

BEFORE THE  
GOVERNING BOARD OF THE  
SAN MARINO UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In The Matter Of The Accusation Against:

OAH No. 2010031145

Scott Barton, and Other Certificated  
Employees of the San Marino Unified  
School District,

Respondents.

**PROPOSED DECISION**

This matter was heard by Mark E. Harman, Administrative Law Judge (ALJ) of the Office of Administrative Hearings, on May 11, 2010, in San Marino, California.

Howard A. Friedman and Anna J. Miller, Attorneys at Law, represented the San Marino Unified School District (District).

Respondents Scott Mooney, Tamara Garcia, Lisa Davidson, Janet Jackson, Frank Dooley, Ben Ubovich, and Nancy Beagle attended the hearing. Michael R. Feinberg, Attorney at Law, represented these seven Respondents, as well as Respondents Michael Condie, Gail Denham, Larry Fitzgibbons, Heather Floyd, Christina Hsu, Joann Goebel, Beth Holstead, Kimberly Johns, Sarah Morris, Kathy Snider, and Melanie Thomas-Whitehead, who were not present. Respondents Scott Barton, Winlor Chang, Howard Cheung, Joseph Claro, Chrystal Dahlstein, Kenneth Dee, Cecilia Dominguez, Hannah Fong, Emma Glenly, June Gonzalez, Mayumi Hasegawa, Laura Ives, Derek Jamieson, Sherry Lee, Michelle Macedo, Bill McDaniel, Lisette Moggio, Beth Negroe, Suzanne Nitta, Tina Nott, Laura Schoonover, Matthew Slimp, Christine Sohn, Izumi Suzuki, Stacy Travisano, Molly Wiebe, Judy Wu, and Karen Yung were not present and were not represented by counsel at the hearing. Respondent Blake Williams appeared and represented herself at the hearing.

The District decided to reduce or discontinue certain educational services and gave Respondents and other certificated District employees notice of its intent not to reemploy them for the 2010-2011 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2010-2011 school year.

Prior to the hearing, the District rescinded layoff notices of and withdrew the Accusation with regard to Respondents Scott Barton, Nancy Beagle, Janet Jackson, and Kimberly Johns.

Oral and documentary evidence was received. The record was left open until May 17, 2010, to allow the parties to file closing briefs. Both briefs were timely received and considered. The District's brief was marked for identification as Exhibit 11, and Respondents' brief was marked as Exhibit I. The record was closed and the matter deemed submitted on May 17, 2010.<sup>1</sup>

### FACTUAL FINDINGS

1. The District operates two elementary schools, one middle school, and one high school for approximately 3,230 students. There are 154 certificated employees. Linda de la Torre (de la Torre) is the District's Assistant Superintendent, Human Resources. She filed the Accusation in her official capacity.

2. Respondents are certificated employees of the District.

3. The Governing Board of the District (Governing Board) adopted Resolution No. 8 (the Particular Kinds of Services (PKS) resolution) on February 9, 2010, reducing or eliminating the following services for the 2010-2011 school year:

PARTICULAR KINDS OF SERVICES	NO. OF FULL-TIME EQUIVALENT (FTE) POSITIONS
Elementary (K-5)	16.0
Elementary (6th Grade)	2.0
Elementary 6th Grade Computers	.2
Secondary Athletic Director	.2
Secondary Art	.8
Secondary Band/Music	2.0
Secondary At-Risk Counselor	.4
Secondary Counselor-Middle School	1.0

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<sup>1</sup> Pursuant to the request of a party, the hearing in this matter was continued from April 8 to May 11, 2010, due to the unavailability of counsel on the original hearing date. At the hearing, a parties requested to continue the matter to May 17, 2010, to allow the filing of closing briefs. These requests were made in accordance with Education Code section 44949, subdivision (e), and Government Code section 11524. Granting these continuance requests has extended the statutory deadlines established in Education Code sections 44949, subdivision (c), and 44955, subdivision (c). Pursuant to the parties' stipulation and the continuances, the District will have until June 2, 2010, to serve the Proposed Decision on Respondents and until June 9, 2010, to issue a final layoff notice to Respondents. These dates comply with the statutory time frame under Education Code sections 44949 and 44955.

Secondary Counselor-High School	2.0
Secondary ELD	.6
Secondary English	4.0
Secondary English/Speech and Debate	1.0
Secondary Foreign Language-French	.6
Secondary Foreign Language-Japanese	.6
Secondary Foreign Language-Mandarin	.4
Secondary Foreign Language-Spanish	2.4
Secondary Math	1.6
Secondary Music/Choir	1.6
Middle School Boys PE	1.0
Middle School Girls PE	.2
Secondary Science-Life	1.6
Secondary Science-Physical	2.0
Secondary Social Science	2.2
Specialized Academic Instruction (Special Ed.)	1.0
Secondary 6th Period Athletics	1.5
Secondary Word Processing	.2
Secondary Publications/Yearbook	.2
<b><u>Total Net FTE Reduction</u></b>	<b>47.3</b>

4. On February 22, 2010, the District amended the PKS resolution, by which it made an additional reduction of 0.6 FTE in Secondary Life Science.<sup>2</sup> This modification resulted in a proposed reduction of 47.9 FTE positions.

5. On or before February 17, 2010, de la Torre notified the Governing Board that she recommended that notice be provided to certificated employees of the District, including Respondents, that their services would not be required for the next school year because of the elimination or reduction of particular kinds of services.

6. On or about February 17, 2010, the District served a written “reduction in force” notice (RIF notice) on 47 certificated employees, including Respondents, that de la Torre recommended that their services would not be required for the 2010-2011 school year due to the elimination or reduction of particular kinds of services.

7. Respondents requested a hearing to determine if there was cause for not reemploying them for the 2010-2011 school year.

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<sup>2</sup> Another amendment contained in Exhibit 1 also modified the total reduction in FTE for Secondary Physical Science to 2.2 FTE, instead of 2.0 FTE, but the parties appear to have disavowed this amendment in their closing briefs.

8. On or about March 19, 2010, the District issued the Accusation and related documents and served it on 47 certificated employees. Counsel for the District and Respondents stipulated that all persons who received the Accusation packet were admitted to be participants in this proceeding regardless of whether they filed their notices of defense in a timely manner.

9. All prehearing jurisdictional requirements have been met.

10. 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.<sup>3</sup>

11. The Governing Board took action to reduce the services set forth in factual finding number 3 primarily because of the uncertainty surrounding State funding. The decision to reduce or discontinue the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

12. The reduction or discontinuance 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.

13. On February 22, 2010, the Governing Board adopted Resolution No. 10, which includes criteria for determining order of seniority of those employees with the same date of first paid service (tie-breaking criteria). Respondents did not raise any particular issues with these criteria or the manner in which they were applied.

14. The District maintains a seniority list, which contains employees' seniority dates (first date of paid service), current assignments, and credentials. The District used the seniority list to develop a proposed lay-off list of the least senior employees currently assigned to the various services being reduced. 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 determined whether these employees held credentials in another area and were entitled to "bump" other employees.

#### *Respondents' Contentions and other Relevant Evidence*

15a. Frank Dooley (Dooley) is a permanent English teacher with a seniority date of February 2, 2004. He has a single subject credential in English. Dooley is the most senior English teacher who currently is scheduled for layoff. Dooley maintains he is certificated and competent to render the services performed by Blake Williams (Williams), a junior certificated employee who is the drama teacher at San Marino High School. Williams'

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<sup>3</sup> All further statutory references are to the Education Code.

seniority date is August 20, 2008. She also has a single subject credential in English. The District specifically determined to retain Williams in the drama position because she has special training and experience for this position.<sup>4</sup> More specifically, Williams was hired for the position after a competitive hiring process in 2008. She has several degrees, including a Bachelor of Arts in Dramatic Arts and a Masters in Fine Art in Theater Direction. She has extensive experience in professional theater, and during her two years with the District, she has mastered the District's light and sound systems, which require a high level of expertise. The District maintains that these qualifications make her well suited to teach all aspects of theatre, ranging from acting and playwriting, to directing, and to the more technical aspects, such as stage lighting and design. Finally, the position demands Williams to spearhead an entire program rather than just simply teach drama courses, including overseeing the Spring musical and the Spring play, as well as overseeing the technical aspects of numerous other events staged in the District's facilities, which include a 250-seat auditorium and a 1000-seat auditorium at the high school, and a 410-seat auditorium at the middle school.

15b. The only legal requirement to teach high school drama is a certification to teach secondary English, which Dooley possesses. The District has not published a specific definition of competency for the position. Dooley does not have any special degrees in drama. He has not taught drama before, but he teaches performance and writing of plays in his regular teaching assignment; students write scenes and perform roles within the classroom setting. Dooley has acted in over 20 community theater productions and performed technical assistance for some of these productions.

15c. Dr. Nancy Beagle (Beagle) is a permanent English teacher who has been teaching secondary English classes, and who was initially scheduled for layoff, but who is now being retained due to attrition. Her seniority date is August 30, 2000. At the hearing, the parties stipulated that Beagle is qualified and competent to teach the drama courses currently taught by Williams. As an alternative to bumping Williams directly, Dooley believes that the District should reassign Beagle to teach the high school drama courses, Dooley would be retained to take Beagle's position, and Williams would be laid off.

16. Scott Mooney (Mooney) has a seniority date of August 31, 2004, and holds a single subject credential in physics. He is being laid off by .8 FTE in physics and by .2 FTE in athletics. Scott Barton is being laid off .4 in physics, and Suzanne Nita is being laid off .8 in physics. These three teachers comprise the 2.0 FTE reduction in secondary physical science. Wyeth Collo (Collo) has a seniority date of August 30, 2000, and holds a single subject teaching credential in biology with a supplementary authorization in chemistry. Although Collo is teaching .4 biology, .4 chemistry, and .2 athletics during the 2009-2010 school year according to the seniority list, at the hearing, de la Torre's testimony and other

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<sup>4</sup> Known as "skipping," it is allowed as long as the District can justify a "specific need for personnel to teach a specific course or course of study . . . and the certificated employee has special training and experience necessary to teach that course." (Code, § 44955, subd. (d)(1).)

records showed that Collo actually is teaching .4 physics instead of .4 chemistry, although Collo does not have a credential to teach physics. Collo's .4 biology and .2 athletics assignments are being eliminated, but he is being retained by bumping into chemistry. Mooney maintains that the two periods of physics Collo is teaching have not been reduced according to the PKS resolution or otherwise, and therefore, as the most senior teacher being laid off in physics, Mooney should be retained to teach these classes. The District claims to have determined prior to consideration of the PKS resolution that it would only need Collo to teach chemistry courses next year and that his two sections of physics would not be needed. Therefore, the District asserts, there will be no physics courses for Mooney to teach.

17. The District noticed Respondent Tamara Garcia (Garcia) for layoff. Garcia has a seniority date of August 20, 2008. Garcia holds a special education credential for teaching moderately to severely disabled students and a multiple subject credential. Casey Holcomb (Holcomb) has a seniority date of August 28, 1997. Holcomb holds a single subject credential in social science and a special education credential for teaching mildly to moderately disabled students. All of Holcomb's various assignments are being eliminated by the PKS resolution, and the District wants to reassign her to Garcia's position. Garcia maintains that Garcia's students fall within the moderate to severe category, including several autistic students, and that Holcomb's credential does not authorize her to provide services to this category of student. The District argues that when a teacher bumps another teacher out of his or her position, the District is not required to subsequently place the "Bumpor" into the exact class schedule of the teacher who was bumped. In other words, the District believes that it may reassign its certificated employees in any manner, as long as they are retained to render a service which they are "certificated and competent to serve." (§ 44955, subd. (b).) Thus, the District will be able to meet its needs for special education instruction by retaining Holcomb to provide special education services, even if Holcomb will not be teaching the exact classes that Garcia is teaching.

18. Beth Holstead is teaching four periods (.8 FTE) of biology and one period (.2 FTE) of earth science, although she is not certificated to teach earth science. The District noticed Holstead that it was terminating her position pursuant to the PKS resolution. In the District's internal calculations, it appears the District relied on the 2.0 reduction of secondary life science as the basis for Holstead's termination notice. Holstead maintains that, since the District did not notice her for reduction of the earth science class, which is not a life science, she must be retained to teach that part of her assignment. The District maintains that Holstead is not credentialed to teach this class and that she was only able to teach earth science under a one-year District Board authorization granted to her pursuant to section 44256. Neither party mentioned the amendment of the PKS resolution to create an additional .2 FTE reduction in physical sciences may have been intended to include Holstead's earth science class. Nevertheless, the PKS resolution was intended to identify the positions that would be cut. Whether the PKS resolution, or the RIF layoff served upon Holstead, lacked precision, the issue is whether Holstead received sufficient notice that the District intended to eliminate her entire position, including the earth science subject that she is not credentialed to teach. The evidence does not suggest the District intended to retain her for one period of earth science instruction, or she was entitled to a more specific notice than was provided.

19. The District proposes to reduce service in Secondary Foreign Language-French by three periods (.6 FTE), and Spanish by 2.4 FTE, by reassigning French teacher Kristen Koiles (Koiles) to teach .6 FTE of Spanish, which would bump Spanish teacher Kathy Snider (Snider) to that extent. The remainder of Snider's assignment, .4 FTE, is scheduled for reduction, meaning that Snider will be terminated through the layoff proceeding. Snider teaches Spanish I and II classes and holds a life secondary Spanish credential. In addition to a single subject credential in French, Koiles holds a supplementary authorization to teach introductory Spanish. This credential authorizes the holder to teach, in grades twelve and below, the subject matter content of the "introductory subject or subjects." Thus, Snider maintains that Koiles is not certificated or competent to teach the classes that Snider has been teaching. The District maintains, in an argument similar to the Garcia/Holcomb circumstances, above, that it can rearrange the class schedule so that it will meet its students' needs for instruction in Spanish with the proposed reductions, because it is not required to reassign Koiles specifically to teach the classes taught by Snider.

20. The District did not retain any certificated employee junior to Respondents Winlor Chang, Howard Cheung, Joseph Claro, Michael Condie, Chrystal Dahlstein, Lisa Davidson, Kenneth Dee, Gail Denham, Cecelia Dominguez, Frank Dooley, Larry Fitzgibbons, Heather Floyd, Hannah Fong, Tamara Garcia, Emma Glenny, Joann Goebel, June Gonzalez, Mayumi Hasegawa, Beth Holstead, Christina Hsu, Laura Ives, Derek Jamieson, Sherry Lee, Michelle Macedo, Bill McDaniel, Lisette Moggio, Scott Mooney, Sarah Morris, Beth Negroe, Suzanne Nitta, Tina Nott, Laura Schoonover, Matthew Slimp, Kathy Snider, Christine Sohn, Izumi Suzuki, Melanie Thomas-Whitehead, Stacy Travisano, Ben Ubovich, Molly Wiebe, Judy Wu, and Karen Yung to render a service which these Respondents are certificated and competent to render.

### LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to Code sections 44949 and 44955, by reason of factual finding numbers 1 through 9.

2. The services listed in factual finding number 3 are particular kinds of services that could be reduced or discontinued under Code section 44955.

3. Cause exists for the District to reduce or discontinue the particular kinds of services listed in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils within the meaning of Code section 44949, as set forth in factual finding numbers 1 through 12.

4. The District has established that Williams has particular experience and skills that justify skipping her under section 44955, subdivision (d)(1), and for not reassigning Beagle into Williams's position, in order to meet the needs of its education program. (*Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555.)

5. Respondent Mooney has not established facts that would entitle him to be retained for two periods (.4 FTE) of physics currently taught by Collo. The reassignment of Collo to teach chemistry for the 2010-2011 school year was determined by the District before issuance of the PKS resolution. Therefore, there are no physics classes for Mooney to teach.

6. Respondent Holstead has not established that she should be retained for .2 FTE of earth science because she did not receive notice that a particular kind of service, e.g., physical science, was being reduced by the Governing Board in the PKS resolution. The District provided sufficient notice to Holstead that her entire position was being terminated due to the reduction of secondary life sciences for the 2010-2011 school year. She does not have a credential to teach earth science. The RIF notice that Holstead received was sufficient to terminate her in this proceeding.

7. The District has established a basis for reassigning Koiles and Holcomb. The District has shown that Holcomb is certificated and competent to bump Garcia. Also, the District has shown that Koiles is certificated and competent to bump Snider.

8. Cause exists to terminate the services of Respondents, Winlor Chang, Howard Cheung, Joseph Claro, Michael Condie, Chrystal Dahlstein, Lisa Davidson, Kenneth Dee, Gail Denham, Cecelia Dominguez, Frank Dooley, Larry Fitzgibbons, Heather Floyd, Hannah Fong, Tamara Garcia, Emma Glenny, Joann Goebel, June Gonzalez, Mayumi Hasegawa, Beth Holstead, Christina Hsu, Laura Ives, Derek Jamieson, Sherry Lee, Michelle Macedo, Bill McDaniel, Lisette Moggio, Scott Mooney, Sarah Morris, Beth Negroe, Suzanne Nitta, Tina Nott, Laura Schoonover, Matthew Slimp, Kathy Snider, Christine Sohn, Izumi Suzuki, Melanie Thomas-Whitehead, Stacy Travisano, Ben Ubovich, Molly Wiebe, Judy Wu, and Karen Yung, for the 2010-2011 school year due to the reduction of particular kinds of services, by reason of factual finding numbers 1 through 20, and legal conclusion numbers 1 through 7.

## ORDER

The Accusation is sustained and the District may notify Respondents, Winlor Chang, Howard Cheung, Joseph Claro, Michael Condie, Chrystal Dahlstein, Lisa Davidson, Kenneth Dee, Gail Denham, Cecelia Dominguez, Frank Dooley, Larry Fitzgibbons, Heather Floyd, Hannah Fong, Tamara Garcia, Emma Glenny, Joann Goebel, June Gonzalez, Mayumi Hasegawa, Beth Holstead, Christina Hsu, Laura Ives, Derek Jamieson, Sherry Lee, Michelle Macedo, Bill McDaniel, Lisette Moggio, Scott Mooney, Sarah Morris, Beth Negroe, Suzanne Nitta, Tina Nott, Laura Schoonover, Matthew Slimp, Kathy Snider, Christine Sohn, Izumi Suzuki, Melanie Thomas-Whitehead, Stacy Travisano, Ben Ubovich, Molly Wiebe, Judy Wu, and Karen Yung that their services will not be needed during the 2010-2011 school year due to the reduction of particular kinds of services.

Dated: May 28, 2010

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MARK E. HARMAN  
Administrative Law Judge  
Office of Administrative Hearings