howard (Howard), Christine Laird (Laird), Stephanie Maki (Maki), Susan Mattina (Mattina), Jennifer McEvoy (McEvoy), Casey Morrison (Morrison), Sara Olson (Olson), Katie O'Neil (O'Neil), Eileen Poole (Poole), Patricia Ricks (Ricks), Matt Smith (Smith), Gretchen Spann (Spann), and Sara Stevens (Stevens).[1]

8. The District timely served an Accusation and other required documents upon each of the 22 Respondents. Respondents timely filed Notices of Defense. All pre-hearing jurisdictional requirements have been met.

9. The services set forth in factual finding number 4 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.[2]

10. The Governing Board took action to reduce the services set forth in factual finding number 4 primarily because of the uncertainty surrounding State funding. The District estimates a revenue shortfall of approximately two million dollars for the remainder of the 2008-2009 school year, and a possible four-million-dollar deficit for the 2009-2010 school year. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

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[1] Bischak, Heseman, Hillygus, McEvoy, and Ricks did not appear personally at the hearing.

[2] All further references are to the Education Code.

11. The reduction or discontinuance of services set forth in factual finding number 4 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

12. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), current assignments and locations, advanced degrees, credentials, and authorizations. Certificated employees were given access to the seniority list and some submitted information to update or correct the pertinent information. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District then determined whether these employees held credentials in another area and were entitled to "bump" other employees.

13. On March 6, 2009, the Governing Board adopted criteria for determining order of seniority of those employees with the same date of first paid service (tie-breaking criteria).[3] The tie-breaking criteria are reasonable as they relate to the skills and qualifications of certificated employees. The criteria, themselves, were not challenged by Respondents. The District applied the criteria to select four teachers (Crow, Howard, Maki, and Spann) for layoff and to choose to retain four others (Cossey, Casco, Holm, and Courtemanche). All eight hold multiple subject credentials and were assigned the same seniority dates of August 14, 2006.[4]

14. Respondents Crow, Howard, Maki, and Spann dispute their District-assigned seniority dates of August 14, 2006. Each began teaching full time in the District in the 2006-2007 school year. Crow teaches kindergarten, Howard teaches 5th grade, Maki teaches 1st grade, and Spann teaches 4th grade. In the summer of 2006, each of them attended a new-teacher orientation held in the District office, before their normal teaching assignments began. The District compensated each of them in the sum of $194.29, an amount roughly equivalent to one-day's worth of new-teacher pay. Each of them testified that they believed they were required to attend the orientation, although the District maintained that the orientation session was voluntary. None of these teachers was aware of the precise date they attended this training. The teachers first raised this issue with the District at the hearing, although the District had given them access to its seniority list as early as March 7, 2009.

15. Kathy Kelso was in a charge of the paperwork, payroll, and contracts for the certificated employees of the District for 20 years until she retired last year. She has always encouraged new teachers to attend the orientation, but she never told any of them that it was mandatory. The training was usually one-half day held in the District office, followed by a

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[3] The code provides, in relevant part, that: "As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof." (§ 44955, subd. (b).)

[4] All certificated employees who received their classroom assignments at the beginning of the 2006-2007 academic year have the same first date of paid service.

luncheon. The afternoons were free for the teachers to visit their assigned schools. The purpose was to introduce the new teachers to the bureaucracy of the District, with instruction on how to navigate it. Not all new teachers attend, and no penalty or discipline is imposed upon a new teacher for not attending. The District maintains that all new teachers' contracts for the 2006-2007 school year specify that their first date of paid service is August 14, 2006. Kelso has never adjusted a teacher's contract to reflect attendance at the teacher orientation session. The pay received by the Crow, Howard, Maki, and Spann for attendance at the orientation was in addition to the amounts they received under their contracts.

16. Sara Olson is employed as a first grade teacher at Pierce Elementary School. She is a permanent employee. Olson disputes the District-assigned seniority date of August 17, 2007. Olson was employed by the District for 13 years in a classified position as a bilingual clerk, while she pursued her bachelor's degree. In late 2004, Shirley Kennedy, the principal of Mesquite High School, a continuation high school, asked Olson if she could take over a class for a teacher who was out on sick leave. As a result, Olson taught ELS classes at night at Mesquite between February 2005 and February 2006 on a "Waiver 30-day Substitute Teaching Permit." (Exhibit 17.) This permit was renewed in March 2006 so she could continue to teach. In September 2006, Olson received an internship multiple subject credential. She continued to teach. In August 2007, she received her preliminary multiple subject credential, at which time, the District offered her a temporary contract for one year. This temporary contract expired at the end of the 2007-2008 school year. The District hired Olson as a probationary employee in August 2008. Olson maintains that her first date of paid service should be February 2005, when she began teaching with the credential waiver. The District showed that, in March 2007, it both released Olson and served her a Notice of Non-Reelection as a probationary employee, and thus, the August 2007 date is correct.

17a. The District specifically determined to retain three employees with multiple subject credentials, who otherwise would be impacted by the layoff proceeding: Holly Bergevin, Barbara McCollum, and Tonya Wicker. Known as skipping, this is allowed as long as the District can justify that it has a "specific need for personnel to teach a specific course or course of study." (§ 44955, subd. (d)(1).) Bergevin is a permanent teacher with a seniority date of August 14, 2006. She holds a clear multiple subject credential and a supplemental authorization in mathematics. She also is an NCLB highly qualified teacher based on her undergraduate semester units in mathematics courses. She was not subjected to the lay off because she is currently assigned to teach mathematics at Mesquite High School, and there is a need to retain her in this position.

17b. Wicker is a probationary teacher who has been assigned a seniority date of August 17, 2007. She holds a preliminary multiple subject credential, yet at present she teaches departmentalized English classes at Monroe Middle School, which the Governing Board authorized in Board Resolution #4-0809.[5] Wicker has completed approximately 35

[5] Under Code section 44256, subdivision (b), the Governing Board by resolution may authorize the holder of a multiple subject teaching credential "to teach any subject in departmentalized classes to a given class or group of students below grade 9, provided that

semester units in English, exceeding the minimum necessary to teach under this authorization. She is NCLB highly qualified. Bell testified that the Governing Board intends to place her in the same assignment next year, and that another board resolution will be issued. Bell has not considered every teachers' qualifications to determine whether they might be eligible to teach the English classes which Wicker is authorized to teach.

17c. McCollum is a permanent employee with a preliminary multiple subject credential. She was not subject to the lay off because she is currently assigned to teach "Teen Living," a home economics course at Murray Middle School. McCollum has a bacherlor's degree in education, with a minor in home economics, but she does not have a Governing Board authorization to teach this subject, which Bell described as a District error for not having presented this request to the Board.

17d. No certificated teachers who are senior to Bergevin, McCollum, or Wicker have demonstrated sufficient credentials, qualifications or competency to render the services provided by Bergevin, McCollum, or Wicker. Retaining these three teachers is appropriate, as the District has demonstrated it has a specific need for their services, and that they have the requisite training and experience for these positions.

18. The District did not retain any certificated employee junior to Alison Bachety, Leandra Bischak, Mary Beth Boss, Jennifer Brown, Kiera Buriak, Stacey Crow, Maureen Flatebo, Joy Cathy Heseman, Amy Hillygus, Rebekah Howard, Christine Laird, Stephanie Maki, Susan Mattina, Jennifer McEvoy, Casey Morrison, Sara Olson, Katie O'Neil, Eileen Poole, Patricia Ricks, Matt Smith, Gretchen Spann, and Sara Stevensto render a service which these Respondents are certificated and competent to render

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 8.

2. The services listed in factual finding number 4 are particular kinds of services that could be reduced or discontinued under section 44955.

3. Cause exists for the District to reduce or discontinue the particular kinds of services listed in factual finding number 4, which cause relates solely to the welfare of the District's schools and pupils within the meaning of section 44949, as set forth in factual finding numbers 1 through 11.

4. Respondents Crow, Howard, Maki and Spann have not established that the District-assigned seniority dates for them are incorrect. Each attended a district orientation

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the teacher has completed at least 12 semester units, or six upper division or graduate units, of coursework at an accredited institution in each subject to be taught."

for new teachers, which they have argued is "paid service in a probationary position." (See § 44848.) The Code provides no specific guidance as to the application of the facts in this case. In this situation, however, no teacher was required to attend the training. The training did not involve the usual classroom duties. And the teachers were not compensated for attending based on the terms of the teachers' contracts with the District. In some instances, Respondents had not even signed a contract at that point. Therefore, there is no substantial basis for changing the seniority dates for Respondents Crow, Howard, Maki, and Spann, nor for changing the results of the District's application of the tie-breaking criteria.

5. Respondent Olson has not established that she has a seniority date of February 2005. At that time, she began providing teaching services as a substitute, which she continued to do until she received her intern credential in September 2006. Even if she should be characterized as a temporary or probationary employment during these earlier years, the District properly terminated her employment at the end of the 2006-2007 school year. Next, she was rehired for the 2007-2008 school year as a temporary employee. The District properly credited her for that year under the probationary classification, since it hired her as a probationary employee for 2008-2009. Olson has not demonstrated that the District's account in inaccurate.

6. Cause exists to terminate the services of Respondents Alison Bachety, Leandra Bischak, Mary Beth Boss, Jennifer Brown, Kiera Buriak, Stacey Crow, Maureen Flatebo, Joy Cathy Heseman, Amy Hillygus, Rebekah Howard, Christine Laird, Stephanie Maki, Susan Mattina, Jennifer McEvoy, Casey Morrison, Sara Olson, Katie O'Neil, Eileen Poole, Patricia Ricks, Matt Smith, Gretchen Spann, and Sara Stevens for the 2009-2010 schoo year, due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 18, and legal conclusion numbers 1 through 5.

ORDER

The Accusation is sustained and the District may notify Respondents Alison Bachety, Leandra Bischak, Mary Beth Boss, Jennifer Brown, Kiera Buriak, Stacey Crow, Maureen Flatebo, Joy Cathy Heseman, Amy Hillygus, Rebekah Howard, Christine Laird, Stephanie Maki, Susan Mattina, Jennifer McEvoy, Casey Morrison, Sara Olson, Katie O'Neil, Eileen Poole, Patricia Ricks, Matt Smith, Gretchen Spann, and Sara Stevens, that their services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services.

Dated: May 7, 2009

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MARK E. HARMAN
Administrative Law Judge
Office of Administrative Hearings