

BEFORE THE  
GOVERNING BOARD OF THE  
YOSEMITE UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In The Matter of the Accusation Against:

DENISE ALVAREZ  
ARLENE AOKI  
MICHELLE BREWER  
GREG DAHLEM  
JULIET DAVIS  
MELINDA GRESHAM  
JESSICA MEDRANO  
SYLVIA SLOAS  
CHERYL STANSBURY  
KATIE TALBOT,

OAH No. 2009031159

Respondents.

**PROPOSED DECISION**

Judith A. Kopec, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 23, 2009, in Oakhurst, California.

Stephen A. Mendyk, Attorney at Law, represented the Yosemite Unified School District (district).

Joshua F. Richtel, Attorney at Law, represented respondents except for Greg Dahlem.

Respondent Greg Dahlem appeared on his own behalf.

The matter was submitted at the conclusion of the hearing on April 23, 2009.

## FACTUAL FINDINGS

1. District operates one comprehensive high school, two elementary schools, and several alternative and small schools. It has an enrollment of about 2,300 students and has 250 employees, including 125 certificated employees.

2. District initiated the lay off process after evaluating its budget and patterns of declining enrollment. District staff evaluated other options to achieve budget savings, and met with representatives of the Yosemite Unified Teachers' Association before determining that lay offs were required.

3. Respondents were each properly served prior to March 15, 2009, with notices under Education Code sections 44949, subdivision (a) and 44955, that their services will not be required for the next school year. Respondents each timely filed a request for hearing. Respondents were properly served with an accusation dated March 27, 2009. All respondents except Greg Dahlem timely filed a notice of defense.

4. Neither district nor the other respondents objected at the beginning of the hearing to Mr. Dahlem's participation in the hearing. As a result, any objection to his participation was waived. Mr. Dahlem is an appropriate respondent in this matter.

### *Board's Resolutions*

5. On February 9, 2009, the district's governing board (board) adopted the Superintendent's recommendation in resolution number 2008/2009-10, which proposed reduction or discontinuation of 13.175 full-time equivalent (FTE) certificated employees. The resolution provided for the reduction or discontinuation of the following particular kinds of services:

<b>Particular Kinds of Services</b>	<b>FTE</b>
Elementary School Teachers	7.0
Continuation Teacher	1.0
Special Education Teacher	1.0
English Teachers	1.34
Math Teacher	.66
Science Teachers	.83
Art Teacher	.34
Social Science Teacher	1.0

6. On the same date, the board adopted resolution number 2008/2009-06, which provided criteria to use to deviate from laying employees off in order of least seniority, which is commonly referred to as 'skipping criteria.' The skipping criteria provided, among others, that a junior employee would be retained to fill a demonstrated need to teach a specific course or course of study.

7. On March 2, 2009, the board adopted resolution number 2008/2009-15, which established tie-breaking criteria to determine the order of termination for employees who first rendered services to district on the same day. There is no evidence that district did not appropriately use these criteria to break ties in seniority.

8. On March 13, 2009, the board adopted the Co-Superintendent's recommendation in resolution number 2008/2009-10.1, which proposed reduction or discontinuation of an additional 3.0 FTE certificated employees, bringing the total proposed reduction or discontinuation to 16.175 FTE. The resolution provided for the reduction or discontinuation of the following additional particular kinds of services:

<b>Particular Kinds of Services</b>	<b>FTE</b>
Business Teacher	1.0
Social Science Teacher	1.0
English Teacher	1.0

9. At the beginning of the hearing, district rescinded its decision to reduce or discontinue 2.0 FTE of elementary school teachers as a result of recent retirements, leaving a total reduction or discontinuation of 5.0 FTE of elementary school teachers. District also rescinded its decision to reduce or discontinue 1.0 FTE of a social science teacher, leaving a total reduction or discontinuation of 1.0 FTE of a social science teacher. As a result, district proposed to reduce or discontinue a total of 13.175 FTE certificated employees.

10. At the beginning of the hearing, district and respondent Arlene Aoki agreed that she will be laid off for .5 FTE of a science teacher. Effective July 1, 2009, district shall reemploy Ms. Aoki for .5 FTE at district's Yosemite Falls Education Center. Ms. Aoki was the most senior person being laid off.

*Lay Off Procedure Used by District*

11. District maintains a seniority list containing employees' seniority dates, credentials, and current assignments. District sent letters to all teachers giving them an opportunity to request corrections in the seniority list. A copy of the seniority list was also distributed to representatives of the bargaining unit at each school site.

*Greg Dahlem*

12. Greg Dahlem holds a clear multiple subjects credential and a single subject credential in physical education. He is compliant with the federal requirements of No Child Left Behind (NCLB). Mr. Dahlem was identified to be laid off to effectuate the board's 1.0 FTE reduction or discontinuation of a continuation school teacher.

13. The seniority list shows Mr. Dahlem's seniority date as August 16, 2007. He was an elementary school teacher and coach at Coarsegold Elementary School (Coarsegold Elementary) from 1983 through 1997. There is no evidence that Coarsegold Elementary was

within the district either at the time Mr. Dahlem taught there, or at present.<sup>1</sup> Mr. Dahlem contends that he should be credited with 13 years of prior service. According to Mr. Dahlem, he was given credit for 13 years of prior service for the purpose of establishing his rate of pay upon his return. There is no evidence in the record supporting Mr. Dahlem's view that he should be given credit for his prior service when calculating his seniority for the purpose of a lay off.<sup>2</sup> Mr. Dahlem did not establish that district inaccurately determined his seniority date.

14. District established that Mr. Dahlem has the least seniority of district's continuation school teachers. Although there was no evidence that any other continuation school teacher had the same seniority date as Mr. Dahlem, district skipped Sarah Campstrom, Jeff Kirby, and Rachel Cornec, who each have the same seniority date as Mr. Dahlem. Ms. Campstrom holds a preliminary multiple subjects credential and a preliminary level 1 education specialist, mild/moderate credential and teaches reading intervention, English, learning strategies, and study skills RSP. She is needed to provide special education services to students. Mr. Kirby has a professional clear multiple subject credential with a supplement in social sciences and a preliminary designated subject full time welding credential and teaches a variety of welding courses. District needs Mr. Kirby to teach vocational welding classes. Ms. Cornec has an internship single subject credential in French and teaches several French courses. Ms. Cornec is the only teacher in the district who can teach these courses. There is no evidence that the board adopted specific competence criteria or that these employees were not certificated or competent to teach their respective classes. District established that Ms. Campstrom, Mr. Kirby, and Ms. Cornec each meet a specific need to teach a specific course or course of study.

15. District did not consider whether Mr. Dahlem or any employee complied with the NCLB requirements in its implementation of the lay off. There is no evidence this was an abuse of district's broad discretion. Therefore, district's proposal to effectuate the board's reduction or discontinuation of 1.0 FTE of a continuation school teacher by laying off Mr. Dahlem is reasonable and within its discretion.

## LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955.

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<sup>1</sup> District filed a prehearing motion asserting that district was created in 2006 by the unification of two school districts. However, there is no evidence in the hearing record establishing this.

<sup>2</sup> Although not cited by any party, Education Code section 44848 provides: "When any certificated employee shall have resigned or been dismissed for cause and shall thereafter have been reemployed by the board, his date of employment shall be deemed to be the date on which he first accepted reemployment (if reemployed before July 1, 1947) or rendered paid service (if reemployed after June 30, 1947) after his reemployment."

2. A school district's governing board may terminate the services of certificated employees whenever a particular kind of service is to be reduced or discontinued. (Ed. Code, § 44955, subd. (b).) A preliminary notice must be sent to an employee that the governing board has determined that his or her services will not be required for the next year as a result of the decision to reduce or discontinue particular kinds of service. (Ed. Code, § 44949, subd. (a).) An employee who is not given the required notices and right to a hearing as provided under Education Code section 44949 is deemed reemployed for the following school year. (Ed. Code, § 44955, subd. (c).)

3. An employee may request a hearing to determine if there is cause for not reemploying him or her for the next year. (Ed. Code, § 44949, subd. (b).) If an employee fails to request a hearing within the required time frame, his or her failure constitutes a waiver of his or her right to a hearing. (*Ibid.*) If an employee properly requests a hearing, he or she must file a notice of defense within the applicable time frame. (*Id.* at subd. (c)(1).) The hearing is before an administrative law judge, who prepares a proposed decision. (*Id.* at subd. (c)(3).) The governing board may or may not adopt the proposed decision. (*Ibid.*) The school district must provide a final notice of termination before May 15. (Ed. Code, § 44955, subd. (c).)

4. The services identified in the board's resolutions as determined in Factual Findings 5 and 8 are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. (*Campbell Elementary Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796, 808.) Cause exists to reduce the number of certificated employees of district due to the reduction or discontinuation of particular kinds of services as identified in the board's resolutions. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949, subdivision (c)(3).

5. When implementing a lay off, a school district shall make assignments and reassignments so that employees shall be retained to render any service which their seniority and qualifications entitle them to provide. (Ed. Code, § 44955, subd. (c).) A school district may deviate from terminating a certificated employee in order of seniority, and retain a junior employee and lay off a senior employee under limited circumstances. (Ed. Code, § 44955, subd. (d).) It is permissible to do so when the school district demonstrates a specific need for a teacher to teach a specific course or course of study, and the certificated employee has special training and experience necessary to teach that course or course of study, which others with more seniority do not possess. (*Id.* at subd. (d)(1).) District has considerable discretion in implementing these procedures in order to meet its educational needs while fulfilling its legal obligations to the employees. (See *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469, 474.)

6. As determined in Factual Findings 12 through 15, district's proposal to effectuate the board's reduction or discontinuation of 1.0 FTE of a continuation school teacher by laying off Mr. Dahlem is reasonable and within its discretion.

7. District does not propose to retain any junior certificated employee to perform services which a more senior employee is certificated and competent to provide.

#### ORDER

Notice shall be given to respondents before May 15, 2009, that their services will not be required for the 2009-2010 school year because of the reduction and discontinuance of 13.175 FTE of particular kinds of services.

Dated: April 30, 2009

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JUDITH A. KOPEC  
Administrative Law Judge  
Office of Administrative Hearings