

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

In The Matter Of The Accusations  
Against:

BONNIE ALBERTSON and  
TARA MARTZ,

Respondents.

OAH No. N2006040076

**PROPOSED DECISION**

Administrative Law Judge M. Amanda Behe, Office of Administrative Hearings, State of California, heard this matter on April 26, 2006, at the Middletown Unified School District, Windsor, California.

Suzanne K. Reed, Senior General Counsel, School and College Legal Services of California, represented the Middletown Unified School District.

James D. Allen, Attorney at Law, represented respondents Bonnie Albertson and Tara Martz. Ms. Albertson was not present at the hearing. Ms. Martz was present at the hearing.

The matter was submitted on April 26, 2006.

**FACTUAL FINDINGS**

1. The Middletown Unified School District (hereinafter "the District") operates elementary, middle and high schools. Donald K. Martin, Ed.D., is the Superintendent of the District.

2. On March 8, 2006, Dr. Martin gave notice to the Governing Board in accordance with Education Code section 44949 and 44955 of his recommendation that particular kinds of services being provided by the District be reduced or discontinued, specifically:

1.0 FTE<sup>1</sup> Secondary Departmentalized English/Social Science

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<sup>1</sup> The acronym "FTE" refers to a full-time equivalent position.

- 1.0 FTE Secondary Departmentalized Math/Science
- 1.0 FTE Secondary Alternative Education Program
- 1.0 ROP/Work Experience Program Services
- 2.0 FTE Elementary School Instructional Service.

Dr. Martin further recommended that six full-time equivalent (FTE) certificated employees be notified that their services would not be required for the ensuing school year.

3. Board Resolution No. 05-05-06, adopted on March 8, 2006, directed the reduction or elimination of the following particular kinds of services:

- 1.0 FTE Secondary Departmentalized English/Social Science,
- 1.0 FTE Secondary Departmentalized Math/Science
- 1.0 FTE Secondary Alternative Education Program
- 1.0 ROP/Work Experience Program Services
- 2.0 FTE Elementary School Instructional Service.

The Governing Board directed Dr. Martin to initiate and pursue procedures to not reemploy six full-time equivalent certificated employees for the ensuing school year because of the discontinuation or reduction in services.

4. Before March 15, 2003, the District served affected employees with written notice that it had been recommended that notice be given pursuant to Education Code sections 44949 and 44955 that their services would not be required for the ensuing school year and setting forth the reasons for the recommendation.

Each notice further advised the employee of his/her right to a hearing, including that such a request must be delivered in writing, and that the failure to request a hearing would constitute the waiver of the right to a hearing.

5. Respondents Bonnie Albertson and Tara Martz filed timely and proper requests for hearing.

6. On March 14, 2006, Dr. Martin filed Accusations which were timely served on respondents as required by the Education Code, and the information that a Notice of Defense must be filed within five days pursuant to Education Code section 44944, subdivision (c)(1).

7. Respondents Albertson and Martz filed timely and proper Notices of Defense.

8. Dr. Martin described that his recommendation and the Board Resolution were required by the District's budget situation, and that elimination of excess positions was necessary to resolve fiscal problems. None of the services to be reduced or eliminated are mandated services.

9. In implementing the Governing Board's Resolution No. 05-05-06 Dr. Martin had notices sent to a seven employees, including two elementary teachers with the same first date of paid service. Later analysis of the budget indicated that sufficient funds were available to reinstate some of the positions originally scheduled for lay-offs, and the related notices were rescinded. The reinstated positions were in Secondary Departmentalized English/Social Science, Secondary Departmentalized Math/Science, and one of the Elementary School Instructional Service positions. The positions were reinstated on the basis of District instructional needs, and to limit the impact on teachers delivering services to the greatest number of students.

The District reinstated Jenny Keyport, a middle school Science teacher who holds a single subject Science credential. Ms Keyport's first date of paid service was August 28, 2003, and she is senior to respondent Martz, who was hired August 30, 2005. Respondent Martz holds a multiple subject credential. The District also reinstated Dawn Ginn and David Leonard, both of whom have the seniority date of September 2, 2004, and hold multiple subject credentials.

The four least senior District teachers, all with the seniority date of August 31, 2005, are Katherine Hawley, Louise Owens, Marc Morita and respondent Martz. Ms. Hawley, Mr. Morita and respondent Martz have multiple subject credentials. Ms. Owens hold a single subject Physical Education credential. Mr. Morita has a supplementary authorization in English and taught it at the secondary level for four years. As a middle school English teacher Mr. Morita serves approximately 150 students per day. In light of the concern to not cut teachers delivering services to a large number of students Mr. Morita was reinstated.

Respondent Martz does not have the seniority or qualifications to fill any of the positions reinstated by the Governing Board. Kim Ferguson, who is currently in an elementary school pull-out position supported by the general fund, was hired August 30, 2001, and holds a multiple-subject credential. She is senior to respondent Martz and can "bump"<sup>2</sup> her.

10. On April 19, 2005, the Governing Board created a middle school Opportunity Class for the 2006-07 School Year, and the position was thereafter posted. The collective bargaining agreement with the teachers' association provides that a teacher may request a transfer to a different school or reassignment to another grade level of subject. Such a request must be filed within ten days of the posting of the notice of a vacancy. Requests are evaluated on the basis of educational needs, employee aptitude and seniority.

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<sup>2</sup> Generally speaking, a senior teacher whose position is discontinued has the right to a position held by a junior teacher if the senior teacher is properly credentialed. That displacement of a junior teacher is known as "bumping." The seniority rule is not absolute, and a junior teacher with a needed credential/skill may be retained even if a more senior teacher is terminated. Such "skipping" is recognized by statute (Education Code section 44955, subdivision (d)(1)) and appellate law. *Santa Clara Federation of Teachers, Local 2393 v. Governing Board of the Santa Clara Unified School District* (1981) 116 Cal.App.3d 831.

Dr. Martin described that the opportunity class position could be filled by a teacher with a multiple subject credential or a single subject credential with multiple authorizations. He opined that respondent Martz would have the necessary credentials and could apply for the position.

11. The District's Regional Occupational Program (ROP) is supported by a combination of approximately \$70,000 from the general fund and \$195,000 in state funds monitored by the County Office of Education. Of the \$195,000 approximately \$90,000 is spent on teacher salaries; the general fund money supplements the amount paid for teachers by ROP funds. Most of the six teachers in the ROP program teach regular as well as ROP classes. For example, Robert Bolach is a full-time teacher who teaches only two ROP sections.

The Governing Board's resolution reduced the District's Regional Occupational Program (ROP), by 1.0 FTE ROP/Work Experience Program Services. Respondent Albertson's seniority date is April 17, 2000, and she holds a Vocational Education (Computer Applications, Office Occupations, Small Business Owner) credential, and teaches work experience in the ROP program.

The other ROP teachers include Robert Bolach who was hired August 28, 1988, and has single subject Industrial Arts and Agricultural Mechanics credentials. He teaches agricultural mechanics in the ROP program, and other classes in the secondary school. Patsy Pachie was hired August 28, 1992, and Dan Renninger was hired August 31, 1999. They are vocational education teachers significantly senior to respondent Albertson. Mr. Renninger holds a single subject Social Science credential with an authorization in Computer Concepts and Applications; Ms. Pachie holds a single subject Agriculture credential and a multiple subject credential. Jennifer Pyzer holds a single subject Business Education credential and teaches in the ROP program; her seniority date is August 27, 1991. Karen Jones holds a Vocational Education (Agricultural Business Management and Marketing) credential, and was hired August 27, 2002.

Respondent Albertson's vocational education credential authorizes her to teach business and non-technical computer applications such as bookkeeping, file management, etc. She does not hold a credential to teach floral design, animal husbandry, or agricultural mechanics. No District employee other than respondent Albertson teaches business experience, and she does not have a credential that would let her "bump" any other employee.

12. The District must be solvent to provide educational services, and cost savings are necessary to resolve its financial difficulties. The Board's decision to limit the effect of reductions for teachers who serve the greatest number of students is a proper exercise of its discretion. Respondents did not establish that the proposed reductions in services would violate any statutory or regulatory requirement governing the District.

## LEGAL CONCLUSIONS

1. Education Code section 44944, subdivision (a), provides in relevant part that:

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, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

2. Education Code section 44955 provides:

(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 ... 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 certificated 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 of 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 in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, 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. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

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 demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, 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. Education Code sections 44949 and 44955 establish jurisdiction for this proceeding. The notice and jurisdictional requirements set forth in Education Code sections 44944 and 44945 were met.

4. The services identified in Board Resolution No. 05-05-06 are particular kinds of services that could be reduced or discontinued pursuant to Education Code section 44955. (*Rutherford v. Board of Trustees of Bellflower Unified School District* (1976) 64 Cal.App.3d 167). The Board's decisions to reduce or discontinue the identified services were neither arbitrary nor capricious, and were a proper exercise of its discretion. The reduction or discontinuation of particular kinds of services related to the welfare of the District and its pupils.

5. 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. (*Santa Clara Federation of Teachers, Local 2393, v. Governing Board of Santa Clara Unified School District* (1981) 116 Cal.App.3d 831).

No employee with less seniority than either respondent is being retained to render a service which such respondent is certificated and competent to render.

Respondent Martz argues, without citation to authority, that the District is required to continue her employment in the Opportunity Class, a position which does not exist at the current time. The argument is not persuasive. The relative rights of affected teachers are determined as of the March 15 notice. Respondent Martz may apply for the position, consistent with the collective bargaining agreement. Should the District select another employee to fill the position respondent Martz may have reemployment rights, but she is not entitled to a position which was not in existence as of the date of the March 15 notice.

#### ORDER

Notice shall be given to respondents Bonnie Albertson and Tara Martz that their services will not be required for the 2003-2004 School Year because of the reduction and discontinuance of particular kinds of services.

Dated: May 4, 2004

  
M. AMANDA BEHE

Administrative Law Judge

Office of Administrative Hearings