

**BEFORE THE GOVERNING BOARD OF THE
SHANDON UNIFIED SCHOOL DISTRICT
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)	OAH NO. 2009030425
)	
DAN DAVIS, EMBER DUTY, JON FULLER)	
ALAN SCIOCCHETTI, ERIN SEIDEL,)	
JILL SMITH,)	
)	
Respondents.)	
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**PROPOSED DECISION
(AMENDED)**

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on March 27, 2009, at the offices of the San Luis Obispo County Office of Education, San Luis Obispo, California.

Peter Carton, Attorney at Law, represented the Shandon Unified School District.

John Sachs, Attorney at Law, represented Respondents Dan Davis, Ember Duty, Alan Sciocchetti, Erin Seidel and Jill Smith.

Respondent Jon Fuller represented himself.

Evidence was received and the matter was submitted for decision. The undersigned issued a proposed decision on April 7, 2009. On April 17, 2009, the Administrative Law Judge was informed of certain typographical errors in the proposed decision, and Mr. Carton and Mr. Sacks made a joint request to correct the following typographical errors:

1. On page 1 the sentence "Peter Carton, Attorney at Law represented the San Miguel Joint Unified School District" has been changed to read "Peter Carton, Attorney at Law represented the Shandon Unified School District."

2. Legal Conclusion 3 in the Proposed Decision, which stated "Cause exists to retain the services of Respondent Sciochetti pursuant to Factual Findings 11 through 14" has been changed to read "Cause exists to retain the services of Respondent Sciochetti pursuant to Factual Findings 15 and 16."

3. Legal Conclusion 4 in the proposed Decision, which stated “Cause exists to retain the services of Respondent Fuller pursuant to Factual Findings 15 and 16” has been changed to read “Cause exists to retain the services of Respondent Fuller pursuant to Factual Findings 11 through 14.”
4. Other minor typographical errors have been changed.

SUMMARY

The Governing Board (Board) of the Shandon Unified School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2009-2010 school year for budgetary reasons. The decision was not related to the competency and dedication of the teachers whose services were proposed to be reduced or eliminated.

District staff carried out the Board’s decision by using a selection process involving review of seniority, credentials, “bumping,” and breaking ties between employees with the same first dates of paid service. The selection process complied with Education Code requirements.

FACTUAL FINDINGS

1. Chris Crawford, Superintendent of the District, filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.
3. On or about March 10, 2009, Superintendent Crawford recommended that the Board give notice that certain services performed by certificated employees be reduced or eliminated for the 2009-2010 school year. Mr. Crawford also recommended that the Board adopt a resolution to reduce or discontinue particular kinds of services for the 2009-2010 school year. Specifically, Mr. Crawford recommended the reduction and/or elimination of 4.0 full-time-equivalency (FTE) certificated employees as follows:

K-6 Elementary	2.0 FTE
Middle/High School	2.0 FTE

4. On March 10, 2009, the Board adopted Resolution No. 2008-09-14, to discontinue or reduce the particular kinds of services as set forth in Factual Finding 3. The Board further determined that based on the discontinuance or reduction of services, it would be necessary to decrease the number of certificated employees at the close of the present school year by a corresponding number of FTE positions. The Board also directed Mr. Crawford to notify the employees affected by the Board’s resolution.

5. On March 11, 2006, Mr. Crawford notified certificated employees, including Respondents, in writing that it had been recommended their services would not be required for the next school year. The mailing included the reasons for the notification. Respondents made timely requests for hearing.

6. On March 16, 2009, the Superintendent made and filed an Accusation against each Respondent.

7. Notices of Defense were timely filed by all of the employees who appeared for the hearing. All prehearing jurisdictional requirements were met.

8. The reduction or discontinuation of the particular kinds of services set forth in Factual Finding 3, related to the welfare of the District and its pupils.

9. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid service in a probationary position), current assignments and locations, advanced degrees, credentials, and authorizations.

10. The District has decided to retain Respondents Fuller and Sciocchetti.

11. Respondent Fuller teaches agricultural classes and the District chose to retain his services even though Respondent Davis has more seniority. Respondent Davis holds a Clear Credential in Industrial Technology with an additional authorization in Introduction to Mathematics. He currently teaches math in grades 7 through 12. Respondent Fuller has a Clear Single Subject Credential in Agriculture Science, and holds a Masters Degree in Agricultural Education. He currently teaches Agricultural Welding, Agricultural Construction, Agricultural Science and Agricultural Mechanics. The welding, construction and mechanics classes that are taught by Respondent Fuller are subjects that are specifically geared toward their use in an agricultural setting.

12. On or about March 16, 2009, the District Superintendent received a letter (exhibit 15) from the Department of Education that stated in pertinent part:

Only those with an Agricultural Specialist and Single Subject Agricultural Credential are qualified to teach an agricultural course where the students are eligible to participate in FFA [Future Farmers of America]. In addition, Agricultural Incentive Grant funds are not available to be spent on materials or other institutional materials for a teacher who is not appropriately credentialed as indicated above.

Finally, as outlined in the State FFA Constitution, a FFA advisor must be a qualified agricultural education teacher holding the above stated credentials.

13. The Superintendent testified that 90% of the students in the District are members of FFA. The District considered exhibit 15 in deciding to retain Respondent Fuller rather than Respondent Davis. Under the facts of this case, the District's decision to retain Respondent Fuller despite his having less seniority than Respondent Davis is an appropriate exercise of its discretion and relates to the welfare of the pupils in the District.

14. Respondent Sciocchetti teaches alternative education classes. The District intends to retain Mr. Sciocchetti despite his having less seniority than Respondents Smith, Davis, Seidel, and Duty. Respondent Sciocchetti teaches at the Community Day School, in an alternative education classroom. His classes are composed of students who have been sent to the Day School because of severe disciplinary problems. Respondent Sciocchetti has had specialized training for handling difficult students in alternative education classes and in teaching high school students in a self contained setting. He is considered highly qualified under the No Child Left Behind Act in Economics, History, Civics, Geography and Science. He has four years experience as an alternative education teacher at the Shandon Community Day School, and the District considers Respondent Sciocchetti as the most highly qualified teacher in the District to teach alternative education classes.

15. Under the facts of this case, the District's decision to retain Respondent Sciocchetti despite his having less seniority than Respondents Davis, Siedel, Smith and Duty, is an appropriate exercise of its discretion and relates to the welfare of the pupils in the District.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44944 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents.

2. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services. The Board's decisions to reduce or eliminate the identified services were neither arbitrary nor capricious. The decisions relate solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44955.

3. Cause exists to retain the services of Respondent Sciocchetti pursuant to Factual Findings 15 and 16.

4. Cause exists to retain the services of Respondent Fuller pursuant to Factual Findings 11 through 14.

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ORDER

Notice may be given to Respondents Dan Davis, Ember Duty, Erin Seidel and Jill Smith, that their services will not be required for the 2009-2010 school year.

Dated: April 17, 2009

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings