

BEFORE THE GOVERNING BOARD OF THE
CENTRALIA SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

Carrie Barron and Other Certificated
Employees of the Centralia School District,

Respondents.

OAH Case No. 2010020639

PROPOSED DECISION

Administrative Law Judge, Sophie C. Agopian, Office of Administrative Hearings, heard this matter on April 22, 2010, in Buena Park, California.

Sharon J. Ormond, Attorney at Law, represented Dr. Douglas Staine (Staine), the Assistant Superintendent, Human Resources, of the Centralia School District (District).

Kent Morizawa, Esq. represented 13 certificated employees of the District, all of whom were present at the hearing. One certificated employee, Carrie Barron, did not appear at the hearing and was not represented by counsel. The hearing proceeded in her absence. The 14 certificated employees are respondents in this matter (Respondents).¹

Prior to the hearing, the District dismissed the Accusation against certificated employee Linda Matlock, who concurrently withdrew her request for a hearing. Dr. Matlock was, therefore, not present at the hearing, and is not a respondent in this case.

Evidence was received and the matter was submitted for decision on April 22, 2010.

FACTUAL FINDINGS

1. Assistant Superintendent Staine filed the Accusations in his official capacity.
2. Respondents are certificated employees of the District.

¹ Carrie Barron, Kelly Calvert, Shelly Coveney, Elizabeth Cruz, Amy Edmundson, Desiree Howden, Leigh Logan, Patricia McClure, Karina Montes, Shannon Nelson, Theresa Ogawa, Robin St. Hilaire, Olivia Swinth and Judy Chhouk are Respondents.

3. On February 23, 2010, the Governing Board of the District (Board) adopted Resolution No. 1362 (Resolution) and determined to reduce or discontinue particular kinds of certificated services (PKS) ² for the 2010-2011 school year, as follows:

<u>Certificated Services</u>	<u>FTEs</u>
Reduce K-6 Classroom Teaching Services	12.0 FTEs
Reduce K-6 SDC – Mild/Moderate Teaching Services	1.0 FTE
Reduce Nursing Services	1.0 FTE
Reduce Deaf and Hard of Hearing Teaching Services	1.0 FTE
Reduce Resource Specialist Teaching Services	1.0 FTE
Reduce Speech and Language Pathology Services	1.0 FTE
Reduce Counseling Services	3.0 FTE
Reduce Social Worker Services	3.0 FTE
Reduce Principal Services	2.0 FTE
Discontinue EL/Categorical Program Coordinator Services	1.0 FTE
Discontinue Assistant Superintendent Student Services	1.0 FTE
Total Certificated Positions	27.0 FTEs

4. The Board further determined that the reduction of such services made it necessary to decrease the number of certificated employees of the District by a corresponding number of full-time equivalent (FTE) positions prior to the ensuing school year. By the Resolution, the Board authorized the District Superintendent or designee to implement reduction in force proceedings. The Resolution also set forth criteria to determine seniority among certificated employees with the same first date of paid service, i.e. “tie-breaking criteria.”

5. The District Superintendent, Dr. Diane Scheerhorn, timely and properly notified the Board and Respondents of the recommendation that Respondents’ services will not be required for the 2010-2011 school year, and stating the reasons therefor. The notices recommending their lay-off are hereinafter referred to as “lay-off” notices, and were served

² Although Assistant Superintendent Staine testified that declining enrollment was a factor in the Board’s consideration for implementing a lay-off, the Board’s decision to implement a lay-off was primarily based upon a reduction and/or discontinuance of PKS.

upon individual Respondents on March 8, 2010. The lay-off notices included all necessary jurisdictional documents, including the Accusation and tie-breaking criteria adopted by the Board.³

6. Respondents timely requested a hearing and filed a notice of defense in response to the Accusation.⁴

7. All pre-hearing jurisdictional requirements were met.

8. The Board's decision to reduce and discontinue the services set forth in Factual Finding 3 was not arbitrary or capricious and constitutes a proper exercise of the Board's discretion. The certificated services identified in Factual Finding 3 are "particular kinds of services" that may be reduced or discontinued within the meaning of Education Code section 44955.⁵

9. The Board's decision to reduce and discontinue such services was related to the needs and welfare of the District and its pupils. The District consists of nine K-6 elementary schools and serves approximately 4,550 students. The District expects its revenue to decrease substantially from the present school year to the next school year. The District also has declining enrollment which contributes to its revenue reduction. The District established that its reduction of the PKS identified in Factual Finding 3, including the reduction in special education services will not result in services being reduced below state mandates.

10. To determine the order of termination or lay-off, the District properly created a seniority list by determining the first date of paid service as a probationary employee of each certificated employee and applying the Board-adopted "tie-breaking" criteria when necessary.

³ One of the 14 Respondents, Judy Chhouk, received a "precautionary lay-off notice" although her position on the seniority list indicated that she was not subject to lay-off. The District issued the precautionary notice to permit Ms. Chhouk's participation in the hearing in the event that a challenge to the District's implementation of the lay-off resulted in a change in the order of termination. The District ultimately dismissed the Accusation against Ms. Chhouk for the reason set forth in Factual Finding 12.

⁴ Factual Findings 1 through 6 are established by reason of the parties' stipulation to paragraphs 1 through 7 in the Accusation.

⁵ All further statutory references are to the Education Code.

Certificated employees' "first date of paid service" was based upon information obtained from the employees, on file with the county office of education, contained in personnel files, and verified with the California Commission on Teacher Credentialing. None of Respondents disputed their "first date of paid service" as determined by the District.

If more than one employee shared a "first date of paid service," the District applied the tie-breaking criteria adopted by the Board. The tie-breaking criteria included the type of credential held by the employee, any English language development certifications or authorizations, advanced degrees held and years of service with the District. All Respondents were notified of the tie-breaking criteria at the time they were issued the lay-off notices on March 8, 2010. The tie-breaking criteria were based on the needs of the District and its students, and were correctly applied to determine the order of lay-off. Respondents did not dispute the District's application of the tie-breaking criteria.

11. The District did not retain any certificated employee junior to Respondents to render a service which Respondents are certificated and competent to render. In determining the order of lay-off, the District permitted senior employees, whose positions are subject to lay-off, to "bump" into positions held by junior employees, as long as the senior employee was certificated and competent to render such service. The District properly considered the "credential and competency" information available to it prior to March 15, 2010, in determining which senior teachers were entitled to bump junior teachers.

Respondent Olivia Swinth notified the District in early April 2010, that in addition to her Education Specialist – Mild/Moderate credential, she possessed an "autism certification," which she requested that the District consider in determining whether she is entitled to bump a more junior special education teacher. The District properly declined to consider the additional information because it was not provided to the District in a timely manner. The lay-off statute prescribes strict timelines by which school districts must abide to ensure that affected teachers are notified of their prospective employment status, and are afforded due process well before the ensuing school year. (Ed. Code § 44949.) The March 15 deadline to notify affected teachers is jurisdictional and, therefore, school districts must strictly adhere to it in order to effectively enforce a lay-off. Courts have recognized early on that school districts would be prejudiced if they were required to consider credentials or authorizations obtained after lay-off notices are issued. (*Degener v. Governing Board* (1977) 67 Cal.App. 3d 689, 698.) The reasoning is that after the March 15 deadline passes, it is too late for the school district to notify other employees of their potential nonreemployment. Ongoing consideration of credentialing information would unreasonably restrict a school district's ability to implement an economic lay-off.

In this case, even if the District was required to consider Respondent Swinth's autism certification after the March 15 deadline, it was not established that the certification entitles her to bump a more junior employee.

12. In determining the number of lay-off notices to issue, the District considered all assured and/or known attrition at the time it issued the notices, including attrition related to resignations and retirements. Based upon attrition known as of April 20, 2010, the District agreed to immediately dismiss the Accusations against three Respondents, Desiree Howden, Shannon Nelson, and Judy Chhouk.⁶

LEGAL CONCLUSIONS

1. Jurisdiction for this matter was established pursuant to sections 44949 and 44955, by reason of Finding Findings 1 through 7.

2. A school 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.)

3. Cause exists to reduce the number of certificated employees of the District under sections 44949 and 44955 because the services identified in the Board’s Resolution are particular kinds of services that can be reduced or eliminated within the meaning of section 44955, and because the District established that the reduction of such services is related to the welfare of its schools and students pursuant to section 44949, subdivision (c)(3). (Factual Findings 8 and 9.)

4. Section 44955, subdivision (b), further provides that:

[T]he services of no permanent employee may be terminated... 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.

[¶]...[¶]

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.

⁶ The Accusation against Leanna Mathias, who was not a Respondent in this matter, was also dismissed due to attrition as of April 20, 2010. Ms. Mathias received “precautionary notice” regarding her lay-off, but did not request a hearing.

5. Cause exists to sustain the Accusations against 11 Respondents because the District complied with the requirements of section 44955, subdivision (b), with respect to such Respondents, as set forth in Factual Findings 10 through 12, in that:

The District properly developed and applied tie-breaking criteria to determine the correct order of termination among employees with the same seniority date; and

The District ensured that no junior certificated employee will be retained to render a service which a more senior Respondent is certificated and competent to render.

6. Cause, therefore, exists to terminate the services of Carrie Barron, Kelly Calvert, Shelly Coveney, Elizabeth Cruz, Amy Edmundson, Leigh Logan, Patricia McClure, Karina Montes, Theresa Ogawa, Robin St. Hilaire, and Olivia Swinth.

ORDER

Notice may be given to the 11 Respondents identified in Legal Conclusion 6 that their services will not be required for the 2010-2011 school year.

The Accusations against Respondents Desiree Howden, Shannon Nelson, and Judy Chhouk are dismissed.

DATED: April 28, 2010

SOPHIE C. AGOPIAN
Administrative Law Judge
Office of Administrative Hearings