

**BEFORE THE GOVERNING BOARD  
OF THE SARATOGA UNION SCHOOL DISTRICT**

In the Matter of the Non-Reemployment of	)	OAH NO. 2009040048
Certain Certificated Employees	)	
	)	
Respondents.	)	
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**PROPOSED DECISION**

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 22, 2009, in Saratoga, California.

John Yeh, Attorney at Law, represented the Newark Unified School District.

Christopher Schumb, Attorney at Law, represented the Respondents Jennifer Woelful, Eveonne Lockhart, Margaret Ebner, Lori Chaykin and Debra Willheim. Respondent Patricia Burnham withdrew her request for a hearing.

Evidence was received the record was left open to allow the parties to submit written briefs. Respondents' brief was received on April 27, 2009, and marked as exhibit C for identification only. The District's brief was received on April 29, 2009, and was marked as exhibit 8 for identification only. The matter was submitted for decision on April 29, 2009.

**SUMMARY**

The Governing Board (Board) of the Saratoga Union School District (District) decided to reduce or discontinue particular kinds of services provided by certificated personnel for the 2009-2010 school year for budgetary reasons.

District staff carried out the Board's decision by using a selection process involving review of credentials, seniority, skipping, bumping and breaking ties between employees with the same first dates of paid service.

**FACTUAL FINDINGS**

1. Lane Weiss, Superintendent of the District, filed the Accusation in his official capacity.
2. Respondents are certificated employees of the District.

3. On March 10, 2009, the Board adopted Resolution No. 343.3/09, which established tie-breaking criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination and reemployment would be based on the needs of the District and its students in accordance with the specific criteria set forth in the resolution.

4. On March 10, 2009, the Board adopted Resolution No. 344.3/09, to discontinue or reduce the particular kinds of services. The Board further determined that based on the discontinuance or reduction of services, it would be necessary to decrease the number of certificated employees at the close of the present school year by a corresponding number of full-time equivalent (FTE) positions as follows:

Kindergarten	0.5 FTE
First Grade	2.0 FTE
Second Grade	1.0 FTE
Third Grade	1.0 FTE
Fifth Grade	2.4 FTE
Counselor	2.5 FTE
Instructional Media Specialist	1.0 FTE
Librarian	1.0 FTE
Math Coach	1.0 FTE
Middle School Tutorial	0.67 FTE
Elementary Classroom Music	2.0 FTE
Elementary Reading Specialist	1.05 FTE
Resource Specialist Program	1.50 FTE
Science	0.5 FTE
Teacher Mentor	0.87 FTE
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Total	18.99 FTE

5. The Board directed the Superintendent to notify the employees affected by the Board's resolutions. On or about March 13, 2009, the Superintendent notified certificated employees, including Respondents, in writing that it had been recommended their services would not be required for the next school year. The notice included the reasons for the notification. Respondents made timely requests for hearing.

6. On March 31, 2009, the Superintendent made and filed Accusations against each Respondent.

7. Notices of Defense were timely filed by Respondents. All prehearing jurisdictional requirements were met.

8. The reduction or discontinuation of the particular kinds of services set forth in Factual Findings 4, related to the welfare of the District and its pupils.

9. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid service in a probationary position), current assignments and locations, advanced degrees, credentials, and authorizations.

10. The District used the Seniority List to develop a proposed layoff and "bumping" list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. In determining who would be laid off for each kind of service reduced the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other employees.

11. Respondents Lockhart, Chaykin, Willheim, Woelful and Ebner contend that they are credentialed and competent to teach middle school core classes. The District did not issue layoff notices to three employees who teach middle school core classes, and who are junior to the above-named respondents. (Kathleen Shelhorse – seniority date of September 9, 2008; Dustin Wells – seniority date August 20, 2008; and Kristi Kirwin – seniority date February 28, 2009).<sup>1</sup> These three junior teachers did not receive layoff notices. They work full-time, making up three FTE positions teaching core classes. Respondents Chaykin and Lockhart work full-time and Respondents Willheim, Woelful and Ebner work half-time. Respondents Lockhart, Chaykin, Willheim, Woelful and Ebner are requesting that the Accusations against them should be dismissed because they are credentialed and competent to teach the middle school core classes currently taught by Shelhorse, Wells and Kirwin.

12. Respondent Lockhart has a Multiple Subject Clear Credential and she has four years experience as a 6th grade core teacher, and as a 7th and 8th grade yearbook teacher. Respondent Lockhart has more seniority than Shelhorse and Wells, and she is credentialed, competent and willing to teach a middle school core class.

13.A. The parties stipulated that if called to testify, Respondents Chaykin and Willheim would aver that they believe that they are competent and credentialed to teach the core classes currently taught by Shelhorse, Wells and Kirwin. Respondent Chaykin is senior to Shelhorse, Wells and Kirwin and currently teaches fifth grade. There was no evidence presented at the hearing proving that she has experience teaching at the middle school level. Respondent Willheim is also senior to Shelhorse, Kirwin and Wells and currently teacher kindergarten. There was no presented at the hearing establishing that she has experience teaching at the middle school level. Respondent Ebner has no experience teaching core classes at middle school.

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<sup>1</sup> Respondent Lockhart's seniority date is September 20, 2007. Therefore, Kristi Kirwin is senior to Respondent Lockhart.

B. Education Code section 44955, subdivision (c), states in pertinent part, “Notice of termination of services shall be given before the 15th of May . . . and the services of such employees shall be given in the inverse order in which they were employed.” Subdivision (d) of section 44955 provides that a school district may deviate from terminating a certificated employee in the order of seniority when “the district demonstrates a specific need for personnel to teach a specific course or course of study . . . and that certificated employee has specific training and experience to teach that course or course of study . . .” In *Bledsoe v. Biggs Unified School District* (2009) 170 Cal.App.4th 127, the Court of Appeal held that the district correctly deviated from seniority when less senior employees who taught at a community day school had more training and experience in teaching difficult and/or disabled students than a more senior teacher who received a layoff notice. In *Bledsoe* the evidence established that the two less senior employees who were retained had substantial experience in working with difficult and disabled student populations, and had extensive training in mediation, aggression management, utilization of behavior modification techniques, abuse recognition, and other areas of training related to difficult student populations.

C. In this case, the District did not present sufficient evidence of specialized training and experience of the less senior teachers who teach middle school core classes, and who were not given layoff notices, to justify their retention over Respondents. Respondent Chaykin works full-time and is credentialed, competent and willing to teach a middle school core class.

14. Respondents Willheim, Woelful and Ebner work half-time. Therefore, they are not entitled to bump teachers Shelhorse, Wells and Kirwin from their full-time positions. (*Hildebrandt v St. Helena Unified School District* (2009) 172 Cal.App.4th 334.)

## LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding as to all Respondents.

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. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees due to the reduction or discontinuation of particular kinds of services. The Board’s decisions to reduce or eliminate the identified services were neither arbitrary nor capricious. The decisions relate solely to the welfare of the District’s schools and the pupils within the meaning of Education Code section 44949.

4. Cause exist to dismiss the Accusation against Respondents Eveonne Lockhart and Lori Chaykin because they are competent and credentialed to teach core classes currently taught by less senior teachers who did not receive layoff notices, as set forth in Factual Findings 11, 12 and 13.

5. Cause exists to affirm the layoff notices issued to Respondents Woeful, Ebner and Willheim, based on Factual Findings 11 and 14.

### **ORDER**

1. The Accusations against Respondents Eveonne Lockhart and Lori Chaykin are dismissed.

2. Notice may be given to Respondents Jennifer Woelful, Margaret Ebner, and Debra Willheim, that their services will not be required for the 2009-2010 school year.

Dated: May 5, 2009

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HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings