

BEFORE THE  
GOVERNING BOARD OF THE  
OROVILLE CITY ELEMENTARY SCHOOL DISTRICT  
COUNTY OF BUTTE, STATE OF CALIFORNIA

In the Matter of the Amended Accusation  
Against:

OAH No. 2008031007

Gary Anderson  
Elizabeth Brackmann  
Karen Carriere Armstrong<sup>1</sup>  
Cheri Daniels-Bascherini  
Kristina Hegemier  
Leonard Hubbard  
Karla Johnson  
Lisa Kitchen  
Christy Lephart  
Dawn Stalter  
Kristine Theveos  
Cate (Catherine) Will  
Kristen Wilson  
Victoria Wonacott<sup>2</sup>

Respondents.

**PROPOSED DECISION**

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 29, 2008, in Oroville, California.

Diana D. Halpenny, Attorney at Law, represented the Oroville City Elementary School District (District).

Andrea Price, Attorney at Law, represented the following respondents: Elizabeth Brackmann, Kristina Hegemier, Leonard Hubbard, Karla Johnson, Lisa Kitchen, Kristine

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<sup>1</sup> At hearing, the name of Karen Carriere was amended to Karen Carriere Armstrong.

<sup>2</sup> Joseph Hernandez, Yia Yang Hawj, Adrienne Huseman, Lori Ann Maturino, and Shelby Vance were dismissed as respondents in this matter and the Preliminary Notices of Layoff served upon them were rescinded. Kari Amador-Ludovina, Kimberly Dryden, Martina Johnson, Lisa Leandro, William Linebarger, Gretchen Marsh, and James Wilson entered into a settlement agreement with the District pursuant to which they waived their rights to a hearing to contest their layoff.

Theveos, and Kristen Wilson. Respondents Karen Carriere Armstrong and Cheri Daniels-Bascherini were present and represented themselves regarding tie-breaking issues; Ms. Price represented them regarding common issues. In addition, Ms. Price represented Kathy Pietak, who was not named as a respondent and was not served with a Preliminary Notice of Layoff or an Accusation.

Evidence was received on April 29, 2008. The record was left open until May 1, 2008, for counsel to file letter briefs. On May 1, 2008, Ms. Halpenny filed a letter brief on behalf of the District, which was marked for identification as Exhibit 18. On May 1, 2008, Ms. Price filed a letter brief on behalf of the respondents she represented and Ms. Priepak, which was marked for identification as Exhibit I. The record was closed and the matter was submitted for decision on May 1, 2008.

### FACTUAL FINDINGS AND DISCUSSION

1. Dr. Penny Chennell-Carter is the Superintendent of the District. She made and filed the Accusation and the Amended Accusation in her official capacity.

2. Respondents are employed by the District as permanent or probationary certificated employees and rendered their first paid service to the District in a probationary position on the dates indicated on the seniority list maintained by the District.

3. On February 22, 2008, the Governing Board (Board) of the District was given written notice of Dr. Chennell-Carter's recommendations that notice be given to respondents, pursuant to Education Code sections 44949 and 44955, that their services would not be required for the 2008-2009 school year. In recommending reductions in certificated staff, Dr. Chennell-Carter considered the District's declining student enrollment, the qualified condition of the District's budget, the Governor's proposed budget cuts, and the fact that the District had received a charter school petition from the River Bend Charter School, which seeks to provide services to 160 students beginning in the 2008-2009 school year.

4. On February 27, 2008, the Board adopted Resolution No. 07-08-03, entitled "Resolution of Intention to Dismiss Certificated Employees" (Layoff Resolution), which provided that, "due to the State budgetary problems and funding reductions in general and specific programs, and due to declining enrollment," the Board had determined to reduce or discontinue the following particular kinds of services for the 2009-2009 school year:

1. Reduce Administrator II position, Ophir Elementary School from a work year of 225 to 212 days;
2. Reduce Administrator II position (212 days) Central Middle School and Ishi Hills Middle School split assignment by 1 FTE;



3. Reduce Administrator III position, Director of Pupil Personnel/Principal at Bird Street Elementary School by 1 FTE;
4. Reduce 15.0 full-time equivalent K-6 classroom teachers, District-wide;
5. Reduce K-8 District-wide nursing services by .8 FTE;
6. Reduce In-house suspension services District-wide by 1.0 FTE;
7. Reduce elementary music teacher District-wide by .5 FTE;
8. Reduce counselor services K-8 District-wide by .8 FTE;
9. Reduce independent study services K-8 District-wide by .2 FTE;
10. Reduce GATE services grades 4-8 District-wide by .07 FTE;
11. Reduce work year from 225 to 212 days for school psychologist services District-wide (assigned to Ophir Elementary and Sierra del Oro Schools);
12. Reduce school library services grades 7-8, Central Middle School (.5), Ishi Hills Middle School (.3), .8 FTE total.
13. Reduce non-severe pre-school services at Sierra Del Oro by 1.0 FTE;
14. Reduce 2 special day classes K-8 District-wide by 2.0 FTE;
15. Reduce 2 sections of 8th grade math (Central Middle School), .34 FTE;
16. Reduce 5 sections of 8th grade health (Central Middle School), .83 FTE;
17. Reduce 2 sections of 8th grade history (Central Middle School), .34 FTE;
18. Reduce 4 sections of 8th grade language arts (Central Middle School), .67 FTE;
19. Reduce 1 section of PE (Central Middle School), .17 FTE;
20. Reduce 2 sections of 7th grade math (Ishi Hills Middle School), .34 FTE;
21. Reduce 1 section of 7th grade history (Ishi Hills Middle School), .17 FTE;
22. Reduce 1 section of 7th grade language arts (Ishi Hills Middle School), .17 FTE;
23. Reduce 1 section of 7th grade science (Ishi Hills Middle School), .17 FTE;
24. Reduce 1 section of PE (Ishi Hills Middle School), .17 FTE;

25. Reduce 1 section of elective study skills (Ishi Hills Middle School), .17 FTE;
26. Reduce 1 section of elective advanced physical education (Ishi Hills Middle School), .17 FTE;
27. Reduce 1 section of health (Ishi Hills Middle School), .17 FTE; and,
28. Reduce 1 section of elective journalism (Ishi Hills Middle School), .17 FTE.

In the Layoff Resolution, the Board found that it was “necessary to terminate at the end of the 2007-2008 School Year the employment of 28.85 full-time equivalent certificated positions of the [District] ...” The Layoff Resolution directed the Superintendent to “take the proper steps, pursuant to Education Code sections 44949 and 44955, to send the appropriate notices to all employees whose positions may be affected by virtue of this action.”<sup>3</sup>

5. In accordance with the Layoff Resolution, on March 12, 2008, Preliminary Notices of Layoff were sent to the respondents represented by Ms. Price and they duly requested a hearing to determine if there was cause for not reemploying them for the ensuing school year. The Accusation was timely served upon these respondents and a group Notice of Defense was duly filed with the District on their behalf.

6. Preliminary Notices of Layoff were also sent to respondents Christy Lephart, Dawn Stalter, Cate (Catherine) Will, and Victoria Wonacott. Although these respondents were included in the group Notice of Defense filed by Ms. Price, they did not request a hearing in response to the Preliminary Notice of Layoff, were not present at the hearing on April 29, 2008, and were not represented by Ms. Price or any other counsel at the hearing. They, therefore, waived any right they may have had to a hearing to contest their layoff.

7. Respondent Gary Anderson filed a request for hearing in response to the Preliminary Notice of Layoff, and was duly served with the Accusation. He did not file a Notice of Defense, was not present at the hearing on April 29, 2008, and was not represented by Ms. Price or any other counsel at the hearing. Mr. Anderson, therefore, waived any right he may have had to a hearing to contest his layoff.

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<sup>3</sup> At hearing, Ms. Chennell-Carter estimated that the actual number of reductions set forth in the Layoff Resolution was approximately 28.47 FTE, plus the administrator work year reduction.

## *Tie-Breaking Issues*

8. On February 29, 2008, the Board adopted Resolution No. 07-08-04, entitled "Resolution Adopting Tie-Breaking Criteria" (Tie-Breaking Resolution), which established the following criteria for breaking ties:

1. Credentialing – including but not limited to:
  - a. Legal requirements for each program v. credentials held.
  - b. Specialties specified within each credential held.
  - c. Variety and breadth of credentials held.
2. Experience – including but on limited to:
  - a. Length of experience in [the District] and elsewhere.
  - b. Nature of experience in [the District] and elsewhere.
  - c. Relation of experience to positions to be filled.
3. Education – including but not limited to:
  - a. Degrees earned and dates.
  - b. Majors and minors in all post-high school studies.
  - c. Courses completed since employed in this office.
  - d. Other inservice experiences.
4. Performance – including but not limited to:
  - a. Attendance.
  - b. Evaluation documents on file.
  - c. Specific job-related skills (such as signing) as measured in employment screening.
5. Certificates – including but not limited to:
  - a. Bilingual certificates or credentials demonstrating ability to communicate and teach limited-English proficient students.
6. Service to the School – include [sic] but not limited to:  
At least one year of paid successful district experience in an extracurricular or cocurricular activity or sport within the past three years.



a. *Teachers with an August 14, 2006 Seniority Date*

9. Cheri Daniels-Bascherini and Jody Waddell are currently Special Day Class (SDC) teachers. Karen Carriere Armstrong and Carol Frink are currently Resource Specialist Program (RSP) teachers. All four of these teachers first rendered paid service as probationary teachers with the District on August 14, 2006.

Pursuant to Item 13 on the Layoff Resolution, the Board has decided to reduce non-severe pre-school services at Sierra Del Oro School by 1.0 FTE. Joseph Hernandez is currently in this position. Because he is more senior, Andrea Dunn, the District's Associate Superintendent, Human Resources and Administration, determined that Mr. Hernandez could bump either Ms. Daniels-Bascherini, Ms. Carriere Armstrong, Ms. Waddell or Ms. Frink.

Pursuant to Item 14 on the Layoff Resolution, the Board has decided to reduce two special day classes K-8 District-wide by 2.0 FTE. Ms. Dunn determined that Ms. Daniels-Bascherini and Ms. Waddell were the least senior teachers currently teaching special days classes. Before February 27, 2008, Louise Hering, another SDC teacher, notified the District that she would be retiring. In addition, as set forth in Finding 17 below, Sean Molina, currently a part-time regular education teacher, exercised his right to return full-time to his prior special education teaching position. In light of Ms. Hering's retirement and Mr. Molina's return, Ms. Dunn determined that one SDC teacher would need to be laid off.

10. In order to determine which teacher Mr. Hernandez would bump and which SDC teacher would be laid off, Ms. Dunn applied the tie-breaking criteria set forth in the Board's Tie-Breaking Resolution. To apply the tie-breaking criteria, Ms. Dunn looked at the applications and resumes in the personnel files of Ms. Daniels-Bascherini, Ms. Carriere Armstrong, Ms. Waddell, and Ms. Frink, and asked the Special Education Director about each of these four teachers. She did not, however, ask these four teachers to update their credentials, experience, education, performance, certificates or service to the school before she applied the tie-breaking criteria.

11. From the information she reviewed, Ms. Dunn determined the following about each of these four teachers:

- a. Ms Frink has a Bachelor of Arts (BA) with a major in Liberal Studies and a minor in Special Education. She has a 2006-2011 Preliminary Level I Education Specialist, Mild/Moderate teaching credential, and a 2005-2010 Multiple Subject teaching credential with an English Supplemental Authorization and a Crosscultural, Language, and Academic Development authorization (CLAD). From 1993 to 1995, she was a YMCA Group Supervisor; from 1996 to 1999, she was a Severely Handicapped (SH) Aide; from 1998 to 2001, she was a Networks Tutor for grades three through six; from 1999 to 2003, she was a Parent Intervention Program (PIP) Aide; from 2003 to 2004, she was a paraeducator and tutor; for

approximately three months in the spring of 2004, she was a substitute teacher; for one month in the summer of 2005, she was an SDC teacher in grades three and four in Yuba City; for one month in August of 2005, she was an SDC teacher in grades kindergarten to five in Olivehurst; and for one month in the summer of 2006, she was an SDC teacher in grades four and five in Yuba City. She knows some sign language and has been trained in Guided Language Acquisition and Development (GLAD) strategies.

- b. Ms. Waddell has a BA with a major in Liberal Studies. She has a 2005-2010 Preliminary Level I Education Specialist, Mild/Moderate teaching credential, and a 2004-2009 Multiple Subject teaching credential with a CLAD. From 1995 to 2001, she worked at the YMCA, and was the Director from 1996 to 2001. From 2001 to the present, she has been a VBS<sup>4</sup> teacher on a one-week summer excursion, teaching fifth and sixth grade students. From 2001 to the present, she has been a Youth Camp Director at a one-week summer camp for approximately 100 teenage youth, counselors and staff. From 2001 to 2004, she was a teacher in multi-age grades one to six, six to eight, and nine to twelve, at Magalia Pines Charter School. For one and one-half years in 2004 to 2006, she was a Special Education Teacher at Oroville Community Day School. She knows sign language.
- c. Ms. Daniels-Bascherini has a BA with a major in Liberal Studies and a minor in Special Education. She has a 2006-2011 Preliminary Level I Education Specialist, Mild/Moderate teaching credential, and a 2005-2010 Multiple Subject teaching credential with a CLAD. For one year in 2000, she was a substitute SH paraeducator. For one month in 1999, she was a summer school SH paraeducator. For ten months from 1998 to 1999, she was an SH paraeducator. For one year in 2005 to 2006, she was an SDC teacher in kindergarten through fifth grade at Linda Elementary School.
- d. Ms. Carriere Armstrong has a BA with a major in Liberal Studies. She has a 2006-2011 Preliminary Level I Education Specialist, Mild/Moderate teaching credential, and a 2006-2011 Multiple Subject teaching credential with a CLAD. For one month in 2006, she was a sixth-grade summer school teacher.

12. When Ms. Dunn looked at the personnel files for each of these teachers, she found that all four of them had excellent evaluations and attendance. She did not take into consideration any student teaching experience, since all of their student teaching experience was similar. When she applied the tie-breaking criteria to these four teachers, she started

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<sup>4</sup> Ms. Dunn did not know what "VBS" meant.



with credentialing, the first criterion listed in the Tie-Breaking Resolution. Since Ms. Frink had an English Supplemental Authorization on her Multiple Subject teaching credential, which none of the other three teachers had, Ms. Dunn determined that Ms. Frink should be deemed the most senior of the four teachers. As Ms. Dunn explained, if a teacher has an English Supplemental Authorization, the District is given greater flexibility in assigning that teacher to different assignments.

Because the remaining three teachers had the same credentials, Ms. Dunn then reviewed their experience, the second criterion on the Tie-Breaking Resolution. Ms. Dunn first looked at the actual teaching experience that each of the three teachers had. Because Ms. Waddell had more years of actual teaching experience, Ms. Dunn determined that she should be deemed the second most senior teacher.

Ms. Dunn then compared the experience of Ms. Daniels-Bascherini and Ms. Carriere Armstrong and determined that Ms. Daniels-Bascherini had more relevant experience than Ms. Carriere Armstrong. She, therefore, determined that Ms. Daniels-Bascherini should be deemed the third most senior teacher and that Ms. Carriere Armstrong should be deemed the fourth most senior teacher. Because only two of the four teachers needed to be laid off to comply with the Board's Layoff Resolution, the District decided to layoff Ms. Daniels-Bascherini and Ms. Carriere Armstrong, the teachers deemed to be the least senior of the four.

13. Both Ms. Daniels-Bascherini and Ms. Carriere Armstrong asserted that Ms. Dunn did not take into consideration all of their relevant experience.

Ms. Daniels-Bascherini testified that she had the following additional experience not considered by Ms. Dunn: She had worked one year as a facilitator/counselor at a group home for at-risk youth. She had worked six years as a parent/helper in her three sons' classrooms. She had spent two years as the PTO president at Central Middle School. And she had spent six years as the PTA hospitality chair at the Stanford Avenue School.

Ms. Carriere Armstrong testified that she had a minor in special education that was not noted by Ms. Dunn. She also testified that she had the following additional experience not considered by Ms. Dunn: She had an additional month of teaching sixth grade during the summer of 2006 for the Chico Unified School District. She was a pre-school teacher at the A.S. Children's Center for three years from August 2002 to June 2005. She was a summer camp counselor for two months in 2004. She was a Home Daycare Assistant for one year and two months in 2001 to 2002. She was an elementary school tutor for two years in 1999 to 2001. She also had completed two years of Beginning Teacher Support and Assessment (BTSA), was taking Level II course work at California State University Chico, was certified in Crisis Prevention Intervention Training, had been trained in GLAD strategies, and was a Response to Intervention (RTI) team member at Ishi Hills Middle School.



