

BEFORE THE
BOARD OF EDUCATION
CENTRALIA SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Joan Barnes, et al., who are
Certificated Employees of the
Centralia School District,

Respondents.

OAH Case No. 2009030099

PROPOSED DECISION

Nancy Beezy Micon, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 30, 2009, in Buena Park, California.

Atkinson, Andelson, Loya, Ruud & Romo, by Sharon J. Ormond, Attorney at Law, represented Diane Scheerhorn (Scheerhorn), Superintendent of the Centralia School District (District).

Reich, Adell & Cvitan, by Kent Morizawa, Attorney at Law, represented Joan Barnes, Carrie Barron, Kelly Calvert, Michelle Cappasola, Holly Castor, Melissa Chavez, Sarah Chung, Shelly Coveney, Christina Gibbons, Linda Harris, Desiree Howden, Georgina Kirby, Tammy Kokash, Nicole Lamping, Jennifer Lee, Jamie Mahkorn, Sandra O'Dea, Jennifer Shirley, Anna Smith, Olivia Swinth, and Catherine White (Respondents).

Respondents Nicole Lamping and Jamie Mahkorn represented themselves to challenge the District's application of the tie-breaking criteria in the District's determination of seniority among certificated employees with an August 26, 2002 seniority date.

Although Carrie Barron did not submit a notice of defense, she appeared at the hearing and the District did not challenge her status as a Respondent. Respondent Catherine White did not timely submit a request for hearing, but timely submitted a notice of defense. The District did not object to Catherine White's participation in the hearing. Respondent Joan Barnes did not submit a notice of defense, and was not present at the hearing. Kathryn Chavez did not timely submit a notice of defense, and she was also not present at the hearing. Chiarina Piazza timely submitted a request for hearing, and a notice of defense, but was not present at the hearing. The absent Respondents were in default, and the hearing proceeded in their absence.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2009-2010 school year. Respondents requested a hearing for a determination of whether cause exists for not

reemploying them for the 2009-2010 school year.

Evidence was received by way of stipulation, testimony and documents. The record was closed, and the matter submitted for decision on April 30, 2009.

FACTUAL FINDINGS

1. Superintendent Scheerhorn filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.
3. a. On February 25, 2009, the Governing Board of the District (Governing Board) adopted Resolution Number 1313, reducing or discontinuing the following services for the 2009-2010 school year:

<u>Service</u>	<u>FTE¹ Reduction</u>
Reduce K-6 Classroom Teaching Services	19.0
Reduce K-6 SDC-Mild/Moderate Teaching Services	2.0
Reduce Nursing Services	1.0
Reduce Deaf and Hard-of-Hearing Teaching Services	2.0
Reduce Resource Specialist Teaching Services	0.5
Reduce Speech & Language Pathology Services	1.0
Reduce Counseling Services	2.0
Reduce Social Work Services	1.0
Reduce School Psychology Services	2.5
Reduce Teacher on Special Assignment Services	5.0
Discontinue Curriculum Coordinator Services	1.0
Discontinue Program Improvement Coordinator II Services	<u>1.0</u>
 Total Certificated Positions	 38.0

4. Assistant Superintendent Dr. Douglas Staine (Staine) thereafter notified the Governing Board and, on February 27 through March 3, 2009, provided written notice to 30 certificated employees of the District, including Respondents, that he recommended their services will not be required for the 2009-2010 school year due to the reduction or discontinuance of particular kinds of services.

5. On March 17, 2009, the District issued the Accusation, and, between March 24 and March 26, 2009, served the Accusation and other required documents on Respondents.

¹ Full-time equivalent position.

6. Respondents thereafter requested a hearing, and filed notices of defense, seeking a determination of whether cause exists for not reemploying them for the 2009-2010 school year.

7. All pre-hearing jurisdictional requirements have been met.

8. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of Education Code section 44955.²

9. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 primarily because of the uncertainty surrounding future funding. The District estimates a revenue shortfall of approximately \$3.6 million for the remainder of the 2008-2009 school year and for the 2009-2010 school year. The decision to reduce the particular kinds of services is not arbitrary or capricious but is rather a proper exercise of the District's discretion.

10. The reduction of services set forth in factual finding number 3 is related to the welfare of the District and its pupils, and it has become necessary to decrease the number of certificated employees as determined by the Governing Board.

11. In determining the number of final layoff notices to issue, the District expects to take into account any retirements and resignations to reduce the number of actual layoff notices.

12. On February 25, 2009, the Governing Board adopted Resolution Number 1314, setting forth its criteria for breaking seniority ties for employees with the same first date of paid service to the District. In pertinent part, the Resolution provides: "WHEREAS, pursuant to Education Code Section 44955, the Board is required, as between employees who first rendered paid service to the District on the same date, to determine the order of termination solely on the basis of the needs of the District and its students." The following criteria were used in determining this need, in order of priority, and each criterion was used only if the preceding criteria did not delineate the order of termination:

a. Employees with a clear professional, standard, life or general teaching credential were regarded as having seniority over employees possessing only a preliminary credential, intern credential, short-term staff permit (STSP), provisional internship credential (PIP), or waiver;

b. Employees with a preliminary credential were regarded as having seniority over employees possessing only an intern credential, short-term staff permit (STSP),

² All further references are to the Education Code.

provisional internship credential (PIP), or waiver;

c. Employees with an intern credential were regarded as having greater seniority than employees who possessed only a short-term staff permit (STSP), provisional internship credential (PIP), or waiver;

d. BCLAD/CLAD/LDS Certification;

e. NCLB Highly-Qualified status;

f. Level of college degrees: Ph.D./Ed.D senior to masters degree; masters degree senior to two bachelors degrees; two bachelors degrees senior to a single bachelors degree and an associate of arts/science degree; and a bachelors degree and an associate of arts/science degree senior to a single bachelors degree;

g. Number of college majors: double majors on the transcripts were senior to a single major and two minors on the transcripts; a single major and two minors on the transcripts were senior to a single major and a single minor on the transcripts; and a single major and a single minor on the transcripts were senior to a single major on the transcript;

h. Undergraduate majors;

i. Verified years of service for the District; and

j. If there was still a tie, then seniority would be determined by a random drawing by lot.

13. The provision concerning the determination of seniority on the basis of undergraduate majors was paragraph 11 to the Resolution. It reads, as follows:

Assuming that the preceding paragraphs do not resolve all ties between employees having the same seniority date, then employees will be ranked by undergraduate majors in the following subject matter areas, in order of priority:

(a) English-

(b) Reading / Language Arts

(c) Mathematics

(d) Science

- (e) Foreign Languages
- (f) Social Science / Social Studies
- (g) Arts
- (h) History / Geography
- (i) Liberal Studies / Child Development
- (j) Business / Computer Education
- (k) Physical Education

14. a. Assistant Superintendent Staine applied the tie-breaking criteria to rank the following ten employees, who each have the seniority date of August 26, 2002: Joan Barnes, Kelly Calvert, Anna Smith, Helen Jung, Nicole Lamping, Jamie Mahkorn, Paul McGill, Michelle Cappasola, Jennifer Tibbs, and Stephanie Patton. The undergraduate major criterion was used to rank the following five employees, who all held masters degrees, and were listed with the following undergraduate majors:

- Anna Smith Liberal Arts
- Helen Jung Child & Adol Dev
- Nicole Lamping Psychology
- Jamie Mahkorn Elementary Ed
- Paul McGill Psychology

b. In applying the undergraduate major criterion, Assistant Superintendent Staine modified application of the tie-breaking criteria, based on his knowledge of the coursework required, to treat Liberal Arts majors in the same manner as Liberal Studies majors. Smith, who was a Liberal Arts major, was tied with Jung, who had a Child and Adolescent Development major. Staine gave credit to both Smith and Jung for their majors. Lamping, Mahkorn, and McGill were not given credit for their majors.

c. Respondent Mahkorn contests the District's action, asserting that she should have been given credit for her Elementary Education major. Mahkorn received her undergraduate degree from the University of Maryland. The Dean of the University of Maryland wrote a letter, dated April 13, 2009, which analyzed Mahkorn's degree and the preparation it gave her for teaching elementary school. Assistant Superintendent Staine explained to Mahkorn that the list of undergraduate majors was objectively developed by reference to a California handbook. Mahkorn's Elementary Education major is not, however,

offered in California. At the hearing, Assistant Superintendent Staine reviewed Mahkorn's transcript, which would also have been in her personnel file. Staine testified that Mahkorn's coursework would have been equivalent to a Liberal Studies major.

d. Respondent Lamping contests the District's action, asserting that she should have been given credit for her psychology major from the College of Liberal Arts at California State University at Long Beach. Staine testified that he only reviewed transcripts to identify the employee's major, not the college from which it was obtained. Nevertheless, at the hearing, Staine reviewed Lamping's transcript, which would also have been in her personnel file, and determined that Lamping's coursework would have been equivalent to a Liberal Studies major.

e. No evidence was presented concerning how Staine would assess the undergraduate majors of other employees.

f. In applying criteria, Assistant Superintendent Staine interpreted a Liberal Arts major to be equivalent to a Liberal Studies major, and gave credit to employees who majored in Liberal Arts. Consistent application of the criteria requires that credit be given to Mahkorn and Lamping for their majors, because they established that their majors were also equivalent to Liberal Studies majors, and that Staine considered this to be the case. Mahkorn and Lamping will still be subject to the layoff even if their ranking is changed as a result of being given credit for their undergraduate majors.

15. The District did not retain any certificated employee junior to Respondents Joan Barnes, Carrie Barron, Kelly Calvert, Michelle Cappasola, Holly Castor, Melissa Chavez, Sarah Chung, Shelly Coveney, Christina Gibbons, Linda Harris, Desiree Howden, Georgina Kirby, Tammy Kokash, Nicole Lamping, Jennifer Lee, Jamie Mahkorn, Sandra O'Dea, Jennifer Shirley, Anna Smith, Olivia Swinth, and Catherine White, to render a service which these Respondents are certificated and competent to render.

16. At the hearing, the District withdrew the Accusations against Desiree Howden and Sandra O'Dea.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 7.

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 8.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 10.

4. Assistant Superintendent Staine, in applying the tie-breaking criteria, interpreted a Liberal Arts major to be equivalent to a Liberal Studies major. Consistent application requires that credit also be given to Jamie Mahkorn and Nicole Lamping, who established that their majors were also equivalent to a Liberal Studies major. Despite modification of the tie-breaking criteria, cause still exists to terminate the services of Jamie Mahkorn and Nicole Lamping.

5. Cause exists to terminate the services of Respondents Joan Barnes, Carrie Barron, Kelly Calvert, Michelle Cappasola, Holly Castor, Melissa Chavez, Sarah Chung, Shelly Coveney, Christina Gibbons, Linda Harris, Georgina Kirby, Tammy Kokash, Nicole Lamping, Jennifer Lee, Jamie Mahkorn, Jennifer Shirley, Anna Smith, Olivia Swinth, and Catherine White, by reason of factual finding numbers 1 through 16, and legal conclusion numbers 1 through 3.

RECOMMENDATION

1. It is recommended that the Accusations against Desiree Howden and Sandra O'Dea be dismissed

2. It is recommended that the Accusations be sustained, and that the District may notify Respondents Joan Barnes, Carrie Barron, Kelly Calvert, Michelle Cappasola, Holly Castor, Melissa Chavez, Sarah Chung, Shelly Coveney, Christina Gibbons, Linda Harris, Georgina Kirby, Tammy Kokash, Nicole Lamping, Jennifer Lee, Jamie Mahkorn, Jennifer Shirley, Anna Smith, Olivia Swinth, and Catherine White that their services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services.

DATED: _____

Nancy Beezy Micon
Administrative Law Judge
Office of Administrative Hearings