

BEFORE THE
BOARD OF TRUSTEES OF THE
UKIAH UNIFIED SCHOOL DISTRICT
MENDOCINO COUNTY, STATE OF CALIFORNIA

In the Matter of the Accusation Against
Certificated Employees:

JENNIFER BAILEY ET AL.,

Respondents.

OAH No. 2010031521

CORRECTED PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Ukiah, California, on April 28, 2010.

Margaret M. Merchat, Attorney at Law, represented complainant Lois J. Nash, Ed.D., Superintendent, Ukiah Unified School District.

James D. Allen, Attorney at Law, represented all respondents listed on Attachment A, with the exception of Stephen Burrell, who was self-represented.

The matter was submitted for decision on April 28, 2010.

FACTUAL FINDINGS

1. Lois J. Nash, Ed.D., made and filed the accusation in her official capacity as Superintendent of the Ukiah Unified School District.

2. Respondents listed on Attachment A are certificated employees of the district.

3. On March 3, 2010, the district's Board of Trustees adopted Resolution No. 13, 2009-10 reducing or discontinuing particular kinds of services and directing the superintendent to give appropriate notices to certificated employees whose positions would be affected by the action.

4. On March 9, 2010, Superintendent Nash gave written notice to 43 certificated employees, including respondents, of the recommendation that their services would be reduced or terminated for the 2010-2011 school year. Each notice set forth the reasons for the recommendation.

5. All respondents filed a timely request for hearing to determine if there is cause for reducing or terminating their services for the 2010-2011 school year.

6. An accusation was served on all respondents. All respondents, except Jennifer Bailey and Rachelle Donovan, filed a timely notice of defense. It is found that the district has not been prejudiced by their failure to timely file a notice of defense, and they are permitted to be respondents in this proceeding.

7. In its resolution, the board took action to reduce or eliminate the following particular kinds of services for the 2010-2011 school year:

<u>Services</u>	<u>FTE¹ Reduction</u>
<u>Ukiah High School</u>	
1. Wood (2 periods)	0.4
2. Computers/Projects (ROP) (1 period)	0.2
3. Computer Careers (5 periods)	1.0
4. Sophomore Seminar (3 periods)	0.6
5. High School English (5 periods)	1.0
6. Excel (5 periods)	1.0
7. Instrumental Music (1 period)	0.2
<u>Pomolita Middle School</u>	
8. English Language Development Instruction	1.0
9. Physical Education (2 periods)	0.33
10. Dean Services	0.33
<u>Adult School</u>	
11. English Language Development Instruction	1.0
12. Adult School Instructional Services ²	1.0
13. Adult School Principal	1.0
<u>Eagle Peak Middle School</u>	
14. English (5 periods)	1.0
15. Counselor II	1.0
<u>Class Size Reduction</u>	
16. Elementary Instructional Services	29.0

¹ Full-time equivalent positions.

² These services include GED Services, High School Diploma, Adult Basic Education, English as a Second Language, Jail High School Diploma Services, and GED Instruction Services.

Non CLAD Services

17.	Non-CLAD Instructional Services ³	4.0
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District Wide Services

18.	Resource Specialist Services	2.0
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19.	Physical Education Coordinators	2.0
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20.	Elementary Music	1.0
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Total:		<u>49.06</u>
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8. The resolution does not reduce services below mandated levels.

9. The district is aware of nine elementary teachers who will retire at the end of the school year. The district took this positively assured attrition into account before sending out layoff notices to the elementary teachers affected by the elimination of class size reduction services.

10. By resolution, the board adopted tie-breaking criteria for purposes of determining the order of termination of certificated employees with the same seniority date. The same criteria have been used by the district for four years. The district applied the criteria to determine the relative seniority of certificated employees who hold the same seniority dates in years 2005, 2006, 2007, and 2008. The district only ranked the teachers who shared the seniority date of August 19, 2008, because that tie needed to be broken in order to effectuate the layoff.

11. The district proposes to skip respondents James Evans, Erika Francis, Melissa Galicia, Leah Guerrero, Janet Morris, Graciella Rodarte, and Tiffany Standridge, but served on them precautionary notices. The district has now concluded that respondents Gay Tow, Scott Tucker, and Alex Van Patten, also satisfy the board's skipping criteria.⁴ It was stipulated that each of these teachers may be skipped. The district will rescind the March 15 notices served on these respondents.

12. Respondent Stephen Burrell has a 1.0 FTE position as a Counselor 2 at Eagle Peak Middle School. His position is being eliminated by reason of the PKS reduction of 1.0 Counselor II services.

13. Respondent Sharon Pomelia has a multiple subject credential and a CLAD certificate. She has a seniority date of August 27, 2008. She holds a 1.0 FTE position as a

³ These services include: 1.0 FTE Middle School Physical Education Services; 1.0 FTE High School Services (English (3 periods), Skills for Success (1 period), CAHSEE Prep (1 period) and Film Appreciation (1 period)); 1.0 FTE Elementary Independent Study Services; and 1.0 FTE Elementary Music Services.

⁴ The board's skipping criteria are contained in Resolution No. 14, 2009-10.

middle school teacher at Pomolita School. Respondent Pomelia is being bumped by a more senior teacher, Kitty Graham, whose position is being eliminated by the PKS resolution eliminating 1.0 FTE English Language Development Instruction.

14. Respondent Theresa Oster has a multiple subject credential, and a seniority date of August 19, 2008. She holds a 1.0 FTE position as a middle school teacher at Pomolita Middle School. Respondent Oster is being bumped by a more senior teacher, Leticia Warren, whose position is being eliminated by the PKS resolution eliminating 1.0 FTE Middle School English. Oster and respondent David Bigelman share the same seniority date and each were subject to being bumped by Warren. Respondent Oster was determined to be the more junior teacher after application of the tie-breaking criteria.

15. Respondent Kristine Kaney has a single subject Social Studies credential and is assigned to Eagle Peak Middle School. Her 1.0 FTE position is being reduced by .6 FTE by reason of being bumped by a more senior teacher, Jeffery Burrell, whose 1.0 FTE position was reduced by .6 FTE due to the PKS resolution eliminating .6 FTE Sophomore Services. Kaney will retain a .4 FTE position.

Issues Raised by Respondents

16. The board's resolution for skipping authorizes the district to skip the following employees when implementing the reductions:

Certificated personnel who possess conversational Spanish skills that are used in the course of their work day to assist students and families.

The district relied on this criterion to skip one elementary teacher, Andrea Werra. Werra has a multiple subject credential, a CLAD, and an emergency BCLAD. Werra has a seniority date of August 19, 2008. The district has determined that Werra meets the skipping criterion because of her Spanish-speaking ability, and it did not serve her with a March 15 notice. The district notes that it initially interviewed Werra for a teaching position with the district in Spanish, and that she has worked for many years as a Bilingual Resource Teacher.

17. Two other elementary teachers, respondents Amber Walker and Rebecca Burford, were not skipped and they received a March 15 notice. Like Werra, neither of these teachers has a BCLAD. They both use Spanish to communicate with families during parent teacher conferences and in sending home notes from school, but they do not teach in a bilingual classroom or in an immersion program. The district does not believe that either of these teachers qualifies to be skipped because they have not held a Bilingual Resource Teacher position and were not interviewed for their teaching position in Spanish.

18. Respondents argue that Werra should not have been skipped, or if she can be skipped, then Walker and Burford should also be skipped. It is concluded that none of these teachers may be skipped.

In order to deviate from seniority order and retain a junior teacher, the district must satisfy the requirements of Education Code section 44955, subdivision (d). This section provides in relevant part:

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, . . . 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.

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

Thus in order to skip Werra and layoff a more senior elementary teacher, the school district must establish the following: that it has “a specific need” for personnel to teach “a specific course or course of study”; that Werra possesses “special training and experience necessary to teach such a course or course of study; and that teachers senior to Werra do not possess those special qualifications. (*Bledsoe v. Biggs Unified School Dist.* (2009) 170 Cal.App.3d 127.)

Werra’s position is a 1.0 FTE Elementary Instructional Services. She is assigned to teach in a regular elementary program; she is not assigned to an immersion or bilingual program. Werra’s bilingual ability is not a requirement for her assignment. This case falls squarely within the holding of *Alexander v. Board of Trustees* (1983) 139 Cal.App.3d 576, where the court held that junior bilingual elementary school teachers who were not employed to teach classes in a formal bilingual program could not be retained over more senior elementary teachers who were not bilingual.

It is concluded that the district has failed to establish that it has a specific need for personnel to teach “a specific course or course of study,” or that Werra possesses special training and experience necessary to teach that course or course of study. The district has not established cause under Education Code section 44955, subdivision (d), to deviate from seniority order with respect to Werra.

19. The most senior elementary teacher who received a March 15 notice is the teacher who has been affected by the district’s erroneous decision to skip Werra. (*Alexander v. Board of Trustees, supra*, 139 Cal.App.3d at p. 576.) The appropriate remedy for this error is to direct that this employee may not receive a final notice.

20. Respondent Walker is a second-year probationary teacher with a seniority date of August 21, 2007. Walker was a certificated employee during the 2008-2009 school year, but was out for six weeks on maternity leave and missed other work days due to utilization of her sick leave. Walker testified that she was told by the district that she did not earn credit toward tenure for that school year because she did not work a sufficient number of days. It was not established in this proceeding that respondent Walker's seniority date or status should be different.

21. Respondent Pomelia notes that the seniority list does not reflect that she has a Reading Specialist Certificate or a Master's Degree in Education. The seniority list does not reflect teacher's degrees, advanced or otherwise. With respect to the Reading Specialist Certificate, it is not clear that Pomelia has advised the district of this certificate. While the degree and the certificate are relevant to application of the tie-breaking criteria, they do not affect whether Pomelia will be laid off in this proceeding.

22. Respondents contend that, even though it makes no difference to the elimination of their services, Education Code section 44955 required the district to apply its tie-breaking criteria to other employees who share the same first date of paid service. The district did apply the criteria to these employees, but did not set forth their ranking on the seniority list because it did not affect the order of termination. Under Education Code section 44955, the district must apply tie-breaking criteria when it affects the order of termination, and in this case it did not. The district did not err by not applying its tiebreaking criteria to respondents.

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

24. Except as to the most senior elementary teacher who has been prejudiced by the district's decision to skip Werra, 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.

25. 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 Factual Finding 11, there is no cause pursuant to Education Code section 44955 to give a final layoff notice to respondents James Evans, Erika Francis, Melissa Galicia, Leah Guerrero, Janet Morris, Graciella Rodarte, Tiffany Standridge, Gay Tow, Scott Tucker, and Alex Van Patten.

3. By reason of the matters set forth in Factual Findings 18 and 19, the district must identify the most senior elementary teacher noticed for 1.0 FTE Elementary Instructional Services reduction. There is no cause pursuant to Education Code section 44955 to give a final notice to this employee.

4. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to employees occupying 49.06 Full-Time Equivalent certificated positions that their services will be reduced or will not be required for the 2010-2011 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

1. The accusations against respondents James Evans, Erika Francis, Melissa Galicia, Leah Guerrero, Janet Morris, Graciella Rodarte, and Tiffany Standridge, Gay Tow, Scott Tucker, and Alex Van Patten are dismissed.

2. The district shall identify the most senior elementary teacher noticed for layoff. A final layoff notice may not be given to that employee.

3. Notice may be given to employees occupying 49.06 Full-Time Equivalent certificated positions that their services will be reduced or eliminated for the 2010-2011 school year because of the reduction in particular kinds of services.

DATED: _____

MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings