

BEFORE THE
GOVERNING BOARD OF THE
FORESTVILLE UNION SCHOOL DISTRICT

In the Matter of the Accusation Against

JAMES ANDERSON, JOANIE BLECHEL,
ANNE S. FOX, MARGARET C. PORTER,
RAMONA ROBERTSON,

Respondents.

OAH No. 2008040014

PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings heard this matter on April 28, 2008, in Windsor, California.

Carl Corbin, Esq., and Margaret Merchat, Esq., represented the Forestville Union School District.

James DeMartini, Esq., represented respondents.

The matter was submitted for decision on April 28, 2008.

FACTUAL FINDINGS

1. Don Hack made and filed the Accusation against respondents in his official capacity as the Superintendent (Superintendent) of the Forestville Union School District (District).

2. Respondents James Anderson, Joanie Blechel, Anne S. Fox, Margaret C. Porter and Ramona Robertson are all certificated employees of District.

3. On March 6, 2008, the Superintendent recommended to the Governing Board (Board) of District that the following particular kinds of services be reduced or discontinued for the 2008-2009 school year:

- | | | |
|----|---|-------------|
| 1. | Music Teaching Services | 0.4 F.T.E. |
| 2. | Academic Counselor Services | 0.04 F.T.E. |
| 3. | Home School Teaching Instructional Services | 0.2 F.T.E. |

4.	Resource Specialist Program	1.0 F.T.E.
5.	Elementary Instructional Services (grades K-6)	2.0 F.T.E.
6.	Elementary Instructional Services (grades K-6) (Eliminating 3rd grade class size reduction)	1.0 F.T.E.
7.	Elementary Instructional Services (grades K-6) (Changing 6th grade to middle school core block schedule)	1.0 F.T.E.
8.	History Instructional Services (middle school)	0.2 F.T.E.
9.	English Instructional Services (middle school)	0.2 F.T.E.
10.	Science Instructional Services (middle school)	0.2 F.T.E.
11.	Directed Studies Science Instructional Services	0.2 F.T.E.
12.	Math Instructional Services (middle school)	<u>0.2 F.T.E.</u>

Total	6.64 F.T.E.
-------	-------------

4. On March 6, 2008, the Governing Board of District adopted Resolution No. 9.e.03.06.08, reducing or discontinuing particular kinds of services for the 2008-2009 school year and directing the Superintendent or his designee to send appropriate notices to all employees affected by the reduction.

5. On March 18, 2008, the Superintendent gave written notice to respondents, pursuant to Education Code sections 44949 and 44955, of his recommendation that notice be given them that their services would not be required for the ensuing school year. The written notice set forth the reasons for the recommendation.

6. Respondents each made a timely request in writing for a hearing to determine if cause existed for not reemploying them for the 2008-2009 school year. Prior to hearing, District withdrew the Accusation against respondents James Anderson, Margaret C. Porter and Ramona Robertson. Only respondents Joanie Blechel and Anne S. Fox are still subject to layoff.

7. All prehearing jurisdictional requirements have been met.

8. District's sixth grade students currently receive instruction in a self-contained classroom. District plans to convert the sixth grade instructional format to a middle school "core block" schedule for the 2008-2009 school year. Under the core block format, sixth grade students will be required to change teachers for certain core subjects. For example, math and science will be a core block that is taught by a separate teacher with a single subject credential in those disciplines. History and English will be another core block. Sixth graders will have a total of three separate teachers. District decided to adopt this new format because its sixth grade students were experiencing difficulty transitioning out of a self-contained classroom into the seventh grade single subject format. District believes having a core block format in the sixth grade will make the transition easier. District also wanted a core block format for science because its sixth grade students are having "performance issues" and it believes that science instruction and student performance will improve under a

teacher who has a single subject science credential. District characterizes its format change as a different way of delivering the same services.

9. Respondent Joanie Blechel holds a Clear Multiple Subject/Early Childhood Education credential and a CLAD¹ certificate. District currently employs Blechel as a 1.0 F.T.E. sixth grade teacher in a self-contained classroom. Blechel has a seniority date of August 23, 1999. She has taught in District for almost nine years. Blechel holds one of the Elementary Instructional Services positions that is being reduced.

John Hayden holds a Clear Single Subject credential in math and science and a CLAD certificate. District currently employs Hayden as a 1.0 F.T.E. seventh/eighth grade math and science teacher. Hayden has a seniority date of August 23, 2005. Hayden position is not being reduced. Hayden is less senior than Blechel.

M.J. Nelson holds a Clear Multiple Subject Credential and a Clear Single Subject credential in science, as well as a CLAD certificate. District currently employs Nelson as 0.4 F.T.E. seventh grade science teacher. Nelson has a seniority date of August 23, 2005. Nelson's position is not being reduced. Nelson is less senior than Blechel.

10. Blechel contends that District is improperly retaining a less senior employee to provide services she is credentialed and competent to perform. Blechel reasons that since she is credentialed to teach all of the core subjects in a self-contained format in kindergarten through eighth grade, she is also credentialed and competent to teach those subjects in a sixth grade core block or seventh grade single subject format. She also notes that she has taught seventh grade science in the past.

District contends Blechel is not credentialed to teach in a core block or single subject format, even though she is competent to teach core subjects in a self-contained classroom, and that its decision to deliver sixth grade instruction in a different way is a reasonable exercise of its administrative discretion.

11. Education Code section 44955 prohibits a school district from laying off an employee while retaining another employee with less seniority to render a service which the more senior employee is "certificated and competent to render." And it requires a district to "make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render." Generally speaking, a senior employee whose position is eliminated has the right to "bump" into a position held by a junior employee if the senior employee is credentialed and competent to perform the duties of the junior employee's position. (*Duax v. Kern Community College Dist.* (1987) 196 Cal.App.3d 555.) Education Code 44955 thus protects the seniority rights of certificated employees. However, bumping rights are not absolute. The senior teacher

¹ Crosscultural, Language and Academic Development

must be certificated and competent to render the service being rendered by the junior employee.

The key issue in the subject case is whether Belchel is competent to teach math or science in a single subject format. The term competence relates to the specific skills or qualifications required of the applicant. The determination of competence necessarily involves discretionary decisions by a school district's responsible officials. A board's definition of competence is reasonable when it considers the skills and qualification of the teacher threatened with layoff. (*Duax v. Kern Community College Dist.*, *supra*, 196 Cal.App.3d 555.)

Under existing law, it is the governing board that determines whether the senior employee is competent to perform services being performed by a junior employee. In the subject case, District officials determined, after due consideration of the needs of its students, that only teachers holding single subject credentials in core subjects were competent to teach those subjects under the new sixth grade core block format. It also continued to require a single subject credential to teach core courses in seventh grade. It considered these competency standards in determining whether Belchel was competent to teach a sixth grade core course or seventh grade math or science during the upcoming 2008-2009 school year. Since Belchel does not hold a single subject credential, District concluded she was not competent to teach sixth grade core block classes or seventh grade math or science. District's competency standard was reasonable, and there is no evidence it was inappropriately applied. The exercise of District's discretion must therefore be upheld.

It is also worth noting that the fact the same core sixth grade subjects will be taught by others next year does not preclude District from discontinuing the services of self-contained classroom teachers. A school district is authorized to eliminate a particular kind of service even though the service continues to be performed or provided in a different manner. (See *Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796, 811 [changing the manner in which a service is to be performed constitutes a reduction in services]; *Davis v. Berkeley School Dist.* (1934) 2 Cal.2d 770 [the particular kind of service of the employee may be eliminated even though the service must continue to be performed in a school district].)

12. As a result of decreasing enrollment, District will have one fourth grade class, one fifth grade class and a combined fourth grade/fifth grade class during the upcoming 2008-2009 school year. This will result in the elimination of one elementary teaching position.

Respondent Anne S. Fox holds a Professional Clear Multiple Subject credential and a CLAD certificate. District currently employs Fox as a 1.0 F.T.E. fourth grade teacher. District has assigned Fox a seniority date of August 23, 2005. Fox holds one of the Elementary Instructional Services positions that is being reduced. No certificated employee junior to Fox is being retained to perform services which Fox is certificated and competent to render.

13. The evidence established that District will be reducing services for the ensuing school year.

14. No certificated employee junior to respondents is being retained to perform services which respondents are certificated and competent to render.

15. The reduction or discontinuance of services is related to the welfare of District and its pupils.

LEGAL CONCLUSIONS

1. Each of the services set forth in Finding 3 is a kind which may be reduced or discontinued in accordance with applicable statutes and case law. (See Ed. Code § 44955; *Campbell Elementary Teachers Assn. v. Abbott, supra*, 76 Cal.App.3d 796; *Degener v. Governing Bd.* (1977) 67 Cal.App.3d 689.) The decision to reduce or discontinue the services is neither arbitrary nor capricious but rather a proper exercise of the District's discretion.

2. Cause exists to reduce the number of certificated employees at Forestville Union School District due to the reduction or discontinuance of particular kinds of services pursuant to Education Code section 44955. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Notice may be given to respondents Joanie Blechel and Ann S. Fox that their services will not be required for the 2008-2009 school year because of the reduction or discontinuation of particular kinds of services.

DATED: _____

CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings