

BEFORE THE
GOVERNING BOARD OF THE
NAPA VALLEY UNIFIED SCHOOL DISTRICT

In the Matter of the Accusation Against
Certificated Employees:

CATHERINE ADAMS, et al.,

Respondents.

OAH No. 2009020693

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Napa, California, on April 17, 2009.

Sally J. Dutcher, General Counsel, represented the Napa Valley Unified School District.

David Weintraub, Attorney at Law, Beeson, Taylor & Bodine, 1404 Franklin Street, Fifth Floor, Oakland, California 94612, represented those respondents listed on Exhibit A, attached.

No appearance was made by or on behalf of respondent Dana Voss. Respondent Catherine Adams was present but left before the hearing began and did not return.

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

FACTUAL FINDINGS

1. On March 5, 2009, the governing board of the Napa Valley Unified School District adopted a resolution in which the board resolved to reduce or eliminate the following particular kinds of services no later than the beginning of the 2009-2010 school year and directed the superintendent or his designee to send appropriate notice to the employees affected by this action:

<u>PARTICULAR KINDS OF SERVICES</u>	<u>FTE (Full Time Equivalents)</u>
Administrative Positions	5.0
Elementary Teachers (K-3 Class Size Reduction, Grades 4-6)	60.0
Elementary Prep Time/Physical Education	2.0
High School Class Size Reduction English	4.0
High School Class Size Reduction Math	2.4
High School Physical Education	2.0
Psychologist Services	1.5
Adaptive Physical Education	<u>1.0</u>
	77.9

The resolution further provided:

BE IT FURTHER RESOLVED that in determining that no employee shall be terminated while a less senior employee is retained to render services which the more senior employee is both certificated and competent to render, the Board directs the Superintendent to apply as a standard of competence, that an employee have specific skills and/or qualifications which include but are not limited to the following:

Preliminary or clear credential from CTC at time of initial employment

English Language Development credentials and/or authorizations

(e.g. BCLAD, CLAD, Language Development Specialist (LDS), English Language Learners (ELL), Specifically Designated Academic Instruction in English (SDAIE), AB 1059, SB 1969 and/or SB 395)

BE IT FURTHER RESOLVED that it will be necessary to retain the services of certificated employees in the 2009-2010 school year regardless of seniority, who possess qualifications needed for the following programs:

Bilingual Programs requiring BCLAD credentials

Bilingual Psychologists

Special Education Programs

Middle and High School Science

Continuation and Community Day Schools

2. On or about March 9, 2009, the superintendent gave written notice to respondents that, pursuant to Education Code sections 44949 and 44955, it was being recommended that their services would be reduced or eliminated for the 2009-2010 school year. Respondents filed timely requests for hearing. The parties stipulated that the district has complied with the requirements of Education Code sections 44949 and 44955.

3. The reductions were based on the district's financial situation. As a result of the state budget crisis, the district is projecting a budget deficit of approximately \$11 million for the 2008-2009 and 2009-2010 school years. Considering this, the reductions are in the interest of the schools and their pupils.

4. The district has agreed to rescind the layoff notices sent to the following employees: Emily Bryden, Judith Christman, Sandra Fox, Sara Kvidahl-Schmitz, Jamie Lutz, Janice O'Malley, and Paula Schweiger. Each of these employees will be retained for the 2009-2010 school year.

5. Except as set forth in Findings 6 through 11, respondents do not contest the district's layoff.

6. Courtney Garcia is an elementary school teacher. She has a Multiple Subject credential with a supplemental authorization in English, which entitles her to teach English in grades K-9. Kara Wilson and Jason Canellos are both junior to Garcia. Both possess Single Subject credentials in English and are being retained to teach English in middle school. Garcia asserts these junior teachers are being retained for a service for which she is certificated and competent, and that she must therefore also be retained.

The district asserts Garcia is not being retained as an English teacher because her supplemental authorization does not make her a "highly qualified teacher" under the federal No Child Left Behind Act. The district has been identified as a Program Improvement district and is being monitored to assure that highly qualified teachers teach all classes. Failure to meet this requirement subjects the district to sanctions. Although the board's resolution does not identify being a highly qualified teacher under NCLB as a standard of competence or a skipping criterion, the district has imposed that requirement in determining whether a teacher will be retained for a particular subject. The district points out that the board's resolution specified that competence standards were "not limited to" the two listed in the resolution.

School districts have broad discretion in setting standards of competence to teach particular subjects. The inclusion of a "highly qualified" standard was within the district's discretion and not beyond the board's resolution. Because of the district's Program Improvement status it has a special need to ensure that all teachers are highly qualified under NCLB.

Under NCLB, as administered by the California Department of Education, a teacher holding a supplemental authorization does not meet NCLB requirements unless they have demonstrated subject matter competency for the subject matter taught. (Cal. Code Regs., tit. 5, § 6116.) In this regard, a teacher who received a credential after July 1, 2002, can demonstrate this competency by either having passed or completed one of the following: a validated statewide subject matter examination certified by the Commission on Teacher Credentialing, a university subject matter program approved by the commission, an undergraduate major in the subject taught, a graduate degree in the subject taught, or coursework equivalent to an undergraduate major. (Cal. Code Regs., tit. 5, § 6111.)

Garcia received a Bachelor of Arts degree in Liberal Studies with an Area of Concentration in English. She completed 19 units in English courses. However, Garcia did not establish that her coursework was equivalent to an undergraduate major. Nor has she demonstrated compliance with any of the other competency methods specified in California Code of Regulations, title 5, section 6111. Garcia has not established she is a highly qualified teacher in English under NCLB, or that the district must retain her to teach English.

7. Louann Talbert possesses a Multiple Subject Credential. She is teaching a math/science core class at middle school. She contends she is certificated and competent to teach middle school science and therefore should have been skipped pursuant to the board's resolution. Talbert has taught in the district since August 17, 2007. She came to the district with 14 years of prior teaching experience. She testified that she is highly qualified under NCLB because she was "HOUSSE'd" in another district.

Under NCLB, as administered by the California Department of Education, a teacher who received a credential before July 1, 2002, can demonstrate subject matter competency by completing a high objective uniform state standard evaluation (HOUSSE) conducted by his/her district. (Cal. Code Regs., tit. 5, § 6112.) A teacher determined by one California school district to have met the HOUSSE requirements in a subject is not required to again demonstrate subject matter competency in another district. (Cal. Code Regs., tit. 5, § 6120.)

Talbert did not testify whether she was HOUSSE'd in science or in another subject. But even if she has demonstrated subject matter competency in science, this does not entitle her to teach departmentalized science classes. Talbert does not possess a credential permitting her to teach such classes. Her Multiple Subject credential entitles her to teach in a self-contained classroom, including a core setting, but not in departmentalized classes. She is no more credentialed and competent to teach a middle school math/science core than any other teacher with a Multiple Subject credential. Talbert does not possess the credential and competence to be skipped as a middle or high school science teacher.

8. Carliza Bataller and Shannon Brown both teach at McPherson Elementary School. The school has a very high population of low-income families and English language learners. School staff has been trained to work together in learning communities and has been very successful in involving community members in the school and in making children want to come to school. They believe the program will suffer if McPherson teachers are laid off. While respondents' concerns are understood, McPherson teachers are not entitled to any different treatment than elementary teachers at the district's other schools.

9. Kendall Russo teaches at Napa Valley Academy, the district's dual immersion school. Russo has passed two of the three sections required for BCLAD certification. She will take the test for the final section on May 16, 2009. Although she is currently teaching in a bilingual program, because she does not yet have her BCLAD certification, Russo is not entitled to be skipped under the board's resolution.

10. Meshach Osborne teaches physical education at Harvest Middle School. He asserts he should be retained because he is the only person at the school site who possesses a Water Safety Instructor certification. He asserts that someone with a WSI certification must be on site for swimming lessons. Osborne did not present sufficient evidence to show he should be retained.

11. Donna Andrews did not establish that her seniority date of August 17, 2007, is incorrect.

12. No junior employee is being retained to render a service that any of the respondents are certificated and competent to provide.

LEGAL CONCLUSIONS

Cause for the elimination of 77.9 FTE positions exists in accordance with Education Code sections 44949 and 44955. Except as to those respondents listed in Factual Finding 4, cause further exists to give respondents notice that, to the extent shown in the layoff notices sent them, their services will not be required for the 2009-2010 school year. This cause relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

The layoff notices and accusations issued to respondents Emily Bryden, Judith Christman, Sandra Fox, Sara Kvidahl-Schmitz, Jamie Lutz, Janice O'Malley, and Paula Schweiger shall be rescinded.

Notice may be given the remaining respondents that, to the extent shown in the layoff notices sent them, their services will not be required for the 2009-2010 school year.

DATED: _____

MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings