

BEFORE THE  
GOVERNING BOARD OF THE  
GOLD OAK UNION SCHOOL DISTRICT  
COUNTY OF EL DORADO  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CHRISTINE JOHNSTON,  
DEANNA JOHNSON,  
CAROL ROWBERG,  
& TIFFANY WHETSTONE

OAH No. N200040141

Respondents.

**PROPOSED DECISION**

William O. Hoover, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 28, 2003 at the district office for Gold Oak School District, 3171 Pleasant Valley Road, Placerville, California.

Thomas M. Griffin, Attorney at Law, represented complainant Gold Oak School District ("District").

A. Eugene Huguenin, Jr., Attorney at Law, represented respondent Christine Johnston.

The parties were permitted to submit letter briefs and the record remained open until May 6, 2004. Respondent's letter brief was received May 3, 2004 and marked for identification as Exhibit C. Complainant's letter brief was received May 5, 2004 and marked for identification as Exhibit 5. The matter was submitted on May 6, 2004.

**FACTUAL FINDINGS**

1. The Gold Oak Union School District ("District") operates 2 elementary schools, Gold Oak School and Pleasant Valley School. Gregory Himes is the District Superintendent. The district currently maintains a total of 37.5 Full Time Equivalent positions.

2. On March 9, 2003 the Governing Board ("Board") of the Gold Oak Union School District adopted Resolution No. 04-03-01, in which the Board resolved to eliminate the services of 6.0 full time equivalent ("FTE") certificated staff for the 2004/05 school year, effective June 30, 2004. The resolution averred that the reduction of staff was due to a reduction of a particular kind of service.

3. On or before March 15, 2003, the District served on each respondent a written notice from the District Superintendent informing each of them that, pursuant to Education Code sections 44949 and 44955, their services would not be required for the next school year.<sup>1</sup> The written notice specifically informed respondents that the Board adopted a resolution "...reducing the certificated staff by 6.0 full time equivalent positions effective July 2004." A copy of the resolution was included with the notice.

4. There was no issue as to the timeliness of filing or service of any notice or other action required by the District and each respondent was deemed to have filed timely requests for hearing and notices of defense.

5. At or before the hearing, the District rescinded or withdrew the accusations against respondents Deanna Johnson, Carol Rowberg and Tiffany Whetstone, all of whom will be retained for the 2004-05 school year. Respondent Johnston is the sole respondent remaining and is identified on the District seniority list as a kindergarten teacher. She is a full-time permanent certificated employee of the district with a date of hire of August 22, 2001.

6. The District has created a seniority list of its certificated employees which was current as of March 3, 2004. The seniority list was developed from District personnel and other records and ranks certificated employees according to the date of hire of each (date of first paid service). The seniority list also includes such information as current assignments and locations, advanced degrees, credentials, and authorizations data. Credential and authorization data are obtained from the records of the County Office of Education, at which certificated employees must register such documents.

7. Respondent Johnston is ranked as the least senior permanent certificated employee. Only two employees were ranked beneath her, a temporary (1 FTE) and a probationary employee (1 FTE), neither of whom is being retained. The non retention (or known attrition) of these two individuals permitted the District to limit service of the layoff notices in this matter to 4 FTE. Respondent Johnston did not challenge the accuracy of the seniority list. She also did not assert that she had any superior rights over any employee being retained or that any employee junior to her was being improperly retained. Her selection for receipt of a layoff notice was related solely to her seniority and, as noted, no issues were presented relating to the application of "bumping", "skipping" or tie-breaking" procedures.

---

<sup>1</sup> All subsequent references to statutes and/or sections are to the California Education Code.

8. The sole issue raised at hearing was the adequacy of the resolution adopted by the Board. Respondent Johnston claimed that the resolution was legally insufficient for jurisdictional purposes since it stated only that the services of 6.0 FTE certificated staff would be eliminated. Respondent Johnston contends that the statute requires that the particular kinds of service to be reduced or eliminated be specifically identified in the resolution. The necessary implication of this contention is that, because of the lack of specificity in the resolution language, respondent Johnston asserts that she was unable to effectively assess her risk of layoff. Thus, the District's pre-March 15<sup>th</sup> notice was fatally defective and void *ab initio*. This contention is without merit.

### DISCUSSION

9. "California Education Code section 13447 provides that a school district may reduce its certificated staff because of either a decline in average daily attendance, or a reduction or discontinuation of particular services". *Santa Clara Federation of Teachers, Local 2393 et al, v. Governing Board of Santa Clara Unified School District et al*, (1981) 116 Cal.App.3d 831 (hereinafter "*Santa Clara*")

10. "Because the March 15 notice in section 13447 is intended to insure that the affected employee is informed of the facts upon which he can reasonably assess the probability he will not be reemployed, the notice must state the reasons for the recommendation... The March 15 notice is only the first step in the termination process. It is not required that this preliminary notice specify the precise number of teachers to be terminated or the specific positions to be eliminated; those details emerge as the administrative hearing process progresses. It is enough that the board specify in the March 15 notice the statutory grounds set forth in Cal. Educ. Code section 13447 for staff reduction." *Santa Clara*, supra

11. *Karbach v. Board of Education of Lawndale School District* (1974) 39 Cal.App.3d 366 requires a District to provide sufficient information in its resolution for an employee to be able to reasonably assess the probability that s/he will not be reemployed.

12. "A school board's exercise of discretion is not subject to judicial review unless the board fails to follow proper procedures or the action was fraudulent, arbitrary or capricious." *Santa Clara*, supra.

13. A school board's decision to reduce or discontinue a particular kind of service need not be tied to any statistical computation, such as the reduction in the number of students. *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627. A school board may reduce services within the meaning of the section 44955 by determining that a certain type of service shall not be performed at all or by reducing the number of district employees who perform such services. *Rutherford v. Board of Trustees of Bellflower*

*Unified School District* (1976) 64 Cal.App.3d 167. (see also *Campbell v. Abbott* (1978) 76 Cal.App.3d 796, 811)

14. In *California Teachers Association v. Goleta Union High School District* (1982) 132 Cal.App.3d 32, the reduction of K-6 classes was a reduction of a particular kind of service and the termination of the teachers providing those services was permissible under section 44955. The court held:

“...Since high school offerings, such as mathematics, science, history and art, are particular kinds of service, logically elementary grade classes which teach the same offerings, although with a single teacher, are particular kinds of service.”

15. In *San Jose Teachers Association*, supra, pp 635-637, the court noted that “The number of terminations made necessary by PKS reductions depends totally upon the district’s decision as to how many services to reduce” and that a valid reduction in service can be found “as long as there is a change in the method of teaching or in the particular kind of service in teaching a subject.”

16. These decisions consistently recognize that, at the elementary school level, classroom teaching is a particular kind of service. Unlike middle school and high school, where a teacher instructs in a particular subject or subjects, elementary school classes are multi-subject. Therefore, at the elementary school level, a reduction in services cannot be limited to a single subject or discipline, but must encompass the spectrum of academic offerings in a K-5 class, *i.e.*, a classroom teaching position. *Zalac v. Governing Board of Ferndale Unified School District* (2002) 98 Cal.App.4<sup>th</sup> 838

17. In this case the Board’s resolution called for the reduction of 6 FTE certificated positions based on a reduction of service for the next school year. While greater specificity might have been more desirable, it was statutorily sufficient given the fact that Gold Oak is an elementary school district and respondent Johnston is an elementary school teacher (kindergarten). Under these circumstances any elementary school teacher with limited time in service in the District, especially respondent Johnston, could discern from the resolution language that she was at risk of being laid off. Therefore, the services identified in Board Resolution 04-03-01 are particular kinds of services that could be reduced or discontinued under Education Code section 44955.

18. 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 Education Code section 44949.

19. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessitated a decrease in the number of certificated employees of the District as determined by the Board.

20. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

### LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied.

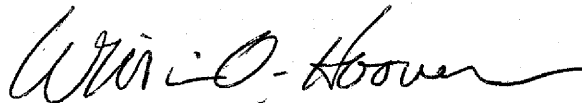
2. Cause exists to reduce the number of certificated employees of the District due to the reduction or discontinuance of particular kinds of services. Cause for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. No employee with less seniority than any respondent is being retained to render a service which any respondent is certificated and competent to render.

### ORDER

The Accusation against Christine Johnston is sustained. The District may give notice that her services will not be required for the 2004-05 school year because of the reduction of particular kinds of services.

Dated: 5/6/04



WILLIAM O. HOOVER  
Administrative Law Judge  
Office of Administrative Hearings