

BEFORE THE
GOVERNING BOARD
PLEASANT RIDGE UNION SCHOOL DISTRICT
COUNTY OF NEVADA
STATE OF CALIFORNIA

In the Matter of the Reduction or Elimination
of Particular Kinds of Services and the
Employment Status of:

ONE CERTIFICATED EMPLOYEE OF
THE PLEASANT RIDGE UNION
SCHOOL DISTRICT,

Respondents.

OAH No. 2009031158

PROPOSED DECISION

Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, heard this matter at the Pleasant Ridge Union School District Office, Grass Valley, California on April 30, 2009.

Bryan Martin, Attorney at Law, of DeGoede, Dunne and Martin, Attorneys at Law, represented the Pleasant Ridge Union School District (District) James Meshwert, Superintendent, appeared on behalf of the District.

Mike McCallum, Attorney at Law, of McCallum and Associates, Attorneys, represented the single respondent, Roshan Mazhar (respondent).

The matter was submitted on April 30, 2009.

FACTUAL FINDINGS

1. James Meshwar, (Superintendent) made and filed the Accusation in his official capacity as Interim Superintendent, Pleasant Ridge Union High School District (District).
2. Respondent Roshan Mazhar was at all times relevant to this Decision a certificated employee of the District.

3. On or just before March 5, 2009, in accordance with Education Code section 44949 and 44955, the Superintendent notified the Governing Board of the District (Board) in writing of his recommendation that certain particular kinds of services would have to be reduced or eliminated for the upcoming school year. The Superintendent's recommendation was based upon the fact that the District is facing financial pressure and an anticipated budget shortfall in the 2009-2010 school year.

4. The Superintendent's recommendation specified the particular kinds of services to be reduced or eliminated, as set forth below. The Superintendent also notified the Board that a corresponding number of certificated employees of the District, in this instance, 6.80 full time equivalents (FTE), would have to be laid off to effectuate the reduction or elimination of the particular kinds of services.

5. The Board adopted Resolution 2009-03 on March 10, 2009. The Board resolved to follow the Superintendent's recommendation to reduce 6.8 FTE particular kinds of services. The Resolution recites the Board's findings that it is necessary by reason of the aforementioned reduction and discontinuance of services to decrease the number of certificated employees by the equivalent of 6.8 full time equivalent employees for the ensuing 2009-10 school year. The Resolution authorized the elimination of the following services now offered in the District:

- 3.0 FTE – Elementary Certificated Positions (K-6)
- 3.0 FTE – Intermediate Certificated Positions (Grades 7-8)
- 0.4 FTE – Physical Education Position (Grades K-5)
- 0.4 FTE – Advanced Studies Position (Grades 4-5)
- 6.8 FTE – TOTAL**

6. The Resolution authorized and directed the Superintendent to give notice to an equivalent number of certificated employees of the District that their services would not be required for the upcoming school year in order to effectuate the reduction

7. The District maintains a seniority list with the names of certificated employees, their first date of paid service to the District, their assignments and their credentials. The Superintendent considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees. The Superintendent identified the most junior employees affected by the reduction in PKS.

8. The Superintendent notified the Board that respondent had been identified as a person to whom notice should be given that her services would not be required for the ensuing school year. The recommendation that respondent's services for the District would not be required for the upcoming school year was not related to her skills, abilities or competencies as a teacher.

9. The Superintendent caused each of certificated employee affected by the Board's resolution to reduce PKS, to be served with a written Notice of Intention to Dismiss (preliminary notice) before March 10, 2009. The written preliminary notices advised the affected employees that their services would be reduced or not required for the upcoming school year. The preliminary notice set forth the reasons for the recommendation and advised of the right to a hearing to determine if there is cause for not reemploying the affected employee for the ensuing school year. The preliminary notice set forth the procedure for timely filing a Request for Hearing.

10. Respondent Mazhar was the only certificated employee of the District who received a preliminary notice of layoff who filed a Request for a Hearing. All other certificated employees who received a preliminary notice of layoff waived their right to a hearing to determine whether cause exists for not reemploying them in the upcoming school year. Failure to file a timely Request for a Hearing constitutes a waiver of the right to a hearing on the allegations.¹ Accordingly, the matter proceeded as a default with respect to certain respondents.

11. The District timely served an Accusation and a blank Notice of Defense on respondent as the only employee who timely filed a Request for a Hearing with the District. Certain certificated employees failed to timely file a Notice of Defense to the Accusation.

12. Respondent Roshan Mazhar timely requested a hearing, was served with an Accusation and timely filed a Notice of Defense. She is a permanent employee with a seniority date (first date of paid service to the District) of August 16, 2006. She holds a Health Science Credential, CLAD, with Single Subject Supplemental Authorizations in Intro to Math, Intro to Science, Computer Concepts and Applications. She is assigned to teach four classes (.58 FTE) at Magnolia Intermediate campus. These four classes consist of two remedial math classes and one 7th grade math and one 8th grade physical science. She is also assigned to teach two classes (.42 FTE) at the Magnolia Community Day School, one class in math and one class in science.

13. Pursuant to the Board's Resolution, Ms. Mazhar's services are reduced 1.00 FTE under the PKS category "3.0 FTE – Intermediate Certificated Positions (Grades 7-8)." There is no one junior to Ms. Mazhar being retained to perform the services she is certificated and competent to render at the Magnolia Intermediate campus. Thus, .58 FTE of her 1.00 FTE reduction is unchallenged. However, Ms. Mazhar contends that the remaining .42 FTE reduction is illegal, in that it is not authorized by the Board Resolution. She contends that the Resolution is defective because it purports to reduce PKS at the 7th and 8th grade level, yet at the Magnolia Community Day School, there is one 6th grade pupil in her remedial 7th and 8th grade classes this year.

¹ Education Code section 44948.5, subdivision (c). Government Code section 11506, subdivision (c).

14. Ms. Mazhar's argument is wholly without merit. Through the Resolution, the Board is authorizing the reduction of a particular kind of service. The fact that a 6th grader has been included in a 7th and 8th grade class does not change the character of the services offered, 7th and 8th grade math and physical science. Her classes have not now been converted to 6th grade instruction because of the presence of a 6th grader. Accordingly, the authorization to reduce category "3.0 FTE – Intermediate Certificated Positions (Grades 7-8)" is appropriate and Ms. Mazhar was properly identified as affected by this PKS reduction.

15. There is no one junior to Ms. Mazhar being retained to perform the services she is certificated and competent to render at the Magnolia Community Day School.

16. There was no evidence that the District proposes to eliminate any services that are State or federally mandated.

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied. The District has the burden of proving by a preponderance of the evidence that the proposed reduction or elimination of particular kinds of services and the preliminary notice of layoff served on respondent is factually and legally appropriate.²

2. The services the District seeks to eliminate in this matter are "particular kinds of services" that may be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue these particular kinds of services was not demonstrated to be arbitrary or capricious, but constituted a proper exercise of discretion.

3. Respondent Mazhar's claim, as set forth in Factual Findings 11 through 14 lack legal merit.

4. The reduction or discontinuation of particular kinds of services relates solely to the welfare of the District and its pupils. The District is facing a projected deficit related to the loss of enrollment and funding. The reduction in particular kinds of services proposed is necessary to avert the District operating in a deficit in the upcoming school year.

5. Education Code section 44955 requires layoffs to take place in inverse order of seniority, with some notable exceptions. "Thus, the statute provides that seniority determines the order of dismissals, and that as between employees with the same first date of paid service, the order of termination is determined on the basis of the needs of the district and its students. Senior employees are given "bumping" rights in that they will not be terminated if there are junior employees retained who are rendering services which the senior

² Education Code section 44944.

employee is certificated and competent to render. Conversely, as in this case, a district may move upward from the bottom of the seniority list, "skipping" over and retaining junior employees who are certificated and competent to render services which more senior employees are not."³ There was no evidence any person receiving a preliminary notice of layoff is being laid off in favor of a junior employee being skipped, or that any employee being laid off is entitled to bump into a position held by a more junior employee where the employee being laid off has the credentials and competence to take the position of the more junior employee being retained. There was no evidence that any certificated employee of the District is being retained to provide a service respondent is certificated and competent to render.

6. Legal cause exists pursuant to Education Code section 44949 and 44955 for the Pleasant Ridge Union School District to reduce or discontinue 6.8 FTE of particular kinds of services, as set forth in the District's Resolution 2009-03. Legal cause therefore exists to sustain the Accusation. The Board may give respondent final notices that her services will not be required by the District in the upcoming school year.

ORDER

The Accusation is SUSTAINED.

The Pleasant Ridge Union School District action to reduce or eliminate 6.8 FTE of particular kinds of services for the 2009-2010 school year is AFFIRMED.

Final notice may be given to respondent by the District that her services will not be required for the upcoming school year. All final notices shall be given in inverse order of seniority.

DATED: May 7, 2009


STEPHEN J. SMITH
Administrative Law Judge
Office of Administrative Hearings

³ *Alexander v. Board of Trustees of the Delano Unified School District* (1983) 139 Cal. App. 3d 567, 571-2, *Moreland Teacher's Association v. Kurze* (1980) 109 Cal.App.3d 648, 655.