

BEFORE THE  
SUPERINTENDENT OF THE  
PLUMAS COUNTY OFFICE OF EDUCATION  
COUNTY OF PLUMAS, STATE OF CALIFORNIA

In the Matter of the Reduction of Particular  
Kinds of Services Affecting:

Persons Occupying  
5.33 Full Time Equivalent  
Teaching Services.

Respondents.

OAH No. N2007040084

**PROPOSED DECISION**

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 18, 2007, in Quincy, California.

Michelle L. Cannon, Attorney at Law, of Kronick, Moskovitz, Tiedman & Girard, represented the Superintendent of the Plumas County Office of Education (Superintendent).

Thomas Smith, Attorney at Law, of Wells, Small & Selke, appeared on behalf of respondents.

The matter was submitted and the record was closed on April 18, 2007.

**PROCEDURAL FINDINGS**

1. Eight certificated employees received notice that their services would not be required for the 2007-2008 school year, and requested a hearing. Of these, three entered into a settlement agreement with the Superintendent prior to the hearing of this matter, and waived their right to a hearing, agreeing that there was cause for dismissal. Three others withdrew their requests for hearing.

2. At the commencement of the hearing, two certificated employees remained in this action.<sup>1</sup> However, neither of these employees appeared at the hearing, despite proper

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<sup>1</sup> The remaining employees are Kimber Azevedo and Teresa Redkey.

notice. Mr. Smith, made himself available at hearing to represent these two employees, but he had not been authorized to represent them.

### FACTUAL FINDINGS

1. Michael Chelotti is the Superintendent of the Plumas County Office of Education. Bruce Williams is Assistant Superintendent and Director of Personnel for the County Office of Education. Their actions were taken in their official capacities.

2. On March 9, 2007, the Superintendent served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education Code sections 44949 and 44955, that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that the Superintendent had passed a Resolution reducing or discontinuing particular kinds of services which reduced the certificated staff by 5.33 full-time equivalent (FTE) certificated positions. Eight certificated employees were given notice that their services would be reduced or eliminated in the 2007-2008 school year.

3. Respondents timely requested, in writing, a hearing to determine if there is cause for not re-employing them for the ensuing school year.

4. The Superintendent made and filed Accusations against each of the employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense were timely served on those employees.

5. Respondents timely filed Notices of Defense to the Accusations.

6. Respondents in this proceeding are permanent certificated employees of the District.

7. On March 8, 2007, the Superintendent adopted Resolution No. 0607-09, providing for the reduction or elimination of particular kinds of services totaling 5.33 FTE in instruction.

8. The Superintendent determined that the average daily attendance in all schools of the District and County Office of Education had decreased by 3300 students during the last two school years. Additionally, the Forest Reserve Bill, which has provided funding to the District and County Office of Education, has expired, depriving the County of \$450,000. Thus, the Superintendent resolved to reduce and eliminate teaching services affecting employment of 5.33 FTE certificated positions. The Superintendent's resolution to eliminate and reduce teaching services was made solely for the welfare of students.

9. Supervisor Michael Chelotti, Assistant Supervisor Bruce Williams, and other District and County employees were responsible for implementation of the technical aspects



of the layoff. The District and County maintain a Certificated Seniority List which contains employees' seniority dates (first date of paid service), status (tenured, probationary or temporary) and credentials and authorizations. Status, credential and authorization data were obtained from the District's and County's records.

10. The County used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The County then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. In determining who would be laid off for each kind of affected service, the County counted the number of reductions not covered by known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The County then checked the credentials of affected individuals and whether they could "bump" other employees. The County then looked at employee competence for certain positions as opposed to other positions.

11. The County considered all known attrition, leaves of absence, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees.

12. As between certificated teachers with the same dates of seniority, the County employed "tie breaking" criteria adopted by the District, County and the Plumas County Teacher's Association.

### LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met.

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction." The County must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Superintendent's decision to reduce particular kinds of services was a proper exercise of its discretion.

3. The services identified in Board Resolution No. 0607-09, are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Superintendent's decision to reduce or discontinue the identified services was neither arbitrary nor capricious and was a proper exercise of its discretion. Cause exists to reduce the number of certificated employees of the County due to the reduction and discontinuation

of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the County's schools and pupils within the meaning of section 44949.

4. A District may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

5. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of services to be reduced, both in the Superintendent's Resolution and in the notices, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

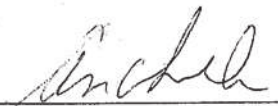
6. No certificated employees with seniority dates junior to respondents are being retained to teach classes for which respondents are certificated and competent to teach.

7. Cause exists under Education Code sections 44949 and 44955 to provide notice to respondents that 5.33 FTE in instruction will not be required in the ensuing school year. Such cause relates solely to the welfare of the County and the pupils thereof.

#### ORDER

Notice shall be given to respondents occupying 5.33 FTE of instruction that their services will not be required for the 2007-2008 school year, because of the reduction and discontinuance of particular kinds of services.

DATED: April 27, 2007

  
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ANN ELIZABETH SARLI  
Administrative Law Judge  
Office of Administrative Hearings