

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

In the Matter of the Reduction In Force of:

CERTAIN CERTIFICATED PERSONNEL
EMPLOYED BY THE SALIDA UNION
SCHOOL DISTRICT,

Respondents.

OAH No. 2009020786

PROPOSED DECISION

Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Salida, California, on April 23, 2009.

Atkinson, Andelson, Loya, Ruud & Romo, by Marisa L. Rubitz, Attorney at Law, and Chesley D. Quaide, Attorney at Law represented the Salida Union School District,

Ernest W. Tuttle, IV, Attorney at Law, represented 17 respondents identified in Exhibit A, a copy of which is attached hereto and incorporated herein by reference.

The matter was submitted for decision on April 23, 2009.

FACTUAL FINDINGS

1. Douglas D. Baughn, Superintendent of the Salida Union School District (District), State of California, filed the Accusations in his official capacity as a public officer.
2. On February 17, 2009, the Governing Board of the Salida Union School District (Board) adopted Resolution No. 0809-14, which reduced and/or discontinued particular kinds of certificated services no later than the beginning of the 2009-2010 school year.
3. The Board further determined that it shall be necessary by reason of the reduction and/or discontinuance of services to decrease the number of permanent and/or

probationary certificated employees at the close of the 2008-2009 school year by a corresponding number of full-time equivalent positions, and directed the Superintendent or his designee to proceed accordingly by notifying the appropriate employees to implement the Board's determination.

4. On February 17, 2009, the Board was given written notice by the Superintendent of the recommendation that notice be given to certificated employees, including respondents, that their services will not be required for the next school year, and stating the reasons for that recommendation. The written notice attached and incorporated by reference Resolution No. 0809-14, which listed the services to be reduced or discontinued, and further detailed the reasons for the written notice.

5. On or before March 15, 2009, the District personally served on 22 certificated employees, including respondents, a written notice that it had been recommended that notice be given to them pursuant to Education Code sections 44949 and 44955 that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation. The written notice attached and incorporated by reference Resolution No. 0809-14, which listed the services to be reduced or discontinued, resulting in a proposed reduction in the certificated staff by 21.0 full-time equivalent (FTE) positions.

6. Seventeen certificated employees made a timely written request for a hearing to determine if there is cause for not reemploying them for the next school year.

7. The Superintendent made and filed Accusations against each of the certificated employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense were timely served on those certificated employees.

8. Notices of Defense were timely filed by 17 certificated employees (respondents).

9. Each respondent (set forth in Exhibit A) is presently a certificated probationary or permanent employee of the District.

10. Resolution No. 0809-14 called for the reduction or discontinuance of the following particular kinds of services for the 2009-2010 school year:

1.0	FTE	Math
2.0	FTE	English
1.0	FTE	Social Studies
1.0	FTE	Science
1.0	FTE	Counseling
1.0	FTE	Psychologist
14.0	FTE	K-6 Elementary

11. The above-described services are “particular kinds of services” that can 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 arbitrary or capricious, but constituted a proper exercise of discretion.

12. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

13. At hearing, the Superintendent elaborated on the reasons for the recommended layoffs. He stated that the District faces a projected budget shortfall of \$2.1 million for the 2009-2010 school year. The anticipated budget shortfall is based in substantial part on declining enrollment in the District, which results in a drop in state funds to the District due to the reduction in the number of students. The Superintendent testified that there had been a decline in enrollment in the District of at least 100 students each year for the past five years, and that the District has had to impose layoffs of certificated employees for the past three years.

14. In arriving at the number of certificated employees required to be terminated, Resolution No. 0809-14 states that the Board “considered positively assured attrition, including all deaths, resignations, retirements, nonreelections, and other permanent vacancies” as of February 17, 2009. The Board concluded that, notwithstanding any vacancies resulting in positively assured attrition, it would still be necessary to terminate certificated employees equal to 21.0 FTE. At hearing, the Superintendent confirmed that certificated employees were sent an “intent to return” form earlier in the year, and that no certificated employee indicated an intent to retire.

15. The District maintains a seniority list which contains pertinent information such as employees’ date of first paid service, current assignments, and credentials on file. The seniority list was corrected at hearing, as follows: Tara Vikjord’s “contract signing date” was changed from June 28, 2001, to May 29, 2001. This correction did not affect Ms. Vikjord’s placement on the seniority list.

16. The District used the seniority list to develop a proposed layoff list. The District considered whether senior employees currently assigned in the various services being reduced or eliminated could displace, or “bump,” more junior employees. In determining who would be laid off for each kind of service reduced or eliminated, the District first applied known vacancies and then applied in progressive sequence the seniority list in inverse order, from least to most senior. Employees with the same date of hire were laid off according to the needs of the District and its students.

17. Resolution No. 0809-14 set forth criteria “to resolve ties in seniority between certificated employees.” There were seven certificated employees with the seniority date of

July 5, 2001. Those employees were ranked in order of seniority according to the tie-breaking criteria adopted by the Board. As a result of the application of the tie-breaking criteria, Elizabeth Inman was retained by the District.

18. In general, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers if the senior teacher has both the credential and competence to occupy such a position. The Board adopted “competency criteria” as part of Resolution No. 0809-14. Paragraph 2 of Resolution No. 0809-14 states:

That “competency” for the purpose of Education Code section 44955 shall be determined upon current possession of a preliminary or clear credential for the subject matter or grade level and the certificated employee having taught the class to which they will be assigned at the beginning of the 2009-2010 school year at least one (1) semester in the past ten (10) years in the Salida Union School District.

19. According to the Superintendent, the Board considered changes in legal requirements and standards since 2000 in determining that experience in the “class to which [the teacher] will be assigned” within the past 10 years would be necessary to establish competency in order for a senior teacher to “bump” a junior teacher from his or her position. Furthermore, the Board justified the requirement that the necessary teaching experience be “in the Salida Union School District” based on the District’s provision of in-service training to teachers, approval of off-site professional development leave, and SB 472¹ state-mandated training in reading/language arts and mathematics. The Superintendent testified that a teacher who had taught one grade in a self-contained classroom (e.g. sixth grade) in the District would nevertheless be “competent” under the criteria to teach a different grade (e.g. first) in a self-contained classroom, because such a teacher would have received professional development training pertaining to elementary classroom teaching and would have “taught the class,” i.e., a self-contained classroom, within the previous 10 years.

20. Carlena Kellogg holds a Multiple Subject (M.S.) clear credential, with supplemental authorizations in Agriculture and Science. She has a seniority date of August 22, 2000, and is the most senior certificated employee with an M.S. credential slated for layoff. During her nine years of employment with the District, Ms. Kellogg has taught science and mathematics. Her current assignment is eighth grade physical science, for which she is qualified as a result of her supplemental authorization. She has not taught in a self-contained classroom (kindergarten through sixth grade) during her employment with the District. Ms. Kellogg has been a credentialed teacher since 1996. Prior to her employment with the District, she taught first, third, and fifth grades while employed with the Sylvan Union School District. She also taught science to students in grades kindergarten through sixth, during the 1999-2000 school year, while employed by Modesto Junior College at the

¹ Sometimes erroneously referred to as “AB 472” during the hearing.

Great Valley Museum. She has not taught in a self-contained K-6 classroom in the past 10 years.

21. Ms. Kellogg is the science teacher with the least seniority in the District. She is identified for layoff as a result of the reduction of 1.0 FTE Science in Resolution No. 0809-14. There are three teachers with less seniority than Ms. Kellogg who hold M.S. credentials, who did not receive layoff notices: Jennifer Snyder (seniority date November 15, 2000); Julie Noel (seniority date January 8, 2001); and Elizabeth Inman (seniority date July 5, 2001). Each of these teachers is currently assigned to teach in a self-contained (K-6) classroom.

22. The District determined that Ms. Kellogg was not “competent” to teach in a K-6 classroom based upon its application of the competency criteria in Resolution No. 0809-14; although she possesses a clear credential for the subject matter or grade level (i.e., an M.S. credential), she has not taught the class to which she would be assigned (i.e., a K-6 self-contained class) for at least one semester in the past 10 years in the District. Thus, the District did not permit her to “bump” one of the three junior teachers with M.S. credentials teaching in the elementary school program.

23. Under the circumstances set forth above, the District properly exercised its discretion to establish and apply its competency criteria. In *Martin v. Kentfield School Dist.* (1983) 35 Cal.3d 294, the Supreme Court considered the “certificated and competent” standard embodied in Education Code section 44956, concerning the reemployment rights of teachers who have been laid off under Education Code section 44955. As the court wrote, “[s]uch determinations, it has been held, involve ‘discretionary decisions’ which are within the ‘special competence’ of the school districts.” (*Id.* at p. 299.) (See also, *King v. Berkeley Unified School Dist.* (1979) 89 Cal.App.3d 1016, 1023.) In *Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555, at p. 565, the court stated:

While these decisions stress the discretion reposed in a school board in defining the term “competent,” the court in *Forker v. Board of Trustees* (1984) 160 Cal.App.3d 13 added further assistance in stating, “[a]s interpreted by the *Martin* court, the term ‘competent’ as used in section 44956 relates to specific skills or qualifications required of the applicant. Decisions prior to *Martin* have interpreted that term in a similar manner.” (*Id.* at p. 19. See also *Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648, 654-655; *Ozsogomonyan, Teacher Layoffs in California: An Update* (1979) 30 Hastings L.J. 1727, 1749-1751.) Hence, from these authorities we conclude that a board's definition of competency is reasonable when it considers the skills and qualifications of the teacher threatened with layoff.

In *Duax*, the court was interpreting the application of Education Code section 87743, the community college analogue to Education Code section 44955. The court upheld the

governing board's application of competency criteria similar to the criteria adopted by the Board herein, to prevent a teacher with more seniority from displacing a less senior teacher, noting that, "In this case, the governing board established a standard of competency that required one year's full-time teaching in the subject area within the last ten years, a standard clearly relating to skills and qualifications to teach." (*Id.* at p. 567.) Under the Board's competency criteria, Ms. Kellogg is not "competent" to bump a junior teacher with an M.S. credential teaching in a self-contained K-6 classroom.

24. No certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render

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.

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under Education Code section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction." The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Board's decisions were a proper exercise of its discretion.

3. The services identified in Resolution No. 0809-14 are particular kinds of services that could be reduced or discontinued under section Education Code section 44955. Cause exists to reduce the number of certificated employees of the District due to the reduction or discontinuance of PKS. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

4. 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.)

5. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen, supra*, 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be

reduced, both in the Board 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.)

6. Respondents contended that the testimony of the Superintendent established that the reason for the layoff was a decline in average daily attendance (ADA), and not a reduction in particular kinds of services (PKS). Education Code section 44955, subdivision (b), states in pertinent part: “Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, ...[or] whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, ... and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year.” Respondents contended that they were not given notice prior to March 15, 2009, of the reason for the layoff (i.e., the decline in ADA), as required by Education Code section 44949,² and that the District did not perform the mathematical calculation necessary to determine the percentage decline in ADA in order to calculate the number of teachers whose services were to be terminated. Thus, respondents argue, the entire layoff must be invalidated.

Respondents’ contention is not persuasive. While the Superintendent stated that declining enrollment was the “primary criteria” for the layoff, he tied declining enrollment to a loss of revenue by the District, resulting in a \$2.1 million projected deficit. The District chose to address this financial crisis by identifying PKS to be reduced or eliminated, rather than by eliminating teaching positions on a strict percentage basis corresponding to a decline in ADA. The District properly exercised its discretion by implementing a PKS layoff. The fact that the Superintendent acknowledged declining enrollment as the underlying cause of the financial deficit did not transform the proceedings into an ADA layoff.

7. No employee with less seniority than any named respondent is being retained to render a service which any named respondent is certificated and competent to render. The Board may give respondents final notice before May 15, 2009, that their services will not be required for the ensuing school year, 2009-2010.

² Education Code section 44949, subdivision (a), states in pertinent part: “No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, **the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee**, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, **that it has been recommended that the notice be given to the employee, and stating the reasons therefor.**” (Emphasis added.)

ORDER

The Accusations served on respondents are sustained. Notices shall be given to respondents identified in attached Exhibit A that their services will not be required for the 2009-2010 school year because of the reduction or discontinuation of particular kinds of services. Notice shall be given to respondents in inverse order of seniority.

Dated: _____

CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A

Salida Union School District
OAH No. 2009020786
List of Respondents Served with Accusation

Heather Bragg
Kathryn Diederich
Robin Garcia
Gina Hall
Rebecca Harms
Eric Hirst
Patty Hoddy
Carlana Kellogg
Elvia Lopez
Suzana Manriquez
Scott Neeley
Rance Skavdahl
Sara Tanner
Mai Thao
Tara Vikjord
Kristin Vilhauer
Pam Wray