

**BEFORE THE GOVERNING BOARD OF THE
LAKEPORT UNIFIED SCHOOL DISTRICT
LAKE COUNTY
STATE OF CALIFORNIA**

**In the Matter of the Statement of Reduction in Force of:

SHELTON EVANS, a Certificated Employee, Respondent.**

OAH No. 2021040009

PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on April 19, 2021, by videoconference.

Lawrence M. Schoenke, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, represented the Lakeport Unified School District.

No appearance was made by or on behalf of respondent Shelton Evans.

The matter was submitted for decision on April 19, 2021.

FACTUAL FINDINGS

1. Jill Falconer made and filed the District's Statement of Reduction in Force in her official capacity as the superintendent of the Lakeport Unified School District (District).

2. On March 11, 2021, the Governing Board of the District adopted Resolution No. 03-21-02 (Resolution), reducing or discontinuing particular kinds of services for the 2021-2022 school year, and directing Superintendent Falconer to send appropriate notices to all employees whose positions may be affected by the reduction or discontinuation of services.

3. The Resolution identified the services to be reduced by the commencement of the 2021-2022 school year as:

- 21st Century Life Skills .167 Full Time Equivalent (FTE) (1 period)
- Current Events .167 FTE (1 period)
- P.E. .333 FTE (2 periods)
- Earth Science .167 FTE (1 period)
- Computer Skills .167 FTE (1 period)

4. The services set forth in the Resolution are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. Superintendent Falconer recommended the reduction of services because of declining enrollment.

5. Pursuant to Education Code section 44955, subdivision (b), when a governing board reduces particular kinds of services resulting in a decrease in the number of certificated, permanent employees, the services of a permanent employee may not be terminated if another employee with less seniority is retained to render a service that the more senior employee is "certificated and competent to render."

6. The seniority date of certificated employees is determined in accordance with Education Code section 44845, which provides: "Every probationary or permanent employee employed after June 30, 1947, shall be deemed to have been employed on the date upon which he first rendered paid service in a probationary position."

7. Prior to March 15, 2021, Superintendent Falconer provided a written "Notification of Recommendation That Your Services Will Not Be Required For The Ensuing School Year" (Preliminary Notice) to respondent Shelton Evans (respondent), a certificated employee of the District, notifying him that his services will not be required for the 2021-2022 school year, pursuant to Education Code sections 44949 and 44955.

8. On March 17, 2021, respondent submitted a request for a hearing. On April 5, 2021, respondent was served with a Reduction in Force Packet, which included: a Statement to Respondent, the District Statement of Reduction in Force, copies of relevant Education and Government Code sections, a Notice of Participation, and a Notice of Hearing notifying respondent of the date and time set for hearing.

9. Respondent did not return the Notice of Participation and did not appear at the hearing. This matter proceeded as a default pursuant to Government Code section 11520.

10. Respondent is a permanent full-time (1.0 FTE) certificated teacher at the District's high school. He has worked for the District since October 1, 2009. Respondent holds a Career Technical Education Teaching credential.

11. During the current (2020-2021) school year, respondent is teaching Professional Computers (1 period); Current Events (1 period); Computer Skills (3 periods); and Advanced Computers (1 period).

12. For the upcoming school year (2021-2022), the District intends to eliminate two of the courses currently taught by respondent. The remaining four courses will be assigned to a teacher with greater seniority who is credentialed to teach these courses.

13. No permanent or probationary certificated employee with less seniority is being retained to render a service which respondent is certificated and competent to render.

LEGAL CONCLUSIONS

1. The District complied with all notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955.

2. The services referenced in the Resolution set forth in Factual Findings 2 and 3 are the kind which may be reduced or discontinued in accordance with applicable statutes and case law. (See Ed. Code, § 44955; *Campbell Elem. Teachers Assn., Inc. v. Abbott* (1978) 76 Cal.App.3d 796; *Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167.) The Board's decision to reduce or discontinue the services is neither arbitrary nor capricious, but rather a proper exercise of the District's discretion.

3. The evidence established that no certificated employee with less seniority than respondent is being retained to render services which he is certificated and competent to perform. (Factual Findings 10-13.)

4. In accordance with Education Code sections 44949 and 44955, cause exists for reduction of particular kinds of services by the District by the commencement of the 2021-2022 school year, as established in Factual Findings 2

through 9. The cause relates solely to the welfare of the District and its students, within the meaning of Education Code section 44949.

5. Notice may be given to respondent that his services will not be required for the 2021-2022 school year.

ORDER

Notice may be given to respondent Shelton Evans that his services will not be required for the 2021-2022 school year.

DATE: 04/22/2021

Karen Reichmann

KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings