

BEFORE THE  
GOVERNING BOARD OF THE  
CENTRALIA SCHOOL DISTRICT  
STATE OF CALIFORNIA

In The Matter of The Accusation Against:

SHELLY COVENEY,  
JANET GRANCH, and  
OLIVIA SWINTH,

Respondents.

OAH No. L2008030911

**PROPOSED DECISION**

Robert S. Eisman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 1, 2008, at the offices of the Centralia School District in Buena Park, California.

Sharon J. Ormond, Attorney at Law, represented the Centralia School District (the District).

Carlos R. Perez, Attorney at Law, represented Shelly Coveney, Janet Granch, and Olivia Swinth (collectively, respondents) who were present at the hearing.

The matter was submitted on May 1, 2008.

**FACTUAL FINDINGS**

1. The District (a public school district operating under the California Education Code) serves the Buena Park and neighboring communities by providing elementary school education at nine schools for students in kindergarten through sixth grade.

Diane Scheerhorn, Ph.D., is the Superintendent of the District. Douglas Staine, Ed.D., is the Assistant Superintendent, Human Resources.

2. On March 6, 2008, the Superintendent of the District made a recommendation to the Governing Board of the District (Governing Board) that certain full-time equivalent

(FTE)<sup>1</sup> certificated employees not be reemployed for the 2008-2009 school year and that the Governing Board give the employees notice as required by Education Code sections 44949 and 44955 that their services will not be required for the following school year.

3. On March 6, 2008, the Governing Board adopted Resolution number 1268 - Reduction or Discontinuance of Particular Kinds of Services, which provided for services to be reduced or discontinued by 16.8 certificated positions, as follows:

- a. Reduce Kindergarten through 6th Grade Classroom Teaching Services - 6.0 FTE
- b. Reduce Deaf and Hard of Hearing Teaching Services - 1.0 FTE
- c. Reduce Resource Specialist Teaching Services - 3.0 FTE
- d. Reduce Counseling Services - 3.0 FTE
- e. Reduce Social Worker Services - 1.8 FTE
- f. Reduce Teacher on Special Assignment in Administration Services - 1.0 FTE
- g. Discontinue Program Improvement Coordinator I - Special Education Services - 1.0 FTE

The Governing Board further determined that it shall be necessary by reason of said reductions or discontinuances to decrease the number of certificated employees at the close of the 2007-2008 school year by a corresponding number of full-time equivalent positions, and directed the Superintendent, or her designees, to proceed accordingly by notifying the appropriate employees to implement the Governing Board's determination.

4. The need for layoffs was the result of District expectation of a \$1.8 million budget shortfall due to proposed State budget cuts imposed on the District, deficit spending, and declining enrollment of two to four percent per year.

5. In order to prepare to meet the challenges of reduced funding and student enrollment, the District is planning to restructure its educational services to accommodate the reduction or discontinuation of particular kinds of services, such that the planned changes would not compromise the educational programs of the District.

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<sup>1</sup> A full-time equivalent (FTE) is a way to normalize personnel numbers based on staffing ratios. In general, six class sections equates to one full-time employee position. Thus, if that staffing ratio is applied to a planned reduction of 15 instructional sections, then the result would be the need to reduce 2.5 FTE, i.e., two full-time employees and one part-time employee.



6. On March 7 and March 10, 2008 (i.e., on or before March 15, 2008), and after notification to the Governing Board, pursuant to Education Code sections 44949 and 44955, the District served each of 21 affected certificated employees, including respondents, with a "Notice of Recommendation That Services Will Not Be Required for the Ensuing 2008-09 School Year." The notices informed the employees, "the undersigned [Dr. Douglas Staine] has recommended to the Governing Board of the Centralia School District that you be given notice that your services will not be required for the ensuing 2008-2009 school year."

The notice set forth the reason for the layoff as being the necessity to reduce or discontinue particular kinds of services of the District beginning not later than the commencement of the 2008-2009 school year.

The notices further advised the employees, in part, of their right to a hearing and that that a hearing must be requested in writing and delivered to the District, c/o Dr. Douglas Staine, no later than 4:30 p.m. on March 18, 2008. Individuals who failed to timely return the Request for Hearing form waived their right to a hearing. Accordingly, these individuals are without standing to participate in this proceeding and without the right to contest the recommendation of non-reemployment, and the Governing Board possesses no jurisdiction other than to support their dismissal from employment.

7. Respondents Shelly Coveney, Janet Granch, and Olivia Swinth, each filed a timely Request for Hearing (i.e., three of the 13 certificated employees who filed requests for hearing). One of the 21 certificated employees who received layoff notices elected to resign.

8. On March 31, 2008, the District sent "Rescission of Notice" letters to 11 of the 20 remaining certificated employees who originally received layoff notices. The letter informed these employees, "the District has determined that the termination of your services is not necessary to accomplish these reductions and discontinuances, and that the March 7, 2008 notice therefore is rescinded." None of the respondents received a Rescission of Notice letter.

9. Superintendent Scheerhorn filed Accusations which were timely served on respondents and one other certificated employee, as required by the Education Code, and informed them that unless a written request for a hearing, signed by the certificated employee or on that employee's behalf, and received by the Governing Board on or before 4:30 p.m. on Monday, April 7, 2008, the Governing Board may proceed on the Accusation without a hearing. The request for a hearing was to be made by delivering or mailing a Notice of Defense, as provided in Government Code section 11506, to the Governing Board of the Centralia School District, c/o Dr. Douglas Staine. The certificated employees were also informed that failure to request a hearing by filing a Notice of Defense within the specified period will constitute a waiver of the right to a hearing.

10. Each respondent filed a timely Notice of Defense. A fourth certificated employee filed a Notice of Defense, but subsequently rescinded it.

11. The District maintains a "Seniority List for All Certificated Employees" that identifies employees' seniority dates (first date of paid service), assigned school, status, position, and credentials. The District also maintains a separate list of temporary employees.

As provided in Education Code section 44845, seniority generally is measured from the first date on which the employee rendered paid service as a probationary employee.

By stipulation, the parties agreed that Janet Granch's seniority date should be corrected to August 27, 2007. However, respondent Granch argued that her seniority date should be even earlier because, based on the advice of District staff member Theresa Hawk, she missed optional training for new teachers provided by the District on August 20-21, 2007. New probationary teachers who attended that training, including Shelly Coveney and Olivia Swinth, received seniority dates of August 20, 2007, because they were paid under their employment contract for attending the District's training.

In rebuttal, Theresa Hawk testified that when she spoke with Ms. Granch regarding the training in August 2007, she informed Ms. Granch that it was her choice whether she attended the training or took her pre-planned vacation and did not address any adverse affect non-attendance would have on Ms. Granch's seniority date.

Teachers who are required, as part of their regular assignment, to report earlier than the start of the school year may be entitled to an earlier seniority date. The key questions are whether the early appearance was mandatory or voluntary and whether the employee was paid for the early appearance or docked for non-attendance, or whether the employee was paid a separate stipend for attendance. In this instance, attendance at the training was voluntary and there is no evidence that respondent Granch was docked for non-attendance.

The administrative law judge finds that even if her seniority date was adjusted to August 20, 2007, it would have no affect on her being subject to layoff.

None of the respondents represented that other information contained in the Seniority List for All Certificated Employees was incorrect or incomplete.

12. Based on the District's Seniority List for All Certificated Employees, the following is noted:

a. Janet Granch has a corrected seniority date of August 27, 2007. She has a preliminary level I credential as an Education Specialist - mild/moderate with English Learner Authorization. Ms. Granch is currently a probationary Resource Specialist - Mild/Moderate assigned to the District's Student Services.

b. Shelly Coveney has a seniority date of August 20, 2007. She has a preliminary level I credential as an Education Specialist - mild/moderate with English



Learner Authorization. Ms. Coveney is currently a probationary Resource Specialist - Mild/Moderate assigned to Walter Knott Elementary School.

c. Olivia Swinth has a seniority date of August 20, 2007. She has a preliminary level I credential as an Education Specialist - mild/moderate and a Clear Multiple Subject credential with Cross-cultural, Language and Academic Development (CLAD) Authorization. Ms. Swinth is currently a probationary Special Education Teacher who teaches Special Day Class - Mild/Moderate at Glen H. Dysinger Elementary School.

13. Eight certificated employees have seniority dates below (i.e., more recent than) that of respondent Shelly Coveney and Olivia Swinth. However, all eight employees, except Janet Granch, are credentialed in areas that are not subject to reduction or discontinuance under Governing Board Resolution 1268.

The following list contains the relevant portion of the seniority list sequence, from the respondent with the lowest seniority date (Mika Winkle) to the respondent with highest seniority date (respondent Olivia Swinth). The status of each certificated employee in that range is also listed (i.e., whether a layoff notice was issued or the reason why one was not issued)

<u>Seniority Date</u>	<u>Name</u>	<u>Status</u>
10/16/2007	Mika Winkle	Audiologist (not reduced)
10/08/2007	Crestina Quesada	Speech-Language Therapist (not reduced)
08/30/2007	Catherine White	Nurse (not reduced)
08/27/2007	Janet Granch	Layoff Notice
08/28/2007	Juan Gil	Speech-Language Therapist (not reduced)
08/20/2007	Christopher Hoyt	Speech-Language Therapist (not reduced)
08/20/2007	Stephanie Golden	Preschool Special Ed. (not reduced)
08/20/2007	Renee Wallace	Preschool Special Ed. (not reduced)
08/20/2007	Shelly Coveney	Layoff Notice
08/20/2007	Olivia Swinth	Layoff Notice

After respondent Swinth, the next senior certificated employee who received a layoff notice that was not subsequently rescinded has a seniority date of 08/28/2006.

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

14. On March 6, 2008, the Governing Board introduced, passed, and adopted Resolution number 1276, Determination of Seniority among Certificated Employees with the Same Seniority Date. Resolution 1276 provided that the order of termination shall be based solely on the needs of the District and its students. The resolution included the specific criteria to be used in determining the order of termination among certificated employees, i.e., how a particular employee is ranked, relative to the other employees in the group.



In identifying the certificated employees affected by the layoff, the District's superintendent and assistant superintendent were required to use the "tie-breaking" criteria to resolve seniority rankings between employees.

15. Assistant Superintendent Staine used the seniority list to determine which employees were affected by Board's resolution regarding layoff of certificated employees and whether the affected individuals were entitled to "bump"<sup>2</sup> other employees.

In this matter, none of the respondents who received a layoff notice were found to have bumping or skipping rights over another employee in the seniority list. However, as a result of the 1.0 FTE discontinuance of Program Improvement Coordinator I - Special Education Services, respondent Swift was bumped by Theresa Hawk, who has a seniority date of August 1, 2004, and has preliminary credentials in both Administration Services and Education Specialist - mild/moderate

16. In determining the number of employees who would receive layoff notices, the District considered all positively assured attrition (i.e., all deaths, resignations, retirements, non-reelection unrelated to the reductions and other permanent vacancies) that had occurred prior to and/or was known on March 6, 2008, when the Governing Board adopted the Resolution 1268.

17. The District must be solvent to provide educational services, and cost savings are necessary to resolve projected District budget reductions. The District must also address projected reductions in student enrollment at all grade levels and undertake restructuring, as necessary, to insure that its schools provide, and students receive, required instruction in an effective and efficient manner. The Governing Board's decision to reduce services in light of its budget and enrollment projections does address the welfare of students, and was a proper exercise of the Governing Board's discretion. Respondents did not establish that the proposed reductions in services would violate any statutory or regulatory requirement governing the District.

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<sup>2</sup> Generally speaking, a senior teacher whose position is discontinued has the right to a position held by a junior teacher if the senior teacher is properly credentialed. That displacement of a junior teacher is known as "bumping." The seniority rule is not absolute, and a junior teacher with a needed credential/skill may be retained even if a more senior teacher is terminated. Such "skipping" is recognized by statute (Education Code section 44955, subdivision (d)(1)) and appellate law (*Santa Clara Federation of Teachers, Local 2393 v. Governing Board of the Santa Clara Unified School District* (1981) 116 Cal.App.3d 831).

## LEGAL CONCLUSIONS

1. Education Code section 44949, subdivision (a), states, in pertinent part:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

2. Education Code section 44955 states, in pertinent part:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section



44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement. . . .

The governing board shall 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. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

3. Education Code sections 44949 and 44955 establish jurisdiction for this proceeding. The notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met. (Factual Findings 3 through 17.)

4. The services identified in the Governing Board's resolution are particular kinds of services that can be reduced or discontinued pursuant to Education Code section 44955. The Governing Board's decisions to reduce or discontinue the identified services are neither arbitrary nor capricious, and are a proper exercise of its discretion. Causes for the reduction or discontinuation of particular kinds of services are related to the welfare of the



District and its pupils. The reduction or discontinuation of particular kinds of services is necessary to address a decrease the expenditures of the District and projected reductions in student enrollment, as determined by the Governing Board.

5. Cause exists to terminate the services of respondents Shelly Coveney, Janet Granch, and Olivia Swinth for the 2008-2009 school year.

#### ORDER

Notice may be given to respondents Shelly Coveney, Janet Granch, and Olivia Swinth that their services will not be required for the 2008-2009 School Year because of the reduction or discontinuance of particular kinds of services, as provided in Governing Board of Centralia School District Resolution number 1268 - Reduction or Discontinuance of Particular Kinds of Services.

DATED: May 6, 2008.

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ROBERT S. EISMAN  
Administrative Law Judge  
Office of Administrative Hearings