

BEFORE THE GOVERNING BOARD OF THE
MARIPOSA COUNTY UNIFIED SCHOOL DISTRICT

In the Matter of the Employment Status of:

CHELSEA ARNOLD, et al.,

Respondents.

OAH No. 2009030054

PROPOSED DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter in Mariposa, California, on April 13, 2009.

James Scot Yarnell, Attorney at Law,¹ represented the complainant, Randy Panietz, Superintendent, Mariposa County Unified School District.

Joshua F. Richtel, Attorney at Law,² represented the respondents. There are 19 respondents, and they are listed in exhibit A.

The matter was submitted on April 13, 2009.

FACTUAL FINDINGS

GENERAL FINDINGS CONCERNING STATUTORY REQUIREMENTS

1. Respondents are certificated district employees.
2. Not later than March 15, 2009, in accordance with Education Code sections 44949 and 44955,³ the superintendent of the school district caused the governing board of the district and respondents to be notified in writing that it was recommended that respondents be notified that the district would not require their services for the ensuing school year. The notice stated the reasons for the recommendation. The recommendation was not related to respondents' competency.

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² Joshua F. Richtel, Attorney at Law, 750 East Bullard Avenue, Suite 101, Fresno, California 93710.

³ All references to the Code are to the Education Code unless otherwise specified.

3. A notice was delivered to each respondent, either by personal delivery or by depositing the notice in the United States mail, registered, postage prepaid, and addressed to respondent's last known address.

4. The notice advised each respondent of the following: He or she had a right to a hearing. In order to obtain a hearing, he or she had to deliver a request for a hearing in writing to the person sending the notice. The request had to be delivered by a specified date, which was a date that was not less than seven days after the notice of termination was served.⁴ And the failure to request a hearing would constitute a waiver of the right to a hearing.

5. Respondents timely filed written requests for a hearing to determine whether there was cause for not reemploying them for the ensuing year. An accusation was timely served on respondents. Respondents were given notice that, if they were going to request a hearing, they were required to file a notice of defense within five days after being served with the accusation.⁵ Respondents filed timely notices of defense. All prehearing jurisdictional requirements were met.

6. The governing board of the district resolved to reduce or discontinue particular kinds of services. Within the meaning of Code section 44955, the services are "particular kinds of services" that can be reduced or discontinued. The decision to reduce or discontinue these services was not arbitrary or capricious but constituted a proper exercise of discretion.

SERVICES THE DISTRICT INTENDS TO REDUCE OR DISCONTINUE

7. The governing board of the district determined that, because particular kinds of services are to be reduced or discontinued, it is necessary to decrease the number of permanent employees in the district by 21.12 full time equivalents (FTE).

8. The particular kinds of services the governing board of the district resolved to reduce or discontinue are:

Middle School Principal	1.00 FTE
High School Assistant Principal	0.50 FTE
Elementary Counseling	0.50 FTE
Itinerant Music	0.65 FTE
7-8 English	3.00 FTE
7-8 History/Social Science	2.00 FTE

⁴ Employees must be given at least seven days in which to file a request for a hearing. Education Code section 44949, subdivision (b), provides that the final date for filing a request for a hearing "shall not be less than seven days after the date on which the notice is served upon the employee."

⁵ Pursuant to Government Code section 11506, a party on whom an accusation is served must file a notice of defense in order to obtain a hearing. Education Code section 44949, subdivision (c)(1), provides that, in teacher termination cases, the notice of defense must be filed within five days after service of the accusation.

7-8 Physical Education	1.00 FTE
K-6 Physical Education	0.80 FTE
K-6 Multiple Subject Instruction	11.00 FTE
Industrial Technology (ROP Multimedia Production)	0.67 FTE

USE OF TIE-BREAKING CRITERIA BASED ON THE CURRENT NEEDS OF THE DISTRICT AND STUDENTS

9. Pursuant to Code section 44955, subdivision (b), the governing board of the district established criteria for determining the order of termination as among employees who first rendered paid service on the same day. The tie-breaking criteria are as follows:

- A. Possession of a currently valid preliminary or clear California teaching credential - 1 point;
- B. Possession of multiple valid preliminary or clear California teaching credentials - 1 point;
- C. Highest current placement on the certificated salary schedule - 1 point;
- D. Possession of one or more English Language Learner certifications (e.g., LDS, CLAD, SB 1969, SB 395, BCC, BCLAD) or other EL qualifying credential - 1 point;
- E. Possession of one or more post graduate degree(s) - 1 point;
- F. Possession of an undergraduate major or minor in: math, science, special education - 1 point;
- G. Overall excellence of most recent evaluation - 1 point;
- H. Coaching experience or qualifies to coach as outlined in District policy - 1 point;
- I. In any case where a tie results after calculating the cumulative points for each the above criteria, then the tie shall be broken by ranking the tied employees from lowest to highest according to the last four digits of their social security number, with the lower number deemed less senior than the next higher number.

10. James Glazier and respondent Christine VanDenover first rendered paid service on August 20, 2002. The superintendent did not serve a notice on Mr. Glazier. He is being retained to render a service that Ms. VanDenover is certificated and competent to render. The district, however, may not do that unless application of the tie-breaking criteria causes him to be deemed to be senior to Ms. VanDenover. When the district applied the tie-

breaking criteria to Mr. Glazier and Ms. VanDenover, the district calculated four points for each of them. The district broke that tie by looking to the final numbers of their social security numbers. Mr. Glazier's number is higher. Ms. VanDenover contends that she should have been given one point for criterion "H." If she had an additional point, there would be no need to refer to social security numbers; and the district, because it is retaining Mr. Glazier, would be unable to dismiss Ms. VanDenover. It is found, however, that Ms. VanDenover is not entitled to a point for criterion "H."

11. As noted above, criterion "H" provides "Coaching experience or qualifies to coach as outlined in District policy" Ms. VanDenover does not have coaching experience.

12. The district policy on coaching provides, in part, as follows:

The State Board of Education has amended the California Administrative Code Title 5, Section 35179.5, which requires that all temporary athletic team coaches meet minimum qualifications for persons serving in limited assignments supervising the athletic activities of pupils.

In an effort to comply with this regulation, all coaches (including walk-ons) will be required to take and gain final certification with the California Interscholastic Federation (CIF) approved Fundamentals of Coaching

[¶] . . . [¶]

The site Principal at Lake Don Pedro . . . will be responsible for ensuring that the coach completes the certification process and provides documentation to the Personnel Coordinator.

Coaches should complete the certification process prior to assuming their duties. If a coach is selected too late to do that, [he or she] will need to complete the certification course as quickly as possible. The Personnel Department will follow up to ensure that coaching certification documentation is on file within 30 days of the coach beginning [his or her] duties.

13. Ms. VanDenover teaches at Lake Don Pedro School. She does not have CIF certification. The principal asked her to start a basketball program for seventh and eighth grade girls. Only two girls expressed interest in the program; and, on Ms. VanDenover's recommendation, the program was cancelled.

14. Ms. VanDenover contends as follows: Her principal asked her to coach, and she agreed to coach. Therefore, one must infer that she "qualifies to coach as outlined in

District policy.” That contention is not persuasive. According to the policy, Ms. VanDenover would have been permitted to coach in something of a provisional status for no more than 30 days while she attempted to obtain the certification required to make her qualified to coach. Under the policy, in order to be qualified to coach, one must have CIF certification. If the proposed girls’ basketball program had gone forward, it is possible that Ms. VanDenover would have obtained CIF certification, which would have caused her to be qualified to coach. But that did not happen.

15. It is found that Ms. VanDenover failed to prove that she “qualifies to coach as outlined in District policy”

16. James Glazier and respondent Erin Vereschagin first rendered paid service on August 20, 2002. As noted above, the superintendent did not serve a notice on Mr. Glazier. He is being retained to render a service that Ms. Vereschagin is certificated and competent to render. The district, however, may not do that unless application of the tie-breaking criteria causes him to be deemed to be senior to Ms. Vereschagin. In fact, application of the tie-breaking criteria caused Ms. Vereschagin to be deemed to be senior to Mr. Glazier. The parties stipulated that the accusation against Ms. Vereschagin should be dismissed.

17. Application of the tie-breaking criteria resulted in determining the order of termination solely on the basis of the needs of the district and the students thereof.

SUMMARY OF FINDINGS REGARDING RETENTION OF EMPLOYEES

18. With regard to respondents who are permanent employees, the district is not retaining any probationary employee to render a service that such a respondent is certificated and competent to render.

19. With the dismissal of the accusation against Ms. Vereschagin, it is true that, with regard to respondents who are permanent employees, the district is not retaining any employee with less seniority than such a respondent has to render a service that the respondent is certificated and competent to render.⁶

20. With regard to respondents who are either permanent or probationary employees, the district is not retaining any employee with less seniority than such a respondent has to render a service that the respondent’s qualifications entitle him or her to render.⁷

⁶ Code section 44955, subdivision (b), provides seniority protection for a *permanent* employee in terms of the services the employee is “*certificated and competent to render.*”

⁷ Code section 44955, subdivision (c), provides seniority protection for both *permanent and probationary* employees in terms of the services an employee’s “qualifications entitle [him or her] to render.”

LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Code sections 44949 and 44955. All notice and jurisdictional requirements contained in those sections were satisfied.
2. Within the terms of Code sections 44949 and 44955, the district has cause to reduce or discontinue particular kinds of services and to give notices to respondents that their services will not be required for the ensuing school year. The cause relates solely to the welfare of the schools and the pupils.

ORDER

1. The accusation against Erin Vereschagin is dismissed.
2. The district may give notice to the remaining respondents that the district will not require their services for the ensuing school year.

Dated: April 23, 2009

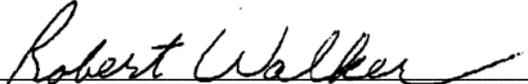

ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A

LNAME	FNAME
Arnold	Chelsea
Blagg	Travis
Breshears	Lynn
Candelaria	Lori
Chappel	Stephanie
Chappell	Doug
Collins	Robert
DeCecco	Catherine
Kelly	Robert
Kudela	Tammy
Marcis	Matthew
Martin	Kimberly
Pederson	Dawn
Slaght	Marianne
Sprague	Hollie
Swift	Hally
VanDenover	Christine
Vereschagin	Erin
Wellcome	Iris