

BEFORE THE  
GOVERNING BOARD OF  
LOS ALTOS SCHOOL DISTRICT  
COUNTY OF SANTA CLARA, CALIFORNIA

In the Matter of the Accusation Against:

KRISTINA ANDERSON, SUZANNE  
CHANDLER, DOUGLAS CORE, AARON  
KERNS AND ANNA UHM,

Respondents.

OAH No. 2010021062

**PROPOSED DECISION**

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Los Altos, California on April 19 and 20, 2010.

Richard Noack, Attorney at Law, Hopkins & Carley, represented the Los Altos School District.

Christopher E. Schumb, Attorney at Law, represented all respondents.

The matter was submitted for decision on April 20, 2010.

**FACTUAL FINDINGS**

1. Timothy L. Justus made the accusation in his official capacity of Superintendent of Los Altos School District.
2. Respondents Kristina Anderson, Suzanne Chandler, Douglas Core, Aaron Kerns, and Anna Uhm are certificated employees of the district.
3. It was stipulated that all of the jurisdictional requirements of Education Code sections 44949 and 44955 have been met in this proceeding. With respect to respondent Chandler, the district did not challenge whether she timely filed a notice of defense, and agreed that she may be considered a respondent in this proceeding.
4. On March 8, 2010, the Governing Board of the Los Altos School District adopted Resolution No. 09/10-15. The Board resolved to reduce or discontinue the

following services for the 2010-2011 school year:

<u>Services</u>	<u>FTE<sup>1</sup> Reduction</u>
Kindergarten through Grade 6 Classroom Teachers	10.5 FTE
Foods Classroom Teachers Grades 7 and 8	0.67 FTE
Art Classroom Teachers Grades 7 and 8	0.67 FTE
Drama Classroom Teachers Grades 7 and 8	0.17 FTE
Teachers in Charge Grades 7 and 8	1.17 FTE
History Classroom Teachers Grades 7 and 8	0.33 FTE
Science Classroom Teachers Grades 7 and 8	0.83 FTE
Math Classroom Teachers Grades 7 and 8	0.83 FTE
Total Full-Time Equivalent Reduction	15.17 FTE

5. The services set forth above are particular kinds of services that may be reduced or discontinued within the meaning of Education Code section 44955. None of the reductions is for a mandated service.

6. Respondent Suzanne Chandler holds single subject credentials in Science and Industrial Arts. She is a permanent employee of the district, and holds a .83 FTE Science Classroom Teacher Grades 7 and 8 position. The district assigned Chandler a seniority date of August 20, 2007. It was stipulated that her first date of paid service was August 19, 2004, and for that reason, her seniority date is three years earlier than the date the district thought she had.

Chandler received a layoff notice by reason of the .83 FTE reduction in Science Classroom Teachers Grades 7 and 8. At the time the notices were issued, Chandler was the most junior Science instructor. By virtue of her revised seniority date, Chandler is now senior to Greg Davies, who holds a 1.0 FTE Science Classroom Grades 7 and 8 teaching position with the district. It is not disputed that this is a service that Chandler is credentialed and competent to render. Davies did not receive a layoff notice. Chandler may not be terminated under these circumstances. (Ed. Code, § 44955, subd. (b).)

The district argues that it should be allowed to retain Davies and reduce Chandler because Davies holds a 1.0 FTE position, and Chandler holds only a .83 FTE position. (The difference between the two positions is one period per day.) The contention is found to be unpersuasive. The only basis that can be asserted for skipping Davies is that it would have been impracticable for the district to split the full-time position to accommodate Chandler's seniority. The district never considered this question prior to issuing the March 15 notices because the district had given Chandler an incorrect seniority date. This only became an issue at hearing. Assistant Superintendent Jeffrey Baier testified that in his experience it is better for a school district to have full-time, rather than part-time certificated employees.

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<sup>1</sup> Full-time equivalent position.

Baier did not testify regarding any difficulty the district would face with respect to this particular service. In the absence of any evidence showing a reasoned basis for skipping Davies, Chandler's seniority over Davies must prevail.

7. Respondent Aaron Kerns holds a preliminary single subject Social Science credential. He holds a 1.0 FTE History Classroom Teacher Grade 7 and 8 position. Kerns is a probationary employee with a seniority date of August 17, 2009. Upon application of the tie-breaking criteria, he is junior to Mary Kate Mather, another probationary teacher with the same seniority date, as Mather has a clear credential, and has taught in the district before.

Kerns's 1.0 FTE position is being eliminated by reason of three events. Kerns's position is being reduced by .33 FTE by reason of the board's resolution reducing .33 FTE of the service of History Classroom Teachers Grades 7 and 8. This reduction is proper. His position is being reduced by another .17 FTE by reason of being bumped by a more senior teacher, Margaret Harris, who also holds a single subject Social Science credential. (Harris's position was reduced by .17 FTE by reason of the reduction in the service of Drama.) This reduction is also proper. Lastly, Kerns's position is being reduced by .50 FTE by reason of being bumped by another more senior teacher, Jason Dewberry.

Dewberry's position was reduced by .50 FTE by reason of the reduction in the service of Teachers in Charge Grades 7 and 8. This year Dewberry also taught history at the middle school. Dewberry does not hold a single subject Social Science Credential, but he is working to complete one. Dewberry taught History under a waiver from the County Office of Education, which authorized him to do so for this year only. The district expects that Dewberry will obtain his credential by the end of this school year.

It is concluded that Dewberry is not entitled to bump into Kerns's position. In order to be able to bump Kerns, Dewberry must be credentialed and competent to render the service Kerns renders. (Ed. Code, § 44955, subd. (b).) The determination of credentialing status is to be made by the district based on credentials on file with the district as of the March 15 notice deadline. (*Degener v. Governing Board* (1977) 67 Cal.App.3d 689, 698-699.) A board can authorize a teacher only to teach within his or her credential. While Dewberry is authorized to teach History this school year, he is not authorized to teach History next year unless he obtains a credential or another waiver. Dewberry is not entitled to bump Kern. Kern will retain a .50 FTE position with the district.

8. Respondent Anna Uhm holds a multiple subject credential. She holds a 1.0 FTE Kindergarten through Grade 6 Classroom Teacher position, and was assigned to teach 3rd Grade at Almond School for the 2009-2010 school year. Uhm is a probationary employee, with a seniority date of August 18, 2008. All probationary Kindergarten through Grade 6 classroom teachers were noticed for layoffs by reason of the reduction in service of Kindergarten through Grade 6 Classroom Teachers. No one junior to Uhm is being retained to provide a service that she is credentialed and competent to provide.

9. Respondent Douglas Core has a preliminary multiple subject credential. He holds a 1.0 FTE position as a Kindergarten through Grade 6 Classroom Teacher. The district assigned Core a seniority date of August 18, 2008, and classified him as a probationary employee. It was stipulated that Core's seniority date should August 20, 2007, and that he is a permanent employee of the district.

Core shares the same seniority date with other permanent certificated employees who are Kindergarten through Grade 6 Classroom Teachers. Upon application of the board's tie-breaking criteria, Core is the junior in this group, and his position is still subject to being eliminated. It was not established that there was any error in the application of the tie-breaking criteria to Core, and it was not established that any certificated employee with less seniority is being retained to render a service which Core is certificated and competent to render.

10. Respondent Kristina Anderson holds single subject credentials in Home Economics and Art. She is a permanent employee with a seniority date of August 31, 1992. During the 2009-2010 school year she held a full-time position, and was assigned to teach two periods of Art and Foods at Egan Junior High School, and two periods of Foods at Blach Junior High School. Anderson's position is being eliminated by reason of the board's resolution reducing the services of Foods Classroom Teachers Grades 7 and 8, and Art Classroom Teachers Grades 7 and 8. The net effect of these reductions is to eliminate the services of Foods and Art in the middle school program.

Anderson is one of the most senior teachers in the district. She is willing to teach in any available position in the two junior high schools. It was not established that any certificated employee with less seniority is being retained to render a service for which Anderson is certificated and competent to render.

11. Anderson, Core and Kerns are each willing to perform duties currently being provided by classified employees. These duties are supervising study hall services and Guided Study Hall. These are not certificated services. Education Code section 44955 does not confer upon them any rights to these positions by reason of their seniority.

12. For the 2009-2010 school year, each junior high school in the district offered a Leadership elective which takes place simultaneously during the period that precedes lunch. A specific credential is not required to teach this class. At Blach the class was assigned to Chandler; at Egan the class was assigned to Dena Zacante. (Zacante holds a .80 FTE position in physical education/health.) Each of these teachers has less seniority than Anderson. Anderson would be willing to teach the Leadership class at either school. Anderson's willingness to teach the class does not provide her with the right to partially bump either Chandler or Zacante by reason of their assignment to teach Leadership.

13. The reduction or discontinuation of services is related to the welfare of the district and of its pupils.

## LEGAL CONCLUSIONS

1. Finding 6: There is no cause under Education Code section 44955 to give notice to respondent Chandler that her services will not be required for the 2010-2011 school year. The accusation against her will be dismissed.

2. Finding 7: Because of the reduction or elimination of particular kinds of services set forth in Finding 4, cause exists pursuant to Education Code section 44955 to give notice to respondent Kerns that .50 FTE of his services will not be required for the 2010-2011 school year. This cause solely relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

3. Findings 8 to 10: Because of the reduction or elimination of particular kinds of services set forth in Finding 4, cause exists pursuant to Education Code section 44955 to give notice to respondents Uhm, Core and Anderson, that their services will not be required for the 2010-2011 school year. This cause solely relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

## ORDER

1. The accusation against respondent Suzanne Chandler is dismissed.
2. Notice may be given to respondent Aaron Kerns that his services will be reduced for the 2010-2011 school year.
3. Notice may be given to respondents Kristina Anderson, Douglas Core, and Anna Uhm that their services will not be required for the 2010-2011 school year.

DATED: April , 2010

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MELISSA G. CROWELL  
Administrative Law Judge  
Office of Administrative Hearings