

BEFORE THE  
GOVERNING BOARD  
SANTA CLARA UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusations Against  
Paula Arnold, et al.

OAH No. N2005020379

**PROPOSED DECISION**

Administrative Law Judge Stewart A. Judson, State of California, Office of Administrative Hearings, heard this matter in Santa Clara, California, on April 11, 12 and 13, 2005.

Richard M. Noack, Esq. represented complainant Rod Adams, the Superintendent of the Santa Clara Unified School District of Santa Clara County, State of California.

Christopher Schumb, Esq. represented respondents.

Submission of the matter was deferred to April 25, 2005, for the receipt of written argument that was duly filed and marked as complainant's Exhibit 8 for identification and respondents' Exhibit CC for identification. Thereafter, submission was deferred to May 10, 2005, to resolve certain issues raised in Counsel Noack's letter dated May 4, 2004, marked as complainant's Exhibit 9 for identification. No resolution having been reached, the matter is deemed submitted as of said date.

**FACTUAL FINDINGS**

1. Rod Adams (complainant) is the Superintendent of the Santa Clara Unified School District (the District) and made and filed the accusations in his official capacity as said officer.
2. Each of the respondents, all of whom are listed in Complainant's Exhibit A for identification, incorporated herein by this reference, is a certificated employee of the District.
3. On March 10, 2005, the Superintendent gave written notice to the Governing Board (the Board) of his recommendation that notice be given to respondents that their services would not be required for the ensuing school year and stating the reasons therefor.

4. On March 11, 2005, the Superintendent gave written notice to respondents of his recommendation that notice be given them that their services will not be required for the ensuing school year and stating the reasons therefor.

5. Respondents timely requested, in writing, a hearing to determine if there is cause for not reemploying them for the ensuing school year.<sup>1</sup>

6. On February 10, 2005, the Board enacted Resolution No. 05-06 (Tie-Breaker Resolution) for the determination of seniority among certificated employees with the same seniority date.

7. On February 10, 2005, the Board enacted two Resolution No. 05-05. The intent of the Board was to add one FTE<sup>2</sup> Wilson High School Teacher to the list of services being reduced or eliminated. Accordingly, the Board intends at this time to reduce or eliminate the following services of the District no later than the beginning of the 2005-2006 school year:

Multiple Subject Classroom Teachers	85.0 FTE
Teachers on Special Assignment (TOSAs)	10.0 FTE
Secondary Math Teachers	5.0 FTE
Secondary English Teachers	5.0 FTE
Nurses	3.4 FTE
Opportunity Program Teachers	2.0 FTE
Wilson High School Teacher	1.0 FTE
Music Teachers	2.5 FTE
Psychologists	2.0 FTE
Secondary Counselors	5.0 FTE

TOTAL 120.9 FTE

8. The following respondents challenge the seniority dates assigned them by the District, as indicated in complainant's Exhibit 5, incorporated herein by this reference, because they attended certain training and/or a new teacher orientation, prior to the first day of school:

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<sup>1</sup> As to those who received a layoff notice and who failed to request timely a hearing under Education Code section 44949(b), they are not parties to this proceeding. As to those who failed to file timely a Notice of Defense under Government Code section 11506, the District's motions to consider this a waiver of a right to a hearing are granted.

<sup>2</sup> Full Time Equivalent.

Tatiana Rogier	Kristy Chocholaty	Susan Carroll	Daniel Guilfooy
Alison Scherling	Melissa Dimiao	Molly Smith	Janelle Marsalli
Jennifer Petros	Jamie Govoni	Tyler Vogel	Caitlain O'Brien
Michelle Romo	Pamela Skilj	Robyn Janis	Jovanah Bonilla
Kendall Schomberg	Isabel Sousa	Kelly Leach	Paula Arnold
Leanne Thomas	Patricia Susnitzky	Andrew Waddel	Karen Onyett
Kristina Chang	Nicole Syth	Susanna Kwan	
Laura Stott	Chandra Frazier	Amy Nord	
Kathleen Chau	Daphne Jenkins	Kourtney Hungerholt	

9. Seniority dates were determined on the basis of the first date of paid service in a probationary status. Status, in turn, was determined by the employee's contract that, in the case of the above-noted respondents, indicated probationary status commencing on the first date of school. Since their requests for earlier seniority dates are based upon attendance at training sessions or orientations that occurred before the first date of school, they are not deemed to have been in a probationary status when attending said training or orientation, whether or not the training was mandatory and whether or not they received compensation for their attendance.<sup>3</sup>

10. ECRW<sup>4</sup> training is sponsored by the Noyce Foundation, which assists the District in improving the quality of teaching in grades kindergarten through fifth. This training is offered prior to the opening date of school and at other times throughout the school year. Attendees are paid a stipend of \$50 per day. Noyce reimburses the District for this compensation.

11. BTSA<sup>5</sup> training, that has now become BTSA-Induction, was funded by the State prior to this school year if the District submitted a grant. This year, the District became a credential provider. If employed, the employee could select the District as the credentialing agency. The service is provided by the District before school starts and is on-going the first two years of employment. If the employee is obtaining a credential in this manner, pay is at the rate of \$25 per hour.

12. GLAD<sup>6</sup> and CLAD<sup>7</sup> training is required for those teachers assigned to schools under said programs. Teachers are encouraged to attend during the summer. The training is

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<sup>3</sup> In certain cases, some were not recompensed though they may have been entitled to payment. That is a matter between those affected and the District to resolve.

<sup>4</sup> Every Child a Reader and a Writer.

<sup>5</sup> Beginning Teacher Support in Assessment.

<sup>6</sup> Guided, Language and Academic Development.

<sup>7</sup> Crosscultural, Language and Academic Development.

also offered during the school year. If a teacher attends in the summer, a stipend is paid. If the teacher elects to attend during the school year, a substitute is provided, and the teacher is paid the full contract salary rate.

13. Attendance at the new teacher orientation is required for all new certificated employees. A per diem rate is paid.

14. Attendance at ECRW training is not mandatory. It is an eight-day program that is on-going throughout the year. New teachers are encouraged to attend their first year.

15. BTSA training is offered for both new and experienced teachers. Attendance is not required. The training is intended to provide an overview of the curriculum. The training is offered during the school year during and after school hours.

16. The following respondents raised issues regarding their credentials:

a. Paula Arnold: She has a Supplemental Authorization in English.

b. Kristy Chocholaty: She received a letter prior to the hearing from the Commission on Teacher Credentialing (the Commission) stating that she would received a Supplemental Authorization in Art. This letter was in the possession of the District prior to March 15, 2005.<sup>8</sup> However, the authorization was not registered with the Santa Clara County Office of Education or the District prior to said date. Since the District was unaware, prior to March 15, that this authorization had, in fact, been issued, it was not required to consider it in determining respondent Chocholaty's placement on the seniority list.

c. Daphne Jenkins: She has a Supplemental Authorization in English.

d. Patricia Susnitzky: She has a Supplemental Authorization in Art. She did not file a request for a hearing.

## NURSES

17. The District seeks to layoff 3.4 FTE nurse positions. Currently, the District has 5.0 FTE nurse positions. The evidence established the mandated services, requirements, those permitted to perform said services, legal citations for said services, components, numbers of students served and nurse days to perform said services, rendered by the nursing staff of the District in respondents' Exhibit X, incorporated herein by this reference. The evidence shows that the mandated services performed in the District require 742 days equaling the services of 4.1 FTE credentialed school nurses. If the reduction sought by the District is accomplished, the District will retain 1.6 FTE nurse positions for the ensuing school year.

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<sup>8</sup> See Education Code sections 44857 and 44330.

18. In 2003, the District reviewed its mandated health services program and concluded that it could provide said services with 2.0 FTE nurse positions. Aside from noting that mandated hearing services could be contracted out, the District offered no evidence as to how all other mandates will be accomplished with 1.6 FTE nurse positions. The District provided no evidence explaining how the mandated services will be performed next year with two nurses on staff.

19. It is found that, by reducing its nurse staff to 1.6 FTE positions, the District did not establish that it will be able to render all mandated health services in the ensuing school year.

#### OTHER MATTERS

20. The services sought to be reduced or eliminated by the District are particular kinds of services within the meaning of Education Code section 44955 and will be reduced or eliminated no later than the beginning of the school year 2005-2006.

21. No permanent or probationary certificated employee with less seniority is being retained to render a service that respondents are certificated and competent to render.

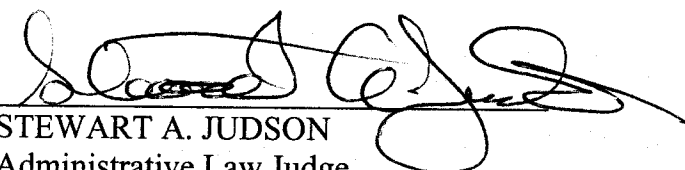
#### LEGAL CONCLUSIONS

1. Cause for terminating 3.4 FTE nurse positions does not exist.
2. Cause exists under Education Code sections 44949 and 44955 for reducing or discontinuing 117.5 FTE positions.
3. Cause for not reemploying 117.5 FTE positions relates solely to the welfare of the schools and the pupils thereof.

#### ORDER

1. The accusations against nurses Eileen Bowden, Amy Davis, Karen Kimieck, Lillian Lum-Kaku, Carolyn Riley are dismissed.
2. The District may notify all other respondents that their services will not be required for the ensuing school year.

DATED: May 11, 2005

  
STEWART A. JUDSON  
Administrative Law Judge  
Office of Administrative Hearings