

BEFORE THE  
GOVERNING BOARD  
SOMIS SCHOOL DISTRICT  
COUNTY OF SANTA BARBARA  
STATE OF CALIFORNIA

In the Matter of the Layoffs Of:

Laura Beyer, Jane Coleman,  
Carolyn Gass, and Heidi Moon,

Respondents.

OAH Case No. L2008030723

**PROPOSED DECISION**

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard this matter on April 29, 2008, in Somis, California.

James C. Romo, Attorney at Law, represented Mary H. McKee, Ed.D. (McKee), Superintendent of the Somis School District (District).

Jeanne MacCalden Kvale, Attorney at Law, represented Laura Beyer (Beyer), Jane Coleman (Coleman), Carolyn Gass (Gass), and Heidi Moon (Moon), collectively referred to as Respondents.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2008-2009 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2008-2009 school year.

The District seeks to reduce Respondent Moon's services by .5 FTE, the portion of her assignment the District contends is temporary. Respondent Moon maintains she is a full-time employee with sufficient seniority to be retained.

Oral and documentary evidence was received at the hearing. The record was left open for the parties to submit written briefs. On April 30, 2008, the District submitted its closing argument, which has been marked for identification as Exhibit 15. Respondent Moon filed a reply brief on May 1, 2008, which document has been marked for identification as Exhibit C. The matter was submitted for decision on May 1, 2008.

### FACTUAL FINDINGS

1. Superintendent McKee filed the Accusation in her official capacity.
2. Respondents are certificated employees of the District.
3. On February 21, 2008, the Governing Board of the District (Governing Board) adopted Resolution number 07-08-15, reducing or discontinuing the following services for the 2008-2009 school year:

<u>Service</u>	<u>Full-Time-Equivalent Positions</u>
Elementary (K-8) Classroom Teaching	2.0
Reading Teacher	1.0
ELD Teacher	1.0
Home Study Teachers	1.5
Foreign Language (French)	1.0
Social Studies (Charter School)	.25
Supplemental Counselor	<u>0.0</u>
Total	6.75

The Supplemental Counselor position has no specific full-time equivalent (FTE) designation because the service is performed by a certificated employee on an hourly basis, as needed.

4. Superintendent McKee thereafter notified the Governing Board that she had recommended that notice be provided to 15 certificated employees, including Respondents, that their services will not be required for the 2008-2009 school year due to the reduction of particular kinds of services.
5. On or about March 6, 2008, the District provided notice to Respondents that their services will not be required for the 2008-2009 school year due to the reduction of particular kinds of services.
6. Respondents thereafter timely requested a hearing to determine if there is cause for not reemploying them for the 2008-2009 school year.
7. On or about March 25, 2008, the District issued the Accusation, and served it on Respondents.
8. Respondents filed timely notices of defense.

9. All prehearing jurisdictional requirements have been met.
10. At the hearing, the District dismissed the accusation against Respondents Beyer, Coleman, and Gass.
11. 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>1</sup>
12. The Governing Board took action to reduce or discontinue the services set forth in factual finding number 3 primarily because of uncertainty future funding. The District estimates a revenue shortfall of approximately 32 percent, or \$1.1 million, for the 2008-2009 school year. The decision to reduce the particular kinds of services is neither arbitrary nor capricious but is rather a proper exercise of the District's discretion.
13. The reduction 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.
14. Respondent Moon first rendered paid service in a probationary position on October 12, 1998. She is senior to 38 other certificated employees and junior to seven others. She holds a clear multiple subject teaching credential.
15. In March 2006, Respondent Moon asked Superintendent McKee for permission to work part time during the 2006-2008 school year to spend more time with her baby. Both participants to the discussions agreed at the hearing that Superintendent McKee explained the options available to Respondent: a leave of absence or a reduction of .5 FTE, but disagreed on key points of the conversation. Superintendent McKee testified that she made it clear that she believed any reduction in position would be "permanent." Respondent Moon testified that any reduction would take place only for one year, and that she could not afford to agree to a permanent reduction. Superintendent McKee prepared the following written understanding of their agreement, which Respondent Moon signed on March 17, 2006:

The purpose of this memo is to confirm our conversation regarding placement for the 2006-2007 school year. I am requesting a voluntary reduction to .5 FTE. I understand that a part time position is available in the independent/home school program. I am requesting assignment to that position. This assignment is appropriate to best utilize my multiple subject credential and meet the requirements under No Child Left Behind "highly qualified teacher."

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<sup>1</sup> All further references are to the Education Code.



I understand that under this reassignment, I will retain my status as a Somis Union School District employee as a .5 employee and my original date of hire for purposes of seniority.

Thank you for your consideration of this voluntary reduction.

Respondent Moon testified that she believed the reduction would be in effect for only one year and that she did not intend to permanently reduce her assignment by .5 FTE.

16. Respondent Moon also worked on a part-time basis during the 2001-2002 school year, after the birth of a prior child. Superintendent McKee was not a District employee at the time, arriving just prior to the 2003-2004 school year. No documentation regarding this prior absence was provided and it was not established whether it was leave of absence or a temporary reduction. In any event, Respondent Moon returned to full-time employment for the 2002-2003 school year.

17. Respondent Moon received her assignment for the 2007-2008 school year during the Summer of 2007. It was a part-time assignment and Respondent Moon complained about the continuing reduction. Superintendent McKee maintained that the reduction agreed to in March 2006 was permanent. Respondent Moon disagreed and asked for full-time employment.

18. Another employee, Maya Sheehey (Sheehey), was on a partial leave of absence for the 2007-2008 school year, and Superintendent McKee was able to assign Respondent Moon for another .5 FTE. Superintendent McKee told Respondent Moon that she would have a temporary .5 FTE for the school year and that, if a position became available, then Respondent Moon could be given consideration for reinstatement to full-time status.

19. Respondent Moon is competent and certificated to render services less senior employees were retained to render. Three individuals more junior to Respondent Moon, who are teaching home study or providing teaching services in regular elementary school classrooms, were specifically identified at the hearing, Sheehey, Lamont Palma, and Jill Morrissey. In addition, Respondent Moon is more senior than four other certificated employees with multiple subject credentials teaching in elementary school classrooms, namely, Respondent Gass, Jan Ferrell, Lorena Jarrells, and David Jackson.

### LEGAL CONCLUSIONS

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

2. The services listed in factual finding number 3 are determined to be particular kinds of services within the meaning of section 44955, by reason of factual finding numbers 3 and 11.

3. Cause exists under sections 44949 and 44955 for the District to reduce or discontinue the particular kinds of services set forth in factual finding number 3, which cause relates solely to the welfare of the District's schools and pupils, by reason of factual finding numbers 1 through 9 and 11 through 13.

4. Cause does not exist to reduce the services of Respondent Moon by .5 FTE, by reason of factual finding numbers 14 through 19. While the District may indeed reduce a temporary position during a layoff proceeding such as this one, Respondent Moon was not hired to fill the temporary position created by Sheehey's leave of absence. She is a permanent employee and her position was not rendered a permanent part-time one by virtue of the March 17, 2006 agreement. The March 17, 2006 document does not contain a clear indication that Respondent intended to permanently reduce her position to a .5 FTE. The District drafted the document and any ambiguities should not be resolved in its favor. In light of her 2001-2002 part time employment experience and her financial need for full-time employment, it is unlikely that Respondent would have agreed to a permanent reduction. In any event, the most reasonable construction of the March 17, 2006 agreement, is that, as the first sentence pronounces, the reduction only pertains to "placement for the 2006-2007 school year." Accordingly, Respondent Moon is presently a full-time employee of the District with sufficient seniority to displace, or bump, any one of several junior employees retained to perform services which she is certificated and competent to render.

#### ORDER

The Accusation is dismissed and the District may not notify Respondents Laura Beyer, Jane Coleman, Carolyn Gass, or Heidi Moon that their services will not be needed for the 2008-2009 school year due to the reduction of particular kinds of services.

DATED: \_\_\_\_\_

SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings