

BEFORE THE  
GOVERNING BOARD OF THE  
DIXON UNIFIED SCHOOL DISTRICT

In the Matter of the Non-Reemployment of  
19.67 Full-Time Equivalent Certificated  
Employees for the School Year 2008-2009,

OAH No. 2008030019

Respondent.

**PROPOSED DECISION**

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Dixon, California, on April 28, 2008.

Terry Fillman, Esq., Atkinson, Andelson, Loya, Rudd, & Romo, represented the Dixon Unified School District.

Margaret Geddes, Esq., Beeson, Taylor & Bodine, represented all respondents who, with the exception of Gretchen Stenz, were present.

The record was left open for submission of closing briefs. The district's brief was filed on April 30, 2008, and marked for identification as Exhibit 18. Respondent's brief was filed on May 2, 2008, and marked for identification as Exhibit L. The record was closed and the matter was submitted for decision on May 2, 2008.

**FACTUAL FINDINGS**

1. On March 6, 2008, the Board of Trustees of the Dixon Unified School District adopted Resolution No. 08-1377, in which the board resolved to reduce or discontinue the following particular kinds of services no later than the beginning of the 2008-2009 school year:

A. Administrative Services:

- |   |          |
|---|----------|
| 1. Assistant Superintendent, Curriculum and Instruction | 1.00 FTE |
| 2. Senior Director Facilities (vacant)                  | 1.00 FTE |
| 3. High School Vice Principal                           | 1.00 FTE |
| 4. Middle School Vice Principal                         | 1.00 FTE |

B. Secondary Education Services:

- |   |          |
|---|----------|
| 1. Counseling   | 1.67 FTE |
| 2. Continuation High School<br>Cultural Studies/ Counseling | 1.00 FTE |

C. Elementary Education Services:

1. Elementary Preparation Teaching (Science/P.E./Computers)	
Not Music	1.20 FTE
2. Reading Intervention Teaching	6.30 FTE
3. Grade K-6 Classroom Teaching	6.00 FTE
Total:	19.67 FTE

The resolution directed the district's interim superintendent, or her designee, to initiate procedures to not reemploy the equivalent of 19.67 full-time equivalent certificated employees of the district pursuant to Education Code sections 44949 and 44955.

2. On March 10, 2008, Senior Director of Personnel Brian Dolan sent notice to 23 certificated employees of his recommendation that their services would be reduced or discontinued for the 2008-2009 school year. Ten teachers requested a hearing to determine if there was cause to not re-employ them. The 10 respondents in this case are: Diane Chapman, Barbara Garlick, Beverly Harrison, Tatiana LaBass, Juanita Lupercio Ortega, Thomas Prieto, Stephanie Roupp, Shondra Sikes, Gretchen Stenz, and Michael Vlach.

3. The parties stipulated that the district has complied with all procedural requirements of Education Code sections 44949 and 44955.

4. The board's decision to reduce the particular kinds of services was based on district's serious fiscal condition. The district is facing significant budgetary shortfalls for the 2008-2009 school year with no money in reserve. The district has been operating in a deficit for a number of years, and is anticipating a significant loss of revenue from the State of California for the next school year.

The district is currently in negative status, which is one step removed from being placed in receivership and being taken over by the State of California. For most of this fiscal year, the district has been operating with an interim superintendent, Solano County Superintendent of Schools Dee Alarcón, and an interim chief business officer, Solano County Office of Education Assistant Superintendent of Business and Administrative Services, Leticia Allen. This was done, in part, for salary savings.

The district's enrollment figures for the next school year are still in flux. Due to financial considerations, the board has decided to close one elementary school, Silveyville Primary School, at the end of this school year. The children currently enrolled at Silveyville will be relocated to the district's other elementary schools. The board is considering, among other things, discontinuing participation in the class size reduction program. Senior Director of Personnel Dolan is satisfied that the district has retained a sufficient number of teachers so that all mandated services will be provided. Dolan is also satisfied that, despite the deep cuts, the district has retained a sufficient number of teachers to cover its needs for the Grade K-6 Elementary Teaching program in the 2008-2009 school year. The district is hopeful that



additional categorical funding will be made available which would allow it to restore some of the Reading Intervention positions that are being reduced.

5. Before issuing the preliminary notices, the district took into account all positively assured attrition. The district has also taken into account attrition that has occurred since the preliminary notices were issued.

6. There are no issues in this proceeding with respect to the reduction of Administrative Services or Secondary Education Services.

7. With respect to the 13.5 FTE reductions in Elementary Education Services, the decision to reduce particular kinds of services was made with the goal of retaining classroom instruction as the highest priority.

a. There are no issues in this proceeding with respect to the 1.2 FTE reduction in Elementary Preparation Teaching (Science/P.E./Computers).

b. There are no issues with respect to the reduction of Reading Intervention Teaching positions. Most of the Reading Intervention Teachers have multiple subject credentials authorizing them to teach in a self-contained classroom. As a result of their seniority, they were able to bump a teacher junior to them who currently occupies a Grade K-6 Classroom Teaching position. The most junior Reading Intervention Teacher received a preliminary notice and did not request a hearing.

8. The issues in this case concern the 6.0 FTE reductions in Grade K-6 Classroom Teaching. Each of the 10 respondents holds a multiple subject credential and has a Grade K-6 Classroom Teaching assignment, with the exception of Beverly Harrison, who holds the position of Literacy Coach. The 10 respondents are among 13 teachers that have a shared seniority date of August 8, 2005.

9. In Resolution No. 08-1377, the governing board established tie-breaking criteria to be used to determine the order of termination of employees having the same first date of paid service. The board assigned points to each of the five stated criteria, and resolved that any ties that existed after application of the criteria were to be resolved by a random drawing (lottery). The tie-breaking criteria to be applied are:

- a. Possession of a valid preliminary or clear California teaching credential – one point.
- b. Possession of multiple valid preliminary or clear California teaching credentials – one point for each additional credential.
- c. Possession of one or more language certifications (e.g., LDS, CLAD, SB 1969, SB 395, BCC, BCLAD) – two points.

- d. Possession of evidence of core academic subject competence in accordance with NCLB – one point.
- e. Bilingual competency – two points.

10. Dolan applied the criteria to the 13 teachers. With respect to the criteria of "Bilingual competency," Dolan believed the board was seeking information that he could objectively verify from the seniority list, meaning possession of a BCLAD with a language other than English specified. Only one respondent, Thomas Prieto, has a BCLAD. If Prieto were given two points, he would be the most senior teacher in the group, but the other 12 teachers would remain tied.

Officials of the teachers' representative union met with Dolan and challenged his interpretation of the board's "Bilingual competency" criterion as being too restrictive. It was argued that other teachers could satisfy that criterion by being a native speaker or by having a college degree in Spanish. After meeting with the union, Dolan concluded that the board's "Bilingual competency" criterion was too vague to be applied fairly. Dolan therefore decided not to apply that criterion, and as a result, the 13 teachers remained tied after application of the other four criteria.

11. In the event of a tie, the resolution provided for a "[r]andom drawing by lot in the presence of an authorized representative of the exclusive representative union." Nolan conducted the lottery with Suzanne Galloway, a high school math teacher, present. The teacher with the lowest number is the teacher most protected (i.e., the teacher with the most seniority of the group); the teacher with the highest number is the least protected (i.e., the teacher with the least seniority). The following list reflects the results of the lottery most senior to least senior:

- 01. Michael Vlach
- 02. Gretchen Stenz
- 03. Tatiana LaBass
- 04. Thomas Prieto
- 05. Diane Chapman
- 06. Beverly Harrison
- 07. Juanita Lupercio Ortega
- 08. Sevgi Bolkan
- 09. Nadine Vita
- 10. Megan White
- 11. Shondra Sikes
- 12. Stephanie Roupp
- 13. Barbara Garlick

12. Respondents challenge the district's application of the tie-breaking criteria. Respondent Prieto argues that he was erroneously deprived of two additional points for his BCLAD. Other teachers, who do not hold a BCLAD, argue that they too should be found to



have "Bilingual competency," by reason of being a native Spanish speaker (Ortega), by reason of having a college degree in Spanish (Garlick), or by reason of their Spanish-speaking abilities (Vlach). It is not unreasonable for the district to conclude, after meeting with respondents' union leaders, that the criterion of "Bilingual competency" was too vague and ambiguous to be able to be applied fairly, and for that reason, it should be disregarded.

13. Respondents also challenge the remaining tie-breaking criteria as being too restrictive, and not taking into account, for example, the number of years of prior service in the district, the number of years of prior service in another district, or other criteria like demonstrated leadership or mentoring experience, or computer authorization.

A board's tie-breaking criteria must be based on "the needs of the district and its students thereof." (Ed. Code, § 44955, subd. (b).) It has not been shown that the board's criteria fail to meet this standard.

14. Respondent Juanita Lupercio Ortega is an elementary teacher. In addition to holding a multiple subject credential, she also holds a single subject credential in science. Although she received a preliminary notice and was placed in the lottery, the parties stipulate that she is entitled to bump into a vacant teaching position in junior high school, and that for that reason, the accusation against her should be withdrawn.

15. Respondent Stephanie Roupp is an elementary teacher who was placed in the lottery by reason of her seniority date. She argues that she should be given an earlier seniority date, by reason of her previous service on a temporary contract. The contention lacks merit.

It is true that, prior to the layoff, the district listed Roupp's seniority date on district records as April 27, 2005. That date was changed to August 8, 2005, after the district researched its employment records in preparation for the layoff. Roupp worked for the district in the 2004-2005 school year as a temporary teacher. In 2005-2006, she worked a full-time temporary employee. In the 2006-2007 school year, Roupp was classified as a second year probationary teacher. The district allowed her to tack one year for her temporary service, as authorized by Education Code section 44917, thus resulting in a seniority date of August 8, 2005, the first date of her paid service in the 2005-2006 school year. There is no error in Roupp's seniority date.

16. The board's resolution specifically authorizes skipping Beverly Harrison, who holds the position of Literary Coach, "based on her unique qualifications and skills related to the required responsibilities for the course/job." Out of caution, however, the district gave Harrison a preliminary notice. And because Harrison shares the same seniority date of August 8, 2005, the tie-breaking criteria were applied to her, and because she tied with all the others, she was placed in the lottery. As a result of the lottery, Harrison ranks 6th out of 13 in seniority. In other words, Harrison is senior to seven teachers, including respondent Diane Chapman, who argues that she is competent and credentialed to be a Literary Coach.

Because of the two FTE elementary teaching positions vacant due to attrition and the one FTE position vacant by Ortega's moving to the Junior High School position, there remain three FTE positions in Grade K-6 Elementary Teaching that need to be reduced under the board's resolution. Based on Harrison's placement on the seniority list the district no longer needs to skip Harrison in order to retain her. Harrison must be retained by reason of her seniority: she is more senior than the three teachers whose positions will be eliminated. There is no cause to consider, therefore, whether the district has established a basis for skipping Harrison over a more senior teacher.

17. No certificated employee junior in seniority to respondents is being retained by the district to perform services that respondents are certificated and competent to render.

18. The reduction or discontinuation of particular kinds of services is related 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 by law.

2. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to all respondents other than Juanita Lupercio Ortega that their services will not be required for the 2008-2009 school year. The cause relates solely to the welfare of the schools and its pupils within the meaning of Education Code section 44949.

### ORDER

1. The accusation against respondent Juanita Lupercio Ortega is dismissed.

2. Notice may be given to respondents holding 3 FTE positions in Grade K-6 Classroom Teaching in reverse of seniority that their services will not be required for the 2008-2009 school year because of the reduction of particular kinds of services.

DATED: May 6, 2008



MELISSA G. CROWELL  
Administrative Law Judge  
Office of Administrative Hearings