

BEFORE THE
GOVERNING BOARD OF THE
PLEASANT VALLEY ELEMENTARY SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against
Certificated Employees:

KATHLEEN GRANT, DEBORAH
QUEEN, SUSAN LIMA, ELLEN HOFF-
MAN AND BETH BAKER,

Respondents.

OAH No. N2006030939

PROPOSED DECISION

This matter was heard on April 25, 2006, before Administrative Law Judge Tamara M. Colson, Office of Administrative Hearings, State of California, at the Pleasant Valley Elementary School District office, in Penn Valley, California.

James E. Young, Esq., of the Law Offices of Spector, Middleton, Young & Minney, LLP, represented the Pleasant Valley Elementary School District (District). Jim Voss, Superintendent, was present at the hearing on behalf of the District.

Lesley Beth Curtis, Esq., of Langenkamp & Curtis, LLP, represented respondents Deborah Queen, Ellen Hoffman and Beth Baker, all of whom were present at the hearing. There were no other respondents against whom Accusations were pending at the time of hearing. Cheryl Dachtler, President of the Pleasant Valley Teachers Association (Association), was present at the hearing on behalf of the Association.

Evidence was received and the matter was submitted on April 25, 2006. The District identified Jim Voss, Superintendent, as the person designated to receive this Proposed Decision via facsimile at (530) 432-7314 or via United States mail at 14806 Pleasant Valley Road, Penn Valley, California 95946.

FACTUAL FINDINGS

1. The District operates elementary and junior high schools, providing educational services to approximately 667 students in kindergarten through eighth grade. The District employs certificated employees to teach kindergarten through sixth grade students in self-contained classrooms designated by grade level. It also employs certificated employees to teach single subject classes to sixth, seventh and eight grade students in a departmentalized setting. Further, the District employs certificated employees in specialist positions.

2. Jim Voss is the Superintendent of the District.

3. On February 14, 2006, the Governing Board of the District adopted Resolution #06-01, providing for the reduction of particular kinds of services provided within the District. Resolution #06-01 defined the particular kinds of services to be reduced as follows:

"Eight and eight-tenths (8.8) full-time equivalent (FTE) certificated teaching positions
One four-tenths (.4) full-time equivalent (FTE) psychologist position."

4. On or before March 15, 2006, the District gave written notice to nine certificated employees, including respondents, stating that their services would not be required for the next school year. The written notice specifically stated that "[t]he governing board has adopted a resolution reducing or eliminating certain certificated services for the 2006-07 school year." A copy of Resolution #06-01 was included with the notice. Hearings were timely requested by the certificated employees of the District, including respondents¹, to determine if there is cause for terminating their services for the 2006-07 school year. No issues were raised regarding the timeliness and service of any notice or request for hearing.

5. Superintendent Voss, acting solely in his official capacity, filed the Accusation dated March 30, 2005, against certificated employees Kathleen Grant, Deborah Queen, Susan Lima, Ellen Hoffman and Beth Baker. Respondents' counsel filed a timely Notice of Defense dated March 27, 2006, on behalf of respondents. There were no issues related to the timeliness and service of the Accusation and Notice of Defense.

6. At various stages of the process between the time that the resolution was adopted and hearing, many of the notices were withdrawn by the District. At hearing, the District confirmed that only 2.4 FTE positions were now subject to reduction and at issue in the hearing, and the only respondents still subject to layoff were Deborah Queen, Beth Baker and Ellen Hoffman. The District stipulated that it has withdrawn the notices for Kathleen

¹ The evidence provided by the District included requests for hearing from the five certificated employees against whom the Accusation was filed. The evidence was unclear as to whether the other employees that received notices requested hearings but the requests were not included in the packet because those employees were not subject to the Accusation, or rather, the notices to those employees were withdrawn before hearings were requested.

Grant and Susan Lima, Ms. Grant and Ms. Lima will not be laid off, and the District is no longer proceeding against Ms. Grant and Ms. Lima in this matter.

7. Respondents in this proceeding are probationary or permanent certificated employees of the District. According to the seniority list, respondents hold the following credentials: Deborah Queen holds a clear pupil personnel/school psychology credential; Ellen Hoffman holds a clear multi-subject credential; and Beth Baker holds a clear multi-subject credential and clear CLAD certificate. There were no issues raised at hearing related to the credentials held by respondents as indicated on the seniority list.

8. The Superintendent testified that he recommended to the Board the particular kinds of services reductions contained in the resolution. His recommendation was based on the District's fiscal situation and need to maintain the required financial reserves for the welfare of the schools in the District and its students. The Board's decision to reduce the identified services as recommended by the Superintendent was neither arbitrary nor capricious. The District determined to reduce particular kinds of services provided by teachers and other certificated employees for budgetary reasons. The decision was not related to the competency and dedication of the individuals whose services are proposed to be reduced or eliminated.

9. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), employment status, current site assignment, current FTE, and credentialing information. The District made the seniority list available to employees by providing it to the Association's President. The seniority list was used to determine which employees would be subject to layoff and which employees would not. Superintendent Voss testified that three teachers less senior than respondents are being retained by the District because one possesses a special education credential, one possesses a credential with a language supplement, and one possesses a single subject math credential. Additionally, in the 2006-07 school year, the District intends to employ a temporary teacher with a single subject science credential. Respondents are not credentialed to teach special education, nor to teach math, English or science in a departmentalized setting to the junior high school students of the District. In Superintendent Voss' testimony, he did not clearly indicate his understanding of the particular type of teaching assignment that the Board's resolution directed him to reduce for the reduction in "credentialed teaching positions."

10. One of the respondents, Beth Baker, believed that her seniority date was incorrect. At hearing, the parties stipulated that her seniority date is actually October 13, 2003, not August 16, 2004, as indicated on the seniority list in evidence as Exhibit D-2; thus, she is number 39 on the seniority list and Ellen Hoffman is number 40, rather than vice versa. There were no other issues related to seniority raised at the hearing.

11. Deborah Queen is currently employed 1.0 FTE in the District's psychologist position. She works .6 FTE, which equates to three days per week, in the District. Pursuant to a contract between the District and the Ready Springs School District, she works .4 FTE, which equates to two days per week, in the Ready Springs School District. She spends 90

percent of her time performing work related to special education services. The District is mandated by law to provide special education services. These mandated services include performing special education assessments. Additionally, if counseling services are included in a special education student's individual education plan (IEP), the District must provide those services. Ms. Queen provides counseling services to five students pursuant to the students' IEPs and to seven students that do not receive counseling pursuant to an IEP. She contends that she cannot provide the mandated special education services that the District relies on her to perform in .6 FTE, which will be her employment if the District is allowed to reduce her position by .4 FTE.

12. Superintendent Voss testified that he believes that the District will be able to continue to provide all of the mandated special education services through Ms. Voss if she is employed .6 FTE, rather than 1.0 FTE. He indicated that between the two districts, Ms. Queen serves approximately 60 students that are subject to IEPs. A full assessment, which only must be done for each student tri-annually, takes approximately one day. There are 182 days in the school year, and .6 FTE is 108 days. Even if the District had to perform full assessments for all 60 students subject to IEPs, Ms. Queen would still have 38 days to perform other services. He believes this is sufficient. Additionally, he testified that if he has underestimated the amount of time necessary for the District to provide required special education services, he intends to increase Ms. Queen's FTE.

LEGAL CONCLUSIONS

1. Jurisdiction for this 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. Pursuant to the District's stipulation that it is no longer proceeding against Kathleen Grant and Susan Lima in this matter and the employees will not be laid off, the Accusations against Ms. Grant and Ms. Lima are dismissed.

3. Cause exists 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.

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. Respondents contend that the 2.0 FTE reduction in "certificated teaching positions" must be disallowed because this service is not a particular kind of service that may

be reduced pursuant to Education Code section 44955. The District employs certificated teachers to teach elementary classes, where one teacher teaches many subjects to the same student. This type of service, most often identified as classroom, elementary or K-5/6, is a particular kind of service that may be reduced. (*San Jose Teachers' Association v. Allen* (1983) 144 Cal.App.3d 627, 638.) The District also employs certificated teachers to teach in a departmentalized setting, where students have different teachers for different subjects. This type of service, when identified by subject area or other quantifiable characteristic, is a particular kind of service that may be reduced. (*California Teachers' Association v. Board of Trustees of the Goleta Union School District* (1982) 132 Cal.App.3d 32, 36.)

All of the teachers employed by the District, whether providing elementary or departmentalized services, hold "certificated teaching positions" within the District. Hence, the phrase "certificated teaching positions," without further definition, includes both elementary self-contained classroom teaching and departmentalized teaching. Therefore, by specifying teaching positions generally, rather than identifying particular kinds of services, the Board's resolution has identified teaching generally. *San Jose Teachers' Association v. Allen, supra*, permits this type of generalization for particular kinds of services layoff only at the elementary level where all of the teaching is self-contained classroom teaching. However, more specificity is required when the District services encompass both self-contained classroom teaching and departmentalized teaching.

The broad phrase "certificated teaching positions" contained in the Board's resolution fails to direct the Superintendent to reduce a particular kind of service and provides him with unfettered discretion to determine which teachers will be subject to layoff. Additionally, the phrase "certificated teaching positions" can encompass any teacher in the District, thus, fails to provide notice to the teachers that he or she may be at risk for layoff. Moreover, even at the hearing, it was not clear from the evidence whether the District intended to reduce self-contained classroom teaching positions at the elementary level, or simply teaching positions within the District. Granted, the two respondents are elementary level teachers, but it is not clear they are subject to layoff because elementary teaching services are being reduced, or because they were the least senior teachers not certificated to teach math, science, English or special education.

The District has failed to identify a particular kind of service. Therefore, cause does not exist for the District to reduce "certificated teaching positions" by 2.0 FTE for the 2006-07 school year.

6. Based on Legal Conclusion 5, the other issues raised by respondents related to the layoff of 2.0 FTE "certificated teaching positions" are moot.


7. Respondents did not contend that the .4 FTE "psychologist position" failed to identify a particular kind of service. As indicated in the Factual Findings, more than half of the counseling services provided by Ms. Queen are not pursuant to an IEP. Additionally, the District has provided a reasonable basis for its belief that the mandated services can be provided at the reduced rate. It was not established that this reduction will inappropriately

reduce a mandated service below the legally required level. (See *San Jose Teachers' Association v. Allen*, *supra*, 144 Cal.3d at p. 639-640 [rejecting contention counselors providing special education services must be retained, rather services simply must be provided].) Therefore, cause exists for the District to reduce the "psychologist position" by .4 FTE for the 2006-07 school year.

ORDER

1. The Accusations against Kathleen Grant and Susan Lima are dismissed.
2. Pursuant to the stipulation, Beth Baker's seniority date shall be changed to October 13, 2003.
3. The District shall not reduce "certificated teaching positions" for the 2005-06 school year.
4. Notice may be given to Deborah Queen that .4 FTE of her counseling position services will not be required for the 2006-07 school year because of a reduction of the particular kind of service.

Dated: May 3, 2006


TAMARA M. COLSON
Administrative Law Judge
Office of Administrative Hearings