

BEFORE THE  
GOVERNING BOARD OF THE  
KERNVILLE UNION SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation against:

Certificated Employees of the Kernville  
Union School District,

Respondents.

OAH Case No. 2009031140

**PROPOSED DECISION**

Administrative Law Judge Susan L. Formaker of the Office of Administrative Hearings heard this matter on April 20, 2009, in Bakersfield, California.

Peter C. Carton of Schools Legal Service represented Mary C. Barlow (Barlow), Superintendent of the Kernville Union School District (District).

Paul A. Welchans of Chain Cohn Stiles represented Respondents Sarah Cole (Cole), Wendy Engel (Engel), Pamela Hoyer (Hoyer), Sherry Lanza (Lanza), Christi Millison (Millison), Christine Pierce (Pierce), Stacey Sanders (Sanders), and Francine Stirling (Stirling). Prior to the hearing, certificated employees Angela Boyd and Tammy Howard withdrew their requests for and waived any hearing after they accepted other teaching assignments within the District. The District rescinded its layoff notices to them. The District also rescinded its layoff notice to Alison Bogart prior to the hearing.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision on April 20, 2009.

**FACTUAL FINDINGS**

1. Barlow, acting in her official capacity with the District, caused all pleadings, notices and other papers to be filed and served upon Respondents pursuant to the provisions of Education Code sections 44949 and 44955.

2. Cole, Engel, Hoyer, Lanza, Millison, Pierce, Sanders, and Stirling (Respondents) are certificated employees of the District.

3. On March 10, 2009, the Governing Board of the District (Governing Board) adopted Resolution No. 02-0309, reducing 16.3998 full-time equivalent (FTE) positions for the

2009-2010 school year. Exhibit A to Resolution No. 02-0309, set forth the positions to be reduced as follows:

<u>“Service Being Reduced or Eliminated</u>	<u>FTE in 2008-2009 (From)</u>	<u>FTE in 2009-2010 (To)</u>	<u>Net FTE Reduction</u>
“Self-Contained Classroom Instruction, Grades K-8	32 FTE	22 FTE	10 FTE
“Departmentalized Instruction, Junior High:			
“Math	13 Sections	9 Sections	.5714 FTE
“ELA	22 Sections	18 Sections	.5714 FTE
“Reading	22 Sections	18 Sections	.5714 FTE
“History	10 Sections	9 Sections	.1428 FTE
“Life Science	10 Sections	9 Sections	.1428 FTE
“Music	1 FTE	1 FTE	1 FTE
“Behavior Specialist	1 FTE	1 FTE	1 FTE
“Physical Education	2 FTE	1 FTE	1 FTE
“Speech Pathologist	1 FTE	.6 FTE	.4 FTE
“Special Education	4 FTE	3 FTE	1 FTE

Total Net FTE Reduction = 16.3998 FTE”

Resolution No. 02-0309 contained two typographical errors in the “FTE in 2009-2010 (To)” column, where both the music and behavior specialist FTEs should have shown as 0 for the 2009-2010 school year.

4. Subsequent to adoption of the Board’s Resolution, the District identified vacancies for the 2009-10 school year due to positive assured attrition (confirmed retirements or resignations).

5. Barlow thereafter determined which certificated employees' services would not be required for the 2009-2010 school year due to the reduction of particular kinds of services.

6. On March 11, 2009, the District provided notice to Respondents that their services will not be required for the 2009-2010 school year due to the reduction of particular kinds of services. A total of 12 certificated employees were served with preliminary notices of layoff. Respondents filed timely requests for hearing.

7. On or about April 1, 2009, the District filed and served the Accusation on Respondents. All Respondents other than Stirling thereafter filed timely notices of defense, seeking a determination of whether cause exists for not reemploying them for the 2009-2010 school year.

8. All prehearing jurisdictional requirements have been met.

9. The services set forth in Finding 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.<sup>1</sup>

10. The reduction of services set forth in Finding 3 is related to the welfare of the District and its pupils. The Governing Board took action to reduce the services set forth in Finding 3 primarily because of a reduction in state funding and resulting budgetary concerns. 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.

11. On March 10, 2009, the Governing Board adopted Resolution No. 03-0309 setting forth criteria to break ties in seniority among certificated employees with the same first paid date of probationary service. These criteria provided for consideration of the following, according to the needs of the District and the students thereof: credentialing, experience, extracurricular activities, training, special education needs, competence, evaluations, NCLB Highly-Qualified status, and BCLAD/CLAD credential needs. There was no point system assigned to the various criteria and no order of importance, allowing for a certain amount of subjectivity to be introduced into the tie-breaking criteria. However, no Respondent objected to the application of the tie-breaking criteria, and the application of the tie-breaking criteria appeared to be based on the needs of the District and the students thereof. In determining the order of layoff, the District properly applied the tie-breaking criteria.

12. The District maintains a seniority list (Exhibit 7) which contains employees' seniority dates (first date of paid service), indications as to whether employees are probationary or tenured, and current assignments, credentials, and authorizations. Prior

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<sup>1</sup> All statutory references are to the Education Code.

assignments are also listed. There was no evidence that the seniority list failed properly to list information pertaining to any Respondent.

13. The District used the seniority list to designate who was proposed to be laid off and who might be able to "bump" less senior employees currently assigned in the various services being reduced. In determining who would be laid off for each kind of service reduced, the District counted the number of reductions not covered by the known vacancies and positive assured attrition, and determined the impact on current staff in inverse order of seniority. The seniority list indicates with pink marker those who were designated to be laid off. Although the seniority list indicates she is to be laid off, subsequent to the designation, Howard was reassigned to a .5 FTE position created by other reassignments following a vacancy.

14. No certificated employee junior to any Respondent was retained to render a service which any Respondent is currently certificated and competent to render.

### **LEGAL CONCLUSIONS**

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of Findings 1 through 3 and 5 through 8.

2. The services listed in Finding 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of Findings 3 and 9.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in Finding 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of Findings 1 through 14. A District may reduce services within the meaning of 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.)

4. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469, 473-474; *Krausen v. Solano County Junior College District* (1974) 42 Cal.App.3d 394, 402.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess special credentials or needed skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

5. Cause exists to terminate the services of Cole, Engel, Hoyer, Lanza, Millison, Pierce, Sanders, and Stirling by reason of Findings 1 through 14, and Legal Conclusions 1 through 4.

**ORDER**

The Accusation is sustained and the District may notify Respondents Cole, Engel, Hoyer, Lanza, Millison, Pierce, Sanders, and Stirling 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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SUSAN L. FORMAKER  
Administrative Law Judge  
Office of Administrative Hearings