

BEFORE THE  
GOVERNING BOARD OF THE  
STOCKTON UNIFIED SCHOOL DISTRICT  
COUNTY OF SAN JOAQUIN  
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

CERTAIN CERTIFICATED EMPLOYEES  
OF THE STOCKTON UNIFIED SCHOOL  
DISTRICT,

Respondents.

OAH No. 2012020574

**PROPOSED DECISION**

Catherine B. Frink, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on April 17-18, 2012, in Stockton, California.

Diana D. Halpenny, Attorney at Law, Kronick, Moskovitz, Tiedemann & Girard, represented the Stockton Unified School District (District).

Thomas J. Driscoll, Attorney at Law, Driscoll & Associates represented certificated employees who are members of the Stockton Teachers Association (STA), as listed in Exhibit A attached to this Decision.

Respondent Guadalupe Villalobos was present on April 17, 2012, and represented herself.

Evidence was received, and the parties entered into stipulations as set forth in the Factual Findings. The record was closed and the matter was submitted for decision on April 18, 2012.

**FACTUAL FINDINGS**

1. Craig Wells is the Assistant Superintendent of Human Resources for the District. He made and filed the Accusations against respondents in his official capacity.

2. On February 28, 2012, the Governing Board of the District (Board) adopted Resolution No. 11-40, reducing or eliminating particular kinds of services (PKS) no later

than the beginning of the 2012-2013 school year (PKS Resolution). The Board further determined that it is necessary by reason of the reduction of services to decrease the number of permanent and/or probationary certificated employees at the close of the 2011-2012 school year by a corresponding number of full-time equivalent (FTE) positions, and directed the Superintendent or his designee to proceed accordingly by notifying the appropriate employees to implement the Board's determination.

3. On March 15, 2012, District Superintendent Carl Toliver gave written notice to the Board of his recommendation that notice be given to certificated employees occupying 143.50 FTE positions, including respondents, pursuant to Education Code section 44949 and 44955, that their services will not be required for the ensuing school year, and stating the reasons therefor.

4. On or before March 15, 2012, the District served 132 certificated employees, including respondents, with a written notice that it had been recommended, pursuant to Education Code sections 44949 and 44955, that their services would not be required for the next school year (Notice). Each Notice set forth the reasons for the recommendation.

5. Requests for hearing were timely filed by 105 certificated employees, including respondents, pursuant to Education Code section 44949, to determine if there is cause for not reemploying them for the ensuing school year.

6. Accusations and notices of hearing were served on all certificated employees who filed timely requests for hearing, either individually or through their legal counsel.

7. Notices of defense were timely filed by or on behalf of 101 certificated employees, including respondents.<sup>1</sup>

8. Except as set forth in the stipulations below, any unrepresented certificated employee (i.e., not listed on Exhibit A) who failed to file a request for hearing or notice of defense, or who failed to appear at hearing, has waived his or her right to a hearing, and may be laid off by the District.

9. Each respondent is presently a certificated probationary or permanent employee of the District.

10. The PKS Resolution called for the reduction or elimination of the following particular kinds of services for the 2012-2013 school year:

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<sup>1</sup> Two certificated employees, Carol Becker and Michael Hall, withdrew their requests for hearing on April 11, 2012. The following individuals who were not represented by Mr. Driscoll filed notices of defense, but did not appear at the hearing: Elisa Galvan, Regina Gearheard, Sharon Greene, Nathan Haley, Karina Lee, Marvin Muela, Michelle Munoz, Deanna Neeley, Phuong Nguyen, and Erin Pressler. The matter proceeded as a default as to those respondents pursuant to Government Code section 11520.

	<b>SERVICE</b>	<b>F.T.E.</b>	<b>Sub-Totals</b>	<b>Totals</b>
1.	<b><u>Administrative Services</u></b>			
	A. Principal II [Stockton Intermediate Alternative Closure]	1.00		
	<b>Total</b>		<b>1.00</b>	
2.	<b><u>K-12 Teaching Services</u></b>			
	A. Elementary Teaching Services (Multi-Subject credentialed)	49.00		
	B. Literacy Specialists	38.00		
	C. Numeracy Specialists	30.00		
	D. K-8 PE Teaching Services	0.50		
	E. Secondary Art Teaching Services	2.00		
	F. Secondary Accounting 1 ROP/Computer Education/Business Skills/Principals of Finance Teaching Services	1.00		
	G. Secondary Business Office Skills – Office Training Teaching Services	1.00		
	H. Secondary Multi-Media/Web Design/Business Skills/Computer Education Teaching Services	1.00		
	I. Secondary English Teaching Services	4.00		
	J. Secondary Health/High School Success/Sports Medicine Teaching Services	1.00		

	<b>SERVICE</b>	<b>F.T.E.</b>	<b>Sub-Totals</b>	<b>Totals</b>
	K. Secondary High School Success/Multi-Media/Leadership Teaching Services	1.00		
	L. Secondary Horticulture ROP Teaching Services	1.00		
	M. Secondary Independent Studies Teaching Services	1.00		
	N. Secondary Integrated Physical Science Teaching Services	2.00		
	O. Secondary Math Teaching Services	2.00		
	P. Secondary Math/Peer Psychology Teaching Services	1.00		
	Q. Secondary Pharmacy Technology/Medical Terminology/Health Careers ROP/Health Careers Interns Teaching Services	1.00		
	R. Secondary Physical Education Teaching Services	2.00		
	S. Secondary Social Science Teaching Services	4.00		
	<b>Total</b>		<b>142.50</b>	
	<b>TOTAL</b>			<b>143.50</b>

The above-described services are “particular kinds of services” that can be reduced or discontinued within the meaning of Education Code section 44955.

11. On February 14, 2012, the Board adopted Resolution No. 11-38, which set forth criteria to be applied to determine the relative seniority of those certificated employees who first rendered paid probationary service to the District on the same date (Tiebreak

Criteria). The Tiebreak Criteria were based upon the Board's determination of the needs of the District and its students, as required by Education Code section 44955, subdivision (b).

12. On February 14, 2012, the Board adopted Resolution No. 11-39, which set forth the criteria defining "competency" for purposes of Education Code section 44955,<sup>2</sup> to be applied in instances where a senior certificated employee slated for layoff who seeks to displace a junior certificated employee (Competency Criteria).

13. The District maintains a seniority list which contains pertinent information such as employees' date of first paid service, current assignment, and credentials on file. The District used the seniority list to develop a proposed layoff list. The District considered whether senior employees currently assigned in the various services being reduced or eliminated could displace, or "bump," more junior employees. Employees with the same date of hire were identified for layoff according to the needs of the District and its students.

*Stipulation Re: Lisa White*

14. The parties stipulated that Ms. White's seniority date is 09/01/1993.

15. The parties stipulated that Ms. White will be reassigned as a counselor as a result of the 2012 layoff. Consequently, the Notice issued to Ms. White is rescinded, and she shall be retained for the 2012-2013 school year.

*Stipulations Re: Changes to Seniority List*

16. The parties stipulated that the District's seniority list accurately reflects the seniority dates and status of the following certificated employees: Elizabeth Collette (07/09/2008, probationary); David Maxwell (09/10/2007, permanent); and Kathleen Litts (10/23/2008, probationary).

17. The parties stipulated to changes in the District's seniority list affecting the following certificated employees, who remain subject to layoff::

- A. Joan Leone Maury: change from 12/10/2007 to 08/21/2006 (probationary).
- B. Silvia Paniagua: change from 11/14/2011 to 07/27/2010 (probationary).
- C. Jennifer Wheeler: change from 11/28/2011 to 11/15/2011 (probationary).

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<sup>2</sup> Education Code section 44955, subdivision (b) provides, in pertinent part: "the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render."

18. The parties stipulated that Beatrice Ressa's seniority date shall be changed from 07/25/2007 to 02/20/2007. As a result, she is more senior than the most senior multiple subject credentialed teacher and, consequently, her Notice is rescinded and she shall be retained for the 2012-2013 school year.

*Stipulations Re: Rescission of Layoff Notices*

19. The District issued precautionary Notices to permanent certificated employees Heather Fernandes (11/01/2007) and Susan Lockman (07/09/2008), in the event a respondent asserted a right to bump into their assignments in alternative programs. No respondent asserted such a right. Therefore, the precautionary Notices are rescinded, and Ms. Fernandez and Ms. Lockman shall be retained for the 2012-2013 school year.

20. The District rescinded the Notices issued to the following permanent certificated employees, who shall be retained for the 2012-2013 school year: Shelese Douglas (09/02/2008); Jill Harden (10/13/2009); and Hung Nguyen (09/22/2009).

21. The District rescinded the Notices issued to the following permanent multiple subject-credentialed teachers, all of whom share the same seniority date (07/25/2007): Kim Almarez; Tracy Brennan; Matthew Burt; Joanna Cahill; Maria Calderon; Brianna Clegg; Rebecca De La Cruz; Kathryn Dugo; Betsabe Elizalde; Chekesha Frazier; Aurora Guyton; Nathan Haley; Erin Knief; Staci Kormen; Karina Lee; Philip McGill; Debbie Mingua; Michelle Munoz; Rachel Navarrete; Chelsea Nickols; Erin Northcutt; Jennifer Pettitt; Anh Thu Pham; Aimee Pichford; Shannon Potter; Hollie Rahe; Crystal Rizzuto-Rodriguez; Kourtney Scott; Stacey Shankel; Maria Stevenson; and Soua Xiong.

22. The Board's decision to reduce or discontinue the particular kinds of services identified in the PKS Resolution was not arbitrary or capricious, but constituted a proper exercise of discretion.

23. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils. The reduction or discontinuation of particular kinds of services was necessary to decrease the number of certificated employees of the District as determined by the Board.

24. No certificated employee junior to any respondent was retained to perform any services which any respondent was certificated and competent to render.

## LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. Cause exists to reduce the number of certificated employees of the Stockton Unified School District due to the reduction or discontinuation of particular kinds of services. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

3. The seniority dates of Lisa White, Joan Leone Maury, Silvia Paniagua, Jennifer Wheeler, and Beatrice Ressa, shall be changed in accordance with Findings 14, 17, and 18.

4. Pursuant to Findings 15, 18, 19, 20, and 21, the District rescinded the Notices to the following certificated employees, who shall be retained for the 2012-2013 school year: Lisa White; Beatrice Ressa; Heather Fernandes; Susan Lockman; Shelese Douglas; Jill Harden; Hung Nguyen; Kim Almarez; Tracy Brennan; Matthew Burt; Joanna Cahill; Maria Calderon; Brianna Clegg; Rebecca De La Cruz; Kathryn Dugo; Betsabe Elizalde; Chekesha Frazier; Aurora Guyton; Nathan Haley; Erin Knief; Staci Kormen; Karina Lee; Philip McGill; Debbie Mingua; Michelle Munoz; Rachel Navarrete; Chelsea Nickols; Erin Northcutt; Jennifer Pettitt; Anh Thu Pham; Aimee Pichford; Shannon Potter; Hollie Rahe; Crystal Rizzuto-Rodriguez; Kourtney Scott; Stacey Shankel; Maria Stevenson; and Soua Xiong.

5. Except as set forth in Legal Conclusion 4, the Board may give respondents final notice before May 15, 2012, that their services will not be required for the ensuing school year, 2012-2013.

#### ORDER

1. The District shall comply with Legal Conclusion 3.

2. Except as set forth in Legal Conclusion 4, the Accusations served on respondents are sustained. Notices of layoff shall be rescinded as to the certificated employees listed in Legal Conclusion 4. Notices shall be given to respondent Guadalupe Villalobos, and to the remaining respondents identified in attached Exhibit A, that their services will not be required for the 2012-2013 school year because of the reduction or discontinuation of particular kinds of services. Notice shall be given to respondents in inverse order of seniority.

DATED: April 23, 2012

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CATHERINE B. FRINK  
Administrative Law Judge  
Office of Administrative Hearings

**EXHIBIT A**  
**Stockton Unified School District**  
**List of STA Respondents**

Almarez, Kim	Huckins, Adam	Rizzuto-Rodrigues, Crystal
Alston, Ambria	Hunt, Julie	Sandoval, Daniel
Basua, Desiree	Ibarra-Pantoja, Angelica	Sarmiento, Richard
Bedford, Amber	Jean, Dayna	Schumacher, Sonya
Bello, Michelle	Joyce, Victoria	Scott, Kourtney
Berlinski, Judith	Kan, Saron	Shankel, Stacey
Borba, Samantha	Katen, Christina	Shelby, Joseph
Brennan, Tracy	Keyes, Debra	Silva, Allison
Burt, Matthew	Kimbrue, Anita	Stevenson, Maria
Cahill, Joanna	KlingelSmith, Daniel	Tath, Madeline
Calderon, Maria	Knief, Erin	Tibbs, Barbara
Casimiro, Joe	Kormen, Staci	Vang, Chuzin
Chase, Elka	Kumar, Lindsay	Wheeler, Jennifer
Chhim, Pin	Litts, Kathleen	White, Lisa
Chhin, Pisey	Lo, Ong	Whitmer, Karen
Chhiv, Sopheak	Lockman, Susan	Xiong, Lee
Chin, Emmeline	Logan, Beverly	Xiong, Soua
Clegg, Brianna	MacKinnon, Kellie	
Cole, Shana	Marquez, Kerrie	
Collette, Elizabeth	Martis, Ellen	
Cordova, Gabriel	Maury, Joan	
Davies, Britta	Maxwell, David	
De La Cruz, Rebecca	McGill, Philip	
Douglas, Shelese	McQuade, Vanessa	
Dugo, Katharyn	Mingua, Debbie	
Elizalde, Betsabe	Neeley, Deanna	
Fernandes, Heather	Nelson, Carin	
Fettke, Wendy	Nguyen, Hung	
Fischl, Kenneth	Nickols, Chelsea	
Flores, Sonia	Northcutt, Erin	
Frazier, Chekesha	Ou, Ravy	
Glass, Richard	Paniagua, Silvia	
Grigsby, Trina	Pena, Anna	
Guyton, Aurora	Pettitt, Jennifer	
Hall, Kathryn	Pham, Anh Thu	
Hardin, Jill	Pitchford, Aimee	
Hem, Phorn	Potter, Shannon	
Holman, Constance	Rahe, Hollie	
Houston, Jennifer	Ressa, Beatrice	