

**BEFORE THE GOVERNING BOARD
OF THE GREENFIELD UNION SCHOOL DISTRICT
COUNTY OF KERN, STATE OF CALIFORNIA**

In the Matter of the Accusation Against: Katy
Chudy, et. al,

Respondents.

OAH Case No. 2011031485

PROPOSED DECISION

The hearing in the above-captioned matter was held on April 12, 2011, at Bakersfield, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided. Complainant was represented by Christopher W. Hine, Schools Legal Services. Respondents were represented by Ernest H. Tuttle III, excepting Respondents Christie L. Marcks, Lisa Daniels, and Berenice Ramirez.

Oral and documentary evidence was received at the hearing, the case was argued, and the matter submitted for decision on the hearing date. The Administrative Law Judge hereby makes his factual findings, legal conclusions, and orders, as follows.

FACTUAL FINDINGS

1. Complainant Chris Crawford filed the Accusation¹ in this proceeding in his official capacity as Superintendent of the Greenfield Union School District (District).

2. The following persons are certificated employees of the District, and are hereafter referred to as Respondents: Katy Chudy, Lisa Daniels, Sandi Dotson, Danielle Granger, Sharee Green, Angie Guijarro, Jennifer Hokit, Mary Susan Holloway, Ryan Kaff, Wendi Kaff, Ashley Lara, Christie L. Marcks, Sarah Ozuna, Berenice Ramiriez, Jenny Saldana, Amy Whisler, and Rachalle Youngblood.

3. (A) On March 1, 2011, the Governing Board (Board) of the District adopted resolution number 11-16, whereby the Board resolved to reduce certain kinds of certificated services beginning in the 2011-2012 school year. (Hereafter Reduction Resolution.) The

¹ The term "accusation" refers to a type of pleading utilized under the Administrative Procedure Act, Government Code sections 11500 and 11503, which provides the procedural framework for hearings of this type. It should be made clear that the Respondents are not "accused" in the every-day sense of that word; they have done nothing wrong. Instead, it might be said that they are accused of not having enough seniority or qualifications to retain their positions with the District in the face of a resolution to reduce positions.

Reduction Resolution was based on the Superintendent's recommendations. Specifically, the Reduction Resolution requires the reduction of 43 "FTE"—Full Time Equivalent—positions by reducing various types of services.

(B) The FTE's that the Board determined to reduce are described in the Reduction Resolution, as follows:

Self-Contained Classroom Instruction, Grades K-6	34 FTE
Academic Coaches	9 FTE
Total FTE To Be Reduced	43 FTE

4. The services which the District seeks to discontinue or reduce are particular kinds of services that may be reduced or discontinued under Education Code section 44955.²

5. The decision by the Board to reduce or discontinue services was neither arbitrary nor capricious, but rather was a proper exercise of the District's discretion given the uncertainty regarding the state budget and the District's financial resources.

6. The reduction and discontinuation of services 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 Board. No legally-mandated services will be reduced as a result of the planned reduction or discontinuance of services.

7. On March 2, 2011, the Board, in its Resolution number 11-17, adopted tie-breaker criteria, to be used in the event that one or more teachers shared the same first date of paid probationary service. The criteria meet the particular needs of the District, and look to matters such as (but not limited to) credentials, experience, training, and other factors.

8. (A) On March 11, 2011, each Respondent was given written notice that pursuant to sections 44949 and 44955 their services would not be required in the 2011-2012 school year (hereafter the preliminary notices). Thereafter, Respondents requested a hearing and then each was served with an Accusation and other documents pertaining to the hearing process. Each Respondent filed a notice of defense.

(B) Seventeen other certificated employees received preliminary notices, but they did not request hearings, were not served with the Accusation, and they are not respondents. By doing so they waived their right to contest the recommendation not to reemploy them in the 2011-2012 school year.

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² All further statutory references are to the Education Code.

9. In the course of the reduction in force process, the District created a seniority list. That seniority list took into account a number of factors, including but not limited to first date of paid service in a probationary position, credentials, assignment, and degrees.

10. The District retained or “skipped” some junior certificated employees where those employees possessed special training or experience not possessed by their more senior colleagues, and where the district could demonstrate a specific need for personnel to teach a specific course or course of study. An example of such was where the District retained an employee with the same seniority date as Respondents, La’Steveia Dixon, because she was in a special education assignment.

11. No Respondent offered any evidence to support a claim that they were entitled to displace or “bump” a junior employee. Likewise, no Respondent offered evidence to support a claim that some teachers had been improperly skipped, or that tie-break criteria was improperly applied.

12. The only evidence offered by Respondents pertained to seniority dates. A number of Respondents asserted that their seniority date should not be August 14, 2006, but that it should be August 1 of that year, because they had attended mandatory training for which they were paid. Respondents Marcks and Ramirez offered evidence that the training was not mandatory, and that the earlier date should not constitute the first date of paid service in a probationary position.

13. (A) The evidence established that several of the Respondents received written notice that they were to attend training classes on August 2, 3, and 10, 2006. For example, Respondent Ashley Lara received a letter dated July 11, 2006 which stated, in part:

There are several mandatory training sessions for you to attend in (sic) this August. You will be compensated for attending at a rate of \$10/hour. The training dates and times are as follows. . . . Please plan on attending all trainings listed above.
(Ex. A.)

The letter was sent by Dannette Anthony, BTSA Induction Program Coordinator, on the District’s letterhead.

(B) Respondents Daniels, Dotson, Granger, Green, Guijarro, Ryan Kaff, Wendi Kaff, Lara, Ozuna, and Youngblood established that they attended the training referenced in Exhibit A on August 2, 2006, and were paid for attending that training. The amount of pay was not as much as their regular rate of pay.

(C) The evidence established that the BTSA program was designed to help employees obtain clear credentials, so that they could continue to teach. While a teacher can obtain the training in many venues, the District established its own program, to help assure that its teachers would pass that important milestone.

(D) The first paid date of service as a probationary employee for Respondents Daniels, Dotson, Granger, Green, Guijarro, Ryan Kaff, Wendi Kaff, Lara, Ozuna, and Youngblood, was August 2, 2006.

14. Respondent Angie Guijarro was employed by the District during 2006 on a temporary contract. She began working on that contract in January 2006, and the contract ended on June 30, 2006. In March 2006 she was given a probationary teacher's contract which by its terms was to take effect at the beginning of the 2006-2007 school year.

15. No junior certificated employee is being retained in a position that a more senior employee is certificated and competent to fill. No junior teacher established that they should have been skipped either.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to sections 44949 and 44955, based on Factual Findings 1 through 8.

2. (A) A district may reduce a particular kind of services (PKS) 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.) The Court of Appeal has made clear that a PKS reduction does not have to lead to less classrooms or classes; laying off some teachers amounts to a proper reduction. (*Zalec v. Governing Bd. of Ferndale Unified School Dist.* (2002) 98 Cal.App.4th 838, 853-85; see also *San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 631, 637 [reduction of classroom teaching can be a reduction of a PKS; as long as there is a change in the method of teaching or in a particular kind of service in teaching a particular subject; any amount in excess of the statutory minimum may be reduced]; *California Teachers Assn. v. Board of Trustees* (1982) 132 Cal.App.3d 32.)

(B) The services to be discontinued are particular kinds of services within the meaning of 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. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949. This Conclusion is based on Factual Findings 3 through 6, and the foregoing authorities.

3. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) No Respondent established that they had the

right to bump a junior employee, based on the foregoing rules, and Factual Findings 11 and 15.

4. Junior teachers may be given retention priority over senior teachers—may be “skipped”—if the junior teacher possesses special skills or capabilities not possessed by their more senior colleagues, and the district demonstrates a specific need for personnel to teach a specific course or course of study. (§ 44955, subd. (d)(1); *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers, Local 2393 v. Governing Bd. of Santa Clara Unified School Dist.* (1981) 116 Cal.App.3d 831.) In this case the District skipped some junior teachers, but no objection was made to those actions, and they must be sustained, based on Factual Findings 11 and 15.

5. Those Respondents who attended training denominated as mandatory, and for which they were paid, rendered paid service in a probationary capacity, and that must be deemed their employment date, pursuant to section 44845. Based on the foregoing statute, and Factual Findings 13(A) through (D), Respondents Daniels, Dotson, Granger, Green, Guijarro, Ryan Kaff, Wendi Kaff, Lara, Ozuna, and Youngblood are entitled to have their seniority dates changed to August 2, 2006. If this modification of seniority dates requires tie-breaking, then the District shall conduct tie-breaking process, in compliance with the tie-break criteria.

6. It cannot be concluded that Respondent Guijarro is entitled to a seniority date prior to August 3, 2006. She did not establish that she worked 75 per cent of the 2005-2006 school year in a temporary capacity, so that time may not be tacked on to what was clearly her first year working under a probationary contract. This Conclusion is based on Factual Finding 14 and sections 44917 and 44918.

7. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render, based on all the foregoing.

8. The District may lay off the Respondents, in reverse order of seniority, in order to reduce 43 FTE of services consistent with the Reduction Resolution, based on all the foregoing.

ORDER

1. The seniority date of the following Respondents shall be changed to August 2, 2006: Daniels, Dotson, Granger, Green, Guijarro, Ryan Kaff, Wendi Kaff, Lara, Ozuna, and Youngblood.

2. The following Respondents may receive final layoff notices in inverse order of seniority: Katy Chudy, Lisa Daniels, Sandi Dotson, Danielle Granger, Sharee Green, Angie Guijarro, Jennifer Hokit, Mary Susan Holloway, Ryan Kaff, Wendi Kaff, Ashley Lara,

Christie L. Marcks, Sarah Ozuna, Berenice Ramiriez, Jenny Saldana, Amy Whisler, and Rachalle Youngblood.

Date: May 6, 2011

Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings