

BEFORE THE GOVERNING BOARD OF THE
CHARTER OAK UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2013020842

CERTIFICATED EMPLOYEES OF THE
CHARTER OAK UNIFIED SCHOOL
DISTRICT IMPACTED BY REDUCTION
IN FORCE, ET AL.,

Respondents.

PROPOSED DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Covina, California on April 17, 2013.

Margaret A. Chidester, Attorney at Law, represented Terry Stanfill, Ed.D., Assistant Superintendent, Human Resources, Charter Oak Unified School District (District).

Michael R. Feinberg, Attorney at Law, represented respondents, Brandy Campbell, Elizabeth Diaz, Victoria Ingledue, Luiza Kartouch, Sara Litch, Valerie Lopez Jennifer Maletz, Dina McGhghy, Mary Moore, Lauren Morris, Patricia Santiago, Jennifer Seagle, Carol Sepulveda, Gregory Solis, Karen Tanaka, Gail Troncoso, Cheryl Wallace and Kathleen White, all of whom, with the exception of Ms. Kartouch, Ms. Morris, and Ms. Wallace, were present at the hearing.

Kim Breen, Staff Representative, California Teachers Association represented exempted certificated employees Kelly Chavez, Joanna Corrales, Robert Demonteverde, Nichol Hope, Michelle Mackay, and Tom Parslow, all of whom received preliminary notices and all of whom were present at the hearing.

Beth Smith, President of the Charter Oaks Educators Association and Phyllis Peters, Staff Representative, California Teachers Association were also present at the hearing.

The District has decided to reduce or discontinue certain educational services and has given respondents notice of its intent not to reemploy them for the 2013-2014 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2013-2014 school year.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision April 29, 2013.¹

FACTUAL FINDINGS

1. Terry Stanfill, Ed.D., Assistant Superintendent, Human Resources, of the District filed the Accusations in his official capacity. Superintendent Stanfill and his staff, including Janice Monteleone, Administrative Assistant, implemented the technical aspects of the layoff.

2. Respondents at all relevant times were certificated employees of the District.

3. On February 23, 2013, the District provided written notice to respondents pursuant to Education Code² sections 44949 and 44955 that their services would not be required for the 2013-2014 school year. Each written notice set forth the reasons for the District's decision and noted that 26.1 full time equivalent (FTE) positions would be reduced or discontinued.

4. On March 15, 2013, the District filed and thereafter served the Accusations and related documents on respondents. Each respondent appearing in this matter filed a Notice of Defense requesting a hearing for a determination of whether cause exists for not reemploying them for the 2013-2014 school year. All prehearing jurisdictional requirements were met.

5. The Governing Board of the District (Governing Board) adopted Resolution Number 09-12-13 (Resolution) and Supplemental Resolution Number 11-12-13 (Supplemental Resolution) reducing or discontinuing the following particular kinds of services (PKS) at the close of the 2012-2013 school year:

¹ Pursuant to a Post-Hearing Order issued April 19, 2013, the record remained open for submissions of written closing arguments. The parties' timely submissions were marked for identification only.

² All statutory citations are to the Education Code, unless indicated otherwise.

<u>Service</u>	<u>FTE Reduction</u>
K-6 Grade Classroom Instruction	16
Oak Knoll Virtual Academy K-8 Teacher	1
Spring Kindergarten Teacher	.60
7-8 Grade English Teacher	1.2
7-8 Grade Social Science Teacher	.60
7-8 Grade Drama Teacher	.80
7-8 Grade Colorguard Teacher	.20
9-12 Grade Drama Teacher	.20
9-12 Grade ROP Stagecraft Teacher	.20
9-12 Grade English Teacher	1
9-12 Grade Social Science Teacher	.40
9-12 Grade Physical Education Teacher	.60
9-12 Grade Health Teacher	.40
9-12 Grade French Teacher	.20
High School Counselor	.50
High School Dean of Students	.50
School Psychologist	.70
Adult with Disabilities Adult Education Teacher	1
<u>Total</u>	26.1

(Ex 1a.)

6a. Respondents' counsel challenges the Resolution contending that English services do not encompass Journalism and Yearbook courses. The California Commission on Teacher Credentialing May 2012 Supplementary Authorization Guideline Book establishes that journalism and yearbook are subjects within the single subject area of English. (Ex. 14 at p. 16.) Respondents' counsel's contention to the contrary is without merit. The Resolution authorizes the discontinuation of a 9-12 Grade English Teacher 1 FTE. Jennifer Maltez (Seniority #190), who has a clear single subject teaching credential for English, teaches both English (.8FTE) and Journalism (.2FTE). Ms. Maltez is properly subject to lay off because of the District's discontinuation of services in 9-12 Grade English by 1 FTE at the close of the 2012-2013 school year.

6b. Respondents' counsel alternatively argues for limiting the reduction of Ms. Maltez's services to .4 FTE. Counsel contends that Ms. Maltez's clear single subject teaching credential in English authorizes her to teach Yearbook (.2 FTE), which Christopher Case (Seniority #201; clear single subject teaching credential for music) currently teaches, and Study Skills (.2 FTE), which Timothy McCabe (Seniority #226; clear single subject teaching credential for geoscience and biological science) currently teaches. Counsel envisions Ms. Maltez "bumping" Mr. Case and Mr. McCabe's respective .2 FTE for Yearbook and Study Skills, which in turn would be added to Journalism for a total of .6 FTE. As set forth above in Factual Finding 6a, Ms. Maltez's layoff properly encompasses the Journalism course (.2 FTE) she teaches under the

subject area of English. There is no evidence that Study Skills is within the exclusive preserve of English or that Study Skills cannot be taught by a credentialed personnel other than one, such as Ms. Maltez, holding a teaching credential in English. Assigning certificated personnel to teaching assignments in increments of one-period classes—a .2 FTE assignment to teach Yearbook—primarily to avoid lay off is impractical and inefficient. Assistant Superintendent Stanfill’s credible testimony establishes that the parsing of teaching assignments to avoid layoff undermines the District’s efforts to achieve its performance standards and that teachers are unlikely to accept such assignments. The reduction of Ms. Maltez’s services is not limited to .4 FTE.

7. The services set forth in Factual Finding 5 are particular kind of services which may be reduced or discontinued within the meaning of section 44955.

8. The Governing Board took action to reduce services set forth in Factual Finding 5 because of an ongoing decrease of State funding. The decision to reduce services was not related to the capabilities and dedication of the individuals whose services are proposed to be reduced or eliminated. The decision to reduce the particular kinds of services is neither arbitrary nor capricious. The decision to reduce the particular kinds of services is a proper exercise of the District’s discretion.

9. Assistant Superintendent Stanfill and Administrative Assistant Monteleone compiled a tentative seniority list containing seniority dates, current assignments, and credentials and certifications, which was distributed to District’s certificated employees for their review and verification of pertinent information.

10. The District used the seniority list to identify District certificated employees subject to and exempt from layoff and, in the case of certificated employees with equal seniority, their relative order of termination as provided for in the Resolution.

11. The Resolution exempts from layoff the following certificated personnel on the basis of special training, experience, or credentials that others with more seniority do not possess:

1. Certificated personnel who possess administrative credentials, who are currently assigned to administrative positions, and who will be assigned to administrative positions for the 2013-2014 school year.
2. Certificated personnel who possess single subject math credentials, or single subject foundational math credentials, who are currently assigned to math positions, and who will be assigned to math positions for the 2013-2014 school year.
3. Certificated personnel who possess autism authorization for special education credentials, who are currently assigned to special education positions, and who will be assigned to special education positions for the 2013-2014 school year.

4. Certificated personnel who possess single subject business credentials, who are currently assigned to business positions, and who will be assigned to business positions for the 2013-2014 school year.
5. Certificated personnel who possess single subject social science credentials, who are currently assigned to social science positions, and who will be assigned to social science positions for the 2013-2014 school year. (Ex. 1a.)

12. Counsel for respondents contends that the District's exemption criteria 2, 4, and 5 are inherently defective because they permit the District to "skip" junior employees "assigned to a specific subject matter position [math, business, and social science] for the 2013-2014 school year . . . that cannot be ascertained." (Respondents' Post-hearing Brief at p.2.) Counsel for respondents further contends that "[n]othing in [section 44955, subdivision (d)(1)] . . . permits the District to 'skip' or 'exempt' junior employees based on their assignment to a specific subject matter position for the upcoming school year. To do so would only allow the District to create a self-fulfilling prophecy constructed on what the District wants to have happen, not established on the basis of objective facts available at the time of the [reduction in force] hearing." (Ibid.) Counsel's contention that the District's exemption criteria 2, 4, and 5 are inherently defective is rejected for the reasons stated below in Factual Finding 14.

13a. Superintendent Standfill credibly explained that the District anticipates implementing the Common Core State Standards Initiative, which raises both instructional levels and expectations for the knowledge and skills students are required to learn in order to be successful in college and careers. The District therefore has an expressed preference for retaining teachers holding a single subject teaching credential in mathematics or foundational mathematics, social science, or business. In its view, possession of such teaching credentials is indicia of the deep fund of knowledge required of teachers to educate the District's pupils consistent with Common Core standards. Such teaching credentials afford the District flexibility when scheduling assignments throughout the district even as budgetary constraints require a reduction in services. Teachers holding such credentials are not limited to teaching assignments in the District's elementary and middle schools; rather, those teachers are authorized to fulfill assignments in the District's one and only high school where in-depth subject matter knowledge is required.

13b. Superintendent Standfill testified, for example, that with respect to the math exemption, Kelly Chavez (Seniority # 236) is exempt from layoff and will be skipped despite the seniority of Jennifer Seagle (Seniority # 177) because Ms. Chavez's clear single subject teaching credential for foundational level mathematics authorizes her to teach general mathematics, all levels of algebra, geometry, probability and statistics, and consumer mathematics in grades twelve and below. Ms. Seagle, on the other hand, has a clear multiple subject teaching credential for general subjects in a self-contained classroom as a self-contained teacher in grades twelve and below, and has a subject

matter authorization in introductory mathematics to teach preschool, K-12, and adult students where the curriculum is designed for grades nine and below. Ms. Seagle's subject matter authorization in introductory mathematics does not enable her to teach any mathematics course in the curriculum for grades 10, 11, and 12.

13c. With respect to the business exemption, Thomas Parslow (Seniority # 216) is exempt from layoff and will be skipped despite the seniority of Lauren Morris (Seniority # 193) because Mr. Parslow's clear single subject teaching credential for business authorizes him to teach business management, business marketing or introduction to business, computer concepts and applications, economics, business communications or business English, or accounting in grades twelve and below. Ms. Morris, on the other hand, has a clear multiple subject teaching credential for general subjects in a self-contained classroom as a self-contained teacher in grades twelve and below and a clear multiple subject teaching credential for computer concepts and applications in grades nine and below. Neither of Ms. Morris' credentials authorizes her to teach computer concepts or other courses comprising the business curriculum in grades 10, 11, and 12.

13d. With respect to the social science exemption, Robert Demonteverde (Seniority # 222) is exempted from layoff and will be skipped despite the seniority of Valerie Lopez (Seniority# 194) because Mr. Demonteverde's clear single subject teaching credential for social science authorizes him to teach courses in the social science curriculum in grades twelve and below. Ms. Lopez, on the other hand, has a clear multiple subject teaching credential with a supplemental authorization to teach social science in grades nine and below. There are no required courses for social science in the District's ninth grade to which Ms. Lopez may be assigned. In addition, Ms. Lopez is not authorized to teach courses in the social science curriculum for grades 10, 11, and 12, which includes World History and United States History.

14. In light of the need to reduce services while retaining personnel with the training, experience, and credentials to adapt to Common Core standards, the District's exemption criteria requiring single subject mathematics, foundational mathematics, business, and social science credentials and current assignments to mathematics, foundational mathematics, business, and social science positions are valid. In this case, the possession of a single subject credential in mathematics, foundational mathematics, business, or social science is the dispositive factor in determining which of the District's certificated employees is exempt from layoff. The "who will be assigned to . . . positions for the 2013-2014 school year" language in the District's exemption criteria is superfluous and therefore its effect need not be considered.

15. The District properly exempted Kelly Chavez, Thomas Parslow, and Robert Demonteverde from layoff pursuant to section 44955, subdivision (d)(1), set forth in Legal Conclusion 2.

16. The manner in which the District chose to exempt or “skip” its certificated employees to implement its layoff was neither arbitrary nor capricious, but rather a proper exercise of its discretion.

17. The Resolution provides that as between certificated employees who first rendered service to the District on the same date, the order of termination is determined by reference to the following tie-breaking criteria and point system:

- a. 3 points for holding a Bilingual Cross-cultural Language and Academic Development (BCLAD) Certificate or Bilingual Certificate of Competence (BCC).
- b. 2 points for each current, valid Single Subject or Multiple Subject credential held, excluding supplemental authorizations.
- c. 3 points for “hard to hire” preliminary or clear credentials held in Math, Science, Special Education.
- d. 3 points for “hard to hire” preliminary or clear credentials held in Foundational Math
- e. 2 points for an earned Master’s degree
- f. 1 point for each year of step placement on salary schedule (maximum of 10 years).
- g. 2 points for Autism Authorization.
- h. 2 points for National Board Certification
- i. 1 point for serving as a BTSA Support Provider within the last two years in Charter Oak Unified School District.

2. Individuals who are specifically exempted by resolution and individuals who do not receive a notice of layoff due to the scope of their credential will nevertheless receive point totals so that their service may be properly credited in the event of a dispute.

3. Employees who receive a notice and who share the same date of first paid service shall be ranked by point totals. Low point totals indicate low seniority for the hire date. For example, an individual with a point total of “1” will be laid off before an individual with a point total of “3” where both individuals share the same date, and provided layoff was not otherwise determined by virtue of credential or exemption.

4. If the criteria listed above do not break a tie, the District shall hold lotteries at least five work days prior to the layoff hearing. Each group of tied employees shall have the right to attend the lottery and pick a lottery number. In the absence of the employee, the Superintendent or designee will select a lottery number on behalf of the employee.

5. As between tied employees, **low lottery numbers will indicate low seniority for the hire date. For example, an individual with a lottery number of “1” would be laid off before an individual with a lottery number of “10.”**

(Ex. 1a; Bold emphasis in original.)

18. The District applied the tie-breaker criteria and point system to its certificated personnel appearing on the seniority list to create a tiebreak chart. (Ex. 10.) At the hearing, the tiebreak chart was amended to correct an error assigning Jaime Somerville (#172) the wrong number of tie-breaking points. (Ex. 20.) The correction does not impact the order of termination for District certificated personnel subject to layoff.

19. The District rescinded layoff notices to Christopher Case, Geoffrey Grund, Mary McKinley, Renette McNeil, and Carrie Smith. Respondents’ counsel argues that the District should additionally rescind the layoff notice to Karen Tanaka (Seniority #168). After leave of absence in the 2012-2013 academic year, Aubrey Brinegar (Seniority #151) resigned from the District effective June 30, 2013. Counsel contends that the District should use Ms. Brinegar’s “departure as attrition to reduce the number of layoffs needed.” (Respondents’ Post-hearing Brief at p.8.) During Ms. Brinegar’s leave of absence, the District retained no temporary personnel to fill Ms. Brinegar’s position, even though the District is obligated to preserve the position in the event of Ms. Brinegar’s return. The District was therefore able to reemploy previously laid-off, credentialed personnel as needed. Consequently, Ms. Brinegar’s subsequent resignation opens no position into which any District certificated personnel, including Ms. Tanaka, may move. Ms. Tanaka is properly noticed for layoff.

20. The District properly considered all known reassignments, resignations, and retirements in determining the actual number of layoff notices to be delivered to employees by March 15, 2013.

21. Respondent’s counsel argues that Brandy Campbell (Seniority #206) “did not receive a precautionary notice” and that “the annotated seniority list [does not] indicate any exemption or PKS reduction for her.” (Respondents’ Post-hearing Brief at p.8.) Ms. Campbell acknowledged her receipt of a Preliminary Notice Not to Reemploy Probationary and Permanent Certificated Personnel for 2013-2014 School Year Due to Layoff, Education Code §§ 44949 and 44955 by affixing her signature to Alphabetical List of Employees Receiving Preliminary Notices 2012-2013 Sign In Sheet. (Ex. 3.) Ms. Campbell additionally completed a Request for Hearing form, which she signed and

dated February 27, 2013. (Ex. 4.) It is factually incorrect to claim that Ms. Campbell was not noticed about her possible layoff. As Assistant Superintendent Standfill testified, the District served Ms. Campbell with notice because, as set forth above in Factual Finding 13b, Ms. Chavez is exempt from layoff, and consequently skipping Ms. Chavez subjects Ms. Seagle to layoff. Ms. Seagle is senior to Ms. Campbell, and Ms. Seagle's seniority enables her to bump Ms. Campbell. The possibility of such a scenario makes it prudent for the District to serve Ms. Campbell with preliminary notice of the layoff because it affects her, notwithstanding that neither the Resolution or the Supplemental Resolution indicates an applicable exemption or PKS reduction for her, and the District has done so.

22. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

LEGAL CONCLUSIONS

1. Section 44949 provides in pertinent part as follows:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefore.

2. Section 44955 provides in pertinent part as follows:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever in any school year the average daily attendance in all of the schools district for the first six months in which school is in session shall have declined . . . , whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, . . . 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 certified 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 on needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish . . . a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group

(c) [S]ervices of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

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. . . .

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrated a specific need for personnel to teach a specific course or course of study . . . and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

3. All notice and jurisdictional requirements set forth in sections 44949 and 44955 were met.

4. The services set forth in Factual Finding 5 are particular kinds of services which may be reduced or discontinued within the meaning of 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 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.

5. 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 service' 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.)

6. The District properly identified the certificated personnel providing the particular kinds of services that the Governing Board directed be reduced or discontinued.

7. Cause exists pursuant to sections 44949 and 44945 to terminate the services provided by respondents Brandy Campbell, Elizabeth Diaz, Victoria Ingledue, Luiza Kartouch, Sara Litch, Valerie Lopez Jennifer Maletz, Dina McGhghy, Mary Moore, Lauren Morris, Patricia Santiago, Jennifer Seagle, Carol Sepulveda, Gregory Solis, Karen Tanaka, Gail Troncoso, Cheryl Wallace and Kathleen White for the 2013-2014 academic year, by reason of Factual Findings 1 through 22, inclusive, and Legal Conclusions 1 through 6, inclusive.

ORDER

Charter Oak Unified School District may give notice to respondents Brandy Campbell, Elizabeth Diaz, Victoria Ingledue, Luiza Kartouch, Sara Litch, Valerie Lopez Jennifer Maletz, Dina McGhghy, Mary Moore, Lauren Morris, Patricia Santiago, Jennifer Seagle, Carol Sepulveda, Gregory Solis, Karen Tanaka, Gail Troncoso, Cheryl Wallace and Kathleen White that their services will not be required for the 2013-2014 school year due to the reduction of particular kind of services.

Dated: May 6, 2013

JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings