

BEFORE THE
GOVERNING BOARD OF THE
MAXWELL UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter of the Reduction of 4.48 FTE
in Particular Kinds of Services affecting:

Russell Gardner, Kathy Jones, John
Patterson,

Respondents.

OAH No. N2004040112

PROPOSED DECISION

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 28, 2004, in Maxwell, California.

David E. Robinett, Attorney at Law, represented the Maxwell Unified School District.

A. Eugene Huguenin Jr. represented respondents Russell Gardner, Kathy Jones, and John Patterson.¹

The matter was submitted and the record closed on April 28, 2004.

FACTUAL FINDINGS

1. The Maxwell Unified School District ("District") operates three schools; an Elementary School, a High School and an Alternative/Continuation School. The District serves approximately 450 students.

2. Ronald Turner is the Superintendent of the District. His actions and the actions of the Governing Board, were taken in their official capacities.

3. Before March 15, 2004, the District served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education

¹ These three employees are the only noticed employees who filed Requests for Hearing followed by Notices of Defense to the Accusations. Thus, these three employees are the only respondents in this action.

Code sections 44949 and 44955 that their services would not be required for the next school year. Each written notice set forth the reasons for the recommendation and noted that the Board had passed Resolutions reducing or discontinuing particular kinds of services (PKS) which reduced the certificated staff by 4.48 full-time equivalent ("FTE") positions.

Respondents timely requested in writing a hearing to determine if there is cause for not reemploying them for the ensuing school year.

4. The Superintendent made and filed Accusations against each of the employees who requested a hearing. The Accusations with required accompanying documents and blank Notices of Defense were timely served on those employees.

5. Respondents timely filed Notices of Defense.

6. Respondents in this proceeding are permanent certificated employees of the District.

7. On March 11, 2004, at a regular meeting of the District's Board of Trustees (the Governing Board), the Governing Board of the District was given notice of the Superintendent's recommendations that certificated and other employees holding 4.48 FTE positions be given notice that their services would not be required for the next school year and stating the reasons for that recommendation.

8. On March 11, 2004, the Board adopted Resolution No. 03-04-013, providing for the reduction or elimination of the following particular kinds of services:

SERVICE REDUCED	REDUCTION IN FTE
Reconfiguration Junior High to 3 Self Contained Classrooms	3.0
SERVICE ELIMINATED	
Band Teaching Services	.48
Elementary Reading Specialist	1.0
TOTAL	4.48

9. The District is experiencing financial difficulties. The Governing Board determined that it needs to reduce its 2004-2005 operating budget in order to remain solvent. Thus, the Governing Board resolved to reduce and eliminate teaching services, affecting employment of 4.48 FTE teaching positions. The Board's resolution to eliminate and reduce teaching services was made in order to balance its budget for the welfare of students.

10. Supervisor Turner and other District employees were responsible for implementation of the technical aspects of the layoff. The District maintains a Certificated

Seniority List which contains employees' seniority dates (first date of paid service), status as tenured, probationary or temporary, and credentials and authorizations. Status, credential and authorization data are obtained from the District's records.

11. The District used the seniority list to develop a proposed layoff list of the least senior employees currently assigned in the various services being reduced. The District then determined whether the least senior employees held credentials in another area and were entitled to "bump" other employees. In determining who would be laid off for each kind of affected service, the District counted the number of reductions not covered by the known vacancies, and determined the impact on incumbent staff in inverse order of seniority. The District then checked the credentials of affected individuals and whether they could "bump" other employees. The District then looked at employee competence for certain positions as opposed to other positions.

12. The Governing Board established, pursuant to Resolution No. 03-04-012, tie-breaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It did not become necessary to employ the tie breaking criteria.

13. The District considered all known attrition, resignations, retirements and requests for transfer in determining the actual number of necessary layoff notices to be delivered to its employees. As of the date of the hearing, the District has granted leave for the 2004-2005 school year to Carrie Daneau. Ms. Daneau is currently teaching six periods of classes at the high school.

14. As a result of the PKS reduction in services of band teaching and elementary teaching, the District reduced certificated personnel by 1.48 FTE.² As a result of the reconfiguration of the junior high school, the services of 3.0 FTE teachers were reduced. Those teachers affected by the junior high school reconfiguration and consequent 3.0 FTE reduction were Eric Lay,³ Russell Gardner and John Patterson.

15. The District concedes that Mr. Patterson is qualified and competent to bump a junior teacher, Kathy Jones.⁴ Thus, the Accusation against Mr. Patterson should be dismissed, provided he agrees to teach the Continuation education program now taught by Ms. Jones.

16. The District also concedes that Mr. Gardner is qualified and competent to bump a junior teacher, Wiley Williams.⁵ Thus, the Accusation against Mr. Gardner should be dismissed.

² Those teachers affected by the band and elementary reduction in services were Vicki Wilson and Eric Leal. Neither is a respondent in this action.

³ Mr. Lay did not file a Request for Hearing and is not a respondent herein

⁴ Mr. Patterson was not present at the hearing and had not previously consented to teach alternative education.

⁵ Mr. Williams was given a lay off notice. However, he is not a respondent in this matter and his retention rights are not considered herein.

17. Ms. Jones's date of first paid service to the District is 1-15-97. She holds a Single Subject-English Credential and a Certificate of Completion of SB 1969. She teaches four periods a day as the lead teacher at Endi Prine Continuation School and two periods a day of English at the High School. She contends that junior employees are unlawfully being retained to perform services that she is qualified and competent to render. She also maintains that the District is unlawfully discontinuing a position that was not identified in the Board's Resolution. That position is held by Carrie Daneau. Ms. Daneau is junior to Ms. Jones. Ms. Jones argues that she is qualified and competent to render the services provided by Ms. Daneau.

18. Ms. Daneau holds a Professional Clear Single Subject – Art Credential with a supplement in English and Literature as well as a Certificate of Completion of SB 1969. She is currently teaching six periods; three periods of Art, one period of English 12, one period of Yearbook and one period of the Avid Program. The Avid program is designed to assist “middle of the road” students to become “college bound”. No specialized credential is required to teach this program.

19. Superintendent Turner testified that the District wishes to save the money required to hire or retain a replacement for Ms. Daneau during her 2004-2005 leave of absence. The District proposes to retain Ms. Daneau as an employee and to redistribute the classes she now teaches. Specifically the District plans to subsume the Art portions of the classes into its industrial arts (floral arts) program. Alternatively, the District proposes that if it “brings back” the Band program reduced in its Resolution, the Band teacher, Vicki Wilson, can teach two periods of Art after the District assists her in obtaining an Emergency Credential to teach Art. Ms. Wilson is junior to Ms. Jones.

The District proposes to have Patricia Bauer teach the Avid course now taught by Ms. Daneau. Ms. Bauer holds a Professional Clear Pupil Services Credential and a Preliminary Single Subject – Math. She is junior to Ms. Jones.

The District plans to move Ms. Daneau's yearbook class to the Media class. Mr. Patterson would teach Ms. Daneau's English classes.

20. In addition to claiming that Ms. Daneau's position was unlawfully reduced and junior employees are being retained to render Ms. Daneau's services, Ms. Jones also contends that she may bump into the position held by Bill Bernstein. Mr. Bernstein is junior to Ms. Jones. He has a Standard Teaching Credential with a major in Agricultural Science and a minor in Biological Science. He holds a Certificate of Completion in SB 1969. He is currently assigned to Enid Prine Continuation School, where Ms. Jones is lead teacher. He teaches four periods at Enid Prine; one of the four periods is an elective Woodshop course. He also teaches Woodshop at the High School. Ms. Jones suggests that she be assigned to a full load of six periods at Enid Prine and that the woodshop elective be changed to an elective she can teach, like Drama.

The District counters that it cannot change the Enid Prine elective from Woodshop to Drama, because the Woodshop class is in great demand. Further, the District contends it cannot fragment Mr. Bernstein's position by assigning three of his Continuation School classes to Ms. Jones. Mr. Turner was candid in voicing his concern that the District did not want to reduce Mr. Bernstein's Enid Prine classes by giving them to Ms. Jones, because it feared losing Mr. Bernstein's services. The District is heavily dependent upon the welding classes Mr. Bernstein teaches to prepare its students to work for local employers.

21. The District employees receiving notices that their services would not be required next year, whether temporary or certificated employees, have all rendered valuable services to the District.

LEGAL CONCLUSIONS AND DISCUSSION

1. All notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met.

2. The anticipation of receiving less money from the state for the next school year is an appropriate basis for a reduction in services under section 44955. As stated in *San Jose Teachers Assn v. Allen* (1983) 144 Cal.App.3d 627, 638-639, the reduction of particular kinds of services on the basis of financial considerations is authorized under that section, and, "in fact, when adverse financial circumstances dictate a reduction in certificated staff, section 44955 is the only statutory authority available to school districts to effectuate that reduction." The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial crisis. The Board's decision to reduce PKS was a proper exercise of its discretion.

3. The services identified in Board Resolution No. 03-04-013 are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause exists to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services. Cause for the reduction or discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of 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. The notices sent to respondents indicated the statutory basis for the reduction of services and, therefore, were sufficiently detailed to provide them due process. *San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831. The description of services to be reduced, both in the Board Resolution and in the notices, adequately describe particular kinds of services. *Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838. See, also, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.

6. A senior teacher whose position is discontinued has the right to transfer to a continuing position which he or she is certificated and competent to fill. In doing so, the senior employee may displace or "bump" a junior employee who is filling that position. *Lacy v. Richmond Unified School District* (1975) 13 Cal.3d 469. Junior teachers may be given retention priority over senior teachers if the junior teachers possess superior skills or capabilities which their more senior counterparts lack. *Poppers v. Tamalpais Union High School District* (1986) 184 Cal.App.3d 399; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.

7. The evidence was clear that the District intends to "freeze" the position held by Carrie Daneau, by not filling it while she is on leave of absence for the 2004-2005 school year. The District did follow the provisions of Education Code 44955 for reduction or discontinuance of the services rendered by Carrie Daneau. Rather, the District intends to have the majority of that position taught by teachers junior to respondent Kathy Jones. Thus, Ms. Daneau's position was not lawfully reduced or discontinued and is available for the 2004-2005 school year.

8. The District may deviate from terminating certificated employees in order of seniority only pursuant to Education Code section 44955 (d). The District must prove that it has a specific need for personnel to teach a specific course and that certificated employees it seeks to retain have special training and experience necessary to teach that course of study, which others with more seniority do not possess. The District has not met this burden in respect to employing junior teachers, Bill Bernstein, Patricia Bauer, Vicki Wilson and retaining Carrie Daneau, while eliminating the services of Kathy Jones. Ms. Jones is senior to these employees and is qualified and competent to teach the various components of the Daneau position the District proposes to assign to the junior teachers. Just as the District proposed to assist Ms. Wilson in obtaining an emergency credential to allow her to teach Ms. Daneau's Art classes, the District may assist Ms. Jones in obtaining that credential. Ms. Jones is thus qualified and competent to "bump" into the position held by Ms. Daneau.

9. The District has also failed to demonstrate that Bill Bernstein should retain his three periods of general teaching at Enid Prine Continuation School, while the senior "lead" teacher at Enid Prine, Ms. Jones, is laid off. The District's contention that his position should not be "fractionalized" by removing three of his classes is without merit. Mr. Bernstein's Enid School position is already divided into three components; three general Continuation School classes, one Woodshop Continuation class and an assignment to the High School to teach vocational classes. The District's concern that reducing Mr.

Bernstein's class load by the general Enid Prine classes may result in the loss of a very valuable vocational teacher is understandable. However, this fear cannot lawfully form a basis to retain Mr. Bernstein to teach classes which a senior teacher is qualified and competent to teach.⁶

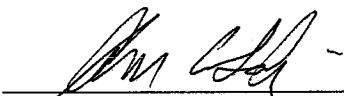
10. Ms. Jones may bump into the classes presently taught by Bill Bernstein at Enid Prine Continuation School, with the exception of the Woodworking class. She may augment her position to 1 FTE by teaching some of the classes now taught by Ms. Daneau. Alternatively, Ms. Jones may assume Ms. Daneau's full position, provided she obtains the Emergency Credential necessary to teach the Art sections of that position.

ORDER

1. Notice shall be given to employees occupying 4.48 full-time equivalent certificated positions that their services will not be required for the 2004-2005 school year because of the reduction and discontinuance of particular kinds of services.

2. The Accusations against Russell Gardner, Kathy Jones, and John Patterson, are dismissed.

DATED: May 6, 2004



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

⁶ Clearly, the District can maintain that Mr. Bernstein possess specific qualifications and skills in vocational education that allow him to be skipped or retained in a lay off. However, he may only be skipped in the area of his special skills, not because he is otherwise a valued employee who the District is fearful of alienating. Mr. Bernstein's qualifications are in fact less valuable than Ms. Jones's qualifications in teaching the general classes in the Enid Prine Continuation School. Ms. Jones has taught in that program four years longer than Mr. Bernstein. And she has functioned in the lead teacher capacity at that school.