

BEFORE THE BOARD OF TRUSTEES  
KONOCTI UNIFIED SCHOOL DISTRICT

In the Matter of the Accusation Against:

JONATHAN BRIGGS, et al.

OAH No. 2008010912

Respondents.

**PROPOSED DECISION**

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on April 14, 2008, in Lower Lake, California.

John A. Drummond, Schools Attorney, Lake County Office of Education, represented the Konocti Unified School District.

James D. Allen, Attorney at Law, represented respondents Jonathan Briggs, Aaron Carter, Lea Derby, Dave Hubbard, Pam Ingersoll, Carrie McCallister, Rachel McFarland, Evelyn Meadows, Jennifer Radtke, Christy Sheffert, Christina Sherick, Cindy Strugnell, Jessica Taliaferro and Bethany Wagner, all of whom were present.

The matter was submitted for decision on April 14, 2008.

**FACTUAL FINDINGS**

1. Louise Nan, Ed.D., made and filed the accusation in her official capacity as Superintendent of the Konocti Unified School District.
2. Respondents are listed on Appendix A, attached hereto and by this reference incorporated herein. Each respondent is a certificated employee of the district.
3. On February 6, 2008, the district's Board of Trustees adopted Resolution No. 08-07-08 reducing particular kinds of services and directing the superintendent to give appropriate notices to certificated employees whose positions will be affected by the action. An unsigned copy of the resolution is attached hereto as Appendix B and by this reference is incorporated herein.
4. Between February 7 and 14, 2008, Superintendent Nan gave written notice to approximately 41 certificated employees, including respondents, of the recommendation that

their services will not be required for the 2008-09 school year. The reasons for the recommendation were set forth in these preliminary layoff notices.

5. Respondents filed timely requests for hearing to determine if there is cause for terminating their services for the 2008-09 school year. (The other employees did not file requests for hearing, or, in the case of Ann Nolasco, filed a request for hearing but later withdrew it.) An accusation was served on each respondent. Appendix A notes the 13 respondents who filed timely notices of defense and the seven respondents who did not file notices of defense. All prehearing jurisdictional requirements have been met.

6. Respondent Dave Hubbard did not file a notice of defense but he appeared at the hearing. In the interest of fairness and because there was no prejudice to the district, Hubbard was allowed to participate in the hearing. Government Code section 11506, subdivision (c), provides, in pertinent part: "The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense. . . . Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but *the agency in its discretion may nevertheless grant a hearing. . . .*" (Italics added).

7. Before issuing the preliminary layoff notices, the district took into account all positively assured attrition. The district must issue the final layoff notices before May 15, and when it does so the district will take into account any additional attrition that has occurred.<sup>1</sup> After that, further attrition will allow the district to rehire laid off employees.

8. On the district's seniority list, a large number of certificated employees (including most of the respondents) share the seniority date of August 17, 2007. The district has tie-breaking criteria in which points are assigned for experience and credentials, but these criteria were not applied in determining who would receive preliminary layoff notices. Determining relative seniority was not necessary because effectuating the service reductions required sending notices to *all* employees holding multiple subject credentials with a seniority date of August 17, 2007 or later. The district has made point computations for tie-breaking and directed principals to notify their employees of the computations. The tie-breaking criteria will be applied to re-order the seniority list when it becomes necessary to do so. The district anticipates applying the tie-breaking criteria during the rehire process, but it may be necessary to do so before the final layoff notices are issued.

Respondents argue that the proposed layoffs are arbitrary and capricious because the district failed to comply with the statutory mandate that tie-breaking criteria be used to determine the order of layoff. This argument is without merit. Education Code section 44955, subdivision (b), provides: "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." However, when all

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<sup>1</sup> Counsel for the district asserted that the district is not required to consider additional attrition before issuing final layoff notices, but it is not necessary to address this legal issue since the evidence established that additional attrition will in fact be considered.



employees with the same first date of paid service are being laid off, there is no need to determine the order of termination.

9. August 17, 2007 was the commencement of the regular 2007-08 school year for newly hired teachers, and the district assigned that seniority date to employees who began work then. However, several of those employees contend that they should have an earlier seniority date because of training they attended before school started.

Respondents Jennifer Radtke and Jessica Taliaferro are 6th grade teachers at Burns Valley Elementary School. From July 30 to August 3, 2007, Radtke and Taliaferro attended the Houghton Mifflin Reading 40-hour training course at the Butte Reading Implementation Center in Chico. (According to the attendance roster, respondents Lea Derby and Rebecca Maloney also attended this course.) Although the training was not mandatory, when Radtke was hired by the district it was strongly recommended that she attend. Taliaferro believed she had to go to the training because her school was a Reading First school. Respondent Christina Sherick, who could not attend the July 30 to August 3, 2007 training session because she was on her honeymoon, was allowed to attend the October 2007 session. It had been strongly recommended to Sherick that she attend the training, and she understood it to be mandatory. The district paid each employee who attended this training course a \$500 stipend, and the district paid for the employee's lodging and travel expenses. The state reimbursed the district for the entire amount of the stipends and costs for the training.

Respondent Rachel McFarland is a 6th grade teacher at Lower Lake Elementary School. She attended a Step Up to Writing training course on August 6, 7, 13 and 14, 2007 at the district. McFarland understood that it was vital that she attend this course. The district paid McFarland a stipend for attending the training (she thinks the amount was \$500, but she is not sure).

Respondents Aaron Carter and Pamela Ingersoll are kindergarten teachers at Pomo Elementary School. From June 11 to 15, 2007, they attended math training at Pomo, along with most of the rest of the school staff. Carter and Ingersoll were asked to attend this training, which they thought was required. They believed their employment would be adversely affected if they did not attend. They were each paid a \$500 stipend for attending the training.

According to the district's payroll supervisor, training stipends were paid at the next pay period, in a separate check, with the same deductions as a paycheck, including a contribution for retirement.

Respondents have not established that they are entitled to earlier seniority dates by reason of attending training before school started. Although respondents felt they had to attend the training, it was not actually mandatory. The stipend that was paid for attendance was not a per diem rate related to a teacher's salary but a flat amount for work in excess of the teacher's contract. A certificated employee's seniority begins with the date he or she

"first rendered paid service in a probationary position."<sup>2</sup> Respondents each first rendered service in a probationary position when they began working on the first day of the regular school year, not the day they attended an earlier training course.

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

11. No certificated employee junior in seniority to any respondent is being retained by the district to perform services that any respondent is certificated and competent to render.

#### LEGAL CONCLUSIONS

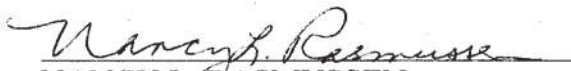
1. Jurisdiction for this proceeding exists pursuant to sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. Cause exists because of the reduction of particular kinds of services pursuant to section 44955 to give notice to respondents that their services will not be required for the 2008-09 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of section 44949.

#### ORDER

Notice may be given to respondents that their services will not be required for the 2008-09 school year because of the reduction of particular kinds of services.

DATED: April 22, 2008

  
NANCY L. RASMUSSEN  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>2</sup> Education Code section 44845.

## Appendix A

### RESPONDENTS

#### Filed Notice of Defense

Jonathan Briggs  
Aaron Carter  
Lea Derby  
Pam Ingersoll  
Carrie McCallister  
Rachel McFarland  
Evelyn Meadows  
Jennifer Radtke  
Christy Sheffert  
Christina Sherick  
Cindy Strugnell  
Jessica Taliaferro  
Bethany Wagner

#### Did Not File Notice of Defense

Andrew Carpenter  
Jonathan Devlin  
Margaret Freeman  
Monte Gregg  
Jennifer Johnson  
Dave Hubbard  
Rebecca Maloney



## Appendix B

### RESOLUTION REGARDING REDUCTION IN SERVICES RESOLUTION NO. 08-07-08

**WHEREAS**, the Board of Trustees of the Konocti Unified School District has determined that it shall be necessary to reduce the following particular kinds of services of the District not later than the beginning of the **2008/2009** school year:

#### Services

#### Reduction

ALL NON EL CLASSES – 5 full time equivalents (FTE), including:

- |  |                              |
|--|------------------------------|
| • NON EL Social Studies at Lower Lake High School    | 1 full time equivalent (FTE) |
| • NON EL Shop at Lower Lake High School              | 1 full time equivalent (FTE) |
| • NON EL Art at Lower Lake High School               | 1 full time equivalent (FTE) |
| • NON EL Special Education at Lower Lake High School | 1 full time equivalent (FTE) |
| • NON EL Health at Lower Lake High School            | 1 full time equivalent (FTE) |

ADMINISTRATIVE POSITIONS AND UNDERLYING EC 44897 TEACHING POSITIONS – is a reduction of 10 full time equivalents (FTE), including:

- Assistant Superintendent – the underlying teaching position is one elementary teaching position (one full time equivalent – 1 FTE)
- Director of Educational Support Services – the underlying teaching position is one elementary teaching position (one full time equivalent – 1 FTE)
- Curriculum and Instruction Program Coordinator -- the underlying teaching position is one elementary teaching position (one full time equivalent – 1 FTE)
- Language Development Specialist – the underlying teaching position is one elementary teaching position (one full time equivalent – 1 FTE)
- Curriculum Coach (Academic Coach) – the underlying teaching position is one secondary teaching position (one full time equivalent – 1 FTE)
- High School Vice-Principal (Assistant Principal) – the underlying teaching position is one elementary teaching position (one full time equivalent – 1 FTE)
- High School Vice-Principal (Assistant Principal) – the underlying teaching position is secondary teaching position (one full time equivalent – 1 FTE)
- Elementary Assistant Principal/Counselor – the underlying teaching position is one elementary teaching position (one full time equivalent – 1 FTE)
- Elementary Assistant Principal – the underlying teaching position is one elementary teaching position (one full time equivalent – 1 FTE)
- Teaching Principal of Konocti Day School – the underlying teaching position is one elementary teaching position (one full time equivalent – 1 FTE)

HIGH SCHOOL INSTRUCTIONAL SERVICES – 4.67 full time equivalents (FTE)

This includes:

- |   |                                     |
|---|-------------------------------------|
| • One High School Academic Coach (Curriculum Coach) position    | 1 full time equivalent (1 FTE)      |
| • Two H.S. Temporary Part-time Math teaching positions totaling | 1 full time equivalent (1 FTE)      |
| • .67 High School CAHSEE teaching position                      | 0.67 full time equivalent (.67 FTE) |
| • One High School Art teaching position                         | 1 full time equivalent (1 FTE)      |
| • One High School Social Studies teaching position              | 1 full time equivalent (1 FTE)      |

MIDDLE SCHOOL INSTRUCTIONAL SERVICES – 2.0 full time equivalents (2 FTEs)

This includes:

- |   |                                  |
|---|----------------------------------|
| • Two Middle School Social Studies teaching positions | 2 full time equivalents (2 FTEs) |
|---|----------------------------------|

**ELEMENTARY SCHOOL INSTRUCTIONAL SERVICES – 11.25 full time equivalents (11.25 FTEs)**

This includes:

- |  |                                     |
|--|-------------------------------------|
| • 2.5 Reading First Coach positions                | 2.5 full time equivalents (2.5 FTE) |
| • One Burns Valley Reading teacher position        | 1 full time equivalent (1 FTE)      |
| • .5 East Lake Reading teacher position            | 0.5 full time equivalent (.5 FTE)   |
| • .75 East Lake Intervention teaching position     | 0.75 full time equivalent (.75 FTE) |
| • One Temp. Sp. Ed. Pre-school teaching position   | 1 full time equivalent (1 FTE)      |
| • .5 Part-time special education teaching position | 0.5 full time equivalent (.5 FTE)   |
| • Five elementary teaching positions               | 5 full time equivalent (5 FTEs)     |

**WHEREAS**, it is the opinion of the Board of Trustees that it is necessary by reason of the above to decrease a corresponding number of certificated employees in the District at the close of the current school year in accordance with Education Code §44955; and,

**WHEREAS**, the Board of Trustees of the District further has determined that, as between employees who first rendered paid service on the same date, the order of termination shall be based solely on the basis of needs of the District, and the students thereof; and,

**WHEREAS**, in accordance with Education Code Section 44955(d), the School District shall deviate from terminating a certificated employee in order of seniority where the School District demonstrates a specific need for personnel to teach a specific course or course of study, and that the certificated employee has special training and experience necessary to teach that course or course of study, which others with more seniority do not possess; and,

**WHEREAS**, in accordance with Education Code Section 44955(d), the School District shall deviate from terminating a certificated employee in order of seniority for purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws; and,

**WHEREAS**, the School District hereby demonstrates a specific need for personnel to teach a specific course or course of study, and that the certificated employee has special training and experience necessary to teach that course or course of study that others with more seniority do not possess as follows:

- The School District has approximately 481 students for whom English is not their native language. More specifically this number includes the following: Lower Lake High School 94; Oak Hill Middle School 84; elementary schools 300. This number is projected to increase. This order of termination is needed to better serve the students for whom English is not their native language, and thereby provide a better educational atmosphere for all students of the School District. State and Federal law requires the School District to provide teachers qualified to teach the students for whom English is not their native language. The above order of termination is required in order for the School District to comply with State and Federal law.
- The School District needs to retain teachers based upon the above priorities in order to meet the requirements of State and federal law; and

**WHEREAS**, the Board of Trustees has considered all positively assured attrition which has occurred to date, that is, all deaths, resignations, retirements, and other permanent vacancies and other additional attrition which may occur before the start of the **2008/2009** school year, in reducing these services, and but for the attrition already assured and the attrition anticipated would have found it necessary to reduce additional particular kinds of services.

**NOW, THEREFORE, BE IT RESOLVED**, that it shall be necessary to terminate at the end of the **2007/2008** school year, the employment of the above mentioned certificated positions as a result of the

above reduction in services. The Superintendent or her designated representative is directed to give appropriate notices to the employees whose positions shall be affected by virtue of this action.

**ADOPTED** by the Board of Trustees of the Konocti Unified School District on February 6, 2008, by the following vote:

AYES \_\_\_\_\_  
NAYS \_\_\_\_\_  
ABSTAIN \_\_\_\_\_  
ABSENT \_\_\_\_\_

ATTEST: \_\_\_\_\_  
(Clerk of the Board)