

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

In the Matter of the Layoff Of:

Robin Aaron-England and Other
Certificated Employees of the
Templeton Unified School District,

Respondents.

OAH Case No. L2009030639

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 20, 2009, in Templeton, California.

David A. Moreno, Attorney at Law, represented Deborah Bowers, Ed.D. (Bowers), Superintendent, Templeton Unified School District (District).

John F. Sachs, Attorney at Law, represented Robin Aaron-England, Christine Ames, Julie Badalamenti, Robert Boele, Annie Cline, Donald Crow, Maddie Eaton, Katherine Finstuen, Deborah Garcia, Virginia Gilliam, Teri Gracey, Candice Hubbard, Shelly Keller, Stephanie Lee, Scott Lewis, Steven Logue, Danielle Love, Barbara Lucich, Neal Mandich, Susan Pickett, Susan Rounsevell, John Spalding, Aimee Wagner, Jamison Warner, and Katarina Zemella (Respondents).

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.

Oral and documentary evidence was received at the hearing. The record was left open for the submission of written closing argument. Respondents submitted an Opening Post Hearing Brief on April 24, 2009, which document has been marked for identification as Exhibit D. The District filed a Post-Hearing Layoff Brief on April 27, 2009, and a Post-Hearing Reply Layoff Brief on April 29, 2009, which documents have been marked as Exhibits 17 and 18, respectively. On April 30, 2009, Respondents' counsel informed the Administrative Law Judge that Respondents would not file a reply brief. The matter was submitted for decision on April 30, 2009.

FACTUAL FINDINGS

1. Superintendent Bowers filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.
3. a. On March 4, 2009, the Board of Trustees of the District (Governing Board) adopted Resolution number R09-11 reducing or discontinuing the following services for the 2009-2010 school year:

<u>Service</u>	<u>FTE¹ Reduction</u>
High School English	1.00
High School Science	.57
Secondary Social Science	2.00
Secondary Mathematics	1.50
High School Computers/Business	.58
High School French	.14
Physical Education (Single Subject)	.86
Counselor	2.00
Teacher (Multiple Subject)	10.50
Independent Studies, Grades 9-12	2.00
Home School, Grades K-8	.32
Performing Arts	.50
Special Education Teacher	<u>.20</u>
 Total	 22.17

b. On March 12, 2009, the Governing Board adopted Resolution number R09-13 reducing or discontinuing an additional .43 FTE in High School English and an additional .14 FTE in High School Computers for the 2009-2010 school year. This additional .57 FTE brought the total reductions and eliminations to 22.74 FTE.

4. On March 13, 2009, Superintendent Bowers notified the Governing Board that she recommended notice be provided to Respondents that their services would not be required for the 2009-2010 school year due to the reduction of particular kinds of services.

5. Between March 9 and March 13, 2009, 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. Respondents filed timely requests for hearing.

¹ Full-time equivalent position.

6. On April 1, 2009, the District filed and thereafter served the Accusation on Respondents. Respondents filed timely notices of defense, seeking a determination of whether cause exists for not reemploying them for the 2009-2010 school year.

7. All prehearing 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 the services set forth in factual finding number 3 primarily because of the uncertainty surrounding future State funding. The District estimates a loss of \$800,000 for the current school year, and a loss of \$2.4 Million for the 2009-2010 school year. The decision to reduce the particular kinds of services is neither arbitrary nor 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. On March 26, 2009, the Governing Board adopted criteria for breaking seniority ties for employees with the same first date of paid service. The following six criteria were chosen, based on the District's needs for the 2009-2010 school year: credentials to teach or serve in a particular program or provide a particular service of need by the District; credentials to teach a special categorical program (e.g., reading, special education); years of experience previous to current employment as a full-time, credentialed teacher in a probationary/permanent K-12 teaching situation in a public school; number of supplementary authorizations (e.g. math, English, Health Science); possession of a CLAD Certificate or SDAIE/ELD Certificate or English Authorization or possession of a BCLAD certificate; earned degrees beyond the BA/BS level. The criteria were equally weighed, and points were awarded for each item met. The tie-breaking criteria are reasonable as they relate to the skills and qualifications of certificated employees. The District properly applied the criteria, as necessary to determine the order of termination.

12. Respondent Aaron-England shares the seniority date of August 25, 1999, with Phil James (James). She holds a clear multiple subject credential, and a supplemental authorization in health science. She has taught a health in the past, but more recently has taught fifth grade. James holds a clear single subject (physical education) credential, and a supplemental authorization in introductory health science. However, James teaches health at the high school, something which Respondent's credential does not permit.

² All further references are to the Education Code.

13. Respondent Rounsevell, who holds a clear multiple subject credential, also shares the August 25, 1999, seniority date. She questioned the tie-breaking criterion that did not give her credit for experience in a private school. As set forth in factual finding number 11, the District properly exercised its discretion in developing reasonable tie-breaking criteria. But even if Respondent Rounsevell were to receive credit for teaching in private, as opposed to public school, this would not impact the order of termination, as all other elementary school teachers sharing the August 25, 1999, seniority date received layoff notices.

14. The District retained three employees junior to some Respondents in order to fulfill special instructional needs. Annette Calcote, who has a seniority date of August 25, 1999, and holds a multiple subject credential, was retained because she holds a BCLAD and serves as the English as a Second Language Coordinator. Kathleen Rubin, was first hired in a probationary capacity on August 25, 1999, and holds a professional clear multiple subject credential with supplemental authorizations in mathematics and business, was retained to continue teaching mathematics classes. Elisabeth Chomicki (Chomicki), who has a seniority date of August 22, 2001, and holds a clear multiple subject credential and a supplemental authorization in computer concepts and applications, was retained to teach computer classes. The District has demonstrated a specific need for these teachers to provide bilingual services coordination, and instruction in mathematics and computers, and the retained certificated employees provide the needed services and possess special training and experience to do so. Therefore, these employees were properly skipped for layoff.

15. Respondents Aaron-England, Ames, Garcia, Gracey, Keller, Lucich, and Zemella have completed technology training offered by the San Luis Obispo County Office of Education, and have received certificates attesting to their completion. The certificates were issued for Level I (Basic Proficiency) and Level II (Professional Proficiency), the former being a prerequisite for the more advanced second certificate. Instruction was provided through written materials that each participant completed at his/her own pace using the District computer laboratory. Classified staff was also permitted to complete the training and to obtain the certificates. The certificates allowed the recipients to utilize computer skills in their classrooms or other assignments. Respondents Aaron-England, Ames, Garcia, Keller, Lucich, and Zemella, who are more senior than Chomicki, and Gracey, who has the same seniority date, assert that by virtue of these certificates they are competent and certificated to teach computer classes that Chomicki was retained to teach. However, the certificates of completion are not credentials issued by the California Commission on Teacher Credentialing (CTC), and respondents do not otherwise possess a CTC-issued credential or certificate to enable them to teach computer classes.

16. The District has declared Respondents Cline, Gracey, and Wagner “highly qualified” under the federal law known as “No Child Left Behind” in certain areas. It has done so by taking into account the actual coursework completed by the Respondents and/or the classroom experience these Respondents possess. The resulting qualification is entitled High

Objective Uniform State Standard Evaluation, or HOUSSE. Respondent Gracey did not provide information about her specific subject-matter designation, but Respondents Cline and Wagner received their respective designations in Language Arts and in Spanish and English. Respondent Cline testified she could teach reading, but did not identify a junior employee whom she could purportedly bump. Respondent Wagner has a seniority date of August 24, 2000, and holds a professional clear single subject (social science) credential; she asserts that she can perform the assignment that Jaime Warner (Warner) was retained to perform. Warner has a seniority date of August 22, 2005, holds a clear single subject (English) credential, and teaches language arts and literature. However, the HOUSSE designations are not CTC-issued credentials, and Respondents are not certificated and competent to render services more junior employees were retained to render.

17. No certificated employee junior to any Respondent was retained to render a service which any Respondent 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 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 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, particularly when the anticipated reduction in State funding is taken into account, by reason of factual finding numbers 1 through 17.

4. Section 44955, subdivision (b), provides that, “[E]xcept 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.” (Emphasis added.) Teaching certificates may be issued by the CTC or pursuant to authority granted by the CTC. (Ed. Code, § 44252 *et seq.*) Neither the Technology Proficiency certificates nor the HOUSSE designations constitute CTC-issued certificates that would render an individual certificated and competent to teach the computer classes at issue or any other subject matter. Accordingly, Respondents Aaron-England, Ames, Cline, Garcia, Gracey, Keller, Lucich, Wagner, or Zemella may not bump Chomicki, Warner, or any other employee based on these certificates or designations.

5. Cause exists to terminate the services of Respondents Robin Aaron-England, Christine Ames, Julie Badalamenti, Robert Boele, Annie Cline, Donald Crow, Maddie Eaton, Katherine Finstuen, Deborah Garcia, Virginia Gilliam, Teri Gracey, Candice Hubbard, Shelly Keller, Stephanie Lee, Scott Lewis, Steven Logue, Danielle Love, Barbara Lucich, Neal Mandich, Susan Pickett, Susan Rounsevell, John Spalding, Aimee Wagner, Jamison Warner, and Katarina Zemella, by reason of factual finding numbers 1 through 17, and legal conclusion numbers 1 through 4.

ORDER

The Accusation is sustained and the District may notify Respondents Robin Aaron-England, Christine Ames, Julie Badalamenti, Robert Boele, Annie Cline, Donald Crow, Maddie Eaton, Katherine Finstuen, Deborah Garcia, Virginia Gilliam, Teri Gracey, Candice Hubbard, Shelly Keller, Stephanie Lee, Scott Lewis, Steven Logue, Danielle Love, Barbara Lucich, Neal Mandich, Susan Pickett, Susan Rounsevell, John Spalding, Aimee Wagner, Jamison Warner, and Katarina Zemella that their services will not be needed during the 2009-2010 school year due to the reduction of particular kinds of services.

DATED: _____

SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings