

BEFORE THE  
GOVERNING BOARD OF THE  
GOLD OAK UNION SCHOOL DISTRICT  
STATE OF CALIFORNIA

In The Matter of the Accusations against:

CHRISTIE CLARY, SUSAN LANDON,  
JEANA NEU, TERREY ROBINSON, and  
MELODY ROOT

Respondents.

OAH No. N2008030564

**PROPOSED DECISION**

Trevor Skarda, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 23, 2008, in Placerville, California.

Allen R. Vinson, Attorney at Law, of Trujillo & Vinson LLP, represented the Gold Oak Union School District.

A. Eugene Huguenin, Jr., Attorney at Law, of Huguenin Law Office, represented all of the respondents to the extent that their interests did not conflict. All respondents represented themselves to the extent that their interests conflicted.

The matter proceeded in respect to the Lay Off Notices issued to Christie Clary, Susan Landon, Jeana Neu, Terrey Robinson, and Melody Root, as these employees had filed Requests For Hearing, been issued Accusations, and had filed Notices of Defense to the Accusation.

The matter was submitted and the record closed on April 23, 2008.

**FACTUAL FINDINGS**

1. The Gold Oak Union School District (District) operates one elementary school (Gold Oak Elementary), one middle school (Pleasant Valley Middle School) and one charter school, Gold Oak Arts Charter School, which serves children in grades 4 through 8.

2. Richard L. Williams is the Superintendent of the District. His actions, and the actions of the Board, were taken in their official capacities.

3. On March 12, 2008, the District personally 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 Board had passed Resolutions reducing the certificated staff by 4.5 full-time equivalent (FTE) positions.

4. Respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

5. 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 served on those employees in a timely manner.

6. Respondents timely filed Notices of Defense.

7. Respondents in this proceeding are permanent or probationary certificated employees of the District.

8. On March 11, 2008, at a meeting of the District's Board of Trustees (Governing Board), the Governing Board of the District was given notice of the Superintendent's recommendations that certificated and other employees holding 4.5 FTE positions be given notice that their services would not be required for the next school year and stating the reasons for that recommendation.

9. On March 11, 2008, the Board adopted Resolution No. 08-03-02, providing for the reduction or elimination of the following particular kinds of services, and to decrease a corresponding number of certificated employees in the District, as follows:

- A. Reduce 2.5 FTE Self Contained Classroom Teachers at Gold Oak School, Grades K-5
- B. Reduce 1.0 FTE 7th and 8th Grade Language Arts at Pleasant Valley Middle School
- C. Reduce 1.0 FTE Classroom Teacher at Gold Oak Arts Charter School, Grades 4-8

10. On March 9, 2004, the Board adopted Resolution No. 04-03-02, in which the Governing Board established tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. The criteria include whether individuals have (1) certificates allowing them to teach English language learners, and, if certificates are the same, then (2) credentials allowing them to teach "the



greatest number of different K-8 teaching positions." If individuals with the same seniority date are still tied after application of the above criteria, then the District will use a lottery to determine seniority. The District used the 2004 tie-breaker criteria in the instant layoff. It did not adopt a new resolution for the current layoff.

11. The District is in a state of financial crisis caused by the State budget and declining enrollment. Thus, the Governing Board resolved to reduce teaching services, affecting employment of 4.5 FTE teaching positions. The Board's resolution to eliminate and reduce teaching services was made in order to balance its budget for the welfare of students.

12. Superintendent Williams and other District employees, in particular, Dawn Eddleman who is the Executive Secretary and Personnel Administrator, were responsible for implementation of the technical aspects of the layoff.

13. The District maintains a Certificated Seniority List which contains employees' seniority dates (first date of service), status as tenured, probationary or temporary, and credentials and authorization. Status, credential and authorization data are obtained from the District's records. The District circulated a seniority list in anticipation of issuing layoff notices.

14. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District 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 District determined the impact on staff in inverse order of seniority. The District checked the credentials of affected individuals to determine whether they could "bump" other employees who were junior to them. The District then looked at employee competence for certain positions as opposed to other positions.

15. The Board considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees. Attrition occurred after the layoff notices had been delivered.

16. Because of attrition, the Board dismissed the Accusations at the hearing against Christie Clary, representing 1.0 FTE Classroom Teacher at Gold Oak Arts Charter School, Grades 4-8, and against Susan Landon, representing 1.0 FTE Self Contained Classroom Teachers at Gold Oak School, Grades K-5.

17. Three of the teachers who received layoff notices, Christie Clary, Susan Landon and Terrey Robinson, have the same seniority date. The District applied the tie-breaker criteria as to these three individuals and determined that Christie Clary was the most senior and Terrey Robinson was the least senior. It was not disputed by respondents that the District properly applied the tie-breaker criteria or that the determination of seniority was not arbitrary or capricious.



18. There was no evidence that the Governing Board's decision to eliminate the particular kinds of services listed in Factual Finding 9 was arbitrary or capricious.

19. There was no evidence that the Governing Board's decision to reduce the particular kinds of services listed in Factual Finding 9 will cause it to reduce its offerings in code mandated courses below the level required by law.

## LEGAL CONCLUSIONS AND DISCUSSION

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 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 District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Governing Board's decisions were a proper exercise of its discretion.

3. The services identified in Board Resolution No. 08-03-02 are particular kinds of services that could be reduced or discontinued under 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 exists to reduce the number of certificated employees of the District 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 District'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*, supra, 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 Board 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 junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

7. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. (*Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469.) Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. (*Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers v. Governing Board*, supra, 116 Cal.App.3d 831.)

8. Services reduced below the level mandated by law are not "particular kinds of services" under Education Code section 44955. So long as a school district does not reduce its offerings in a code mandated course below the level required by law, that reduction should be considered a reduction of a particular kind of service. (*Degener v. Governing Board*, supra, 67 Cal.App.3d 689.)

9. It was not established that the District will reduce its course offerings below mandated levels by reducing 1.5 FTE Self Contained Classroom Teachers at Gold Oak School, Grades K-5 or 1.0 FTE 7th and 8th Grade Language Arts at Pleasant Valley Middle School.

10. Education Code section 44955, subdivision (b) states, in relevant part, as follows:

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

11. The District's application of the tie breaking criteria as to all affected respondents was appropriate.

ORDER

1. Notice shall be given to employees occupying 2.5 full-time equivalent certificated positions that their services will not be required for the 2008-2009 school year because of the reduction and discontinuance of particular kinds of services, including the following respondents: Jeana Neu, Terrey Robinson and Melody Root.

2. The Accusations against Christie Clary and Susan Landon are dismissed.

DATED: April 29, 2008

A handwritten signature in cursive script, reading "Trevor Skarda", is written over a horizontal line.

TREVOR SKARDA  
Administrative Law Judge  
Office of Administrative Hearings