

BEFORE THE
GOVERNING BOARD OF THE
SARATOGA UNION SCHOOL DISTRICT
COUNTY OF SANTA CLARA
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ELIZABETH BELLES, et al.,

OAH No. 2011030669

Respondents

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, Office of Administrative Hearings, State of California, heard this matter on April 28, 2011, in Saratoga, California.

John R. Yeh, Attorney at Law, represented the School District.

Christopher E. Schumb, Attorney at Law, represented all respondents whose names are listed on Attachment A except Judy Wolthausen, who was present, but declined to represent herself.

The matter was submitted on April 28, 2011.

FACTUAL FINDINGS

1. Lane Weiss made the accusation in his official capacity as the Superintendent of the Saratoga Union School District.
2. Respondents listed on Attachment A are certificated employees of the district. The district rescinded the March 15 notice issued to Laurie Brandt, Carol Chun, Julie Paolini, Vernon (Manny) Steffen, Eric Witter, and Assaf Josh Henig (.5 FTE.)
3. On March 9, 2011, the Governing Board of the Saratoga Union School District adopted Resolution No. 378.2/11. The Board resolved to reduce or discontinue particular

kinds of services for 2011-2012 school year, and directed the Superintendent to give notice to the certificated employees whose positions would be affected.

4. On March 15, 2011, the superintendent gave written notice to respondents that, pursuant to the Education Code, it was being recommended that their services would be reduced or eliminated for the 2011-2012 school year. All jurisdictional requirements were met.

5. In its resolution, the Board resolved to reduce or discontinue the following particular kinds of services:

Kindergarten	2.0 FTE ¹
First Grade	2.0
Third Grade	1.0
Fifth Grade	1.0
Sixth Grade Core (English/Social Science)	2.0
Seventh Grade Core (English/Social Science)	1.0
Math (6th and/or 7th Grade)	1.0
Physical Education (6th and/or 7th Grade)	1.0
Science (6th and/or 7th Grade)	1.0
Electives (Spanish, Study Hall, Tutorial)	1.0
Literacy Coach	1.0
Math Coach	1.0
SVNTP Mentor	0.47
School Counselor	2.0
Technology Specialist (TOSA)	1.0
Assistant Superintendent	1.0
Director of Special Education	1.0
Vice Principal	1.0
Total:	22.47 FTE

6. The services set forth in the Board's PKS resolution are particular kinds of services that may be reduced or discontinued within the meaning of the Education Code. No service is being reduced below a mandated level. Any mandated service being performed by the counselors will be performed by other certificated personnel.

7. The Board established by separate resolution criteria for determining the order of termination among certificated employees who have the same seniority date. The criteria were applied to certificated employees who share the same seniority date in 2005, 2006, 2007, 2008, and 2009. Carol Chun and Kerry Goddard are both Math teachers who share the same first date of paid service (August 19, 2009). After application of the tie-breaking

¹ Full-time equivalent.

criteria, it was determined that Carol Chun is senior to Kerry Goddard. Carol Chun will be retained and Kerry Goddard will receive a final notice.

8. The district has released all temporary employees.

9. The district will take into account all positively assured attrition prior to issuing the final notices. There has been one recent retirement that the district will take into account before issuing the final notices.

10. The district has a number of probationary employees who have greater seniority than some of its permanent employees. In order to effectuate the PKS resolution reductions, services of probationary employees must be reduced or eliminated before services of permanent employees may be reduced or eliminated (Ed. Code, section 44955, subd. (b).) These employees² account for 2.4 FTE in multiple subject credentialed teachers. A corresponding number of multiple subject credentialed teachers who are permanent must be retained³.

11. The district plans to retain or place senior teachers into elementary teaching positions who do not have CLAD certificates. A teacher without such a certificate cannot teach English Language Learners.⁴ The district is not required to only employ teachers with CLAD certificates. There are 15 ELL students in the district. The district must make sure that all of those students will be taught by teachers with the appropriate certificate. What the district cannot do is get an emergency CLAD certificate for a teacher who is retained while there is a teacher with a CLAD certificate who has been reduced or eliminated.

12. Jon Jow is one of the music teachers. He retains a .4 FTE because of a temporary teacher who was released.

13. Denyelle Chapman is presently assigned to teach .5 FTE in 6th grade science. She has a multiple subject credential and an Education Code section 44256, subdivision (b) temporary authorization to teach science based on her minor. This temporary authorization will terminate at the end of the 2010-2011 school year. Ms. Chapman was not given notice. Shannon McQuaide (who received a 1.0 FTE notice) is presently assigned .5 FTE 7th grade science. She has a clear single subject credential in science. The PKS resolution calls for a 1.0 reduction in 6th and/or 7th grade science. Ms. McQuaide retains .5 FTE since Ms.

² Judy Wolthausen, Meg Ebner, Linda Rosiak, Debbie Willheim, and Jennifer Woelfel.

³ Based on the Tie-Breaking Chart and seniority date those teacher are identified as Susan Jacobs, Christie Nielsen and Sheridan Kurtz-Fenster (.4 FTE).

⁴ An English Language Learner is defined in Education Code section 306, subdivision (a).

Chapman's position must account for .5 FTE reduction of the 1.0 FTE reduction in science called for in the PKS resolution.

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

15. Except as stated above, 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.

15. The cause for the reduction in particular kinds of services relates to the welfare of the schools and the pupils thereof.

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met.

2. The services identified in the Board Resolution are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

3. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. The District identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued.

4. Except as identified in the Findings above, no junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

ORDER

1. Except as set forth above, notice may be given to certificated employees that their services will be reduced or eliminated for the 2011-2012 school year.
2. Notice shall be given in inverse order of seniority.

Dated: _____

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings