

BEFORE THE
GOVERNING BOARD OF
SARATOGA UNION SCHOOL DISTRICT
COUNTY OF SANTA CLARA, CALIFORNIA

In the Matter of the Accusation Against
Certificated Employees:

SHEILA CHAKO et al.,

Respondents.

OAH No. 2010020462

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Saratoga, California, on April 26 and May 3, 2010.

John R. Yeh, Attorney at Law, Dannis Wolliver Kelley, represented complainant Lane Weiss, Superintendent of the Saratoga Union School District.

Christopher E. Schumb, Attorney at Law, represented all respondents whose names are listed on Attachment A.

The matter was submitted for decision on May 3, 2010.

FACTUAL FINDINGS

1. Lane Weiss made the accusation in his official capacity of Superintendent of the Saratoga Union School District.

2. Respondents listed on Attachment A are certificated employees of the district. The district rescinded the March 15 notice it issued to Linda Rosiak. The accusation against her will be dismissed.

3. On March 9, 2010, the Governing Board of the Saratoga Union School District adopted Resolution No. 09/10-15. The Board resolved to reduce or discontinue the particular kinds of services for the 2010-2011 school year, and directed Superintendent Weiss to give notice to the certificated employees whose positions would be affected.

4. On or about March 11, 2010, the superintendent gave written notice to respondents that, pursuant to Education Code sections 44949 and 44955, it was being recommended that their services would be reduced or eliminated for the 2010-2011 school year. Respondents filed timely requests for hearing. The district served an accusation on each respondent who requested a hearing. Each respondent filed a notice of defense. The parties stipulated that the district has complied with the requirements of Education Code sections 44949 and 44955.

5. In its resolution, the board resolved to reduce or discontinue the following particular kinds of services:

<u>Particular Kinds of Services</u>	<u>Number of Full-Time Equivalencies</u>
First Grade	1.0
Second Grade	2.0
Fourth Grade	1.0
Fifth Grade	1.0
School Counselor	1.0
Computer Teacher/Tech Support	1.0
Math Coach	1.0
Dean	0.50
Speech Arts	0.17
Study Hall	0.17
Tutorial Prep	0.17
Instructional Media Specialist (Categorical)	1.0
Librarian (Categorical)	1.0
Music (Categorical)	2.0
Science (Categorical)	1.0
Silicon Valley New Teacher Project Mentor (Categorical)	0.50
Total:	14.51 FTE

It was stipulated that the board's PKS resolution contains an error regarding the amount of the reduction of Study Hall and Speech Arts services. Each of these services is a one semester class taught by one teacher; they therefore jointly constitute only a .17 FTE position. The district will effectuate the board's PKS resolution by reducing these services jointly at the level of a .17 FTE position. The net effect is that 14.34 FTE positions are being reduced or eliminated by the board's PKS resolution.

6. The services set forth in the board's PKS resolution are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. No service is being reduced below a mandated level.

7. The reductions were based on the district's financial situation. The district is a Basic Aid district, meaning that its funding comes primarily through property tax revenues, although the district also receives some of its funding through the federal government, the state government and the Saratoga Education Foundation. The district has been operating in a budget deficit for a number of years. It expects to receive less funding for next year but the amount of the reduction is uncertain at this time. It also expects that its expenses will increase. Considering all of this, the reductions are in the interest of the schools and their pupils.

8. The board established by separate resolution criteria for determining the order of termination among certificated employees who have the same seniority date. The criteria were applied to certificated employees who share the same seniority date in 2006, 2007 and 2008. No issues were identified with respect to application of the tie-breaking criteria to respondents.

9. The district has released all temporary employees.

10. The district will take into account all positively assured attrition prior to issuing the final notices.

11. The district has a number of probationary employees who have greater seniority than some of its permanent employees. In order to effectuate the PKS resolution reductions, services of probationary employees must be reduced or eliminated before services of permanent employees may be reduced or eliminated. (Ed. Code, § 44955, subd. (b).)

Challenges to 2006 Seniority Dates

12. A certificated employee's seniority begins with the date he or she "first rendered paid service in a probationary position." (Ed. Code, § 44845.)

13. Respondent Eric Witter has a seniority date of August 24, 2006, which corresponds with the first day of school for the 2006-2007 school year. The district has given Witter two seniority dates. He has a seniority date of August 24, 2006, for his .5 FTE teaching position, and a seniority date of August 7, 2006, for his .5 FTE administrative position, which is being eliminated by the PKS resolution. The parties agree that his .5 FTE Dean position is a school site administrator position.

The district has properly assigned respondent Witter a seniority date of August 24, 2006, for his teaching position. Pursuant to Education Code section 44956.5 the most credit towards seniority respondent Witter is entitled to for his administrative service is three years, which is less than the seniority he has as a teacher.

14. Respondent Lori Chaykin is an elementary teacher with a seniority date of August 24, 2006. She attended a New Teacher Orientation on August 18, 2006. She was told by someone that attendance at the orientation was mandatory for new teachers to the district, and she changed her vacation plans in order to attend. She does not remember how she was compensated for her attendance, either by way of stipend or by credit on the salary schedule for professional development.

Respondent Chaykin has not established that she is entitled to an earlier seniority date by reason of attending the New Teacher Orientation before the start of the 2006-2007 school year. It was not established that attendance at the New Teacher Orientation was mandatory in the sense of there being negative consequences for failing to attend. The district did not consider participation to be mandatory, and that was reflected in the letter the district sent to new employees inviting them to attend the orientation. The district has correctly assigned respondent Chaykin a seniority date of August 24, 2006, as that is the date on which she first rendered paid service to the district in a probationary position.

15. Respondents Sheila Chako, Sheridan Kurtz-Fenster, and Suzanne Ross are elementary teachers with seniority dates of August 24, 2006. Each of these teachers had a preliminary teaching credential when first hired into the district. As a part of their employment contract with the district, they were required to participate in the Silicon Valley New Teacher Project, also known as Beginning Teacher Support and Assessment (BTSA) program for two years.

An orientation meeting for the program was held on August 17, 2006. Respondents Chako, Kurtz-Fenster, and Ross argue that their seniority date should be advanced to August 17, 2006, because of their attendance at this meeting. Each of these teachers was under the impression that attendance at the orientation meeting was mandatory. Each was compensated for her attendance, either by way of stipend or by way of credit on the salary schedule for professional development.

Respondents Chako, Kurtz-Fenster, and Ross have not established that they are entitled to an earlier seniority date by reason of their attendance at this orientation meeting. There is no question that these teachers were led to believe that their attendance at this meeting was important. But, it was not established that attendance was mandatory in the sense of there being negative consequences for failing to attend. But even if this were a mandatory meeting, it does not alter that they first rendered paid service to the district in a probationary position on August 24, 2006.

Challenges to 2007 Seniority Dates

16. Eveonne Lockhart, Shannon McQuaide and Sandra McConnell share the same seniority date of August 20, 2007, which corresponds with the first day of school for the 2007-2008 school year.

17. Respondent McConnell was required to participate in the BTSA program upon her employment with the district for the 2007-2008 school year. She attended the BTSA orientation meeting on August 16, 2007, which she argues, entitles her to have her seniority date advanced.

Respondent McConnell received a stipend for her attendance at the meeting. She also understood that her attendance at this meeting was mandatory. She was never told that she had the option to reschedule the orientation meeting.

Respondent McConnell has not established that she is entitled to advance her seniority date. There is no question that she was led to believe that her attendance at this meeting was important. But, it was not established that attendance was mandatory in the sense of there being negative consequences for failing to attend. But even if this were a mandatory meeting, it does not alter that she first rendered paid service to the district in a probationary position on August 20, 2007.

18. Respondent Lockhart was a new teacher to the district for the 2007-2008 school year. She attended the New Teacher Orientation on August 17, 2007, which, she argues, entitles her to have her seniority date advanced.

Respondent Lockhart understood from district personnel that her attendance at this meeting was mandatory. She received either a stipend or professional development credit on the salary schedule.

Respondent Lockhart has not established that she is entitled to advance her seniority date. There is no question that she was led to believe that her attendance at this meeting was important. But, it was not established that attendance was mandatory in the sense of there being negative consequences for failing to attend. But even if this were a mandatory meeting, it does not alter that she first rendered paid service to the district in a probationary position on August 20, 2007.

Challenges to Bumping

19. Mardi Kambish is a senior teacher in the district with a seniority date of August 30, 1990. She has a clear standard elementary credential and a supplementary authorization in Math. Kambish holds a 1.0 FTE position with the district. By virtue of her credentials, Kambish may teach Math or any position which requires a multiple subject credential.

For the 2009-2010 school year, Kambish was assigned to be the Math Coach position, a position which is being eliminated by the PKS resolution. The district retained Kambish's Math position for this year, and "back-filled" it by using a temporary teacher. The district has released the temporary teacher, and so that position is vacant.

The district has not decided where it will assign Kambish for 2010-2011 school year, and it will not make that decision until May. The district thus proposes that it may lay off an elementary teacher junior to Kambish in order to have an elementary teaching position in which it can assign Kambish should it decide to do that. The evidence establishes that the district does not have any other permanent or probationary teacher in mind to fill its vacant Math position. Superintendent Weiss wants to keep all options open for filling the vacant Math position. The district was very satisfied with their temporary math teachers this year.

The district had not established a legal basis which would allow it to keep two positions open for one teacher whose position has been eliminated by a PKS resolution. The net effect of the district's decision not to make an assignment of Kambish is to reduce one elementary teacher position more than that which is authorized by, or necessary to effectuate, the PKS resolution. The district is not permitted to do this. The district may not issue a final notice to an elementary teacher junior to Kambish in order to effectuate the reduction in Math Coach services.

20. Other senior teachers were impacted by the PKS resolution. The district proposes to place senior teachers into elementary teaching positions, thus bumping junior teachers who are currently occupying those positions. Some of these more senior teachers do not have a CLAD, BCLAD, or other similar certificate. Respondents argue that these senior teachers cannot bump into their positions because they have English Language Learners¹ in their classrooms and a CLAD certificate is required in order to teach in those positions.² In other words, respondents argue that these senior teachers are not credentialed and competent to teach in their positions. (Ed. Code, § 44955, subd. (b).) The contention is without merit.

It is not a requirement of the district for each of its elementary teachers to have a CLAD or similar certificate. As established through the testimony of Assistant Superintendent of Education Services Elizabeth Polito, the district does have English Language Learners in all of its schools, but the percentage of students is not large in any school. Each of the three elementary schools has some English Language Learners, but not each class in each school has them. The greatest number of classes with English Language Learners are in Kindergarten, First and Second Grades. The children tend to test out after second grade, although there are students who do not, and there are older students who enter the district that are English Language Learners.

In short, not all of the classes offered by the district require teachers with a CLAD certificate. The district has determined that it has a sufficient number of teachers with a

¹ An English Language Learner is defined in Education Code section 306, subdivision (a), as: "English Learner" means a child who does not speak English or whose native language is not English and who is not currently able to perform ordinary classroom work in English, also known as a Limited English Proficiency or LEP child."

² It is not disputed that English Language Learners must be taught by a teacher possessing a CLAD certificate, or its equivalent.

CLAD certificate that it can provide instruction to its English Language Learners next school year. As such, the district is correctly following the requirements of Education Code section 44955 in retaining its senior teachers without CLAD certificates, and noticing its more junior teachers for layoff.

21. The PKS resolution requires a 2.0 FTE reduction in Music. One music teacher will be resigning at the end of the school year. The district's evidence shows that it can satisfy the 2.0 FTE reduction and still retain a vacant .17 FTE music position. The most senior teacher who is credentialed and competent to teach Music is respondent Witter. He is entitled to bump into this .17 FTE Music position.

Reduction of Science

22. The PKS resolution requires the elimination of 1.0 FTE Science. The district provided conflicting evidence regarding which position would be reduced. There was testimony that the position held by respondent McQuaide, 7th Grade Science, would be eliminated. There was testimony that .5 FTE of the position held by respondent Lockhart, 6th Grade Science, would be eliminated. The PKS resolution authorizes the district to layoff the equivalent of only 1 FTE Science position. The district must make its determination of how to effectuate the 1.0 FTE Science reduction before it issues the final notices. There is no evidence that the district will do otherwise.

Other Matters

23. Respondents argue that the district has not complied with the requirements for an ADA layoff. It was not established by competent evidence that the district has conducted anything other than a PKS layoff.

24. All contentions made by respondents not specifically addressed above are found to be without merit and are rejected.

25. Except as stated above, no permanent employee is being terminated while a permanent or probationary employee with less seniority is being retained to render a service which the permanent employee is certificated and competent to render.

26. The cause for the reduction in particular kinds of services relates to the welfare of the schools and the pupils thereof.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. By reason of the matters set forth in Finding 2, there is no cause pursuant to Education Code section 44955 to give final notice to respondent Rosiak.

3. By reason of the matters set forth in Finding 19, there is no cause pursuant to Education Code section 44955 to lay off a certificated employee holding a 1.0 FTE elementary teaching position in order to effectuate the PKS resolution reduction of 1.0 FTE Math Coach.

4. Cause exists because of the reduction of services pursuant to Education Code section 44955 to give notice to certificated employees occupying 14.34 FTE positions that their services will be reduced or eliminated for the 2010-2011 school year. This cause relates solely to welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

1. The accusation against respondent Linda Rosiak is dismissed.

2. Except as set forth above, notice may be given to certificated employees occupying 14.34 full-time equivalent positions that their services will be reduced or eliminated for the 2010-2011 school year.

DATED: May 11, 2010

MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

EXHIBIT A

List of Respondents:

1. Sheila Chako
2. Lori Chaykin
3. Harrison Dill
4. Margaret Ebner
5. Sheridan Kurtz-Fenster
6. Susan Jacobs
7. Kristi Kirwan
8. Eveonne Lockhart
9. Sandra McConnell
10. Shannon McQuaide
11. Christie Nielsen
12. Suzanne Ross
13. Amy Kathleen Schelhorse
14. Dustin Wells
15. Debra Willheim
16. Eric Witter
17. Judy Wolthausen