

**BEFORE THE GOVERNING BOARD OF THE
SOUTH FORK UNION SCHOOL DISTRICT
COUNTY OF KERN
STATE OF CALIFORNIA**

In The Matter of the Accusation Against:)	OAH NO. L2005030863
)	
SHANNON DAMRON)	
DAWNE L. GIBSON)	
)	
Respondents.)	
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PROPOSED DECISION

Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 25, 2005, at Bakersfield, California.

Peter Carton, Attorney at Law, represented the Administration of the South Fork Union School District (District).

Ernest H. Tuttle III, Attorney at Law, represented Respondents.

Evidence was received and the matter was submitted for decision.

FACTUAL FINDINGS

1. Michael E. McGuire, the Superintendent of the District, filed the Accusation in his official capacity.
2. Respondents are permanent certificated employees of the District.
3. On or before March 8, 2005, Superintendent McGuire recommended that the Governing Board adopt a resolution to reduce or discontinue particular kinds of services for the 2005-2006 school year. Superintendent McGuire recommended the reduction and/or elimination of full time equivalency certificated employees ("FTE's") as follows:

**Service Being Reduced
or Eliminated**

FTE Reduction

Title I funded Classroom
Services

1.0 FTE

Self-Contained Classroom
Instruction, Grades K-5

0.0 FTE

Total FTE Reduction

1.0 FTE

4. The Board agreed with the recommendations and adopted Resolution 05-14 dated March 8, 2005, reducing or discontinuing services as set forth in finding 3.

5. On March 14, 2005, pursuant to Education Code sections 44949 and 44955, Superintendent McGuire notified Respondents by mail that their services would not be required for the next school year. The mailing included the reasons for the notification.

6. Each Respondent made a timely request for hearing.

7. On April 6, 2005, the Superintendent made and filed an Accusation against Respondents.

8. A Notice of Defense was timely filed by each Respondent. All prehearing jurisdictional requirements were met.

9. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils.

10. The District maintains a Seniority List which contains employees' seniority dates (the first date of paid service in a probationary position), current assignments and locations, advanced degrees, credentials, and authorizations. There was one certificated employee who was hired by the District after respondents' date of hire, however, this employee tendered her resignation prior to the adoption of resolution 05-14.

11. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render.

12. The Board also adopted resolution 05-15, which sets forth tie breaking criteria for certificated employees with the same date of hire. Both Respondents are excellent teachers with identical credentialing and similar experience. However, Respondent Damron has received more Computer Efficiency Training than Respondent Gibson. Therefore, in the event that the Board decides to retain only one of the respondents, Respondent Damron should be retained based on the training she has received.

LEGAL CONCLUSIONS

1. All notices and other requirements of Education Code sections 44949 and 44955 were met. Therefore, jurisdiction was established for this proceeding.

2. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees. The Board's decision to reduce or eliminate the identified services was neither arbitrary nor capricious. The decision relates solely to the welfare of the District's schools and the pupils within the meaning of Education Code section 44949. This conclusion is based on factual findings 3 through 11.

3. No junior certificated employee is being retained to perform services which a more senior employee subject to layoff is certificated and competent to render, based on factual findings 10 and 11.

4. The Board is required to apply the tie-breaking criteria between Respondents in accordance with factual finding 12.

ORDER

Notice may be given to Respondents Shannon Damron and Dawne L. Gibson that their services will not be required for the 2005-2006 school year.

Dated: April 29, 2005

Humberto Flores
HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings