

BEFORE THE
GOVERNING BOARD OF THE
BLACK OAK MINE UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter of the Accusations
(Reduction In Force) against:

MINDY AHRENS AND LYNN
SCHARDT,

Respondents.

OAH No. 2008030552

PROPOSED DECISION

Karl S. Engeman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 14, 2008, in Georgetown, California.

Heather M. Edwards, Esq., Law Offices of David W. Girard, represented the Black Oak Mine Unified School District.

Andrea Price, Esq., Langenkamp & Curtis, represented Mindy Ahrens.

Lynn Schardt represented herself.

Evidence was received and the matter was submitted on April 14, 2008.

FACTUAL FINDINGS AND DISCUSSION

1. Rob Schamberg is the Superintendent of the Black Oak Mine Unified School District (District). His actions and the actions of the District Governing Board were taken in their official capacities.

2. Respondents are certificated employees of the District. On March 12, 2008, the District served on each respondent a written notice that it had been recommended that notice be given to respondents pursuant to Education Code sections 44949 and 44955 that their services would be reduced or would not be required for the 2008-2009 school year. Each written notice set forth the reasons for the recommendation and noted that the District Governing Board had passed a Resolution reducing the certificated staff by 13.045 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.¹

3. The Superintendent made and filed Accusations against respondents. The Accusations with required accompanying documents and blank Notices of Defense were timely served on respondents. Respondents timely filed Notices of Defense to the Accusations.

4. On March 6, 2008, at a regular meeting, the District Governing Board was given notice of the Superintendent's recommendations that certificated employees holding 13.045 FTE positions be given notice that their services would be reduced or not required for the next school year and stating the reasons for that recommendation.

5. On March 6, 2008, the District Governing Board determined that it was necessary to decrease programs and services and thus it was necessary to reduce teaching services affecting employment of 13.045 FTE positions. The District Governing Board adopted Resolution No. 07-08-05 providing for the reduction or elimination of the following particular kinds of services (PKS):

K-5 Self-Contained Classrooms	5.0 FTE
4-6 Self-Contained Classrooms	1.0 FTE
Creekside Prep	.0903 FTE
6-8 Offerings	
Industrial Technology/Math Technology	1.0 FTE
Mathematics	0.14 FTE
Science/Applied Science/Computer	0.56 FTE
English/History Core	0.28 FTE
9-12 Offerings	
English	0.4 FTE
Social Studies	1.4 FTE
Art	0.2 FTE
Physical Education	0.8 FTE
Music	0.2 FTE
Science	1.2 FTE
Continuation/Independent Study	<u>0.775 FTE</u>
Total	13.045

6. The Governing Board's resolution to eliminate and reduce these particular kinds of services was made in order to address a substantial estimated budget shortfall in the ensuing school year.

¹ The other certificated employees noticed did not appear as one of them waived her right to a hearing, and the District rescinded the notices for the other six employees.

7. 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 and employees are given the opportunity to correct errors in the seniority list.

8. The Superintendent and other District employees were responsible for implementation of the technical aspects of the layoff. 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.

Mindy Ahrens

9. Mindy Ahrens has a seniority date of December 13, 2007. She holds a Clear Multiple Subjects Credential. She is a first year probationary teacher, and no other certificated teacher more junior than she is being retained by the District. Ms. Ahrens is currently assigned to teach 1.0 FTE at Northside Elementary School. Her services are reduced by 1.0 FTE pursuant to the Governing Board's resolution to eliminate 5.0 FTE K-5 teaching services in self contained classrooms. No employee junior to Ms. Ahrens is being retained to perform services that Ms. Ahrens is certificated and competent to render.

10. Ms. Ahrens maintains that at one, and possibly two, .5 FTE positions are available and she is certificated and competent to fill either position. Her contention is based on an earlier review of the Superintendent's spread sheet for next year's teaching positions by a teachers' association representative. However, the evidence established that the spread sheet is merely a "working document" and not a reliable indicator of vacant positions for the ensuing school year. One position identified by Ms. Ahrens depends upon continued federal funding or the District's ability to use unexpended funds from an initial three-year grant. The other identified position is a .5 FTE position in the District's continuation high school. District concedes that Ms. Ahrens is certificated and competent to occupy these positions. However, District established that all positively assured attrition to date has already been considered in making assignments and reassignments, and it remains to be seen whether any future vacancies, including the two identified by Ms. Ahrens, materialize in the future. The availability of the two positions identified by Ms. Ahrens, or other positions, will also depend upon possible reassignments among more senior certificated employees which may or may not create positions which Ms. Ahrens is certificated and competent to fill.

Lynn Schardt

11. Lynn Schardt holds Special Education and Multiple Subjects Credentials. Her seniority date is September 9, 1996, and she is a permanent certificated teacher. She currently teaches .5 FTE special education which is unaffected by the PKS reduction. She also occupies .0903 FTE which represents the approximately 45 minutes on each of four days each school week that she teaches Creekside middle school students. Ms. Schardt

volunteered to perform this work several years ago to provide the required preparatory time for two middle school teachers at Creekside and her teaching contract was amended accordingly. This practice has been followed each school year since then. Ms. Schardt teaches whatever subject the regular teachers designate. She works with the students individually or in small groups. The District is going to merge the Creekside program into another middle school next school year. This will eliminate one of six middle school teachers now employed by the District. The District plans to have music and physical education teachers provide instruction in those subjects to middle school students during the time that regular middle school teachers are allocated their required preparatory time next school year. As a practical matter, there are no approximately .10 FTE positions occupied by more junior teachers into which Ms. Schardt may "bump." Ms. Schardt concedes that the District's plan to change the manner in which the middle school teachers are provided preparatory time is at least feasible.

LEGAL CONCLUSIONS

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

2. The services identified in the Board Resolution are particular kinds of services that could be reduced or discontinued under section 44955. The Governing 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.

3. 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.)

4. Education Code section 44955, provides in pertinent part:

¶...¶

(b) Whenever in any school year ... whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, ...or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section 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.

¶...¶

5. Education Code section 44955 provides that when certificated employees face layoffs due to reduction or elimination of PKS, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers, if the senior teacher has both the credentials and competence to occupy such positions. The intent of the Legislation is clearly to prevent Districts from laying off senior teachers while retaining junior teachers. Section 44955, subdivision (c) provides in pertinent part:


Services of such employees shall be terminated in the inverse of the order in which they were employed... The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render...

6. As set forth in Factual Findings 1 through 11, and the Legal Conclusions, the District has established that no employee junior to Ms. Schardt and Ms. Ahrens is being retained to perform services which either Ms. Schardt or Ms. Ahrens is certificated and competent to render. District has considered all positively assured attrition, and while there may be positions in the future to which Ms. Ahrens may be assigned, there are no such positions at this time.

ORDER

Notice shall be given to Mindy Aherns and Lynn Schardt that their services will be reduced by 1.0 FTE and .0903 FTE, respectively, in the 2008-2009 school year, because of the reduction and discontinuance of particular kinds of services.

DATED: April 30, 2008


KARL S. ENGEMAN
Administrative Law Judge
Office of Administrative Hearings