Ms. Daniels-Bascherini and Ms. Carriere Armstrong recognized that the additional experience to which they testified may not have been included in their personnel files. Ms. Dunn did not, however, ask them about their experience or offer them the opportunity to update their personnel files before she applied the tie-breaking criteria. Consequently, their additional information should be added to the information set forth in Finding 11 above.

14. Respondents argued that the tie-breaking criteria set forth in the Tie-Breaking Resolution were vague and ambiguous and, as a result, the application of those criteria lead to arbitrary and capricious results. In particular, respondents questioned the use of the term "including but not limited to" in each of the criteria. Respondents argument was not persuasive. Each of the criteria designated for review in the Tie-Breaking Resolution was reasonable and appropriate. While each of the listed criteria permitted consideration of additional factors not specifically delineated, it was clear from the Tie-Breaking Resolution that any additional factors that might be considered had to relate to the criteria. Consequently, the tie-breaking criteria set forth in the Tie-Breaking Resolution were not vague and ambiguous.

15. Respondents also argued that Ms. Dunn's application of the tie-breaking criteria was erroneous. They asserted that she substituted her judgment for how the criteria should be weighted, which was not reflected in the Tie-Breaking Resolution. Respondent's argument was not persuasive. While the Tie-Breaking Resolution did not explicitly provide that the criteria should be applied in the order in which they were listed, given the nature of each of the criteria and their list order, it was not unreasonable for Ms. Dunn to begin with credentialing and give it the greatest weight. It was also not unreasonable for her to apply the experience criterion next and give the greatest weight to actual teaching experience. As she explained, the criteria were applied in this way during a previous layoff, and were applied consistently to all four teachers in this layoff. Ms. Dunn's reasons for applying the tie-breaking criteria as she did were within the discretion of the District and were not arbitrary and capricious. Even though Ms. Dunn failed to include some of Ms. Daniels-Bascherini's and Ms. Carriere Armstrong's experience when applying the tie-breaking criteria, the consideration of this additional experience would not have changed Ms. Dunn's determination to place Ms. Frink first due to her English Supplemental Authorization, and to place Ms. Waddell second due to her greater actual teaching experience. Because Ms. Daniels-Bascherini and Ms. Carriere Armstrong are both scheduled to be laid off, whether Ms. Daniels-Bascherini's and Ms. Carriere Armstrong's additional experience might affect the application of the tie-breaking criteria between the two of them is not ripe for determination at this time. That determination does not need to be made until, if ever, the District decides to retain or rehire one, and not the other, of these two teachers. In sum, Ms. Dunn's application of the tie-breaking criteria to place Ms. Frink first and Ms. Waddell second was not arbitrary, capricious or an abuse of discretion.



*b. Teachers with an August 21, 2000 Seniority Date*

16. Pursuant to Item 4 on the Layoff Resolution, the Board has decided to reduce 15.0 full-time equivalent K-6 classroom teachers, District-wide. In determining which teachers should be laid off pursuant to this item, there were four teachers who had the same August 21, 2000 first day of paid service as probationary teachers and Multiple Subject teaching credentials – Sean Molina, Rozemary Sabino, Kristine Theveos and Christy Lephart.

17. Mr. Molina is currently working part-time (.2 FTE) as a regular education teacher, teaching fifth grade. He has a Multiple Subject teaching credential and an Education Specialist, Mild/Moderate, teaching credential. Before Mr. Molina became a part-time regular education teacher, he was a full-time special education teacher. Mr. Molina has exercised his right to return full-time. Ms. Dunn determined that, given Mr. Molina's Education Specialist teaching credential and seniority date, he will be placed as a special education teacher in the 2008-2009 school year, and will bump a more junior special education teacher. Consequently, Ms. Dunn did not include him when determining which teachers should be reduced under Item 4. Ms. Dunn's determination was within the District's discretion.

18. Rozemary Sabino also has a seniority date of August 21, 2000. She has been on a leave of absence for the 2007-2008 school year, but will be returning for the 2008-2009 school year. She has a Multiple Subject teaching credential with a BCLAD and a Reading Certificate, and a Special Instruction teaching credential in Reading and Language Arts. Before she went on leave, she was a Reading Specialist. When she returns, she will be placed back in the Reading Specialist teaching position. Because Ms. Sabino did not teach in a self-contained K-6 position before she went on leave and will not be placed in such a position when she returns, Ms. Dunn determined that Ms. Sabino did not need to be considered when determining which teachers should be reduced under Item 4. Ms. Dunn's determination was within the District's discretion.

19. Ms. Dunn applied the tie-breaking criteria to determine whether Ms. Lephart, a second grade teacher, or Ms. Theveos, a second and third grade teacher, should be deemed more senior. Ms. Lephart has a Multiple Subject teaching credential with an English Supplemental Authorization and a CLAD. Ms. Theveos has a Multiple Subject teaching credential with a CLAD. Ms. Dunn determined that, because Ms. Lephart has an English Supplemental Authorization, she should be deemed more senior than Ms. Theveos. Ms. Theveos asserted that, because she has more teaching experience and greater service to the District, she should have prevailed over Ms. Lephart in the tie-breaker.

20. At hearing, Ms. Dunn testified that both Ms. Lephart and Ms. Theveos are currently slated for layoff. Because both of these teachers are going to be laid off, there is no need at this time to determine whether Ms. Dunn's application of the tie-breaking criteria to



them was correct. That determination does not need to be made until, if ever, the District decides to retain or rehire one, and not the other, of these two teachers.

*Classification of a Teacher in a Categorically-Funded Program*

21. Kathy Pietak was first employed by the District on March 1, 2006, as a temporary teacher in a categorically-funded position. During the 2006-2007 school year, she was employed by the District as a first-year probationary teacher in a regular education position. Ms. Pietak received a layoff notice in March 2007. At the end of the 2006-2007 school year, she was laid off and placed on the rehire list. For the 2007-2008 school year, the District employed Ms. Pietak as a temporary teacher in a categorically-funded position. By letter dated March 12, 2008, Dr. Chennell-Carter notified Ms. Pietak that, in accordance with Education Code section 44954, subdivision (b), the Board had determined to "non-reelect" her as a temporary certificated employee, effective June 30, 2008. Because the District considered Ms. Pietak to be a temporary teacher, it did not issue a Preliminary Notice of Layoff to her or advise her of a right to a hearing.

22. Respondents Elizabeth Brackmann, Karla Johnson, Lisa Kitchen, Kristine Theveos, and Kristen Wilson all have at least the same teaching credentials as Ms. Pietak and seniority dates that are earlier than Ms. Pietak's seniority date.

23. Ms. Pietak argued that she was a second-year probationary teacher during the 2007-2008 school year, and not a temporary teacher, and that, because she was not given a Preliminary Notice of Layoff by March 15, 2008, as required by Education Code section 44944 in order to layoff a probationary teacher, she must be deemed to be reemployed for the 2008-2009 school year. Respondents Brackmann, Johnson, Kitchen, Theveos, and Wilson argued that, if the District is required to retain Ms. Pietak, who is junior to them, they cannot be laid off.

24. Because Ms. Pietak is not a party in this matter, she has no standing to raise the issues of her classification and release. In addition, respondents do not have standing to argue on Ms. Pietak's behalf that she was improperly classified and released by the District. Consequently, the issues argued in this matter relating to Ms. Pietak's classification and release will not be addressed in this decision.<sup>5</sup>

*Positively Assured Attrition*

25. As set forth in the Layoff Resolution, the Board "considered all positively-assured attrition which has occurred to date and additional attrition which may occur before the start of the 2008-2009 school year in reducing these services and but for the attrition

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<sup>5</sup> At hearing, the District argued that the March 1, 2006 seniority date for Ms. Pietak reflected on the District's seniority list was incorrect. The District requested that Ms. Pietak's seniority date be corrected. Because Ms. Pietak is not a party to this action, her seniority date will not be addressed in this decision.



already assured and the attrition anticipated would have found it necessary to reduce additional particular kinds of service.”

26. After the Board issued the Layoff Resolution, Janice Nielsen notified Dr. Chennell-Carter that she would be retiring at the end of the 2007-2008 school year. Ms. Nielsen is currently employed by the District as a Kindergarten teacher. Her seniority date is February 24, 1970.

27. On March 18, 2008, after the Board issued the Layoff Resolution, Sonja Lund notified the District that she would be retiring at the end of the 2007-2008 school year. Ms. Lund is currently employed by the District as a first grade teacher. Her seniority date is September 1, 1970.

28. Respondents argued that, even though Ms. Nielsen and Ms. Lund gave notice after the Layoff Resolution was issued that they would be retiring, the Board should take their retirements into consideration as positively assured attrition.

29. At hearing, Dr. Chennell-Carter testified that, even though she did not receive Ms. Nielsen's or Ms. Lund's retirement notices until after the Board issued its Layoff Resolution, she anticipated that these two retirements would occur and took them into consideration in making her layoff recommendations to the Board. As set forth in Finding 3, when determining whether reductions in certificated staff were necessary, Dr. Chennell-Carter considered, among other things, the charter school petition then pending before the Board. According to Dr. Chennell-Carter, she calculated that the District would have to reduce its K-6 certificated teaching staff by five teachers to accommodate the creation of the charter school. Because she anticipated Ms. Nielsen's and Ms. Lund's retirements, she included only three, instead of five, reductions relating to the charter school in the 15 reductions set forth in Item 4 on the Layoff Resolution.

30. Approximately one week before the hearing, the Board voted to deny the charter school petition. The charter school petitioners have informed Dr. Chennell-Carter that they intend to ask the Board to reconsider its denial. If the Board continues to deny that petition, the charter school petitioners may appeal the Board's denial, first to the county and then to the state. The charter school petitioners still hope to begin their charter school in the 2008-2009 school year. It is beyond the scope of this decision to determine whether or to what extent the charter school petition should impact the reduction of certificated staff for the 2008-2009 school year. The Board will have to make that determination itself before the final layoff notices are issued.

31. Citing *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, the District argued that it did not need to take Ms. Nielsen's or Ms. Lund's retirements into consideration as positively assured attrition in this proceeding. The District's argument was not persuasive. The Board, in its Layoff Resolution, explicitly stated that it considered “all



... additional attrition which may occur before the start of the 2008-2009 school year in reducing these services.” In addition, Dr. Chennell-Carter testified that she anticipated these retirements and took them into consideration when making her reduction recommendations to the Board. Given these facts, the Board must continue to consider the retirements of Ms. Nielsen and Ms. Lund as positively assured attrition when issuing the final layoff notices, no matter what determination it may make as to the charter school.<sup>6</sup>

32. In sum, the services identified in the Layoff Resolution are particular kinds of services that may be reduced or discontinued under Education Code section 44955. The Board’s decision to reduce or discontinue the identified services was not arbitrary or capricious, and was a proper exercise of its discretion. The Board’s decision was based solely on the welfare of the District and its pupils. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued. No junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render.

### LEGAL CONCLUSIONS

1. Jurisdiction in this matter exists pursuant to Education Code sections 44949 and 44955. All notices and jurisdictional prerequisites required by those sections were satisfied.

2. The services the District seeks to eliminate in this matter, as set forth in the Layoff Resolution, are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. The Board’s decision to reduce or discontinue these particular kinds of services was not arbitrary or capricious, but constituted a proper exercise of the Board’s discretion. Pursuant to Education Code sections 44949 and 44955, legal cause exists for the District to reduce or discontinue the particular kinds of services set forth in the Layoff Resolution. The reduction or discontinuance of these identified particular kinds of services relates solely to the welfare of the District and its pupils.

3. No certificated employee with less seniority than any respondent is being retained to render a service that any respondent is certificated and competent to render. Legal cause exists pursuant to Education Code sections 44949 and 44955 to give respondents final notice that their services will not be required for 2008-2009 school year, subject to continued consideration of the positively assured attrition found in Finding 31.

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<sup>6</sup> During the hearing, the District included evidence with respect to its layoff of Lorinda Strieby as an administrator and her placement in a Bilingual Resource teaching position for the 2008-2009 school year. Because there were no respondents who argued that they would be adversely affected by Ms. Strieby’s placement, there is no need to address the District’s actions with respect to Ms. Strieby in this decision.

## RECOMMENDATION

1. The Oroville City Elementary School District's action to reduce or eliminate the particular kinds of services identified in the Layoff Resolution for the 2008-2009 school year is AFFIRMED.

2. The Amended Accusation against respondents is SUSTAINED. Subject to the continued consideration of the positively assured attrition found in Finding 31, the Oroville City Elementary School District may give final notices to respondents that their services will not be required for the 2008-2009 school year. Notices shall be given in inverse order of seniority.

DATED: May 5, 2008



KAREN J. BRANDT  
Administrative Law Judge  
Office of Administrative Hearings