

BEFORE THE  
GOVERNING BOARD OF THE  
SCOTIA UNION SCHOOL DISTRICT

In the Matter of the Accusation Against:

LISA STOCKWELL,  
CARRIE BRAZIL,

Respondents.

OAH No. N2007030988

**PROPOSED DECISION**

On April 19, 2007, in Eureka, California, within the facilities of the Humboldt County Office of Education at 901 Myrtle Avenue, Eureka, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter.

Stephen L. Hartsell, Attorney at Law, of School and College Legal Services of California, 901 Myrtle Avenue, Eureka, California 95501-1219, represented Superintendent Jaenelle L. Lampp.

Paul Hagan, Attorney at Law of Bragg, Perlman, Russ, Stunich, Rudolph & Eads LLP, 434 Seventh Street, P. O. Box 1248, Eureka, California 95502-1248, represented respondents Carrie Brazil and Lisa Stockwell.

On April 19, 2007, the parties submitted the matter and the record closed.

**FACTUAL FINDINGS**

1. On April 6, 2007, in her official capacity, Jaenelle L. Lampp, Superintendent, Scotia Union School District (the District), made and filed the Accusation regarding Respondents Carrie Brazil and Lisa Stockwell (respondents).
2. Respondents are fully credentialed and certificated employees of the District. The District extends designation to each respondent as a permanent teacher.
3. On March 8, 2007, the Superintendent presented the District's Governing Board a recommendation that the District give notice that particular kinds of services

(PKS), then offered through the District, be reduced or eliminated by the District for the ensuing school year (2007-2008).

4. On March 8, 2007, the District's Governing Board unanimously adopted Resolution number 2006-2007/001, although one board member was absent.

The resolution recites that, pursuant to Education Code sections 44949 and 44955, it has become necessary for the District to reduce and/or to eliminate, no later than the beginning of the 2007-2008 school year, particular kinds of services in the form of 3.2 full time equivalent (FTE) certificated positions as follows:

3.0	FTE	Elementary Classroom teaching positions;
0.2	FTE	English Language Learner part-time teaching position.

5. By individual letters, dated March 9, 2007, the District's Superintendent dispatched preliminary notices to a number of FTE position holders, including each respondent, that the District's Board of Trustees had an intention to reduce or to eliminate the particular service provided by each person who received the notice. Hence, due to the prospective elimination or reduction of the particular kinds of service now rendered to the District, each of the respondents learned the District would not reemploy the named individuals in the certificated positions each had worked over the past school year.

Also the letter, dated March 9, 2007, which had attached to it the Board's resolution and other pertinent documents, conveyed to each respondent that no certificated employee of the District having less seniority than each respective respondent would be retained for the 2007-2008 school year to render a service that each respondent was credentialed and competent to render to students under the District's competency criteria.

6. The written preliminary notice to Respondents from the Superintendent and the Governing Board's resolution set out legally sufficient reasons of the District's Board's intent to eliminate the courses as taught by respondents.

7. Respondents each timely requested in writing a hearing to determine whether or not cause exists for not reemploying each respondent for the ensuing school year.

8. The Superintendent timely served upon each respondent the Accusation, dated April 3, 2007, and related documents. Each respondent filed timely notices of defense.

9. All pre-hearing jurisdictional requirements were met.

10. Jaenelle L. Lampp, in her capacity as the Superintendent (the Superintendent), appeared at the hearing. She provided credible and persuasive evidence.

The Superintendent established that the prospective elimination of particular kinds of services for the 2007-2008 school year directly results from a prospective shortfall in money for the District's budget. Also, the prospective elimination of particular kinds of service is due to the declining pupil census for the district for the ensuing school year.

Regarding decreasing financial resources, the Superintendent described that in the school year 2003/04 the District had 293 enrolled students, but for the current year (2006/07) there were 230 students enrolled. Forecasts for the ensuing year project a smaller number than this year. The District's past annual budget was about \$1.8 million; however, for the ensuing year, the District must reduce expenditures to operate within a budget of \$1,555,789, which is a reduction of \$196,000 in revenue for the current year.

Furthermore, the District has established a curriculum that revolves around a seven-period school day departmental setting not only for seventh grade and eighth grade classes, but also for fifth and sixth grade classes. (There are currently two seventh grade classes and two eighth grade classes, which have low enrollment respectively at 11 pupils, 11 pupils, 17 pupils, and 18 pupils.) In order to assure the best delivery of instruction to those junior high pupils, the District has formulated a departmental setting that will boost curriculum for the fifth grade and six grade classes to be joined in the multiple period departmental setting for school day instruction. In order to implement the new departmental setting for grade five through grade eight, the Superintendent analyzed the records of teachers for credentials, training certifications (for evidence of inclusion of, at least, 12 units of relevant college-level instruction in critical subject areas), and actual teaching experience so that the Governing Board may approve the new teaching model for instruction through departmental settings. For the coming school year, the District will only maintain six self-contained-classroom-instruction settings that will be limited to kindergarten through grade four classes, but none of those six classrooms will be taught by teachers who are junior on the seniority list to respondents.

In order to partially aid the Governing Board in crafting a reasonable budget for the ensuing school year, the District's Superintendent recommended that certain certificated positions be eliminated due to lack of funds as well as lack of teachers' work within District schools.

11. The Superintendent further established that on learning that the Governing Board was required to initiate layoff proceedings for teacher employees of the District, the Superintendent, with her staff, took reasonable and lawful steps to develop the District's seniority list for the District's teachers.

The Superintendent accurately attended to identifying the District's teachers who were properly designated as District teachers. She studied and set forth on the District's seniority list dates calculated as the hire dates or first date of paid service for each teacher of the District.



The Superintendent noted that respondents were the teachers with the least experience in teaching under the departmental model for instruction. Neither respondent has experience in teaching in any departmental setting. Even though under the mandate of the No Child Left Behind federal law, which entails funding components to districts, both respondents may soon acquire designation of being "highly qualified" as elementary teachers in only self-contained classroom settings. However, neither respondent has gained Board approval of their respective abilities or eligibility to teach in departmental instructional settings.

12. The Superintendent identified that for the ensuing year District will retain two teachers, who are junior on the seniority list to respondents, but who have certain experience and qualifications that are essential for the District's new model that has been devised for instruction during the ensuing school year. The teachers, junior to respondents who will be retained, are Mr. Shawn Barsanti and Mr. Saul Lewis.

Mr. Saul Lewis holds a multiple-subject credential. However, he is in the process to soon be designated a "highly qualified" teacher in elementary and middle school instruction under the HOUSSE<sup>1</sup> process. Mr. Lewis has also been a basketball coach for four years. Due to his record reflecting 13 units of instruction at the college level in physical education, Mr. Lewis is eligible to teach in that specialized area of physical education. Mr. Lewis is a

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<sup>1</sup> "HOUSSE" signifies: "High Objective Uniform State Standard of Evaluation" under the guidelines of the California Department of Education, Professional Development and Curriculum Support Division, through a booklet titled, *NCLB (No Child Left Behind) Teacher Requirements Resource Guide*.

In part the booklet points out that:

The HOUSSE option is . . . the method set by the State for all teachers who are 'Not New' to the profession to demonstrate subject matter competency. . . .

The HOUSSE consists of two parts. Part one allows teachers to demonstrate subject matter competency through a point system that is based on the following:

- (i) Years of experience teaching in the grade span or subject (no more than one-half of the total necessary points can be based on years of experience);
- (ii) Core academic coursework in the assigned grade span or subject;
- (iii) In-depth standards aligned professional development; and
- (iv) Service to the profession in the relevant core academic subject area.

The second part of the HOUSSE consists of direct observation or portfolio assessment in the grade span or subject taught and is only conducted if part one does not identify sufficient experience, coursework, professional development, or service to demonstrate subject matter competence. Finally, if the teacher does not yet meet the requirements, then subject matter competency can be demonstrated through completion of an individualized professional development plan or completion of the Peer Assistance and Review Program for Teachers. . . .

school-wide curriculum coach for science, which will allow him to earn "points" under the leadership criteria of the HOUSSE process.

Mr. Shawn Barsanti holds a multiple-subject credential. However, he has been determined to soon hold a designation so as to acquire "highly qualified teacher" status for elementary and middle school instruction of history and government courses. Mr. Barsanti teaches mathematics at the District's elementary school level. Also, Mr. Barsanti teaches two periods of physical education and he is pursuing a designation of "highly qualified" for physical education under the HOUSSE process. Mr. Barsanti is the athletic director and the basketball coach for his school. Also, during the past school year, he was the social studies curriculum coach for the entire school; hence, he acquired "points" under the leadership criteria of the HOUSSE process.

Although Mr. Barsanti and Mr. Lewis are junior on the seniority list to respondents, the two junior teachers have each four years or five years of experience teaching in departmental settings.

13. The Superintendent determined that neither Respondent Stockwell nor Respondent Brazil has the training, experience or credential to teach during the ensuing year to perform in teaching positions under the District's revised departmentalized instructional model for fifth grade and sixth grade pupils when they are measured against two teachers, who are junior on the seniority list, but who will be retained to teach during the coming school year.

14. On March 9, 2007, the Superintendent caused to be delivered to teachers, who were affected by the Board's resolution, notices to affected permanent and probationary teachers that their services would not be needed by the District for the next school year.

#### *Respondents' Contentions and Arguments*

15. Respondents contend the District's action is procedurally defective and improper insofar as the prospective layoff of the subject credentialed employees does not fully account for seniority of those persons in light of the District's retention of junior, credentialed employees who are being retained to teach subjects under a new instructional model where the teachers who are to be retained have nearly identical credentials as respondents. Respondents argue that the Superintendent did not afford them opportunities to become "highly qualified teacher" status under the HOUSSE process so as to enable them to secure the qualifications for them to be retained as opposed to the District retaining teachers who are junior to respondents relative to the District's seniority list. Respondents argue that an inference may be drawn that the District's layoff proceeding that adversely affects their respective future with the District is contrary to the California Department of Education policy "that nothing in the No Child Left Behind Act requires that teachers who have not yet demonstrated that they meet NCLB teacher requirements be fired." Respondents contend that the Board did not make a decision until March 8, 2007, to



departmentalize instruction to fifth grade and sixth grade pupils and that date was too late to afford them notice of a basis to meet the District's needs for teacher services for the ensuing school year.

Respondents' contentions and arguments are without merit and are rejected as bases to dismiss any aspect of the accusations.

### *Individual Respondents*

#### *Lisa Stockwell*

16. Respondent Lisa Stockwell (Respondent Stockwell) has a first date of paid service with the District as a probationary-one teacher as of August 23, 1995. (She has devoted 12 years to the District out of her entire 13-year long career as a teacher.) Respondent Stockwell now holds a clear, multiple-subject credential with a CLAD certification.

Respondent Stockwell teaches fourth grade pupils in a self-contained classroom at school known as the "Upper Complex," which is a facility for public school instruction to pupils in kindergarten through sixth grade. Respondent Stockwell has instructed pupils in the fourth grade level over the past two school years. While employed by the District, she has always taught at the kindergarten through fifth grade levels.

Respondent Stockwell acknowledges that she does not have experience or college-level coursework that has made her eligible to acquire highly qualified teacher status.

Respondent Stockwell believes that she has specialized training that enables her to teach in a departmental setting. She has taught at six different grade levels (kindergarten to grade five) over a tenure that has seen her make rapid changes in teaching duties.

Only on March 9, 2007, which was one day after the Board's decision to departmentalize instruction at the fifth grade and sixth grade levels, did Respondent Stockwell learn that her teacher's position might be adversely affected by the Board's new policy. However, she acknowledged that the Superintendent dispatched circulars called "Monday Memo" that informed teachers of a June 30 deadline to acquire from the District "highly qualified teacher status."

Respondent Stockwell has 11.5 units of college level coursework in physical education. But, that total number of units do not render her eligible to teach physical education.

Respondent Stockwell has 14 units of college level coursework in science. She has taught science at grade levels kindergarten through fifth grade.

She has 94 units of coursework in social studies, which includes only nine units of history coursework. The District has not determined Respondent Stockwell to be viewed as a highly qualified teacher for either science or history. She has taught history at the fifth grade level.

Respondent Stockwell asserts her belief that the District has not "reached out to her" for the purpose of aiding her to become eligible to gain the highly qualified teacher status.

However, Respondent Stockwell provided no competent evidence that the District has retained any teacher junior to her for which Ms. Stockwell possesses a credential and is currently competent to teach. Nor did Respondent Stockwell establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District.

*Carrie Brazil*

17. Respondent Carrie Brazil (Respondent Brazil) has a first date of paid service as a probationary-one teacher as of August 23, 2000. She holds a clear, multiple-subject credential with a CLAD emphasis and a supplementary authorization in English.

Respondent Brazil teaches sixth grade pupils in a self-contained classroom at "upper school complex," which houses pupils in the fourth grade through six grade.

Respondent Brazil has four units of college level coursework in physical education. And, Respondent Brazil has 20 units of college level coursework in science, and 34 units of coursework in social studies.

Respondent Brazil met with the Superintendent regarding the District's plan to use a departmental model for instruction for fifth grade and sixth grade pupils next year. She believes that her experience at teaching science qualifies her for other assignments in the departmental structure. She has taught in the District over three years at the fifth grade level as well as four years at the sixth grade level. Hence, she argues that she has ample experience with the two grades that are to be included in the new departmental model of instruction.

Respondent Brazil believes that she qualifies under California Department of Education standards to acquire "highly qualified teacher" status.

However, Respondent Brazil provided no competent evidence that the District has retained any teacher junior to her for which Ms. Brazil possesses a credential and is currently competent to teach according to the District's revised departmentalized instruction model for the coming school year. Nor did Respondent Brazil establish that the Superintendent committed a procedural error in the initiation of the layoff action that adversely affects her teacher position with the District.

*District's Reasonable Basis to Proceed*

18. The Superintendent demonstrated that she exerted reasonable and equitable steps to disseminate information, through her "Monday Memo" circulars, and other informal communication, as sent to all teachers, regarding the deadline or suspense-date for teachers to obtain with the District's approval HQT (highly qualified teacher) status so that such credentialed employees might gain proficiency to be oriented into teaching in departmental instruction settings. The Superintendent met with respondents, separately, to review records in their respective quests to become eligible to gain highly qualified teacher status. The Superintendent received transcripts from each respondent during respective meetings; however, the records for respondents did not meet the requisite demands to secure the HQT status before the date the Superintendent was required to present respondents with the preliminary notice of the layoff action.

19. During the immediate past school year, the Board has found that the District faces a prospective budget shortfall in that the amount of funding from the State of California may be markedly reduced for the upcoming school year. Hence, the Board has determined that sufficient money is not available to operate the same number of teacher and administrator positions and programs during the ensuing school year so that the District must prospectively reduce or eliminate a number of FTE of particular kinds of services, including the positions held by respondents.

20. No competent and credible evidence establishes that as a result of the proposed elimination of the full time equivalent positions respectively held by respondents, the District will retain any teacher who is junior to respondents to perform services for which respondents have been certificated or found to be competent to teach in such FTE positions for the next school year.

21. The recommendation of the Superintendent and the Board's decision to eliminate or discontinue a total of 3.2 FTE positions, including the positions held by each respondent, were neither arbitrary nor capricious. Rather, the Superintendent's recommendation and the Board's decision were within the proper exercise of the District's discretion.

22. The District's proposed elimination or discontinuation of a number of FTE positions, including the positions respectively held by respondents, for the ensuing school year is related to the welfare of the District and its overall student population.

23. The Board determined that it will be necessary, due to the elimination of particular kinds of services, to decrease the number of teachers before the beginning of the next academic year. The Board lawfully directed the notification to respondents of the elimination of the certificated positions held by each respondent.



## LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955.

2. The District provided all notices and other requirements of Education Code sections 44949 and 44955. This conclusion of law is made by reason of the matters set forth in Factual Findings 1 through 9, inclusive.

3. Evidence Code section 664 establishes a presumption that the action or official duties of a public entity, such as the District and its governing board, have been regularly performed. Respondents offer no evidence to rebut the presumption that the District has properly performed actions related to the procedures that seek the non-reemployment of respondents.

4. Respondents were not persuasive that the law that pertains to teacher layoff proceedings dictates that the District may assign them as teachers, with their consent, to teach at a grade level for which such teacher does not specifically hold a valid credential based upon the college-level coursework completed respectively by the teacher. By exerting such reassignment for respondents, each respondent would be retained to teach classes in the District's new departmentalized model for which two junior teachers have been assigned to teach. But the underpinning of Education Code 44256, subdivision (b),<sup>2</sup> turns on the exercise of discretion by the subject school district to designate a teacher to fill a position for which the teacher does not hold a credential. In this matter, respondents offered no legal basis to require the District to view their college level coursework as

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<sup>2</sup> Education Code section 44256, subdivision (b), provides, in part:

The holder of a multiple subject teaching credential or a standard elementary credential who has completed 20 semester hours of coursework or 10 semester hours of upper division or graduate coursework approved by the commission at an accredited institution in any subject commonly taught in grades 9 and below shall be eligible to have that subject appear on the credential as authorization to teach the subject in departmentalized classes in grades 9 and below. *The governing board of a school district by resolution may authorize the holder of a multiple subject teaching credential or a standard elementary credential to teach any subject in departmentalized classes to a given class or group of students below grade 9, provided that the teacher has completed at least 12 semester units, or six upper division or graduate units, of coursework at an accredited institution in each subject to be taught. The authorization shall be with the teacher's consent.* However, the commission, by regulation, may provide that evidence of additional competence is necessary for instruction in particular subjects, including, but not limited to, foreign languages. The commission may establish and implement alternative requirements for additional authorizations to the multiple subject credential on the basis of specialized needs. (Emphasis added.)

meeting such standards as to warrant their retention to teach in a departmentalized setting in place of two teachers, with less seniority with the District, but who have taught in the departmentalized format for four or five years.

5. Board Resolution 2006-2007/001, as adopted on March 8, 2007, stated that it was the Board's determination that it was necessary to reduce or eliminate particular kinds of services for the 2007-2008 school year. A decline in average daily attendance was not cited as a basis for eliminating 3.20 full time equivalent certificated positions in the District's corps of teacher positions.

The preliminary layoff notice, dated March 8, 2007, stated that the reason for the notice was due to a decision "to reduce particular kinds of services in the District beginning not later than at the commencement of the 2007-2008 school year. In the opinion of the Governing Board, it therefore will be necessary to decrease the number of full-time equivalent (FTE) certificated employees in the District." The preliminary notice did not mention a decline in average daily attendance.

Education Code section 44955, subdivision (b), authorizes a district's governing board to terminate the services of not more than a corresponding percentage of employees whenever in any school year the average daily attendance for all schools in the first six months has declined below the corresponding period of either of the previous school year or whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year.

Education Code section 44949, subdivision (a) requires that no later than March 15 and before an employee is given notice that his or her services will not be required for the ensuing year, the governing board and the employee will be given notice by the superintendent that it has been recommended that preliminary notices be given to employees and the reason for that recommendation.

The preliminary notice is intended to insure that affected employees are informed of the facts upon which they can reasonably assess the probability that they will not be reemployed. The preliminary notice must state the reasons for the recommendation. (*Karbach v. Bd. of Education* (1974) 39 Cal.App.3d 355.)

A notice that specifies both grounds, that is PKS reduction/elimination and declining average daily attendance, is suspect. (See *Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648.) And, where a notice specifies one of the two statutory reasons for a



teacher layoff, a governing board may not later attempt to justify dismissal on the other ground. (*Karbach v. Bd. of Education, supra*, 39 Cal.App.3d 355.<sup>3</sup>)

A governing board's decision to reduce or eliminate particular kinds of services need not be tied to any statistical computation, such as a projected decline in the number of students in the affected district. The number of terminations by a PKS reduction of certificated employees depends entirely on the district's governing board's decision regarding how many, or which, services to reduce or to eliminate. It is wholly within the Board's discretion to determine the numbers by which the District will reduce a particular service. (*San Jose Teachers Assn. v. Allen, supra*, 144 Cal.App.3d 627.)

The District's Governing Board did not propose layoffs for any reason not specified in the preliminary notice as sent to certificated employees. The projection of declining pupil attendance or enrollment, as offered in evidence by the superintendent, was one of a few reasons for consideration by that professional education administrator offered as the ground for teacher layoff to the subject governing board for its decision to eliminate particular kinds of services. In this matter, the reduction of particular kinds of services was not a fraudulent, arbitrary or capricious action. (*Campbell Elementary Teachers Assn. v. Abbott* (1978) 76 Cal.App.3d 796.)

The Scotia Union School District Governing Board's decision to eliminate 3.2 FTE positions for the 2007-2008 school (which may have been based in some measure on a projected decline in enrollment of pupils for the 2006-2007 school year) was a discretionary decision that constituted a valid basis for reduction in particular kinds of service under the Education Code.

6. Pursuant to Education Code sections 44949 and 44955 cause exists to give respondents notice of the discontinuation of full-time equivalent positions in the particular kinds of services rendered by respondents, by reason of the matters set out in Factual Findings 10 to 14 inclusive, 18 to 21 inclusive and 23.

7. The discontinuation of the subject particular kinds of service provided by each respondent relates solely to the welfare of the District and its students within the meaning of Education Code sections 44949 and 44955, by reason of the matters in Factual Finding 22.

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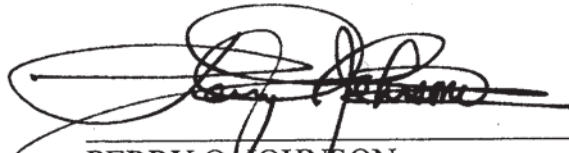
<sup>3</sup> In *Karbach*, the governing board gave notice to probationary teachers that such employees would not be reemployed for the ensuing school year on the ground of a decline in average daily attendance. But, at the administrative adjudication hearing, the presiding officer allowed the board to present evidence justifying the decision to eliminate positions of the affected probationary teachers on the new theory of reduction in particular services. The Court of Appeal held that the governing board had no authority to terminate the teachers for any reason not specified in the original preliminary notice and that the proposed terminations on the ground of reduction in services were not valid.



## ORDER

1. The Accusation served on each respondent is sustained.
2. Final notice may be given to Respondents Lisa Stockwell and Carrie Brazil that their respective services will not be required for the 2007-2008 school year because of the reduction or discontinuance of the particular kinds of services by the District.

DATED: May 3, 2006



PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings