

BEFORE THE  
GOVERNING BOARD OF THE  
TRAVIS UNIFIED SCHOOL DISTRICT  
SOLANO COUNTY, STATE OF CALIFORNIA

In the Matter of the Non-Reemployment of:

MERIDITH ARMSTRONG, KRISTIN BUMP,  
JOHN OLEARY, RHONDA YUNG,  
MARGORIE MARTINSON,  
MARY ELLEN QUINE, NORMAN DEPONTE,  
KAREN COLEMAN, and MARANDA HANSON

Respondents.

OAH No. 2010030681

**PROPOSED DECISION**

On April 15, 2010, in the City of Fairfield, Solano County, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter.

Lawrence Schoenke, Esq., of Dannis Woliver Kelly, Attorneys at Law, 71 Stevenson Street, 19th Floor, San Francisco, California 94106, represented Kate Wren Gavlak, Superintendent, Travis Unified School District.

Costa Kerestenzis, Attorney at Law of Beeson, Tayer and Bodine, 520 Capitol Mall, Suite 300, Sacramento, California 95814-4714, represented Respondents Meridith Armstrong, Kristin Bump, John Oleary, Rhonda Yung, Margorie Martinson, Mary Ellen Quine, Norman DePonte, Karen Coleman, and Maranda Hanson.

The record was held open to afford opportunities to the parties to file with OAH written closing arguments and, if necessary, reply briefs. On April 21, 2009, OAH received, via telefacsimile transmission (telefax), from respondents' attorney a five-page letter, which had an attachment consisting of a 19-page proposed decision in OAH No. N2003010592, which pertained to a teacher layoff proceeding before the Governing Board for the Oakland Unified School District. Respondents' post-hearing letter brief, was marked as Exhibit "B," and received as argument. On April 22, 2010, OAH received, by telefax, from the Superintendent's attorney a brief titled "Closing Memorandum of Points and Authorities," which was marked as Exhibit "11," and received as argument. On April 26, 2010, OAH received, via telefax, a closing argument titled "District's Reply Brief to Respondents'

Closing Letter Brief,” which was marked as Exhibit “12,” and was received as argument. And on April 27, 2010, OAH received, via telefax, a letter from respondents’ counsel in the way of a reply to the Superintendent’s written closing arguments. The letter was marked as Exhibit “C” and received as argument.

On April 27, 2010, the parties were deemed to have submitted the matter and the record closed.

### FACTUAL FINDINGS

1. On March 24, 2010, Kate Wren Gavlak, Superintendent (the Superintendent) for the Travis Unified School District (the District), in her official capacity, made and filed the accusations that pertained to respondents.

2. Respondents are either probationary or permanent certificated employees of the District.

3. On March 2, 2010, the District’s Governing Board adopted Resolution No. 2009-10-35. The resolution recites that it has become necessary for the District to reduce or to discontinue, no later than the beginning of the 2010-2011 school year, particular kinds of services in 13 categories for a total of 7.77 full time equivalent (FTE) certificated positions as follows:

PARTICULAR KINDS OF SERVICES	NUMBER OF FULL-TIME EQUIVALENT POSITIONS
1. High School Assistant Principal	1.0
2. High School Career Tech (ROP)	1.5
3. Middle School English	0.33
4. Middle School Math	0.33
5. Middle School Social Science	0.33
6. Middle School Science	0.49
7. Middle School Spanish	0.49
8. Middle School Woodshop	0.33
9. Middle School Home Economics	0.16
10. Middle School Band	0.16
11. Middle School Art	0.16
12. Middle School Physical Education	0.49
13. Categorical Programs	
BTSA Coordinator	0.50
Title I Coordinator	1.0
Title I Coordinator	0.5
Total Full-Time Equivalents	7.77

4. By individual letters, dated March 12, 2010, the Superintendent caused to be dispatched, by certified mail, preliminary notices<sup>1</sup> to a number of FTE position holders, including each respondent, who had status as a permanent or probationary employee. The letter stated that the District's Board had an intention to reduce or to discontinue the particular service provided by each person who received the notice. By the letter, each of the recipient respondents learned the District would not reemploy the named individuals in the certificated positions each had worked.

5. The written preliminary notices to each respondent, as issued by the Superintendent, along with the Board's resolution set out legally sufficient reasons for the Board's intent to eliminate the positions occupied by each affected respondent for the school year of 2010-2011.

6. Each respondent timely requested in writing a hearing to determine whether or not cause exists for not reemploying each respondent for the ensuing school year.

7. The District's Superintendent caused to be timely served upon each respondent a respective accusation, dated March 24, 2010, and related documents. Each respondent filed a timely notice of defense.

8. All pre-hearing jurisdictional requirements were met.

*Stipulations by the Parties*

9. At the hearing of this matter, the District rescinded the notice of layoff action, or portions thereof, regarding three respondents. Those individuals, along with the FTE positions held by those persons, are:

<i>Certificated Employees Who Had Layoff Rescinded in Whole Or in Part</i>	<i>Type of Initially Proposed Action</i>	<i>Current Proposed Reduction</i>	<i>FTE To Be Held 2010-11</i>
Oleary, John	Layoff Notice 0.7 FTE	0.19	Reduction/ Reassignment 0.51
Yung, Rhonda	Layoff Notice 0.33	Rescission Entirety	0.33

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<sup>1</sup> "Notice of Non-reemployment for 2011-11."

Coleman, Karen	Layoff Notice 1.0	0.67	Reduction/ Reassignment 0.33
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By its rescission, or partial rescission, of the respective layoff notices of the subject three certificated employees, the District will retain the services of Mr. Oleary, Ms. Yung and Ms. Coleman in a certificated position at the FTE level indicated in the last column set out immediately above.

*Respondents' Contentions*

10. Respondents, collectively, contend that the District's proposed layoff action, as contemplated by the accusations filed regarding each Respondent, should be dismissed. Respondents aver that the Superintendent, through her designees, improperly "over-noticed" individual certificated employees for the prospective layoff action for the ensuing school year because the noticed individuals occupy more than the number of FTEs that were specified by the Board in its Resolution No. 2009-10-35. Respondents argue that the Governing Board may only terminate the services of "not more than a corresponding percentage of the certificated employees of the District." Respondents aver that the contemplated layoff action will lead to termination of more individuals being laid off in a greater number than is necessary.

Further, respondents contend that the Superintendent, through her designee, failed attribute certain Respondents with proper placement on the District's Seniority List and failed to correctly note tenure credit for some respondents. Respondents also contend that the Superintendent failed to reassign or grant "bumping" rights to certain teachers as prescribed by Education Code section 44955.

Also, respondents argue that the Superintendent improperly retained junior teachers to perform services for which senior teachers, who are the subject of the layoff action, are credentialed and qualified to teach.

And, respondents contend that the Superintendent cannot demonstrate that the reduction or elimination of particular kinds of services was lawful in that the District failed to provide a rationale basis for the Superintendent's refusal to "split assignments" between school sites. In essence, respondents reject the proposition that distances between various school sites and differing lengths of class time render it impractical or infeasible to assign teachers to different school sites.

Individual respondents advanced contentions of particularized import as follows:

i. Respondent Mary Ellen Quine contends the reduction of services action should not result in her loss of the 0.2 FTE position in the Cyber High program. She argues

that she was improperly “bumped” from the Cyber High because of excessive displacement of personnel by way of “over noticing” of affected employees for the layoff action.

ii. Respondent Meridith Armstrong avers also that the Superintendent’s method of carrying out the Board’s directive to reduce or eliminate particular kinds of services resulted in too many teachers being bumped so that after all the movement of certificated personnel all of her teaching assignments at the high school level were improperly taken from her. She notes that, at most, the layoff action should have deprived her of only a 0.49 FTE position, which would have corresponded with the position that was reduced at the middle school level.

iii. Although Respondent DePonte did not testify at the hearing, respondents argue that he should not be laid off by 0.3 FTE from his currently held physical education assignment due to bumping by a middle school teacher whose service is being eliminated for the ensuing school year. The argument for Respondent DePonte advanced that he could have been assigned a 0.6 FTE at Cambridge Elementary School and a 0.4 FTE at Vanden High School. Second, respondents argue that Respondent DePonte is competent to teach the 0.2 FTE position in the Cyber High course because the Cyber High program begins at 6:45 a.m., and Respondent DePonte could leave that high school course in order to reach the physical education classes that do not begin before 8:30 a.m.

11. Respondents’ contentions and arguments are without merit and are rejected.

*Evidence of Individual Certificated Employees at the Hearing of this Matter*

*a. Ms. Mary Ellen Quine*

12. Respondent Mary Ellen Quine is a teacher at Vanden High School. She has a first date of paid service to the District of August 23, 2006. For the current school year, Respondent Quine teaches physical education, health and “Cyber High.”

Cyber High is a 0.2 FTE position. (Cyber High is an Internet-online educational program that is offered to high school seniors from 6:45 a.m. through 7:30 a.m. The program is designed to provide seniors with the means to earn up to five credits in order to meet graduation requirements.) Respondent Quine has been the teacher in Cyber High only for the current school year (2009-2010). Respondent Quine is subject to reduction of 0.6 FTE of her current assignments, including the Cyber High position. But she is being retained in a 0.4 FTE physical education assignment.

On cross-examination, Respondent Quine acknowledged that as a physical education teacher Ms. Zenbrosky, who is being retained to work in the Cyber High program, is senior to her on the District’s Seniority List.

Notwithstanding her displeasure with the District's determination regarding her diminished assignment for the coming school year, Respondent Quine provided no competent evidence that the District has retained any teacher junior to her to perform services for which Ms. Quine possesses a credential and is currently competent to provide. Nor did Respondent Quine establish that the Superintendent, or her designee, committed a procedural error in the execution of the layoff action that adversely affects her teaching position with the District.

*b. Respondent Meridith Armstrong*

13. Respondent Armstrong is a chemistry and biology teacher at Vanden High School. She has a first date of paid service to the District of August 21, 2007. During the 2009-2010 school year, Respondent Armstrong worked in 0.2 FTE for chemistry and 0.6 FTE for biology. Her total FTE position for the current school year totaled 0.8 FTE.

Respondent Armstrong received preliminary notice that the layoff action would completely eliminate her teaching position with the District.

Respondent Armstrong, however, provided no competent evidence that the District has retained any teacher junior to her to perform services for which Ms. Armstrong possesses a credential and is currently competent to provide. Nor did Respondent Armstrong establish that the Superintendent, or her designee, committed a procedural error in the execution of the layoff action that adversely affects her teaching position with the District.

*Evidence on Behalf of Respondents Generally*

14. Respondents did not offer competent evidence that the District has failed to treat respondents fairly. No evidence was offered to support respondents' general argument that the District failed to engage in an intelligent and rational process in deciding which employees to retain and which employees to layoff. No competent evidence shows that the District knowingly set out to distort data or statistical information to reach the preliminary decision in this matter. The findings and determinations of the Superintendent, and her designee, did not render this layoff action fatally flawed.

Respondent DePonte did not offer testimony at the hearing of this matter. And, through respondents, credible evidence was not offered on his behalf to support the arguments made for him.

Respondent DePonte has a first date of paid service to the District of August 22, 2001. Respondent DePonte now holds a 1.0 FTE high school physical education teacher assignment. By reason of bumping, he will lose 0.3 FTE of his full-time assignment. Although respondents argue, on behalf of Respondent DePonte, that he can serve at different school sites so that he can maintain a full-time position next year, the evidence did not establish that splitting assignments between the middle school and the high school so

that Respondent DePonte may work as a full-time physical education teacher would be beneficial to the District or its students. Further, respondents did not offer competent evidence to demonstrate that Respondent DePonte is competent to teach the Cyber High course, which entails a 0.2 FTE position.

Respondents provided no competent evidence that the District has retained any teacher junior to Respondent DePonte to perform services for which Mr. DePonte possesses a credential and is currently competent to provide. Furthermore respondents did not establish that the Superintendent, or her designee, committed a procedural error in the execution of the layoff action that adversely affects Respondent DePonte's physical education teaching position with the District.

*The District's Reasonable Basis to Proceed*

15. The Superintendent appeared at the hearing of this matter to provide credible and persuasive evidence.

The Superintendent is responsible for advising the District's Board on pertinent aspects of the District's practices and procedures for personnel issues, hiring procedures, credentialing considerations, and the status of employees in certificated positions at five elementary schools, a middle school, a comprehensive high school and a continuation/alternative high school. (The District's schools serve about 5,300 students.) The Superintendent is charged by the Board with contract management for the certificated units. In addition to the foregoing, the Superintendent is vested with knowledge, expertise, and experience to offer competent and reliable evidence regarding the basis for the proposed layoff action that will take effect for the ensuing school term. (The Superintendent also serves as the District's senior personnel management officer because during a past year's layoff the position of Human Resources manager was eliminated.)

16. The Superintendent persuasively expressed that the determination to initiate the layoff action arose as a result of the absolute need to balance the District's budget in light of the fact that the District is a "negatively-certified" district. As such, the District must establish that it can meet financial obligations for the coming school year. The reductions and elimination of particular kinds of services are essential for the District's certification of its fiscal stability for the ensuing school year. Also, the Superintendent noted that projected student enrollment for the coming school year affected the decision to reduce certificated employees at the middle school level.

17. Upon learning that the District was required to initiate layoff proceedings for teacher employees of the District, the Superintendent and her designee took reasonable and lawful steps to develop the District's seniority list for the District's teachers. The Superintendent studied and set forth on the District's seniority list the names of probationary and permanent employees as well as the dates that established the first day of paid service to the District. And the Superintendent in her official capacity was reasonable in the exercise of

discretion in executing the procedures associated with the layoff action as required by the Board's resolution. The Superintendent was not arbitrary, capricious nor fraudulent in carrying out the District's Resolution No. 2009-10-35.

18. Ms. Danyel Conolley offered persuasive evidence in the hearing of this matter.

Ms. Conolley is the District's Certificated Personnel Specialist. Her duties pertain to all District functions that revolve around certificated employees including payroll questions, monitoring assignments relative to credentials held by employees, maintaining accurate records of certificated employees, addressing auditing questions propounded by the Solano County of Education, interacting with school site administrators regarding the needs of schools for services performed by various certificated employees and preparing various documents and charts that aid in accurately matching certificated employees to assignments in District schools.

Ms. Conolley offered a credible explanation regarding the effect of bumping of respondents by senior middle school teachers, whose teaching positions are being eliminated. Ms. Conolley created various charts that aided in analyzing seniority dates, credentials, school sites and assignments that led to making recommendations with regard to the loss of high school positions by respondents.

As to the matter of whether "splitting" assignments in a way that respondents suggest would "save" jobs of teachers, Ms. Conolley demonstrated the rational basis of the District's decision-making process that rejected the idea of splitting teacher assignments between school sites. Ms. Conolley was persuasive that splitting assignments was highly impracticable and simply cannot work. For example, respondents argued for placing Ms. Zendrosky into a partial assignment at Golden West Middle School and a partial assignment at Vander High School. But, such assignment would make Ms. Zendrosky a 0.49 FTE employee at Golden West Middle School and a 0.51 FTE at Vander High School. First such partial assignments do not conform with the distinct school schedules because Vander High School has five-period days which equate to 0.20 FTE positions being apportioned to high school teachers, while Golden West Middle School has six-period days that amount to 0.16 FTE positions serving as the unit that defines middle school teacher work loads. Second, respondents' formula for Ms. Zendrosky to hold split assignments between a middle school and a high school would mean that she would be a 1.09 FTE employee, which is improper. Other suggested patterns of teacher assignments as offered by respondents were shown by Ms. Conolley to be not feasible.

### *Ultimate Findings*

19. The recommendation of the District's Superintendent and the Board's preliminary decision to eliminate or discontinue 7.77 FTE positions, including the positions held by each Respondent, were neither arbitrary nor capricious. Rather, the

Superintendent's recommendation and the Board's decision to authorize the layoff action were within the proper exercise of the District's discretion.

20. The District's proposed elimination or discontinuation of the prescribed FTE positions, including the positions held by Respondents, for the ensuing school year is related to the welfare of the District and its overall student population.

21. The Board determined that it will be necessary, due to the elimination of particular kinds of services, to decrease the number of teachers before the beginning of the next academic year. The Board lawfully directed the notification to Respondents of the elimination of the certificated positions held by each Respondent.

22. No competent and credible evidence establishes that as a result of the proposed elimination of the full time equivalent positions respectively held by Respondents herein, the District will retain any certificated employee who is junior to such Respondents to perform services for which Respondents have been certificated or found to be competent to provide for the next school year.

## LEGAL CONCLUSIONS

### *Motions by Respondents for Dismissal All Accusations*

1. Respondents made a motion for dismissal of the accusations as against all affected certificated employees alleging the Superintendent's designee "over-noticed" a large number of credentialed employees who occupy many more full-time equivalent positions than prescribed in the Board resolution. Also, Respondents seek dismissal of the accusations because of a purported fatal defect with the entire process because of supposed wholesale miscalculation of bumping rights. For the reasons noted immediately below, respondents are mistaken. Also, respondents argue for dismissal on the ground that a decision in a layoff action by the Oakland Unified School District approves splitting of teacher assignments in order to save jobs of teachers who were subject to layoff.

### *Claim of "Over-noticing"*

i. Respondents demand the dismissal of the entire layoff action be granted because the Superintendent's designee sent accusations to several individuals holding certificated positions with the District when the Board's resolution prescribed an elimination of 7.77 FTEs.

Evidence at the hearing showed that to properly account for the bumping rights of certificated employees into teacher positions for the ensuing years, current junior certificated teachers were given layoff notices that resulted in a number of teachers being subject to layoff that exceeded the 7.77 FTE elimination as set out in the Board's resolution.

The District is not required to match exactly the FTE positions with those persons receiving the notice of layoff. Only an average daily attendance reduction action requires a “corresponding percentage” of certificated employees to be identified in such a reduction of staff. A governing board’s decision to reduce or eliminate particular kinds of services need not be tied to any statistical computation, such as a projected decline in the number of students in the affected district. The number of terminations by a PKS reduction of certificated employees depends entirely on a district’s governing board’s decision regarding how many, or which, services to reduce or to eliminate. It is wholly within the Board’s discretion to determine the numbers by which the District will reduce a particular service. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.)

Further *Hilderbrant v. St. Helena Unified School District* (2009) 172 Cal.App.4th 334, supports the proposition that the District is not compelled to split an existing full-time FTE position into parts so as to accommodate certificated employees who are subject to a layoff action.

#### *Unpersuasive Nature of Another School District’s Decision on Splitting Assignments*

ii. Respondents’ use of a decision in a layoff action before the Oakland Unified School District, County of Alameda, was not persuasive. First, in administrative adjudication an earlier issued decision only has precedential value under the explicit requirements of Government Code section 11425.60, which includes the requirement that the agency seeking to rely on an agency decision as precedent must first promulgate a regulation that creates an index of determinations made in precedent decisions. The District has no index of precedential decisions. Second, the 2003 decision in the Oakland Unified School District layoff action dealt with a reduction of 1054 FTE positions contains a now inapplicable analysis that is rendered wholly invalid in light of the 2009 decision in *St. Helena Unified School District, supra*, 172 Cal.App.4th 334.

#### *Ruling on Motion to Dismiss Accusations*

iii. As indicated by the factual findings above, the proposed layoff of teachers because of reductions and the elimination of particular kinds of service is for the welfare of the District and its students. Accordingly, the motion for dismissal due to “over-noticing” to certificated employees and the supposed failure of the District to split assignments to save jobs of affected employees is denied.

#### *Lawful Basis for the Reduction or Elimination of Particular Kinds of Services*

2. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955.

3. The District provided all notices and other requirements of Education Code sections 44949 and 44955. This conclusion of law is made by reason of the matters set forth in Factual Findings 1 through 8, inclusive.

4. Judgments entered by a tribunal on the stipulations of the parties have the same effect as acts tried on the merits. (*John Siebel Associates v. Keele* (1986) 188 Cal.App.3d 560, 565.) The District stipulated to rescind the layoff notices and to withdraw the accusations regarding the certificated employees named in Factual Finding 9. The stipulations are binding on the parties.

5. Evidence Code section 664 establishes a presumption that the action or official duties of a public entity, such as the District and its governing board, have been regularly performed. Respondents offer no evidence to rebut the presumption that the District has properly performed actions related to the procedures that seek the non-reemployment of Respondents.

6. Board Resolution No. 2009-10-35, as adopted on March 2, 2010, stated that it was the Board's determination that it was necessary to reduce or eliminate particular kinds of services for the 2010-2011 school year.

Education Code section 44949, subdivision (a), requires that no later than March 15 an employee is given notice that his or her services will not be required for the ensuing year, the governing board and the employee will be given notice by the superintendent that it has been recommended that preliminary notices be given to employees and the reason for that recommendation.

The preliminary notices are intended to assure that affected employees are informed of the facts upon which they can reasonably assess the probability that they will not be reemployed. The preliminary notices must state the reasons for the recommendation. (*Karbach v. Board of Education* (1974) 39 Cal.App.3d 355.) That goal was attained by the Superintendent's designee's conscientious performance.

A governing board's decision to reduce or eliminate particular kinds of services need not be tied to any statistical computation, such as a projected decline in the number of students in the affected district. Rather the number of terminations by a PKS reduction of certificated employees depends entirely on the district's governing board's decision regarding how many, or which, services to reduce or to eliminate. It is wholly within the Board's discretion to determine the numbers by which the District will reduce a particular service. (*San Jose Teachers Assn. v. Allen*, (1983), 144 Cal.App.3d 627.)

The Travis Unified School District Governing Board's decision to eliminate 7.77 FTE positions for the 2010-2011 school year was a discretionary decision that constituted a valid basis for reduction in particular kinds of services under the Education Code.

*Ultimate Determinations*

7. Pursuant to Education Code sections 44949 and 44955 cause exists for the District to eliminate or reduce particular kinds of services for the ensuing year. And cause exists to give certain Respondents notice that for the ensuing school year they will not be reemployed to provide services now rendered by such Respondents. These determinations are made by reason of the matters set out in Factual Findings 15 through 19, 21, and 22.

8. The discontinuation of the subject particular kinds of service provided by each Respondent relates solely to the welfare of the District and its students within the meaning of Education Code sections 44949 and 44955, by reason of the matters set out in Factual Finding 20.

9. The District's layoff action is necessary. The District's proposed action is consistent with the law. And, the District's contemplated layoff action is reasonable in its execution.

RECOMMENDED ORDER

1. The accusations served on Respondents Meridith Armstrong, Kristin Bump, Margorie Martinson, Mary Ellen Quine, Norman DePonte, and Maranda Hanson are sustained.

2. The layoff notice is rescinded, and the resultant accusation is dismissed, as to Respondent Rhonda Yung.

3. The layoff notice is partially rescinded as to Respondent John Oleary and Karen Coleman. The accusations are sustained, in part, as to these respondents in that the District may eliminate 0.19 FTE from the teacher assignment held by Respondent Oleary and 0.67 FTE from the teacher assignment held by Respondent Coleman.

4. Except as indicated above, notice may be given to respondents that their services, or portions thereof, will not be required for the 2010-2011 school year by the Travis Unified School District.

DATED: May 6, 2010

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PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings