

BEFORE THE GOVERNING BOARD OF THE
DENAIR UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation (Reduction
in Force) Against:

RACHEL WATTS,

Respondent.

OAH No. 2010021008

PROPOSED DECISION

Administrative Law Judge JoAnn Irwin Eshelman, Office of Administrative Hearings, State of California, heard this matter in Denair, California, on May 17, 2010.

Marissa R. Lincoln, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, represented the Denair Unified School District (District).

Respondent Rachel Watts (respondent) was represented by Ernest H. Tuttle, IV, Attorney at Law.

Oral and documentary evidence were received. The record was closed and the matter was submitted for decision on May 17, 2010.

Because this matter was continued pursuant to Education Code section 44949, subdivision (e),¹ the May 7 deadline set forth in section 44949, subdivision (c)(3), was extended to June 11, 2010, and the May 15 deadline set forth in section 44955, subdivision (c) was extended to June 19, 2010. The parties stipulated that the proposed decision in this matter is due on June 11, 2010.

FACTUAL FINDINGS

Board Resolution for Reduction in Force

1. On March 11, 2010, the Governing Board of the District (Board) adopted Resolution No. 031110-R11 (Resolution), by which it determined that it was necessary to reduce or discontinue certain identified particular kinds of services (sometimes referred to as PKS) of the District for the 2010-2011 school year. Due to this reduction or discontinuance

¹ All further statutory references are to the Education Code unless otherwise noted.

of particular kinds of services, the Board determined that it was necessary to terminate the employment of certain certificated employees of the District at the end of the 2009-2010 school year. The Board directed the Superintendent, Edward E. Parraz, or his designee to send appropriate notices to all employees whose services will be terminated as a result of the Board’s action. The PKS reductions and discontinuances are based solely on economic factors and are not related to the skills, abilities or work performance of the affected teachers.

2. In the Resolution, the Board identified the following particular kinds of services for reduction or discontinuance:

<u>Services</u>	<u>Number of FTE Positions²</u>
K-8 Teachers	12.0 FTE
Assistant Vice Principals	3.0 FTE
K-12 Independent Study/Home School Teachers – Charter School	8.3 FTE
TOTAL:	23.3 FTE Positions

3. These are particular kinds of services that may be reduced or discontinued within the meaning of section 44955. The Board considered all positively assured attrition, including deaths, resignations, retirements and other permanent vacancies for 2010-2011, which had occurred by March 11, 2010, in determining the services to be reduced or eliminated. The Board’s decision to reduce or discontinue services was a proper exercise of its discretion.

Preliminary Layoff Notices and Hearing Requests

4. Pursuant to the Resolution, on March 11, 2010, the Superintendent recommended to the Board that 54 certificated employees, identified for layoff, be given preliminary written notices that their services will not be required for the 2010-2011 school year.

5. On March 12, 2010, Jody L. Jorge, Administrative Assistant to the Superintendent, mailed preliminary layoff notices to the 54 employees, along with a blank Request for Hearing form, a copy of the Resolution, and copies of Education Code sections 44949 and 44955. The letter informed the employees of their right to request a hearing and the procedure to do so.

6. In response to the preliminary layoff notices, the District received requests for hearing from 17 employees, one of whom was Rachel Watts.³ Ms. Watts submitted a

² FTE is an abbreviation for the term “full-time equivalent.” This is the basic unit of employment measurement and staff calculation.

³ The other 16 employees are Inga Bernard, Kara Binkley, Rosanne Cantwell, Stacy Criswell, Coree Fitzgerald, Patricia Guillen, Susanna Jones, Stephen Ladine, Amanda Naranjo, Justin Riggs, Dina Rodriguez, Melinda Rosenquist, Sarah Schuchterman, Tamara Sondeno, Susan Tanis, and Quinn Waterson.

timely request for hearing on March 18, 2010. She is a certificated employee of the District. On March 25, 2010, the Superintendent personally served a Certificated Layoff Hearing Packet on Ms. Watts and each of the 16 other employees who had requested a hearing. The packet included a Statement to Respondents, Accusation with Exhibits A through C, Notice of Hearing, blank Notice of Defense, Request for Discovery, Education Code sections 44949 and 44955, and Government Code sections 11506, 11507.5, 11507.6, 11507.7, and 11520.

7. Prior to the hearing, the District narrowed the scope of the reduction in force, and rescinded preliminary layoff notices for 16 of the 17 employees. The only employee whose preliminary notice was not rescinded was Rachel Watts. The revised and current scope of the reduction in force is as follows:

<u>Services</u>	<u>Number of FTE Positions</u>
K-8 Teachers	2.2 FTE
Assistant Vice Principals	3.0 FTE
K-12 Independent Study/Home School Teachers – Charter School	8.3 FTE
TOTAL:	13.5 FTE Positions

8. On March 26, 2010, Ms. Watts filed a timely Notice of Defense.

9. All of the pre-hearing jurisdictional requirements have been met.

10. Ms. Watts challenges her proposed layoff on grounds that the District has not met its burden under section 44955, subdivision (d)(1) to justify the “skip” of a less senior employee, Sheila Gianfortone. That issue is addressed below.

The District’s “Skip” of Ms. Gianfortone

11. In the Resolution, the Board set forth “skipping” criteria which would allow the District to retain certain junior employees with special training and experience needed by the District. The Resolution stated,

That due to the unique needs of the District to hire and retain only teachers who possess necessary authorizations to teach certain classes within the District’s curriculum, the Superintendent or designee is authorized to deviate from terminating certificated employees in order of seniority (“skipping”) in instances where the less senior employee possesses one of the following credential authorizations and will be providing services pursuant to said credential:

1) Single Subject Math; 2) Supplemental Subject Math; 3) Special Education- Mild to Moderate; 4) BCLAD; 5) Single Subject English; 6) Single Subject Spanish; 7) Single Subject Science (including, but not limited to Agriculture, but excluding Social Science); 8) Single Subject Business; 9) Designated Subject Law Enforcement, Criminal Justice; 10) Single Subject Special Education; or 11) **Clear Specialist Instructional-Reading**; or 12) Single Subject Physical Education. (Emphasis added.)

12. Ms. Watts holds a clear multiple subject credential, and a Crosscultural, Language and Academic Development (CLAD) Certificate. She does not hold a reading specialist credential and there was no evidence that she has experience either assessing reading skills or teaching reading. Her 2009-2010 school year assignment was teaching middle school language arts and social science. Ms. Watts' seniority date is August 7, 2008.

13. Ms. Gianfortone holds a clear multiple subject credential, a CLAD Certificate and a Specialist in Reading – Reading and Language Arts credential. Her 2009-2010 school year assignment involved teaching at a middle school and at the Denair Charter Academy, a charter school which provides only independent study and home school programs. Ms. Gianfortone taught one period of computer literacy, coordinated the Supplemental Education Services (SES) intervention program at the middle school, did reading assessments and taught reading. Ms. Gianfortone's job description does not require a reading specialist credential. Her seniority date is August 8, 2008, one day junior to Ms. Watts.

14. The Superintendent testified that the District is opening a new charter school in the fall that will be "classroom-based" with some independent study students. The District needs a teacher with specialized training and experience in reading to work with students who will be enrolling in the new charter school. Ms. Gianfortone has used her reading credential in her 2009/2010 school year assignment and will be able to use it at three sites (an elementary school and two charter schools) in the fall, affording the District greater flexibility. The Board's Resolution authorizes "skipping" any teacher with a Clear Specialist Instructional-Reading credential who will be providing services pursuant to that credential. Ms. Gianfortone has the reading credential and the specialized training and experience which the District needs in the 2010-2011 school year. Ms. Watts does not have a reading credential. For these reasons, the District "skipped" and intends to retain Ms. Gianfortone.

15. Ms. Watts contends that the District has not met its burden under the language in section 44955, subdivision (d)(1). That language requires that the district demonstrate that it has a specific need for personnel "to teach a specific course or course of study." Ms. Watts contends that the reading assignment of Ms. Gianfortone is not a specific course or course of study. The District conceded this point, but argues that it needs a

teacher with the reading credential to work with students at the new charter school. Because Ms. Watts does not have that credential or the specialized training and experience it represents, she would not be able to handle that portion of the anticipated 2010-2011 assignment for Ms. Gianfortone. The District also argued that it is retaining Ms. Gianfortone because this allows more flexibility for the District to meet its needs in the upcoming school year.

16. Although the reading assessment and teaching portion of Ms. Gianfortone's assignment does not amount to a specific course or course of study as such, it is clearly an extremely important and basic service which the District must provide to its students. As such, the reading assessment and teaching portion of Ms. Gianfortone's anticipated assignment falls within the purview of the statute. The District has demonstrated that it has a specific need for a teacher with a reading credential, and with experience assessing and teaching reading at three different District sites. Ms. Watts does not have that credential or the experience to assess and teach reading.

17. The Superintendent testified that it was not possible to separate the percentage of Ms. Gianfortone's time that would be devoted to her reading assignment. It is also not necessary for the District to do so in order to accommodate the requirements of section 44955 to retain more senior employees by splitting a position. The District's decision to deviate from terminating a certificated employee in order of seniority and to "skip" Ms. Gianfortone, as permitted by its "skipping" criteria in the Resolution, was correct.

Other Findings

18. There was no evidence that the District proposes to reduce any services that are mandated by state or federal laws or regulations below mandated levels.

19. There was no evidence that the District proposes to retain any permanent or probationary employee to render services that respondent is certificated and competent to perform. Employees were terminated in the inverse order from which they were employed, as determined from a seniority list prepared by Ms. Jorge, under the Superintendent's direction.

20. Any defenses or issues not specifically raised in this proceeding are deemed waived. Any other assertions put forth by respondent at the hearing and not addressed above are found to be without merit and are rejected.

LEGAL CONCLUSIONS

1. There is jurisdiction to proceed in this matter under sections 44949 and 44955. The District has complied with all notice and other jurisdictional requirements of those sections, as set forth in Factual Findings 1 through 9.

2. The notices sent to respondent indicated the statutory basis for the reduction of services and were sufficiently detailed to provide her with due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board, supra*, 116 Cal.App.3d 831.) The description of services to be reduced, both in the Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

3. As set forth in Factual Finding 3, the services identified in the Resolution are particular kinds of services that could be reduced or discontinued under section 44955. The Superintendent's decision to reduce or discontinue the identified services was neither arbitrary nor capricious and was a proper exercise of discretion. Cause exists to reduce the number of certificated employees of the District due to the reduction or discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

4. Section 44955, subdivision (b), provides, "Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render." Section 44955, subdivision (c), provides in pertinent part, "... and services of such employees shall be terminated in the inverse order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845." As set forth in Factual Finding 19, the District has satisfied these requirements.

5. Section 44955, subdivision (d), provides,

Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) the district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

¶

As set forth in Factual Findings 11 through 17, the District's decision to "skip" Ms. Gianfortone was proper under section 44955, subdivision (d)(1).

6. Because of the reduction or discontinuation of particular kinds of services pursuant to section 44955, cause exists to give notice to Ms. Watts that her services will not be required for the 2010-2011 school year.

RECOMMENDATION

Notice may be given to respondent Rachel Watts that her services will not be required for the 2010-2011 school year because of the reduction or discontinuation of particular kinds of services in the District.

Dated: June 9, 2010

JOANN I. ESHELMAN
Administrative Law Judge
Office of Administrative Hearings