

BEFORE THE
BOARD OF TRUSTEES
CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force
Involving the Respondent's Listed in
Exhibit A.

OAH No. 2009030481

PROPOSED DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 13, 2009, in Ontario, California.

Mark Thompson, Atkinson, Andelson, Loya, Rudd & Romo, represented the Board of Trustees of the Chaffey Joint Union High School District ("district").

Michael Feinberg, Schwartz, Steinsapir, Dohrmann & Sommers, represented the respondents listed in Appendix A.

No appearance was made by or on behalf of respondents Julianne Arends, Amanda Bentley, Mandl Cederlund, Michelle Dolven, Sean Franco, Michael McC Carson, Laurette Ortiz, Kent Rothman, Phillip San Angelo, and Jason Strickland.

Before the hearing, the accusations filed against Vincent Mangione, Jason McReynolds, Mallory Moreno and Angela Windt were withdrawn and their layoff notices were rescinded. Over the lunch hour, the accusation filed against Barry Harp was withdrawn and his layoff notice rescinded.

The record remained open to allow the parties to submit closing briefs. Thereafter the matter was submitted for decision on April 22, 2009. After the hearing, and before the matter was submitted, the accusation filed against Katherine Chambers-Misawa was withdrawn and her layoff notice rescinded.

FACTUAL FINDINGS

1. Lynne Ditfurth, Assistant Superintendent, Personnel, made and filed the accusation in her official capacity, on a non-exclusive delegation of authority.
2. Respondents are listed in Appendix A, attached hereto and by this reference incorporated herein. Each respondent is a certificated employee of the district.

3. On March 3, 2009, the district adopted Resolution No. 2009-03, reducing particular kinds of services and directing the superintendent or his designee to give appropriate notices to certificated employees whose positions were affected by the action. An unsigned copy of the resolution is attached hereto as Appendix B and by this reference is incorporated herein.

4. Between March 5 and March 9, 2009, Ditfurth gave written notice to approximately 51 certificated employees, including respondents, of the recommendation that their services would not be required for the 2009-10 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

5. Respondents filed timely requests for hearing to determine if there was cause for terminating their services for the 2009-10 school year. An accusation was served on each respondent. All prehearing jurisdictional requirements were met for all respondents except Amanda Bentley. As to this respondent, the district served its jurisdictional documents on her via certified mail. However, the district's certified letter was returned to the district marked "unclaimed" Bentley's address written on the envelope was crossed out. No other evidence was introduced by the district indicating that Bentley had ever been served with her jurisdictional packet. Without proper service on her, she cannot be a party to these proceedings and this administrative law court lacks jurisdiction to proceed on the district's case filed against her.

6. Before issuing the preliminary layoff notices, the district took into account all positively assured attrition.

7. Several respondents shared the same seniority date. The district established tie-breaking criteria in which points were assigned for experience and credentials and used those criteria to determine who would receive preliminary layoff notices.

July and August 2008 Workshops and Orientations

8. Ditfurth testified that the district determined the seniority date as "the first date of paid service with the district." However, several respondents contended that they should have an earlier seniority date because of training they completed before school started. The district argued that although these employees were paid a stipend to attend the training, and the training was "encouraged," it was not part of the employees' service because the training was not required. Ditfurth testified that if employees had contacted the district about the training, they would have been informed that the training was not "required." However, several teachers testified to the contrary, claiming that they were told the training was mandatory and that they had received letters from the district informing them of that fact.

9. Respondent Anne Robbins is an English teacher who has a seniority date of August 21, 2008. She had previously been employed for 22 years in a private school. She had a clear single subject English credential. When the district hired her, it sent her a packet of information which included a document advising of "Important Dates for New Teachers 2008." That document advised that "All teachers new to the District" were to attend "1st

Year teacher training” on August 18 and 19, 2008, and a “New Teacher Breakfast” and “New Teacher Orientation” on August 20, 2008. Another document in Robbins’ packet of materials was entitled “New Teacher Instructional Workshops,” which stated the August 18 and 19, 2008 courses were for “teachers new to the [district] and to the profession.” The August 18, 2008 workshop was “required of all teachers new to [the district] with less than two years of experience,” while the August 19, 2008, workshop was “required for all teachers new to [the district]. (Emphasis in original.) The teachers receiving these packets were informed that “all teachers new to the Chaffey district are required to attend” the August 20, 2008, breakfast and orientation. The memo also advised that, “All certificated employees are entitled to two buyback days per school year at 85% of their daily pay,” and directed them to contact Todd Haag, Director of Student/Staff Support Services with questions or concerns. Haag’s telephone number and e-mail address were provided.

Robbins testified she contacted the district about the workshops because of her previous teaching experience. Robbins was informed that it was “strongly suggested” that she attend the August 18, 2008, workshop, but that she “had to go to” the August 19, 2008, workshop. Robbins attended both workshops, for which she was compensated, but she was unsure what rate of pay or percentage of salary she received for attending. She merely recalled seeing a notation on her paycheck reflecting payment for attending the workshops.

10. Respondent Josephine Relaford-Doyle was a new hire in 2008. She received a memorandum from the district advising her that, “As a new staff member, it will be necessary for you to attend one of our orientation meetings” on either July 16, 2008 or August 13, 2008. (Emphasis in original.) Relaford-Doyle attended the August 13, 2008, orientation, as well as the August 18-20, 2008, workshops she was “required” to attend.

11. Respondent Stephanie Clarke also attended the August 19, 2008, workshop. She inquired about the workshops upon receiving her materials from the district and was informed she did not need to attend the August 18, 2008, workshop, because she had three years of prior teaching experience, but that she was required to attend the August 19, 2008, workshop.

12. Respondent Michael Flax is an English teacher who coaches the football team. He attended the August 13, and 20, 2008, workshops and orientation. He actually began working for the district in the spring of 2008 as a coach. He did not attend the August 18 and 19, 2008, workshops because he had already cleared his credential and he was told by the district that he did not need to attend.

13. Respondent Dresden Hauck, the cheerleading coach, produced her day planner. It documented that she attended the July 16, 2008, orientation. She was informed by the district that she needed to attend the July session because she was required to complete her orientation before attending cheer camp with her students in late July 2008. Hauck also attended the August 20, 2008, orientation.

14. Respondent Vanessa Ressa attended both the August 18 and 19, 2008, workshops. When she inquired about the workshops, she was told by the district that she needed to attend all of the workshops. She also attended the August 13, 2008 orientation.

15. Respondent Ashley Maxwell, began her employment with the district in 2008. She attended the workshops and orientations on August 18, 19 and 20, 2008. She also introduced a certificate of attendance at a “Welcome to the Jungle, BTSA Orientation” that was put on by the district on August 15, 2008. Maxwell was compensated for her attendance at two of these sessions at the 85% pay rate that was listed on the flyer.

16. Notwithstanding Ditfurth’s testimony to the contrary, the preponderance of the evidence established that the district required new employees to attend orientations and workshops in July and August 2008. The employees were compensated for attending the sessions based upon a percentage of their pay under the collective bargaining agreement. The respondent’s reasonably relied on the statements made by the district and attended the workshops and orientations under the reasonable belief that their attendance was required. The employees forwent their summer vacations in order to attend these workshops and orientations.

A valid claim of equitable estoppel consists of the following elements: (a) A representation or concealment of material facts; (b) made with knowledge, actual or virtual, of the facts; (c) to a party ignorant, actually and permissibly, of the truth; (d) with the intention, actual or virtual, that the ignorant party act on it; and (e) that party was induced to act on it. (See *California Milling Corp. v. White* (1964) 229 Cal.App.2d 469; 479; *Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.)

In *Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496, the California Supreme Court observed that the doctrine of estoppel may be applied against the government “where justice and right require it;” but it will not be applied where this would nullify a strong rule of policy adopted for the benefit of the public; and “[t]he tension between these twin principles makes up the doctrinal context in which concrete cases are decided.” (3 Cal.3d 493.)

“The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel.” (3 Cal.3d 496.)

Accordingly, given both the district’s documents mailed to the employees and the statements made to the teachers who inquired about the training sessions, the district is estopped from asserting that the respondents identified in Factual Findings 9 through 15, have a different seniority date than the first day of attendance at these orientations and workshops for which they were paid. It is recommended that the district review the personnel files of these respondents, and in light of these new seniority dates, determine if any of them have sufficient seniority to permit them to retain their employment.

August 15, 2008 Workshop

17. Candice Newman has an integrated science assignment, a curriculum including both physical and life science, and a seniority date of August 21, 2008. She

received her layoff notice after tie breaking criteria were applied for her and Jamie Graham. However, Newman contended that tie breaking criteria should not have been used in her case because her seniority date should be August 15, 2008, the date she attended the “Welcome to the Jungle, BTSA Orientation” that was put on by the district prior to the start of school. Unfortunately for Newman, and unlike the courses that were identified in the district’s memos referencing the August 18 and August 19, 2008 workshops, Newman introduced no evidence that the August 15, 2008 workshop was “required” by the district. In fact, she did not even produce her certificate documenting that she had attended the August 15, 2008, course, merely testifying that she had received the same certificate that Ashley Maxwell produced at hearing. Even if Newman produced her certificate of attendance, without any evidence that the district “required” attendance at the August 15, 2008, workshop, that date cannot be used to establish Newman’s seniority date. However, if she, too, attended the “required” August 18-20, 2008, workshops and orientations, and if she was compensated for attending that workshop, then she is also entitled to have her seniority date recalculated in a manner consistent with Factual Finding No. 16 and a determination about her layoff status should be based on that new seniority date. Finally, Newman admitted that she did not have her supplemental authorization on March 15, 2009, the deadline for layoff notices to be served. The district properly considered all current credentials existing on that date when determining which employees would receive notices. There was nothing arbitrary or capricious in the district establishing this cutoff date.

Summer of 2007 Orientation and Workshops

18. Respondents Francesco Macchia and Jessica Bremer began employment in the district in 2007. Neither produced any documents, but both testified that in the summer 2007, they, too, attended mandatory workshops and orientations as new district employees. Unfortunately, they introduced no evidence that the 2007 workshops, like the 2008 workshops, were “required” by the district. If the district “required” attendance at the 2007 sessions and compensated attendees in a manner similar to the 2008 sessions, then these two respondents are also entitled to have their seniority dates recalculated and to have a determination about their layoff statuses made based on those new seniority dates, consistent with Factual Finding No. 16.

Layoffs of Physical Education Teachers

19. Another area of contention was Marissa Lang’s retention as a physical education (“PE”) teacher despite the fact that her seniority date was junior to other PE teachers who received layoff notices. Difturth testified that Lang had a degree in dance/dance choreography and taught a dance class that counted as credit towards the fine arts class requirement for admission to University of California. The other three PE teachers, Jessica Bremer, Francesco Macchia and Donald Furnald, did not hold a dance/dance choreography degree and were not considered highly qualified for purposes of teaching dance/dance choreography to meet a fine arts requirement. The district argued that it was entitled to consider Lang’s unique degree for bumping purposes on the basis of the district’s intent to retain highly qualified teachers for the PE fine arts class.

Respondents argued that the district's bumping procedure improperly denied non-dance/dance choreography senior PE teachers the right to retain their employment over Lang, a junior employee. Respondents argued that the district's resolution made no reference to the dance/dance choreography degree, that the degree Lang held was not required to teach PE, and that district's action amounted to the skipping of the junior employee without justification, in violation of Education Code section 44955, subdivision (c), which requires a district to "make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render."

There is no legal requirement mandating that skipping criteria be contained in a governing board's resolution. The district was required to implement the governing board's resolution in a manner that was consistent with the board's policies and the district's effort to make University of California required courses available to its students. Retaining Lang as a PE teacher allows the district to continue to offer such a course to its students and the use of that degree as a basis for bumping did not involve the application of an arbitrary or capricious standard. The implementation of a policy that precluded an employee who did not have a dance/dance choreography degree from retaining their position over a junior employee who had such a degree (whether that process is called bumping or skipping) involved considerations of both seniority and qualifications, and the evidence established that implementation of that policy was in the best interests of the district and the students. The policy was not inconsistent with the statutory directive requiring the retention of the most senior qualified certificated employees.

Layoff of Plumbing Teacher

20. Respondent Richard Hoskins teaches plumbing. There is a backlog of students wishing to take his classes. He has helped students find employment and scholarships in order to take additional classes. Although his testimony demonstrated the value of the class he offers and his dedication to his students, the district's decision to reduce or discontinue a particular kind of service was a matter reserved to the district's discretion and is not subject to second-guessing in this proceeding. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.)

Correction to Seniority List for Respondent Natalie McMinn

21. Natalie McMinn, with a seniority date of November 1, 2007, is a probationary counselor with a Clear Pupil Personnel Services Credential who received a layoff notice. At the hearing, McMinn introduced evidence that she also possesses a Clear Multiple Subject Teaching Credential, with a Supplementary Authorization in English, that was issued on May 1, 2006, and a Clear Single Subject Teaching Credential in Health Sciences. Ditfurth admitted that the district did not recognize all of those credentials in its seniority list. Wendy Covarrubias, a probationary English teacher with a seniority date of January 7, 2008, whose seniority date was junior to McMinn, did not receive a layoff notice. Ditfurth admitted she did not know what level English, Covarrubias taught or why McMinn was not allowed to bump Covarrubias. Accordingly, as the district's credentialing information regarding McMinn was incorrect, it is hereby recommended that the district review McMinn's personnel file, in light of the evidence regarding McMinn's additional three credentials, and

determine if McMinn has the seniority and qualifications that would permit her to bump into a position currently being held by a less senior employee.

Correction to Seniority List for Leticia Ybanez

22. The district's seniority list pertaining to Leticia Ybanez, a teacher who did not receive a layoff notice, incorrectly identified her as a probationary employee. At hearing the district conceded she was a tenured employee and the seniority list will be corrected to reflect that fact.

Other Layoffs

23. No other certificated employee junior in seniority to any respondent was retained by the district to perform services that any respondent was certificated and competent to render other than mentioned herein.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. 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.)

3. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Junior teachers may be given retention priority over senior teachers only if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831, 842-843.)

4. Because of the reduction of particular kinds of services, cause exists pursuant to section 44955 to give notice to respondents that their services will not be required for the 2009-10 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of section 44949. The district has identified the certificated employees providing the particular kinds of services that the Board of Trustees directed be reduced or discontinued. It is recommended that the Board of Trustees give respondents notice before May 15, 2009, that their services will not be required by the District for the school year 2009-2010.

A preponderance of the evidence sustained the charges set forth in the accusation subject to the recommendations listed in the factual findings. This determination is based on all factual findings and on all legal conclusions.

RECOMMENDATION

It is recommended that the governing board give notice to the respondents whose names are set forth below except for Amanda Bentley and those respondents identified above in the Findings of Fact Nos. 8 through 18, inclusive, and 21, that their employment will be terminated at the close of the current school year and that their services will not be needed for the 2009-2010 school year.

DATED: _____

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

Appendix A

RESPONDENTS

- | | | | |
|-----|----------------------------|-----|---------------------------|
| 1. | Alvaro, Gil | 27. | Matthews, Cynthia |
| 2. | Arends, Julianne | 28. | Maxwell, Ashley |
| 3. | Bentley, Amanda | 29. | McCarson, .Michael |
| 4. | Bremer, Jessica | 30. | McMinn, Natalie |
| 5. | Cantelletta, Gina | 31. | McReynolds, Jason |
| 6. | Cederlund, Mandl | 32. | Moreno, Mallory |
| 7. | Chambers-Misawa, Katherine | 33. | Nafis, Mary |
| 8. | Clarke, Stephanie | 34. | Newman, Candice |
| 9. | Cortez, Christine | 35. | Ortiz, Laurette |
| 10. | Dane, Michelle | 36. | Panduro, Cynthia |
| 11. | Davis, Kevin | 37. | Randall, Joanne |
| 12. | Deocales, Demoree | 38. | Relaford-Doyle, Josephine |
| 13. | Dolven, Michelle | 39. | Ressa, Vanessa |
| 14. | Echols, Cari | 40. | Robbins, Anne |
| 15. | Flax, Michael | 41. | Rogers-Mayle, Takiyah |
| 16. | Franco, Sean. | 42. | Rothman, Kent |
| 17. | Franco, Windy | 43. | Ruiz, Courtney |
| 18. | Frost, Patrick. | 44. | Salcedo, Isabel |
| 19. | Furnald, Donald | 45. | San Angelo, Phillip |
| 20. | Greenlee, Kristi | 46. | Shaw Jr., Jon |
| 21. | Harp, Barry | 47. | Strickland, Jason |
| 22. | Hauck, Dresden | 48. | Velarde, Yolanda |
| 23. | Hoskins, Richard | 49. | Warner, Bret |
| 24. | King, Alexis | 50. | Whitten, Aja Adia |
| 25. | Macchia, Francesco | 51. | Windt, Angela |
| 26. | Mangione, Vincent- | | |

Appendix B

BOARD OF TRUSTEES OF THE
CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT

REDUCTION OF PARTICULAR KINDS OF CERTIFICATED SERVICES

RESOLUTION NO. 2009-03

WHEREAS, the Board of Trustees of the Chaffey Joint Union High School District has determined that it is in the best interests of the District and the welfare of the schools and the pupils thereof that the particular kinds of services set forth herein must be reduced or discontinued due to financial conditions; and

WHEREAS, it is the opinion of the Board that because of the aforementioned reason, the number of certificated employees of the District must be reduced; and

WHEREAS, this Board does not desire to reduce the services of regular certificated employees based upon reduction of average daily attendance during the past two years.

WHEREAS, this Board has determined that due to the specialized needs of the District's Regional Occupation Program ("ROP") students, a specific and compelling need exists to employ and retain certificated employees who have ROP authorizations, and the special training and experience that comes therewith; and

WHEREAS, Education Code section 44955(d) authorizes this Board to deviate from terminating certificated employees in order of seniority for the above reasons, if necessary.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Chaffey Joint Union High School District as follows:

- A. That the particular kinds of services set forth below be reduced or eliminated commencing in the 2009-2010 school year:

English Teaching Services	34	F.T.E.
Social Science Teaching Services	8	F.T.E.
Math Teaching Services	4	F.T.E.
Physical Science Teaching Services	2	F.T.E.
Biology Teaching Services	1	F.T.E.
Life Science Teaching Services	3	F.T.E.

Home Economics Teaching Services	3	F.T.E.
ROTC Teaching Services	1	F.T.E.
Industrial Technology Teaching Services	3	F.T.E.
Business Teaching Services	4	F.T.E.

Spanish Language Teaching Service	2	F.T.E.
French Language Teaching Service	1	F.T.E.
Art Teaching Services	2	F.T.E.
Music Teaching Services	1	F.T.E.
Special Education Teaching Services	3	F.T.E.
Physical Education Teaching Services	3	F.T.E.
Counseling Services	4	F.T.E.
Work Experience Teaching Services	0.4	F.T.E.
TOTAL. TEACHING SERVICE POSITIONS	79.4	F.T.E.
Administrator - Assistant Principal	2	F.T.E.
Administrator - Director	1	F.T.E.
TOTAL CERTIFICATED POSITIONS	82.4	F.T.E.

13. That due to the reduction or elimination of particular kinds of services, the corresponding number of certificated employees of the District shall be terminated pursuant to Education Code section 44955.

That the reduction of certificated staff he achieved by the termination of regular employees and not by terminating temporary and substitute employees.

- D. That "competency" as described in Education Code section 44955(b) for the purposes of bumping shall necessarily include: (1) possession of a valid credential in the relevant subject matter area; (2) "highly qualified" status under the No Child Left Behind Act; (3) an appropriate EL authorization (if required by the position); and (4) for ROP positions, an appropriate ROP authorization.
- E. That, as between certificated employees with the same seniority date, the order of termination shall be determined solely by Board-adopted criteria.
- F. That the District Superintendent or designee is directed to initiate layoff procedures and give appropriate notice

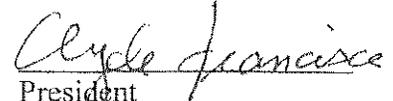
pursuant to Education Code sections 44955 and 44949.

PASSED AND ADOPTED this 3rd day of March, 2009, in the County of San Bernardino, California.

AYES: _____ 5 _____

NAYES : _____ 0 _____

ABSTENTIONS: _____ 0 _____


President
Board of Trustees

I, Mathew Holton Superintendent of the Chaffey Joint Union High School District of San Bernardino County, California, do hereby certify that the foregoing is a full, true and correct copy of a Resolution adopted by the District's Board of Trustees at a duly scheduled meeting thereof
Dated: March 3, 2009

Mathew Holton
Superintendent