

BEFORE THE
GOVERNING BOARD OF THE
CHARTER OAK UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

OAH No. 2012030366

ELIZABETH ALVA, and other named
certificated employees,

Respondents.

PROPOSED DECISION

Michael A. Scarlett, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 25, 2012, in Covina, California.

Margaret A. Chidester, Attorney at Law, represented Terry Stanfill, ED.D., Assistant Superintendent, Human Resources, Charter Oak Unified School District (District).

Michael R. Feinberg, Attorney at Law, represented the following 11 certificated employees of the District: Teddi Breaux, Virginia DeAnda, Mary Fabela, Heather Lehigh, Victoria Raus, Patricia Santiago, Amy Scogin, Carol Sepulveda, Gregory Solis, Stacy Stirrett, and Gail Troncoso (Respondents), who were all present at the hearing. Respondent Elizabeth Alva was not represented by counsel and did not appear at the hearing. Elizabeth Smith, President of the Charter Oaks Educators Association and Phyllis Peters, Staff Representative, California Teacher Association, were also present at the hearing.

Oral and documentary evidence was received at the hearing. On April 26, 2012, pursuant to an unopposed request at hearing by Respondents, Respondents submitted a copy of the "The Administrator's Assignment Manual, Appendix 1 ("Subjects Within the Single Subjects Area"), First Edition: March 1988, Eighth Revision: September 2007, published by the California Commission on Teacher Credentialing. The document was marked as Respondents' "Exhibit A" and admitted into evidence. The matter was submitted for decision at that time.

FACTUAL FINDINGS

1. Terry Stanfill, ED.D., Assistant Superintendent, Human Resources, of the District filed the Accusations in his official capacity.

2. Respondents at all times relevant were certificated District employees.

3. On March 1, 2012, the Governing Board of the District (Governing Board), following the recommendation of the District’s Superintendent, adopted Resolution Number 05-11-12 (Resolution), deciding to reduce or discontinue certain particular kinds of services (PKS) at the close of the 2011-2012 school year. Pursuant to Education Code¹ sections 44949 and 44955, the following particular kinds of services were recommended to be reduced or discontinued:

<u>Service</u>	<u>FTE² Reduction</u>
(1.1) K-6 Grade Classroom Instruction	6.4
(1.2) K-6 Grade Oak Knoll Virtual Academy Teacher	.40
(1.3) 7-8 Grade English Teacher	1.0
(1.4) 9-12 English Grade Teacher	1.0
(1.5) Alternative Ed. Social Science Teacher (Arrow/Bridges)	1.0
Total	9.8(FTEs)
 (1.6) Elementary Intervention Positions	 4.0
Total	4.0(FTEs)

4. Pursuant to the Governing Board’s Resolution, the Superintendent, or his designee, was directed to serve notices of termination in accordance with sections 44955 and 44949 to certificated employees whose rights are, or may be affected by the reduction or discontinuance of the particular kinds of services specified in the Resolution. Assistant Superintendent Stanfill, on behalf of the Superintendent and District, complied with the directive. On or before March 15, 2012, Respondents, and nine other certificated permanent and probationary employees, were given written notice pursuant to sections 44949 and 44955 that their services would not be required for the following school year.

5. On March 2, 2012, March 5, 2012, and March 14, 2012, the District served upon 21 certificated employees, including Respondents, a written “preliminary” notice that their

¹ All further statutory references shall be to the Education Code unless otherwise specified.

² Full-time equivalent position.

services may not be required for the 2012-2013 school year. In addition to Respondents, “preliminary” notices were served on the following certificated employees: Margaret Bailey, Stella Guzman, Luiza Kartouch, Josephine Oliva, Kevin Thomas, Angela Capone, Tami Chavez, Roberta Koval, and Tammy Peters. Each written notice set forth the reasons for the recommendation not to reemploy them, including the Governing Board’s decision to reduce and/or discontinue the particular kinds of services identified in Factual Finding 3.

6. Respondents filed timely requests for hearing, with the exception of Respondent Heather Lehigh.³ The District stipulated at hearing that although Respondent Lehigh’s request for hearing was untimely, the District did not object to her standing to participate in the lay-off hearing. On or about March 14, 2012, the District filed and thereafter served the Accusation Packets on Respondents.⁴ Respondents filed timely notices of defense to determine whether cause exists for the District not to reemploy them for the 2012-2013 school year.

7. All prehearing jurisdictional requirements have been met.

8. The services identified the in Resolution, Factual Finding 3, are particular kinds of services that may be reduced or discontinued within the meaning of section 44955. The Governing Board’s decision to reduce these services will not result in a reduction of services below the levels mandated by state and federal law.

9. The Governing Board took action to reduce or discontinue the services set forth in Factual Finding 3 primarily because of the budget crisis facing the State of California, declining enrollments, and the economic uncertainty as a result of these factors, and the need for the Governing Board to insure the solvency of the District for the upcoming fiscal and school year. Respondents argued that District’s stated reason for reductions, i.e., budget cuts and declining enrollments, did not justify the proposed reductions in the particular kinds of

³ Margaret Bailey, Stella Guzman, Luiza Kartouch, Josephine Oliva, Kevin Thomas, Angela Capone, Tami Chavez, Roberta Koval, and Tammy Peters did not submit requests for hearing, and thus are not Respondents in this hearing.

⁴ Respondents contend that because Assistant Superintendent Stanfill did not personally place the Accusation Packets in the mail, as declared in the Declaration of Services, the service and notice of the Accusations against all Respondents were defective. Education Code section 44949, subdivision (c)(3), provides in relevant part that “[n]onsubstantive procedural errors committed by the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors.” Even though Assistant Superintendent Stanfill did not personally place the Accusation Packets in the mail, he testified that he supervised the preparation of each Accusation Packet, verified the content of the packets, instructed a staff member to place the packets in the mail, and confirmed that each packet was in fact mailed. The evidence established that each Respondent did in fact receive an Accusation Packet, and thus, no prejudice accrued to any Respondents in this case. Accordingly, Respondents’ challenge to the service of the Accusation Packets is not persuasive.

services because those reductions were so minimal that they would not significantly impact the District's budget or solvency. However, Respondents presented insufficient evidence on this point. Moreover, the decision to reduce or discontinue a particular kind of service is a matter reserved to the District's discretion. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167.) A school district has wide discretion in setting its budget and a layoff decision will be upheld unless it was so unreasonable and arbitrary as to indicate an abuse of discretion. (*California Sch. Employees Assn. v. Pasadena Unified Sch. Dist.* (1977) 71 Cal.App.3d 318, 322.) The District's decision to reduce the particular kinds of services in Factual Finding 3 is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.

10. The reduction of services set forth in Factual Finding 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.

11. The District issued "preliminary" notices to 21 certificated permanent and probationary employees, even though the Governing Board's Resolution authorized only 13.8 FTEs to be reduced or discontinued. Assistant Superintendent Stanfill testified that the "over-noticing" was done as a precaution in the event its tie-breaking criteria or order of layoff was found to be defective at hearing. It over-noticed employees to account for corrections of potential errors in its seniority list. At hearing the District identified four Respondents, Gail Troncoso, Patricia Santiago, Teddi Breaux, and Carol Sepulveda, that it was not seeking to layoff, even though preliminary notices had been served on these Respondents. The District did not offer evidence to support laying off these Respondents. Accordingly, the Accusations against Gail Troncoso, Patricia Santiago, Teddi Breaux, and Carol Sepulveda are dismissed.

12. In determining the number of layoff notices to issue, the District properly considered all positively assured attrition, including all known resignations and retirements at the end of the school year. However, subsequent to the Governing Board authorizing Resolution No. 05-11-12, the District became aware that Kathryn Reynolds would be retiring prior to the 2012-2013 school year, which created an additional position. On March 2, 2012, the District notified Elizabeth Diaz that she was being reassigned from an administrative position to a classroom teaching position for the 2012-2013 school year. The retirement of Reynolds and the reassignment of Diaz allowed the District to exclude from layoff the Alternative Ed. Social Science Teacher 1.0 FTE position for the 2012-2013 school year. None of the Respondents asserted that they were entitled to this position or possess more seniority than Diaz. Therefore, the District appropriately considered attrition in implementing the layoff in this matter.

13. The District maintains a Seniority List (Exhibit 2) containing employees' seniority dates, current assignments and locations, credentials, and authorizations.⁵ The

⁵ At hearing, the parties stipulated that the Seniority List should be amended to reflect that the "seniority date" or date of first paid service rendered for Teddi Breaux would be

District used the Seniority List to develop a proposed order of layoff of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held other credentials entitling them to displace or “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 known vacancies, and determined who must be laid off in inverse order of seniority. Respondents did not disagree with the accuracy of the list.

14. Pursuant to Resolution No. 05-11-12 (Exhibit A to the resolution), the Governing Board sought to exempt or skip “certificated personnel who possess administrative credentials, who are currently assigned to administrative positions, and who will be assigned to administrative positions for the 2012-2013 school year.” Respondents did not challenge the skipping criteria or its application to exempt certain administrative employees from the layoff.

15. The Governing Board’s Resolution No. 05-11-12 (Exhibit “B”) established tie-breaking criteria to determine relative seniority of certificated employees who first rendered paid service on the same date. The validity or application of the tie-breaking process was not challenged at hearing and thus is not at issue in this case.

Specific Challenge to Layoff

16. The only specific teacher challenge to the Resolution raised at hearing related to Respondent Victorias Raus. Ms. Raus is a permanent employee with a seniority date of August 27, 2008. The seniority list indicates that Ms. Raus teaches English and Yearbook. The Governing Board’s Resolution authorized the reduction or discontinuance of a “9-12 Grade English Teacher 1.0 FTE” position. Ms. Raus held this position in the prior school year. At hearing Assistant Superintendent Stanfill testified that although the Resolution indicated a 1.0 FTE 9-12 Grade English Teacher position, in fact, the District was proposing to reduce or discontinue a position filled by Victoria Raus in which she performed .80 FTE as an English teacher and .20 FTE in a Yearbook class. Ms. Raus holds a single subject credential in English and a clear multiple subject credential. Ms. Raus is the most junior certificated employee with an English single subject credential. She is subject to layoff, due to the 1.0 FTE reduction in 9-12 Grade English teaching services. However, because Resolution No. 05-11-12 simply references “9-12 Grade English Teacher 1.0 FTE,” and makes no reference to the .20 FTE for the Yearbook class, Ms. Raus cannot be laid off from the .20 FTE for the Yearbook class. Yearbook is not a PKS identified in the Resolution.

17. There is no certificated employee more senior to Ms. Raus that is eligible to “bump” her from the .20 FTE Yearbook position. The only Respondent discussed at hearing who might have been more senior than Ms. Raus, Elizabeth Alva, does not hold a single subject credential that would qualify her to teach Yearbook. Assistant Superintendent

changed from September 1, 2004, to August 30, 2004. This change in seniority date did not impact the proposed order of layoff in this proceeding.

Stanfill testified that Yearbook was a departmentalized subject which required a single subject credential. This testimony was supported by the California Commission on Teacher Credentialing (CTC), credential certificate for Elizabeth Alva which indicated that Ms. Alva's multiple subject credential authorized her to "teach all subjects in self-contained classes." Additionally, CTC's Administrator's Assignment Manual (Exhibit "A") specifies that under California Code of Regulations, Title 5, section 80005, subdivision (a), "Yearbook" falls within the single subject service area of English and thus is a departmentalized subject that requires a single subject credential. (*See also* Cal. Code of Regs., tit. 5, § 80005, subdivisions (a)(4) and (a)(14).) The District does not dispute either the determination that "Yearbook" was not a PKS identified in Resolution No. 05-11-12 or that it is a departmentalized subject requiring a single subject teaching credential. Elizabeth Alva does not possess the credential required to bump into the .20 FTE Yearbook assignment. Because there are no other Respondents more senior to Ms. Raus who is certificated and competent to bump into the Yearbook position, Ms. Raus must be retained to teach the .20 FTE Yearbook assignment for the 2012-2013 school year.

18. According to the District's proposed layoff list, no junior employee will be retained to render a service which a more senior employee is certificated and competent to render.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955, by reason of Factual Findings 1 through 7.

2. The services listed in Factual Finding 3 are particular kinds of services within the meaning of Education Code section 44955 and applicable case law, by reason of Factual Findings 8 through 10.

3. Cause exists under Education Code sections 44949 and 44955 for the reduction of the particular kinds of services set forth in Factual Finding 3, because it relates solely to the welfare of the District's schools and pupils, by reason of Factual Findings 8 through 10.

4. By reason of Factual Findings 1 through 18, and Legal Conclusions 1 through 3, cause exists to terminate the services of the following Respondents: Elizabeth Alva, Virginia DeAnda, Mary Fabela, Heather Lehigh, Victoria Raus (.80 FTE English Teacher), Amy Scogin, Gregory Solis, and Stacy Stirrett.

5. By reason of Factual Findings 16 and 17, cause exists to retain the services of Respondent Victoria Raus for the .20 FTE Yearbook assignment only.

ORDER

1. The Accusations against Elizabeth Alva, Virginia DeAnda, Mary Fabela, Heather Lehigh, Victoria Raus (.80 FTE English Teacher only), Amy Scogin, Gregory Solis and Stacy Stirrett are sustained, and the District may notify them that their services will not be needed during the 2012-2013 school year due to the reduction of particular kinds of services.

2. Notice shall be given in inverse order of seniority.

3. The Accusations against Respondents Teddi Breaux, Patricia Santiago, Carol Sepulveda, and Gail Troncoso are dismissed. The Accusation against Victoria Raus as to the .20 FTE Yearbook assignment is also dismissed. Ms. Raus must be retained to teach the .20 FTE Yearbook assignment for the 2012-2013 school year.

Dated: May 2, 2012

MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings