

BEFORE THE  
GOVERNING BOARD OF THE  
CHAWANAKEE UNIFIED SCHOOL DISTRICT  
COUNTY OF MADERA  
STATE OF CALIFORNIA

In the Matter of the District Statement of  
Reduction in Force of:

KAYLA WEST,

Respondent.

OAH No. 2015040086

**PROPOSED DECISION**

This matter was heard before Administrative Law Judge Jonathan Lew, Office of Administrative Hearings, State of California, on April 21, 2015, in O'Neals, California.

Bryan G. Martin, Attorney at Law, with Atkinson, Andelson, Loya, Ruud & Romo, represented the Chawanakee Unified School District.

Kayla West appeared on her own behalf.

Testimony and documentary evidence were received, and oral closing arguments were made. The record was closed, and the matter was submitted for decision on April 21, 2015.

**FACTUAL FINDINGS**

1. Robert Nelson is the Superintendent of the Chawanakee Unified School District (District). The actions of Superintendent Nelson, and those of the District's staff and Governing Board (Board), were taken solely in their official capacities.

2. Kayla West (respondent) is a certificated probationary employee of the District.

3. On March 10, 2015, Superintendent Nelson recommended to the Board, pursuant to Education Code sections 44949, 44955, and other applicable provisions of law, that notice be given to respondent and other affected employees that their services will not be required for the ensuing 2015-2016 school year, and stating the reasons therefor.

4. On March 10, 2015, the Board adopted Resolution No. 20-2014/2015, reducing or eliminating particular kinds of services (PKS) of the District, and affecting 1.49 Full Time Equivalent (FTE) certificated positions.

5. The Resolution states that it will be necessary to reduce the following PKS of the District, and to decrease a corresponding number of certificated employees in the District no later than the beginning of the 2015-2016 school year:

<b>SERVICE</b>	<b>FTE</b>
One 9-12 Teaching Position, Special Education at Minarets High School	0.49
One 9-12 Teaching Position, English at Minarets High School	1.0
<b>Total</b>	<b>1.49</b>

6. The services set forth in the PKS Resolution are “particular kinds of services” that may be reduced or discontinued within the meaning of Education Code section 44955. There was no evidence that the Board’s decision to reduce or discontinue the identified services was arbitrary or capricious. The reduction or elimination of the services set forth in the PKS Resolution constituted a proper exercise of the Board’s discretion, within the meaning of section 44955.

7. As a result of the above PKS reductions and/or eliminations, the Board determined that it was necessary to decrease 1.49 FTE positions for certificated employees in the District at the close of the 2014-2015 school year, in accordance with Education Code section 44955.

8. On March 11, 2015, Superintendent Nelson gave respondent written notice, pursuant to Education Code sections 44949 and 44955 of his recommendation to the Board that respondent’s services would be reduced for the ensuing school year, and the reasons therefor.

9. Respondent timely filed a Request for Hearing to determine whether there was cause for not reemploying her full-time for the 2015-2016 school year.

10. On March 26, 2015, a Statement of Reduction in Force was filed on behalf of the District, and caused to be served on respondent. Respondent timely filed a Notice of Participation requesting a hearing in this matter.

11. Jurisdiction for the subject proceedings exists pursuant to Education Code sections 44949 and 44955.

### *Respondent's District Seniority*

12. Respondent holds a Single Subject English credential. Her District seniority date is August 14, 2014. She is a probationary full-time District employee assigned to teach English at Minarets High School.

13. Michael Vaughan is another District probationary employee who holds a Single Subject English credential. His District seniority date is also August 14, 2014. Mr. Vaughan and respondent are listed on the District's Seniority List, respectively, as numbers 61 and 62 in order.

14. Superintendent Nelson testified at hearing. He explained that the 1.0 FTE reduction in English at Minarets High School resulted in respondent's position being discontinued. Mr. Nelson determined that respondent and Mr. Vaughan had the same date of first paid service with the District. He applied tie-break criteria that had been adopted by the Board in 2006, and that had been incorporated into the collective bargaining agreement between the District and the teachers. (Appendix C Criteria to Determine the Order of Termination Among Certificated Employees With the Same Date of Paid Service.) The tie-break criteria for determining the order of termination of certificated employees is to be applied sequentially. It provides in part:

A. Credentials and experience to teach or serve in a particular program or provide a particular service of need by the District.  
Rating: +1 per credential, +1 per year of experience

B. Credentials and experience to teach in a special education program (e.g., bilingual, special education)  
Rating: +1 per credential, +1 per year of experience

C. Years of experience previous to current employment as a full-time, credentialed teacher in a probationary/permanent, K-12 teaching situation in a public/private school.  
Rating: +1 per year

15. In applying the above tie-break criteria, Superintendent Nelson determined that respondent and Mr. Vaughan remained tied after applying criteria A and B. He gave credit to Mr. Vaughan under criterion C as Mr. Vaughan had taught in a K-12 teaching situation over a four-month period (01/27/14 to 05/30/14) in the Salinas Union High School District. Respondent had no comparable prior employment in a K-12 teaching situation. This resulted in Mr. Vaughan being ranked higher than respondent on the District's seniority list.

It was established that the District correctly applied the tie-break criteria with regard to respondent and Mr. Vaughan.

16. Respondent indicated that she had been provided earlier information from her principal, Daniel Ching, suggesting that her position was safe. She was also advised that Mr. Vaughan's seniority date was three days earlier than hers. When she learned that they actually had the same District hire date, she proceeded to hearing in order to learn what tie-break criteria had been applied by the District. Up until the time of hearing, she had not been provided with the District's tie-break criteria.

17. Respondent believes she should be given tie-break credit for her service in other District programs. For example, she provides instruction in English 9, Honors English, mentors students regarding peer conflicts, and Drama classes. She also has experience (seven years) in theatre, and can coach soccer.

18. Superintendent Nelson testified credibly that the tie-break criteria were applied correctly. His evaluation of credentials and experience were in context of teaching English, and the other particular programs described by respondent were not a relevant consideration. He further indicated that the District is hopeful that it will retain respondent in an alternative education position. This would require respondent to obtain a supplementary credential, and to be assigned to a K-12 blended learning program through the Chawanakee Academy.

#### *Welfare of the District and Its Students*

19. The cause for not re-employing certificated employees relates solely to the welfare of the District's schools, programs and the pupils thereof within the meaning of Education Code section 44949. The Superintendent correctly identified the certificated employees providing the particular kinds of services that the Board directed be reduced or discontinued. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

20. Any other assertions raised by the parties at hearing which are not addressed above are found to be without merit.

### LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955. All notices and other jurisdictional requirements of sections 44949 and 44955 were met.

2. 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.) The burden is on the District to demonstrate that the reduction or elimination of the particular kinds of services is reasonable and that the District carefully considered its

needs before laying off any certificated employee. (*Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 807-808.)

3. The services identified in PKS Resolution No. 20-2014/2015 are particular kinds of services that may be reduced or discontinued pursuant to sections 44949 and 44955. The description of services to be reduced, both in the Board's Resolution and in the notice, adequately described 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.)

4. Legal cause exists to reduce or eliminate 1.49 FTE of particular kinds of services offered by the District as set forth in detail in the Factual Findings. 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 for the reduction or discontinuance of services relates solely to the welfare of the District's schools and pupils within the meaning of Education Code section 44949.

5. Education Code section 44955 provides: "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." The District's tie-break criteria were properly adopted by the Board in 2006. The District applied the criteria correctly in this case by reason of the matters set forth in Findings 12 through 18.

6. Cause exists for the reduction of the particular kinds of services and for the reduction of full-time equivalent certificated positions at the end of the 2014-2015 school year pursuant to Education Code sections 44949 and 44955. No employee with less seniority than respondent is being retained to render a service which respondent is certificated and competent to render.

The District's Board of Trustees may give final notice to respondent, that her services will be reduced by 1.0 FTE for the ensuing school year, 2015-2016.

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## RECOMMENDATION

Cause exists for the reduction of 1.49 FTE certificated positions at the end of the 2014-2015 school year. Notice shall be given to respondent that her services will be reduced by 1.0 FTE for the ensuing school year, 2015-2016, because of the reduction and discontinuance of particular kinds of services. Notices shall be given in inverse order of seniority.

DATED: April 23, 2015

/s/  
JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings