

BEFORE THE
GOVERNING BOARD
ATASCADERO UNIFIED SCHOOL DISTRICT
COUNTY OF SAN LUIS OBISPO
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Shauna Ames and Other
Certificated Employees of the
Atascadero Unified School District,

Respondents.

Case No. L2009030194

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 27, 2009, in Atascadero, California.

Louis T. Lozano and Micah K. Nilsson, Attorneys at Law, represented John Rogers (Rogers), Superintendent, Atascadero Unified School District (District).

John F. Sachs, Attorney at Law, represented Shauna Ames, Heather Bakich, Steve Collins, Julie Cross, Kara Ferrell, Jennifer George, Teresa Harback, Yvonne High, Jennifer Isbell, Tammy Jacinto, Sheila Jeffries, Amik Jones, Catherine Kingsbury, Jessica Lloyd, Tori Loney, Christine Miller, Rebecca Morris, Jill-Ana Myers, Alan Pietsch, Megan Schultz, Peter Smith, Jean Sutton, Annie Turner, and Dorothy Wagster (Respondents).

Anna Ferree represented herself, and is included in references to "Respondents."

The District has decided to reduce or discontinue certain educational services and has given Respondents and other certificated employees of the District 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.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Superintendent Rogers filed the Accusation in his official capacity.

2. Respondents are certificated employees of the District.

3. a. On February 17, 2009, the Governing Board of the District (Governing Board) adopted Resolution number 10-08-09, reducing or discontinuing the following services for the 2009-2010 school year:

<u>Service</u>	<u>FTE¹ Equivalent Positions</u>
Testing & Accountability Coordinator Administrator	1.0
Elementary Multiple Subject Instruction	27.0
Special Education Teacher	1.2
School Counselors	4.0
School Psychologist Intern	0.82
Junior High School Drama	1.0
Junior High School Industrial Arts	1.0
High School Independent Study	1.0
High School Mathematics	0.5
High School English	1.0
West Mall Alternative School Home Studies K-8	<u>1.0</u>
Total	39.52

b. On March 10, 2009, the Governing Board adopted Resolution number 15-08-09, reducing or discontinuing the following additional services for the 2009-2010 school year:

<u>Service</u>	<u>FTE Equivalent Positions</u>
Special Education Teacher	1.5
Dance Teacher	1.0
Foreign Language Teacher	1.0
Agriculture Teacher	1.0
Activities Director	<u>1.0</u>
Total	5.5

4. On or about February 18, 2009, and on or about March 11, 2009, with respect to the services set forth in factual finding number 3.b., the District provided notice to Respondents that their services will not be required for the 2009-2010 school year due to the reduction of particular kinds of services.

¹ Full-time equivalent position.

5. On March 13, 2009, Superintendent Rogers notified the Governing Board that he had recommended that notice be provided to 223 certificated employees of the District, including Respondents, that their services will not be required for the 2009-2010 school year due to the reduction of particular kinds of services.

6. Respondents requested a hearing to determine if there is cause for not reemploying them for the 2009-2010 school year. All hearing requests were timely filed.

7. On or about March 23, 2009, the District issued the Accusation, and served it on Respondents.

8. Respondents thereafter filed timely notices of defense.

9. All prehearing jurisdictional requirements have been met.

10. At the hearing, the District withdrew the Accusation with respect to Respondent Catherine Kingsbury, and agreed to retain her to teach Drama, a service that the parties stipulated no employee senior to her is certificated and competent to provide.

11. a. The District provided precautionary layoff notices to Jenny Cruz, Julie A. Davis, Emilie Holzer, Kathryn Forsman, Amy Lundstrom, Cecelia Meikle, Denise Morey, Julie Raike, Peter Romwall, Elisabeth Rosinsky, and Laurie Tonegato, employed in categorically-funded programs. The District views these employees as temporary, and has moved to dismiss the Accusation on the basis that they are not entitled to a hearing on a determination regarding whether cause exists for their layoff for the 2009-2010 school year. Jenny Cruz, Emilie Holzer, Amy Lundstrom, Cecelia Meikle, Denise Morey, Peter Romwall, and Laurie Tonegato did not file requests for hearing or notices of defense, and the District's motion is granted as to them.

b. Respondents Julie A. Davis, Kathryn Forsman, Julie Raike, and Elisabeth Rosinsky appeared at the hearing. Their testimony and their employment contracts establish that they were hired to fill temporary positions pursuant to Education Code.² sections 44909 and 44920 (Davis), 44920 (Forsman), 44909 (Raike), and 44909 and 44920 (Rosinsky). The categorical funding for the programs in question has either ceased, or has ceased to exist as categorical funding. As recently authorized by the Legislature, the District plans to treat any funding previously designated as categorical as unrestricted, general fund money. In these circumstances, the District's motion to dismiss the precautionary accusations against these Respondents is granted.

12. The services set forth in factual finding number 3 are particular kinds of services which may be reduced or discontinued within the meaning of section 44955.

² All further references are to the Education Code.

13. The Governing Board took action to reduce the services set forth in factual finding number 3 primarily because of a significant anticipated decline in State funding. In order to reduce the number of required layoff notices, the District offered retirement incentives, which were accepted by 15 employees; it also counted all vacant positions before issuing notices of layoff. Many Respondents presented testimony about the valuable services they provide, and about how students would suffer in the absence of their services. Neither the value of their services, nor the impact on students was disputed. Nevertheless, the decision to maintain other services, some of which are State mandated, and to reduce or discontinue the particular kinds of services at issue in this proceeding is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

14. The reduction or discontinuance of services set forth in factual finding number 3, in the context of the significant anticipated decline in revenue, 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.

15. On February 17, 2009, the Governing Board adopted Resolution No. 12-08-09, setting forth the criteria to determine seniority among employees who first rendered paid service in a probationary position on the same date (tie-breaking criteria). The criteria are reasonable as they relate to the skills and qualifications of certificated employees, and the District properly applied the criteria.

16. Also on February 17, 2009, the Governing Board adopted Resolution No. 11-08-09, entitled "Resolution for the Determination of Competency and Special Skills and Experience for 2009-2010." The Governing Board defined "competency" within the meaning of section 44955, subdivision (b), "[t]o mean that the employee shall be deemed 'competent' to render services if he or she possesses the necessary credential, No Child Left Behind (NCLB) compliant, and has taught the subject matter or performed the particular service one complete school year within the past 10 years." In addition, the Governing Board further resolved "that certain certificated employees possess certain special skills and experience, because of their training and /or work for the District to provide unique services."

17. The District retained Nathanel Conrad, who has a seniority date of August 22, 2007, and holds a preliminary single subject (music) credential, in order to provide band music instruction. Respondent Sheila Jeffries has a seniority date of August 22, 2005, and holds preliminary clear single subject credentials in business, music, and English, and a preliminary clear multiple subject credential. However, she never taught band and may not bump the retained teacher.

18. The District issued precautionary layoff notices to three employees it will like to retain, Respondents Anna Ferree, Kara Ferrell, and Megan Schultz. Respondent Kara Ferrell has a seniority date of August 25, 2006, and holds a clear multiple subject credential. She

teaches the District's Advancement Via Individual Determination (AVID) program, a program intended to increase educational achievement and college preparation. Respondent regularly completes required training to retain her AVID certification. The District has demonstrated a specific need for the AVID program and Respondent Kara Ferrell provides the needed services and possesses the special training and experience to do so. No Respondent with greater seniority possesses the requisite special training and experience, and Respondent Kara Ferrell may be retained.

19. The District wishes to retain Respondent Anna Ferree to teach the classes presently taught by Respondent Tori Loney. Respondent Anna Ferree has a seniority date of August 19, 2005, and is a permanent employee of the District. She holds a preliminary single subject (health science) credential. During the 2008-2009 school year, she worked as the activities director. Respondent Anna Ferree taught health sciences for one year, while completing the student teaching requirements of her credential.

20. Respondent Tori Loney has a seniority date of August 22, 2007, and holds clear single subject credentials in health science and physical education. She teaches health sciences at Atascadero High School. She also has three years of experience teaching the subject matter in another district. Although certificated to teach physical education, she has not taught the subject matter, and is not competent to bump the more junior respondent Megan Schultz.

21. The District seeks to retain Respondent Megan Schultz to teach physical education. She has the same seniority date as Respondent Tori Loney, August 22, 2007, but is junior to her by reason of the application of the tie-breaking criteria. Respondent Megan Schultz holds a preliminary single subject (physical education) credential, and a clear adapted physical education specialist credential. She teaches physical education in the junior high school.

22. Respondent Jean Sutton holds a professional clear multiple subject credential, a supplemental authorization in art, and a Crosscultural, Language, and Academic Development (CLAD) certificate. She teaches in a self-contained elementary school classroom, a fifth grade class in the current school year. She challenges her given seniority date of August 28, 2006, seeking, instead the date of September 4, 2001. However, her written contracts clearly state that she was hired for the 2001-2002, 2002-2003, 2003-2004, 2004-2005, and 2006-2007 school years to fill temporary positions, as designated under sections 44909 and 44920, and her seniority date was correctly calculated.

23. No certificated employee junior to any Respondent was retained to render a service which any of Respondents is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to sections 44949 and 44955, by reason of factual finding numbers 1 through 9.

2. The services listed in factual finding number 3 are particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 12.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue 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 23.

4. Section 44955, subdivision (b), provides, in pertinent part: “[t]he 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.” (Emphasis added.) “Certificated” is defined by the provisions of the Education Code pertaining to credentials, but “competent” is not specifically defined. In *Forker v. Board of Trustees* (1994) 160 Cal.App.3d 13, 19, the Court defined the term, in the context of a reemployment proceeding under section 44956, in terms of the teachers’ skills and qualifications, as “relating to special qualifications for a vacant position, rather than relating to the on-the-job performance of the laid-off permanent employee.” In doing so, the Court noted that courts in reduction in force cases, namely *Brough v. Governing Board* (1981) 118 Cal.App.3d 702, 714-15, and *Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648, 654-55, had interpreted the term in a similar manner.

Courts in analogous layoff and reemployment contexts, construing provisions similar to section 44955, have recognized that school districts have discretion to establish rules to define teacher competency. Thus, after reviewing earlier cases, the Court in *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 565 (*Duax*), wrote: “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.” (See: also: *Martin v. Kentfield School District* (1983) 35 Cal.3d 294, 299-300; *Forker v. Board of Trustees*, supra.)

In *Duax*, the governing board had established a standard of competency that required one year of full-time teaching in the subject area within the last ten years. The Court found such standard “clearly related to skills and qualifications to teach” and therefore a reasonable one. (*Duax*, supra, 196 Cal. App.3d 555, at p. 567.) The Court also concluded that the standard did not define competency too narrowly.

The District’s competency rule relates to the skills and qualifications of its certificated

employees. As pertinent to this case, the rule mirrors that upheld in *Duax*, and must be utilized to determine whether Respondents are competent to render services in question. Respondents Jeffries and Loney have not taught band or physical education, respectively, and may not bump the junior employees retained to perform such services.

5. Section 44955 directs that certificated permanent and probationary employees are to be laid off by seniority, consistent with their qualifications and status. Thus, subdivision (c) provides, in pertinent part: “[t]he governing board shall make assignments and reassignments in such manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.” The statute, in subdivision (b), gives preference to permanent employees: “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.” Respondent Ferree is a permanent employee and is certificated and competent to provide the services that Respondent Tori Loney is performing, and may bump the junior probationary employee.

6. Districts are permitted to disregard seniority as set forth in subdivision (d): “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 of study or to provide those services, which others with more seniority do not possess. . . .” The District has demonstrated its specific need to provide band music and AVID instruction. Nathanel Conrad was properly retained to provide the band service, a service no Respondent is competent to perform. Respondent Kara Ferrell possesses special training and experience to continue teaching the AVID curriculum.

7. Cause exists to terminate the services of Respondents Shauna Ames, Heather Bakich, Steve Collins, Julie Cross, Jennifer George, Teresa Harback, Yvonne High, Jennifer Isbell, Tammy Jacinto, Sheila Jeffries, Amik Jones, Jessica Lloyd, Tori Loney, Christine Miller, Rebecca Morris, Jill-Ana Myers, Alan Pietsch, Peter Smith, Jean Sutton, Annie Turner, and Dorothy Wagster, by reason of factual finding numbers 1 through 23 and legal conclusion numbers 1 through 6.

ORDER

1. The Accusation is dismissed with respect to Respondents Anna Ferree, Kara Ferrell, Catherine Kingsbury, and Megan Schultz.

2. The Accusation is sustained and the District may notify Respondents Shauna

Ames, Heather Bakich, Steve Collins, Julie Cross, Jennifer George, Teresa Harback, Yvonne High, Jennifer Isbell, Tammy Jacinto, Sheila Jeffries, Amik Jones, Jessica Lloyd, Tori Loney, Christine Miller, Rebecca Morris, Jill-Ana Myers, Alan Pietsch, Peter Smith, Jean Sutton, Annie Turner, and Dorothy Wagster that their services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services.

3. The Accusation is dismissed with respect to Respondents Julie A. Davis, Kathryn Forsman, Julie Raike, and Elisabeth Rosinsky, and the District may notify them that their services will not be needed during the 2009-2010 school year.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings