

BEFORE THE  
GOVERNING BOARD OF  
THE SALINAS CITY ELEMENTARY SCHOOL DISTRICT  
COUNTY OF MONTEREY, STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CERTAIN CERTIFICATED EMPLOYEES  
OF THE HAYWARD UNIFIED SCHOOL  
DISTRICT REPRESENTING 133.5 FULL  
TIME EQUIVALENT POSITIONS,

Respondents.

OAH No. N20005030453

**PROPOSED DECISION**

On April 27, 2005, in Salinas, California, within the Board Room of the Administrative Offices of the Salinas City Elementary School District at 840 South Main Street, Salinas, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter.

Keith V. Breon, Attorney at Law, of Breon and Shaeffer, A Professional Law Corporation, 225 Bush Street, Suite 1600, San Francisco, California 94104, represented the Superintendent for the Salinas City Elementary School District (the District).

Michelle A. Welsh, Esq., of Stoner, Welsh and Schmidt, Attorneys at Law, 413 Forest Avenue, Pacific Grove, California 93950-4201, (Respondents' attorney) represented Respondents in this matter, except Respondents Linda Barrera, Helen Garcia, Mario Gutierrez, Alvaro Holguin, Sheldon Lasda, Laura Matter, Christine Pereira, Julia-Anne Scattini, Sharon Theis, Andrea Tocci, and Nancy Trujillo.

Respondent Sharon Loucks, an administrator for the District, appeared at the hearing to represent her own interests.

Respondents Linda Barrera, Helen Garcia, Mario Gutierrez, Alvaro Holguin, Sheldon Lasda, Laura Matter, Christine Pereira, Julia-Anne Scattini, Sharon Theis, Andrea Tocci, and Nancy Trujillo were not represented by legal counsel at the hearing; yet, each failed to appear at the hearing. However, each of those individuals had requested a hearing in this matter. The absent respondents, who were not represented by legal counsel, were in default pursuant to Government Code section 11520, and the hearing proceeded in their absence.

The record was held open to afford the parties opportunity to file written closing arguments with OAH. On Wednesday, May 3, 2004, OAH received, via telefacsimile transmission, from Respondents' attorney a document titled "Respondents' Post Hearing Brief," which was marked as exhibit "H" and was received as argument. Also, on May 3, 2004, OAH received, by telefax, from Superintendent's attorney a written argument titled "Petitioner's Post Hearing Brief," which was marked as exhibit "17," and was received as argument.

On May 3, 2005, the parties were deemed to have submitted the matter and the record closed.

### FACTUAL FINDINGS

1. On March 31, 2005, Donna Alonzo Vaughan, Superintendent (the Superintendent) for the Salinas City Elementary School District (the District), in her official capacity, made and filed the Accusation against respondents.
2. The respondents to the proceeding are identified by name on the list affixed hereto as Attachments "A.,"<sup>1</sup> except Ms Sharon Loucks, an administrator for the District. Although her name does not appear on the attachment, Ms Sharon Loucks is also a respondent in the proceeding.
3. On or before February 28, 2005, the District's Superintendent presented the District's Governing Board with a recommendation that the District give notice that particular kinds of services, then offered through the District, be reduced or eliminated for the ensuing school year (2005-2006).
4. On February 28, 2005, the District's Governing Board adopted District Resolution number 04/05-21. On March 7, 2005, the Governing Board adopted Revised District Resolution 04/05-21. And, on March 14, 2005, the Governing Board adopted Amended District Resolution 04/05-21.

The resolution, in its final amended form, recites that, pursuant to Education Code section 44955, it has become necessary for the District to reduce and/or to discontinue, no later than the beginning of the 2005-2006 school year, particular kinds of services in the form of F.T.E. (full time equivalent) certificated positions as follows:

<u>Particular Kinds of Service</u>	<u>Full-Time Equivalent ("F.T.E.")</u>
1. K-6 Multisubject Regular Education (36:1)	123.0 F.T.E.
2. Psychologist	3.0 F.T.E.
3. Vice-Principals (5 at .5)	2.5 F.T.E.

<sup>1</sup> The attachment is Complainant's hearing exhibit "9-A," which has a caption that reads: "The following certificated staff received a 'Notice of Layoff.'"

4. District Coordinators	2.0 F.T.E.
5. Principals	2.0 F.T.E.
6. Director	<u>1.0 F.T.E.</u>

Total 133.5 F.T.E.

5. By individual letters, dated March 14, 2005, the Superintendent dispatched preliminary notices<sup>2</sup> to a number of FTE position holders, including each respondent except Respondent Sharon Loucks, that the District's Governing Board had an intention to reduce or to discontinue the particular service provided by each person who received the notice. Hence, due to the prospective elimination or reduction of the particular kind 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.

Also the letter, dated March 14, 2005, which had attached to it the District's resolution and other pertinent documents, conveyed to each respondent a right to file a request for hearing "to determine if there is cause for not reemploying you for the 2005-2006 school year."

6. By a letter, dated March 15, 2005, by personal service, the Superintendent dispatched preliminary notices<sup>3</sup> to a number of administrators, including Respondent Sharon Loucks, that the District's Governing Board had an intention to reassign her from the administrator position held by her into a teacher's position. Certain administrators, including Respondent Loucks, learned that due to their respective lack of seniority as a certificated teacher to the District that they were subject to the Board approved lay-off action. Hence, due to the prospective elimination or reduction of the teacher position to which she had been reassigned, Respondent Sharon Loucks learned the District would not reemploy her for the ensuing year.

7. The written preliminary notice to respondents from the District's Superintendent and the District's resolution set out legally sufficient reasons of the District's Board's intent to eliminate particular kinds of services as delivered by respondents.

8. 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.

9. District's Superintendent timely served upon each respondent the Accusation and related documents. Each respondent filed timely notices of defense.

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<sup>2</sup> "Notice of Layoff."

<sup>3</sup> "Notice of Reassignment."

10. All pre-hearing jurisdictional requirements were met.

11. In her capacity as Superintendent of the District, Donna Alonzo Vaughan (the Superintendent) appeared at the hearing. The Superintendent provided competent, credible and persuasive evidence at the hearing of this matter.

The prospective elimination of particular kinds of services for the 2005-2006 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 attendance for the district for the ensuing school year. In order to partially aid the District in crafting a reasonable budget for the ensuing school year, the Superintendent recommended to the Governing Board that certain certificated positions be eliminated due to lack of funds as well as lack of work for teachers for the ensuing school year.

Initially on February 28, 2005, and then in a final amendment on March 14, 2005, the Governing Board adopted a resolution that identified the particular kinds of services for the next year as a means to handle the pressing financial difficulties faced by the District.

12. The Superintendent further established that upon learning that the District was required to initiate lay-off proceedings for certificated 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, psychologists and other certificated professionals.

The Superintendent accurately attended to identifying the District's teachers and psychologists who were properly designated as provisional employees and temporary teachers. She studied and set forth on the District's 2004-2005 seniority list dates calculated as the hire dates or first date of paid service for all certificated employees to the District.

Pursuant to the recommendation of the Superintendent, the Board determined that the District eliminate 133.5 full time equivalent positions for the ensuing school year.

On February 28, 2005, the Board adopted Resolution No. 04/05-22 that set forth criteria for tie-breaking for contests regarding seniority where certificated employees had identical first days of paid service to the District. The District's tie-breaking criteria was grounded upon purely objective criteria to address pressing needs of the District.

On March 14, 2005, based on the seniority list, the Superintendent caused notices to be delivered to affected permanent and probationary teachers that their services would not be needed by the District for the next school year. On March 15, 2005, the

Superintendent caused to be personally served upon specified identified junior administrators that their services to perform work in reassignment positions as teachers would not be needed by the District for the next school year.

13. The parties stipulate and agree that Pamela Heitz, who holds seniority number 312, and who possesses a Special Education credential, is entitled to teach Resources Specialist (RSP) classes. Pamela Heitz<sup>4</sup>, who now teaches a kindergarten/first grade combination class, may bump Julie Caruthers, an intern who now teaches pupils in RSP.

Also, the parties stipulate and agree that the District shall rescind the lay-off action as against Respondent Linda Piffero, and that she will be retained for the ensuing school year.

The parties further stipulate and agree that the District will consider in its preparation of the final notice of lay-off action, any documentary evidence supplied by Monday, May 9, 2005, regarding credentials duly held by teachers for the proper implementation of tie-breaking criteria for determining seniority as set out in the Board's resolution existing on March 14, 2005.

#### *Respondents' Contentions*

14. Respondents contend the District's proposed action is procedurally defective and improper insofar as the prospective layoff of the subject credentialed employees does not account for vacancies in the ranks of teaching positions, and other certificated employee positions such as psychologist positions, due to recent retirements and resignations. Respondents argue that by failing to account for the vacancies caused by retirements and resignations if the District executes the proposed number of lay-off of personnel that the actual reduction will exceed 170 F.T.E. teacher positions, as opposed to 123 F.T.E. K-6 multisubject regular education positions, and five F.T.E. psychologists position, as opposed to three F.T.E psychologist positions, with the District.

Also Respondents aver that the Board's criterion for skipping with regard to retaining psychologists is defective. In particular, respondents challenge the application of the proposed retention criterion for psychologists that prescribes that "the District

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<sup>4</sup> Respondent Pamela Heitz (Respondent Heitz) occupies a general education teacher during the current school year. She teaches first grade and kindergarten. She has a first day of paid service to the District as August 23, 1999. Respondent Heitz occupies seniority number 312. Respondent Heitz possesses a professional clear education specialist level two (mild to moderate disabilities) credential and a professional clear CLAD. At the hearing, Respondent Heitz asserts that her current position requires that she that care of primary special needs students in general education classroom. Respondent Heitz persuasively asserts that the education specialist credential enables her to hold resources positions, SDC positions or any other positions that would serve pupils enrolled in special education programs.

shall deviate from the seniority list to retain certain psychologists with advanced Spanish language proficiency skills.”

Next respondents contend that the Board’s resolution, which proposes to “skip” teachers authorized to teach special education, adaptive physical education, speech and language therapists and resource specialist, is not appropriate for the proposed PKS elimination action. In the view of Respondents, since no “RSP” positions are subject to reduction or elimination in the PKS reduction in force, certain respondents, including Respondent Amy Brewster, who purportedly are credentialed to teach special education, must be retained pursuant to the Board’s range of criteria for tie-breaking in establishing seniority.

Further, respondents argue that two intern-teachers (Barbara Chapman and Yamara Saldivar) received notice of non-reemployment after April 1, 2005. Respondents contend that because of the failure of the District to properly deliver notice of layoff to those two individuals, the notice of layoff to more senior teachers is invalid.

Respondent Loucks, who represented herself, contends that her position as an administrator with the District should not be eliminated. Also, Respondent Loucks avers that she has a credential as a classroom reading teacher and should be retained to teach for the ensuing year 2005-2006.

Respondents’ contentions are without merit and are rejected.

#### *Individual Respondents*

15. Respondent Yamara Saldivar (Respondent Saldivar) did not appear at the hearing of this evidence. But, the District’s evidence shows that Respondent Saldivar occupied an employee position as intern to the District for that part of the current school year before the Superintendent caused non-reelection letters and lay-off notices to be dispatched.

Because of the status as an intern to the District, on March 15, 2005, the Superintendent prompted service of a non-reemployment letter upon Respondent Saldivar.

Respondents offered no evidence that Ms Saldivar had standing to be served with notice of lay-off under Education Code section 44955. Respondents show no prejudice to Ms Saldivar, or other more senior certificated employees, when the District took extraordinary measures to present her on April 1, 2005, with documents pertaining to the lay-off action against certain employees of the District so as she might participate in the hearing to contest the validity of the District’s assessment of the credential held by her.

16. Respondent Barbara Chapman (Respondent Chapman) appears on the April 18, 2005, updated District seniority list as a probationary-two employee with a first date of paid service to the District on August 18, 2003. She possesses a preliminary multiple subject credential with ELA emphasis. During the past year, she has occupied one F.T.E. position with the District.

But, during the past school year and until a date in April 2005, Respondent Chapman worked under an intern credential at Loma Visa Elementary School.

Respondent Chapman does not possess a BCLAD authorization.

Respondent occupies position number 433 on the District's seniority list.

On or about April 1, 2005, the District dispatched a letter to Respondent Chapman that due to her then status as an intern, the District decided to non-reelect her. The letter further informed Respondent Chapman that her status as an intern to the District did not provide her with a right to standing as a respondent in a lay-off proceeding. Sometime after April 1, 2005, Respondent Chapman filed her preliminary credential with the District so as to prompt the District to amend its seniority list to show her as a probationary teacher.

Respondent Chapman offered no persuasive proof the District should have skipped her on the seniority list due to her skills in Spanish or bilingual education.

Respondent Chapman provides no competent evidence that the District has retained any school psychologist junior to her for which Ms Chapman possesses a credential and is currently competent to teach.

17. Respondent Amy Lynn Brewster ("Respondent Brewster") is a probationary-one employee of the District because her first day of paid service to the District was August 18, 2003. Over the past year, Respondent Brewster provided services to the District as a Resources Specialist (RSP).

Respondent Brewster has a learning handicap credential (mild to moderate disabled pupils) and a resources specialist certificate. She also possesses a single subject credential in life science.

Respondent occupies number 420 on the District's seniority list.

Respondent Brewster provided unpersuasive and weak evidence that the District has retained two RSP teachers who are junior to her in the particular kind of service for which Ms Brewster possesses a credential and is currently competent to teach. The District, through the Superintendent, did not present lay-off notices to Christie Lee and Julie Caruthers.

Ms Lee does possess a Special Education mild/moderate emergency credential. And, she holds multiple subject professional clear credential, as well as a single subject social science credential and an English professional clear credential. No evidence came into the record to establish that Ms Lee will provide services next year in the special education programs of the District. Respondent Brewster offered no competent evidence that the District has decided to retain Ms Lee to serve the District under credentials other than as a special education teacher with an emergency credential.

At the hearing, the District's persuasive and strong evidence showed that during the past school year Ms Caruthers served the District as an intern. The District recognized that Pamela Heitz, who currently is a kindergarten/first grade teacher, holds a Special Education credential that entitles her to teach RSP. Accordingly, Ms Heitz, who has seniority number 312, has bumping rights so as to replace Ms Caruthers. And, Ms Heitz has more seniority than Respondent Brewster and also bumps her.

Due to the bumping rights of Ms Heitz over Respondent Brewster, the District was reasonable, in making a stipulation, to subject Respondent Brewster to receipt of a final lay-off notice because she replaces Pamela Heitz among the 123 full-time equivalent teacher positions that are to be eliminated.

Respondent Brewster provided no competent evidence that the District has retained any school psychologist junior to her for which Ms Brewster possesses a credential and is currently competent to teach.

18. Respondent Christine Vitale (Respondent Vitale) is a school psychologist. Her first day of paid service to the District was July 1, 1991.

Respondent has a bachelor's degree in Rehabilitation, and a Master's of Arts degree in School Psychology.

Respondent Vitale points out that there are seven psychologists now working for the District. She believes that the District has held vacant a permanent psychologist position. Moreover, at the time of dispatch of the preliminary lay-off notice, a psychologist named Jane Mendoza resigned from employment with the District.

The District's Director of Pupil Personnel Service, Randall Schwartz, Ph.D., authored a memorandum, dated March 29, 2005, that suggested his understanding that for the ensuing year, four school psychologists position would be maintained. The psychologists who occupy positions one and two will each work at four schools. The psychologists who hold positions two and three will each work at two schools, but those position holders will be required to possess "advanced bilingual skills" that will enable the position holders to engage in bilingual testing and other work that requires Spanish language skills.



Respondent Vitale asserts that she has taken four years of Spanish language classes. Also, she took a sabbatical to study in Spain. On another occasions she returned to Spain to attend a language program. Respondent works in a highly bilingual school and she has worked at one of the District's most populous English Language Learner schools, namely the Sherwood School.

Respondent Vitale observed that two psychologists who will be retained for the ensuing year - Marilyn Twisselman and Robert De la Rosa - are more senior than she. But, she asserts that those individuals are "the least bilingual" psychologists with the District. Yet, Respondent Vitale offered no competent evidence<sup>5</sup> to corroborate her claim that she has greater bilingual skills than the two psychologists who were not presented with preliminary notice of the prospective lay-off action. And, Respondent Vitale offered inadequate evidence to establish that Randall Schwartz had the ability, training or skill to assess or evaluate the Spanish language proficiency of Respondent Vitale relative to the effectiveness of other psychologists in Spanish/bilingual matters.

Respondent Vitale offered inadequate foundation to establish that she is competent to establish that the District's elimination of three psychologist positions will be insufficient for the District to meet the lawful level of services needed to serve the interests of students of the District. Respondent Vitale failed to show that she has such knowledge and experience in District administration, or management of a District's program for testing and teaching special education pupils and other students in need of assistance from psychologist, so as to establish credibly and persuasively that the District can not fulfill the basic or minimum demands of mandated programs by retaining four psychologists as District employees.

Respondent Vitale holds number 169 on the seniority list. She challenges the District's retention of psychologist Clifford Siegel, who has the same first day of paid service to the District as she holds, that is August 1, 1991. Psychologist Siegel has the number of 168 on the seniority list. But, Respondent Vitale acknowledges that Clifford Siegel<sup>6</sup> is bilingual and that he performs work in Spanish with pupils. Respondent Vitale only speculates that her Spanish language skills are as proficient as the bilingual ability of Psychologist Siegel.

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<sup>5</sup> A supposed memorandum by Randall Schwartz that supposedly ranked the District's psychologists on a scale of supposed skill in bilingual functions. But that hearsay document was not shown to be reliable or trustworthy as an component in the decision-making process of the Superintendent in her reasonable exercise of discretion to follow the advice and counsel of senior administrators regarding retention of psychologists who possess the Spanish language acumen for accomplishment of the missions of the District.

<sup>6</sup> The District's seniority list shows Clifford Siegel to possess a bachelor's degree in psychology, as well as a master's degree in school psychology.

Respondent Vitale was not persuasive that the District should have skipped her on the seniority list due to her skills in Spanish and bilingual education.

Respondent Vitale provided no competent evidence that the District has retained any psychologist junior to her for which Ms Vitale possesses a credential and is currently competent to offer to the District or its pupils.

19. Respondent Keith Roybal (Respondent Roybal) is a school psychologist. His first day of paid service to the District was July 1, 1990. Respondent Roybal has the number of 153 on the District's seniority list.

Respondent Roybal represents that he uses Spanish to converse with parents after testing, such as during, or after, IEP (individual education plans) meetings for students in special education programs. He has been assigned to school sites that have the highest census of bilingual pupils in the District. Respondent Roybal proclaims that he has performed his work for the District in settings that require bilingual skills in a satisfactory manner. Respondent Roybal believes that he has attained the required level of bilingual, or advanced Spanish language, proficiency as needed to perform the duties, functions and responsibilities of a psychologist.

Respondent Roybal points to having developed Spanish language skills through such activity as a trip to Guadalajara, Mexico.

Respondent Roybal speculates that the District will not be able to offer the minimum, lawful level of services to pupils during the ensuing year with four psychologists as employees of the District. Respondent Roybal offered no insight into plans of the District to provide services by psychologists through other means than by the work of employee-psychologists.

Respondent Roybal was not persuasive that the District's prospective ratio of psychologists to students will be so deficient as to expose the District to greater risks of civil actions at law, thereby requiring that the lay-off proceeding should be set aside.

Respondent Roybal asserts that the District's administrators never caused him to be tested for proficiency in the Spanish language. But, he does not show that his level of bilingual skills (English to Spanish) had not been assessed, observed and documented by his superiors, or school principals, teachers or parents.

Respondent Roybal offered no documentary evidence in support of a proposition that he is skilled in Spanish to a degree greater than the psychologists who the District has determined to retain for the ensuing year.

Respondent Roybal provided no competent evidence that the District has retained any school psychologist junior to him for which Mr. Roybal possesses a credential and is currently competent to offer to the District or its pupils.

20. Respondent Karen Bentley (Respondent Bentley) is a school psychologist. Her first day of paid service to the District was January 18, 2000. She holds number 321 on the District's seniority list.

Respondent Bentley is one of the three psychologists to receive a preliminary notice of the District's plan to reduce its certificated employees by three F.T.E. psychologist positions.

Respondent Bentley has enrolled and passed a course in high intensity language training to an advanced intermediate level.

Over the past school year, the District assigned Respondent Bentley to Los Padres School, which she believes has one of the highest bilingual populations in the District. Over the past year, she has only referred two children to more skilled bilingual psychologists. She has been able to attend to the needs of many students who were more adept in the Spanish language than in the English language. The two children, for whom she required another Spanish speaking professionals to assist her, were pupils who essentially had little, if any, English language ability.

Respondent Bentley is familiar with the Board's resolution that prescribes "advanced Spanish language proficiency" criterion for tie-breaking for seniority purposes. But, she was not persuasive that due to her ability to have performed her job as a psychologist that she has shown her advanced Spanish language proficiency.

Respondent speculates that should the District employ four psychologists for the 2005-2006 school year that the District will be subject to "law suits" because of compliance issues under federal government or California state government statutes or regulations. Respondent Bentley was not credible when she theorized that the District will maintain through the ensuing school year an inadequate ratio of one psychologist for every 2,144 students. And, Respondent Bentley offered no evidence that she has insight into the District's inability to provide legally mandated psychological testing, monitoring and counseling by means or processes other than through services of employees of the District.

Respondent Bentley offered no documentary evidence in support of a proposition that she is skilled in Spanish to a degree greater than the psychologists who the District has determined to retain for the ensuing year.

Respondent Bentley provided no competent evidence that the District has retained any school psychologist junior to her for which Ms Bentley possesses a credential and is currently competent to offer to the District or its pupils.

*Pro Se Respondent*

21. Respondent Sharon B. Loucks (Respondent Loucks) currently works for the District as the Director of Curriculum and Staff Development. She has been employed by the District as an administrator over six years. Respondent Loucks possesses an administrative services credential.

Respondent Loucks has never worked as a teacher for the District; but, she holds a teacher's credential as a reading specialist. She possesses a master's degree in reading. Also, Respondent Loucks has a doctorate degree in Education.

The Board's resolution 04/05-21, which sets forth the PKS reduction in force of the District's certificated personnel, as revised on March 7, 2005, and then amended and finally adopted on March 14, 2005, informed Respondent Loucks of the District's elimination of two full time equivalent positions having the particular service designation of "district coordinators."

On March 15, 2005, the Superintendent caused to be personally served on Respondent Loucks notice of reassignment from an administrator's position to a teaching position. But, she then received preliminary notice of the lay-off proceeding in which she could participate as a respondent.

Respondent Loucks holds neither status nor a number on the District's seniority list of certificated teachers.

Respondent Loucks provided no competent evidence that the District has retained any teacher junior to her for which Ms Loucks possesses a credential and is currently competent to offer to the District or its pupils.

*District's Reasonable Basis to Proceed*

22. The Superintendent, in rebuttal to respondents, was credible, persuasive and compelling.

Before making a recommendation to the Board for its final approval of the PKS reduction of psychologists, the Superintendent analyzed the District's fiscal pressures. She then recommended for next year the elimination of three currently filled psychologist positions. The Superintendent is aware that the reduction in force of psychologists will leave the District with four psychologists in employment positions next year. When the Superintendent recommended the lay-off of three school

psychologist, she was aware of an existing or unfilled vacancy in the ranks of District school psychologists for the past school year.

Based upon the advice and counsel of senior administrators in the District, the Superintendent made a decision to retain psychologists who had met the District's objective that some of the school psychologist personnel possess advanced Spanish language skills.

The decision to terminate three psychologists, who are now subject to lay-off, was made with consideration of the skill levels of the psychologists who are to be retained.

The Superintendent, on rebuttal, showed that even though Respondent Amy Brewster now works in an RSP class setting, she is a school teacher who is subject to lay-off due to her lack of higher status on the seniority list. Respondent Brewster is bumped by Ms Heitz.

And the Superintendent, on rebuttal, persuasively explained that when the Board adopted in mid-March 2005 the resolution for the PKS lay-off, which included the elimination of three school psychologist positions, the fact of the recent resignation of a psychologist was not known. Therefore, the Board did not take into account attrition of one psychology vacancy after March 14, 2005.

23. During the immediate past school year, the Board 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 with the same number of teacher, school psychologist and administrator positions and programs during the ensuing school year. Hence, the District must prospectively reduce or eliminate a number of FTE particular kinds of services, including the positions held by many of the affected respondents herein.

24. 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 or psychologist 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.

25. The recommendation of the District's superintendent and the Board's decision to eliminate or discontinue most of a total of 133.5 FTE positions, including the positions held by most of the respondents, 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.

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

27. 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 10, 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. Respondent Chapman and Respondent Saldivar were employed as interns by the District during much of past school year, were not entitled to higher placement on the District's seniority list because their credentials were not registered with the County Office of Education and the District by the date for dispatch on March 14, 2005, of the preliminary lay off notices.

After-acquired credentials, which are filed after the date for mailing the preliminary lay-off notice, need not be considered by a District in the lay-off action. (*Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

The California Legislature's intent in prescribing statutory notice deadlines was expressed as follows:

An obvious purpose of the statute is to allow a teacher, whose employment will be ended with the school year's termination, timely filed notice of that fact in order that [she] may seek other employment in [her] profession

during the coming school year. (*Grzeskowiak v. Bd. of Trustees* (1976) 62 Cal.App.3d 131.)

On March 15, 2005, Respondent Chapman and Respondent Saldivar were each given notice of nonreemployment. With the timely notice from the District, as followed by a courtesy copy of the lay-off notice on April 1, both Respondent Chapman and Respondent Saldivar had sufficient time to "seek other employment" in the teaching profession for the ensuing school year.

5. A vacancy and a resignation among the ranks of school psychologist for the current year have no effect on the prospective PKS lay-off action that anticipates the reduction of three psychologist positions for the ensuing year.

a. First, the Board's resolution for deviation from the seniority list prescribed "BE IT ... RESOLVED that the District shall deviate from the seniority list ... to retain *certain* psychologists with advanced Spanish language proficiency skills." (Emphasis added.) The resolution implied that seniority was to be followed in retaining psychologist except when advanced Spanish language proficiency skills existed. Since three psychologist were to be laid off from the District's seven psychologist, the District was not obligated to deviate from the seniority with regard to the two most senior school psychologists, who did not possess Spanish language proficiency. With five remaining psychologists, the District decided to lay-off three of those employees. The Superintendent, with the advice of the supervisor to the psychologists, assessed the five remaining psychologist and determined that two psychologists would be retained because each possessed advanced Spanish language proficiency skills.

The Superintendent's reasonable exercise in discretion to retain the psychologists with advanced Spanish language proficiency skills was not shown by respondent to have been unreasonable or unlawful.

b. Secondly, Respondents are not persuasive that *Lewin v. Board of Trustees* (1976) 62 Cal.App.3d 977, and *Moreland Teachers Association v. Kurze* (1980) 109 Cal.App.3d 648, are controlling in this matter on the question of attrition in the ranks of school psychologists.

The court in *Brough v. Governing Board of El Segundo Unified School District* (1981) 118 Cal.App.3d 702, addressed the *Lewin* court decision. In essence the later court held that attrition is required to be considered in an ADA "decline in attendance" layoff action, but attrition is not a consideration for a PKS layoff. The *Brough* decision set out, in part:

Clearly 'normal' or 'positively assured' attrition includes retirements, resignations and deaths, but layoffs attributable to PKS reductions do not fall within the same category. The

layoffs attributable to a decline in ADA and those prompted by a reduction in PKS are distinct, not to be commingled, even though provisions for effectuating both are delineated in section 44955. *Burgess*, the cornerstone upon which the line of cases defining normal attrition is built, involved only layoffs based on a decline in ADA. Appellants' reliance on *Lewin*, which followed *Burgess*, as support for the proposition that PKS layoffs offset allowable ADA layoffs is misplaced. (See generally Ozsogomonyan, *Teacher Layoffs in California: An Update* (1979) 30 Hastings L.J. 1727.)

To require the District to use PKS layoffs to offset allowable ADA layoffs would lead to incongruous results. Section 44955 provides that ADA layoffs shall not be proportionately greater than the actual decline in student enrollment during the computation period. By contrast, the only limitations on PKS layoffs are that they be necessary and that they not be governed by any statistical computation. Logically the plain terms of section 44955 relating to the positively assured or 'normal' attrition during the computation period do not include PKS layoffs.... 'Moreover, the economic salvation resulting from the use of the discretionary power to reduce services will be cancelled if teachers laid off for reduction in services must be counted as attrition in the following year's ADA calculations.' (Ozsogomonyan, *Teacher Layoffs in California: An Update*, *supra*, 30 Hastings L.J. 1727, 1735.)

*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 627, establishes that a school district need not consider positively assured attrition that occurs between the date of issuance of the preliminary notice of a Board determination that certificated employees not be reemployed for the following school year by reason of a reduction in particular kinds of services and the date for dispatch of the final notice that determines the number of certificated employees that are to be terminated. "In PKS cases the determination of the amount by which a service is to be reduced is the determination of the number of positions to be eliminated." (*San Jose Teachers Assn. v. Allen*, *supra*, 144 Cal.App.3d at 636.)

Contrary to respondents' argument, the District may issue final lay-off notices to affected respondents without accounting for retirements and resignation of psychologists or teachers that occur between March 15, 2005, and May 15, 2005. Attrition, after dispatch of the preliminary notice and before the date of the final notice, is not relevant to this, or any, PKS lay-off action.

6. As to Respondent Sharon Loucks, who is an administrator at the District level, the lay-off action is lawful.



Before the close of business on March 15, 2005, the District correctly served upon Respondent Loucks with two notices that her services would not be required for the ensuing school year. The first notice reassigned her from an administrator's position with the District to a teacher's position. The second notice conveyed to Respondent Loucks that due to her lack of status on the District's seniority list for certificated teachers that she was subject to lay-off proceedings.

During her six years of service to the District, Respondent Loucks only filled a position as a District administrator. An administrator in a school system serves in such capacity at the pleasure or the governing board (that is, the appointing authority), and an administrator may be removed or reassigned for any reason satisfactory to the appointing authority. (*Barton v. Governing Board* (1976) 60 Cal.App.3d 476.)

Under the law, the only seniority that an administrator may accrue would be through a position at a site or school level. And an administrator at a school site can not acquire more than a maximum of three years of seniority. (Education Code section 44956.5). Under the facts in this matter, Respondent Loucks only worked at the District level as an administrator, and hence, she acquired no seniority as among certificated employees of the District.

The District was lawful in determining that Ms Loucks is one of the junior most teachers with the District and that she is subject to receipt of a final PKS reduction/elimination notice. Hence, she may be one of the first individuals who will be subject to receipt of a final lay off notice.

#### *Sanctity of Stipulation to Dismiss Teachers from the Accusation*

7. Judgments entered by a tribunal on the stipulation of the parties have the same effect as acts tried on the merits. (*John Siebel Associates v. Keele* (1986) 188 Cal.App.3d 560, 565.)

The District stipulates to withdraw the Accusation against Pamela Heitz as set out in Factual Finding 13.

The stipulations are binding on the parties.

#### *Ultimate Determinations*

8. 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 11, 12, 22 to 25 inclusive, and 27.

9. 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 26.

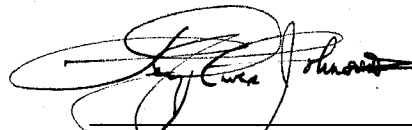
### ORDER

1. The Accusation is dismissed, pursuant to a stipulation between the parties, as to Respondents Pamela Heitz and Linda Piffero.

2. The Accusation served on each respondent, not dismissed from the proceeding, is sustained.

3. Other than the employees dismissed as set out in this Order, final notice may be given to those respondents identified in Attachment "A," as well as Respondent Sharon Loucks, that their respective services will not be required for the 2005-2006 school year because of the reduction or discontinuance of the particular kinds of services by the District.

DATED: May 6, 2005



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PERRY O. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

The following certificated staff received a "Notice of Layoff."

Tara Aderman  
Martha Aranda  
Elva Arellano  
Linda Barrera  
Glenda Bell  
Patricia Beltran  
Karen Bentley  
Jodi Bolinger  
Corrine Bonyng  
Juana Bravo-Vargas  
Amy Brewster  
Michael Burgess  
Stefanie Burgess  
Maria Camacho  
Esabel Cervantes  
Cesar Chaidez  
Barbara Chapman  
Julie Chobanian  
Donna Clark  
Lesley Clevenger  
Linda Coleman  
Mary Cominos  
Rito Contreras  
Cheryl Correa  
Shannon Cortes  
Mauricio Cossyleon  
Jennifer Cottle  
Eva Covarrubias  
Merissa Dacpano  
Bonnie DeCuir  
Catherine Delacruz  
Kellyann Dickison  
Natalie DiTusa  
Alexandra Doherty  
Darcie Edwards  
Veronica Espinosa  
Tina Fabel  
Valerie Fern  
Cecilia Fernandez  
Heather Frerichs  
Kaylene Galeano-Rodriguez  
Lauralea Gaona  
Rosemary Garcia

A

Helen Garcia  
Erica Gomez-Valenzuela  
Jose Gonzalez  
Cynthia Gonzalez  
Patricia Gonzalez  
Kathryn Gordon  
Rebecca Gunwall  
Mario Gutierrez  
Amy Hawes  
Pamela Heitz  
Michael Henderson  
Gonzalo Herrera  
Christi Hicks  
Alvaro Holguin  
Jennine Howell  
Hilda Huerta  
Velvali Huston  
Amy Jansen  
Annette Kamos  
Mary Kehlhofer  
Jeanne Kerney  
Norma Lara,  
Sheldon Lasda  
Melissa Lewington  
Regina Leyva  
Diane Lopez  
Oscar Lopez  
Julie Lumsden  
Julie MacGregor  
Paul Magpusa  
Maria Mariscal  
Beatriz Marquez  
Laura Matter  
Jodie McBride  
Kimberly McCullick  
Deborah McDill  
Linda Mendoza  
Angel Mendoza  
Sara Mercado  
Juana Mireles  
Dora Moncada  
Ursula Moncrief  
Holly Moore  
Claudia Morales  
Blanca Navarro-Martinez  
Stacey Neilsen

Sandra Orozco  
Maria Ortega  
Michele Osorio  
Cheri Pepito  
Christine Pereira  
Gabriella Perez  
Linda Piffero  
Sandra Puga  
Sue Quetin  
Rubi Ramirez  
William Randall  
Margaret Randtke  
Sonia Regalado  
Tricia Reynolds  
Ana Reynoso  
Melissa Rocamora  
Carmen Rocha  
Michelle Ross  
Robert Rossi  
Keith Roybal  
Megan Sacay  
Yamara Saldivar  
Marisela Santana-Gil  
Megan Sawyer  
Julia-Anne Scattini  
Sarah Schuchterman  
Amy Seid  
Susie Shin  
Larry Steffen  
Angela Stone  
Elizabeth Swain  
Sharon Theis  
Francisca Tinajero  
Andrea Tocci  
Cesar Torres  
Nancy Trujillo  
Tiffany Ura  
Connie Valerio  
Lilia Valladares  
Kristine Vasquez  
Joanna Veliz  
Katherine Venza  
Christine Vitale  
Carrie Wallace  
Kelly Zander