

BEFORE THE BOARD OF TRUSTEES
GEYSERVILLE UNIFIED SCHOOL DISTRICT
SONOMA COUNTY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MARGIE SLOAN and CONNIE
SOLDATE,

Respondents.

OAH No. 2009031213

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Geyserville, California, on April 17, 2009.

Margaret M. Merchat, Attorney at Law, represented complainant Joseph Carnation Superintendent, Geyserville Unified School District.

James D. Allen, Attorney at Law, represented respondents Margie Sloan and Connie Soldate, who were present.

The matter was submitted for decision on April 17, 2009.

FACTUAL FINDINGS

1. Joseph Carnation made and filed the Accusation in his official capacity as Superintendent of the Geyserville Unified School District.
2. Respondents Margie Sloan and Connie Soldate are certificated employees of the district.
3. On March 3, 2009, the district's Board of Trustees adopted Resolution No. 135 reducing 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 March 12, 2009, Superintendent Carnation gave written notice to five certificated employees, including respondents, of the recommendation that their services will not be required for the 2009-10 school year. Each notice set forth the reasons for the recommendation.

5. Both respondents filed a timely request for hearing to determine if there is cause for terminating their services for the 2009-10 school year.

6. An accusation was served on both respondents. Both respondents filed a notice of defense. All prehearing jurisdictional requirements were met as to each respondent.

7. In its resolution, the board took action to reduce or eliminate the following particular kinds of services for the 2009-10 school year:

<u>Services</u>	<u>FTE¹ Reduction</u>
Reading Program	1.0
Elementary	2.0
Resource Specialist	0.5
Garden Coordinator	0.3197
Total:	3.8197

8. Superintendent Carnation described that his recommendation and the board resolution were required by the district's budget situation. All avenues of potential funding were considered as were all avenues of reducing services. The district will remain able to provide all mandatory services notwithstanding the reduction in services.

9. Prior to recommending the 3.8197 FTE reductions, Superintendent Carnation took into account all positively assured attrition.

10. The district must issue the final layoff notices before May 15, and when it does so the district will take into account any additional attrition that has occurred. After that, further attrition will allow the district to rehire laid off employees.

11. Respondents are each elementary school teachers. They each hold a multiple subject credential and a CLAD certificate. They share the same first date of paid service to the district, August 27, 2007. After consulting with the union and the teachers, the district adopted tie-breaking criteria to determine the relative seniority of employees with the same first date of paid service, but did not apply them in this case because it found that both employees are subject to layoff. The district will apply its tie-breaking criteria in the event it is necessary to do so during the rehire process.

Respondents contend that, even though it makes no difference to the elimination of their services, Education Code section 44955 required the district to apply its tie-breaking criteria. Their contention lacks merit. Under Education Code section 44955, the district must apply tie-breaking criteria when it affects the order of termination, and in this case it did not. The district did not err by not applying its tiebreaking criteria to respondents.

¹ Full-time equivalent positions.

12. Respondents argue that they are competent to fill a .5 FTE English Language Development Coordinator position currently held by Marjorie Schwartz. Schwartz notified the district of her intent to retire prior to the board's resolution.

Schwartz holds a multiple subject credential, a single subject Social Science credential, and a CLAD certification. The current job description requires the coordinator to hold a multiple subject credential. Ability to speak Spanish is a desired but not required ability. Among other tasks, the coordinator administers the CELDT examination in accordance with the requirements of state law, collects data, interprets data, and does staff development for teachers with ELD students in their classroom.

The ELD coordinator position is a categorically funded position which the board may or may not continue next year. In addition, the board will consider changing the requirements for the position from a certificated position to a classified position. Whether respondents are credentialed and competent for this position, if it exists for the 2009-10 school year, is a matter to be determined through the rehire, not the layoff, process.

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

14. No permanent or probationary employee with less seniority is being retained to render a service for which respondents are certificated and competent.

15. The cause for the layoff relates to the welfare of the schools and their pupils.

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 because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to that their services will not be required for the 2009-10 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

Notice may be given to respondents Margie Sloan and Connie Soldate that their services will not be required for the 2009-10 school year because of the reduction of particular kinds of services.

DATED: _____

MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings