

BEFORE THE
GOVERNING BOARD OF THE
WOODLAND JOINT UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Reduction in Force of:

JUAN ALVAREZ, EMILY BEAL, KARI
CRAMER, RICHARD HALES, JARED
HUNTER, CRAIG MARQUEZ, MIEKO
MENDENHALL, MEAGAN PITCAIRN,
ROBERT ROGERS, JR., and SARA STONE,

Respondents.

OAH No. 2012030298

PROPOSED DECISION

This matter was heard before Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, in Woodland, California, on April 17, 2012.

Terry Filliman, Attorney at Law, represented the Woodland Joint Unified School District (District).

Peter M. McEntee, Attorney at Law, represented all respondents except Juan Alvarez. There was no appearance by or on behalf of Mr. Alvarez.

Evidence was received, the record was closed, and the matter was submitted for decision on April 17, 2012.

FACTUAL FINDINGS

1. On March 1, 2012, the District's Board of Trustees (Board) adopted Resolution No. 24-12 (PKS Resolution), by which it determined that it was necessary to reduce or eliminate certain identified particular kinds of services (sometime referred to herein as PKS) for the 2012-2013 school year. By reason of this reduction or elimination of particular kinds of services, the Board determined that it will be necessary to terminate, not later than the beginning of the 2012-2013 school year, the employment of certain certificated employees of the District, and directed the Superintendent or her designee to send appropriate notices to all employees whose services will be terminated by virtue of the Board's action. The PKS reductions and eliminations are based solely upon economic

reasons, and are not related to the skills, abilities or work performance of the affected teachers.

2. The PKS Resolution identified the following particular kinds of services for reduction or elimination:

A. Elementary Instructional Services:

1. Music	2.5 FTE ¹
2. K-6 Elementary Classroom Teachers	3.0 FTE
3. Release Time PE	4.9 FTE
4. Release Time Science	2.6 FTE
5. Reading Intervention Specialist	.5 FTE
6. Resource (Title I)	1.0 FTE

B. Middle School Instructional Services (Grades 7-8)

1. PE	.8 FTE
2. Music	.2 FTE
3. AVID	.4 FTE
4. Math	.2 FTE

C. High School Instructional Services (Grades 9-12):

1. Agriculture	1.0 FTE
2. Art	2.0 FTE
3. Business	.4 FTE
4. Health	1.0 FTE
5. Industrial Art	1.0 FTE
6. Music	0.8 FTE
7. PE	2.0 FTE

D. Continuation High School (Cache Creek) Instructional Services

1. English	1.0 FTE
2. Social Science	1.0 FTE

E. Instructional Support Services:

1. Elementary Counselor	2.0 FTE
2. Secondary Counselor	3.0 FTE
3. Psychologist	1.0 FTE
4. Nurse	1.0 FTE
5. High School Librarian	2.0 FTE
6. English Immersion Teacher	1.0 FTE

¹ “FTE” stands for “full-time equivalent.”

F. Administrative Services:

1.	Middle School Vice Principal	0.5 FTE
2.	High School Learning Community Directors	2.0 FTE
3.	Coordinator of Professional Standards/Dev.	0.34 FTE
4.	Administrator, Child Welfare and Attendance	1.0 FTE

Total Certificated FTE's to be Eliminated: 40.14

3. Pursuant to the PKS Resolution, on March 9, 2012, Debra LaVoi, Superintendent, sent preliminary layoff notices to the certificated employees identified for layoff. The preliminary layoff notices informed the certificated employees of their right to request a hearing, and enclosed copies of the PKS Resolution, Education Code sections 44949 and 44955,² and blank request for hearing forms.

4. In response to the preliminary layoff notices, the District received requests for hearing from respondents. On March 22, 2012, the District served the Accusation, Statement to Respondent, blank Notice of Defense form, Notice of Hearing, PKS Resolution, and sections 44949 and 44955 on respondents.

5. Respondents are certificated employees of the District. All respondents timely filed a notice of defense. The District did not raise any challenge with respect to respondents appearing at the hearing. All prehearing jurisdictional requirements were met as to each respondent.

Issues

6. During the hearing, respondents raised two bumping issues regarding the reduction in music: whether the competency criteria set forth in the PKS Resolution, which require that a respondent must have either: (1) taught secondary music or (2) taught or worked in alternative education “for at least one full semester within the District in the past ten school years (e.g., 2002-2003 or later) while classified as a probationary or permanent employee” in order to bump a more junior teacher, are arbitrary and capricious, and not a reasonable exercise of the Board’s discretion. Respondents also challenged whether the Board is reducing physical education (PE) below mandated levels. These issues are addressed below.

Competency Criteria for Bumping Into a Secondary Music Assignment

7. The bumping issues relating to secondary music assignments involve four respondents: Emily Beal, Richard Hales, Meagan Pitcairn, and Robert Rogers, Jr. Ms. Beal and Mr. Hales are currently elementary school music teachers. They have been identified for

² Unless otherwise indicated, all further statutory references are to the Education Code.

layoff as a result of the reduction in elementary school music.³ Mr. Rogers is a high school music teacher, and Ms. Pitcairn is a middle school music teacher. Mr. Rogers and Ms. Pitcairn have not been identified for layoff as a result of the District's PKS reduction. They have, however, received "precautionary" layoff notices.

8. Mr. Hales has a seniority date of August 23, 1999, and is more senior than Mr. Rogers (seniority date: August 26, 2004), and Ms. Pitcairn (seniority date: August 11, 2009). Ms. Beal has a seniority date of August 7, 2006, and is more senior than Ms. Pitcairn.

9. One of the competency criteria set forth in the PKS Resolution provides that, in order to bump a more junior secondary music teacher, Mr. Hales and Ms. Beal must have taught secondary music "for at least one full semester within the District in the past ten school years (*e.g.*, 2002-2003 or later) while classified as a probationary or permanent employee." Neither Mr. Hales nor Ms. Beal has taught one full semester of secondary music within the District within the past 10 years. Consequently, they do not meet this competency criterion to allow them to bump Mr. Rogers and Ms. Pitcairn. At the hearing, Ms. Beal and Mr. Hales challenged this competency criterion, and argued that, as a result of their credentials, training, and experience, they are "competent" to teach secondary music.

10. The District has a single job classification for music teachers. Mr. Hales, Ms. Beal, Mr. Rogers, and Ms. Pitcairn are all in this same job classification. All four also possess a clear single subject teaching credential in music. This credential allows all of them to teach secondary music.

11. The District called two witnesses: Don Beno, Assistant Superintendent of Human Resources, and John Abigana, a high school music teacher and a former Director of Music for the District.

12. Mr. Beno testified that the PKS Resolution identified the reductions in music separately for elementary, middle and high schools because there are different levels of complexity in terms of the instruction given and the skills required to teach at each of these levels. According to Mr. Beno, the District does not rotate teachers between these three levels given the different expertise required at each level. Mr. Beno identified the various music courses currently being taught in the middle and high schools.⁴ He described the

³ The District seeks to reduce Mr. Hales' 1.0 FTE to .5 FTE, and to eliminate Ms. Beal's 1.0 FTE.

⁴ At Lee Middle School, there are courses in advanced band, intermediate band, guitar, and expo/choir. At Douglass Middle School, there are courses in introduction to band, advanced band, choir and guitar. At Pioneer High School, there are courses in jazz ensemble, AP music theory, guitar, chamber singers, concert choir, composition and arrangement, strings 1 and 2, beginning and intermediate piano, wind ensemble, symphonic band, and concert band. At Woodland High School, there are courses in choir (combined levels, concert and chamber singers), symphonic/concert band, jazz band, wind ensemble, guitar, and AP music theory.

secondary music program as a “key program” requiring specialized expertise and skill to teach. He specifically pointed to the Advanced Placement (AP) music theory class, in which students can earn credits towards college. According to Mr. Beno, in order to be qualified to teach this course, a teacher must attend an initial training workshop and subsequent refresher workshops. Mr. Beno explained that the competency criterion requires that the one semester of experience teaching music at the secondary level in the last 10 years must have been in the District because the District has no way to assess experience gained outside the District. Mr. Beno also stated that the District has used this competency criterion in past layoffs.

13. Mr. Abigana’s testimony differed from Mr. Beno’s in a number of respects. Mr. Abigana’s seniority date is August 26, 1987. He currently teaches music at Woodland High School. Although he teaches AP music theory, he did not have to attend the training workshops because he was “grandfathered in.” He described some of the differences between the elementary and secondary music programs. For example, the elementary music program teaches a limited number of instruments, while the secondary program provides instruction in all the instruments in a band. He stated that District music teachers do not teach in both elementary and secondary schools in order to provide “continuity” to the students from year to year. When asked whether an elementary music teacher who had not taught at the secondary level for 10 years would need different skills in order to teach music in high school, he stated that what the teacher primarily needed was “time” because teaching secondary music was a “year-round job.” According to Mr. Abigana, during the summer, high school teachers generally do the research and choose the music pieces their students will perform in the coming school year. He also stated that because secondary music was “performance based,” there were more pieces of music taught at the secondary level.

Mr. Abigana testified that an elementary music teacher should have all the skills necessary to teach secondary music, other than AP music theory, based upon their music degree. To teach the AP music theory course, the elementary teacher would have to take the training provided by the College Board. He described “communication” to be the primary skill that was different between teaching music at the elementary and the high school levels. According to Mr. Abigana, upon leaving college, a music teacher should be able to teach at either the elementary or secondary school level.

14. Three of the four affected teachers testified at the hearing – Mr. Rogers, Mr. Hales and Ms. Beal.

15. Mr. Rogers has taught music at Pioneer High School for eight years. He has a total of 11 years of teaching experience. He is certified to teach AP music theory. He attended the initial AP training in the summer of 2006, and took a refresher course in the summer of 2008. Before he began teaching in the District, he taught fourth through sixth grade music for two years. When teaching in elementary school, he only taught five instruments – flute, clarinet, saxophone, trumpet and trombone. When he started teaching in high school, higher expectations were placed upon the students to transfer to other instruments not taught in elementary school, such as the oboe and French horn. He also stated that he has learned a significant amount on the job that was not taught in college. Because he sends students to honor bands, he has to know how to teach all the instruments,

not just the five taught in elementary school. According to Mr. Rogers, the secondary music position is a “lot more demanding” than a position in elementary school. It is a “24/7” job. Last year, he had to take his students to 43 events. According to Mr. Rogers, there are a “lot more time restraints” on secondary school music teachers.

16. Mr. Hales has taught elementary music in the District since 1999. Before starting with the District, he taught for one semester as a long-term substitute teacher in a middle school, and spent three years as a regular substitute teacher in middle and high schools. In these positions, he gained experience with the different instruments taught at the secondary level, and prepared students for performances at the middle school level. He has also taught specialty instruments, including clarinet, oboe and French horn, to students in the fifth and sixth grade. He worked at Vacaville High School to integrate the string and wind instruments in preparation for concerts. While he was a student teacher, he worked with middle school students to prepare them for jazz ensembles. He also worked with symphonic and concert bands at the middle and high school levels. He believes that he has the skills to teach high school music, and is willing to take the training necessary to teach AP music theory.

17. Ms. Beal has been teaching elementary music in the District since 2006. In all, she has 15 years of teaching experience, but she has not worked at the high school level as a teacher. While in college, she had two student teaching placements, one at the elementary level and the other at the secondary level. She has been trained on all instruments and has played all string instruments. While she was a student teacher, she taught two sections of band, a string orchestra, a jazz band, and a choir. She believes she is competent to teach music at the secondary level.

18. Section 44955, subdivision (b), in relevant part, provides:

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.

Under section 44955, subdivision (b), if an employee identified for layoff is “certificated and competent” to provide a service that a more junior employee has been retained to render, the senior employee may “bump” into the position occupied by the junior employee.

19. The determination of whether an employee is “certificated and competent” is a “discretionary” decision within the “special competence” of a school district. (*Martin v. Kentfield School Dist.* (1983) 35 Cal.3d 294, 299.) It is within a school district’s discretion to establish competency standards, including “prior experience teaching middle school programs and students.” (*Id.* at p. 300.) In *Duax v. Kern Community College Dist.* (1987)

196 Cal.App.3d 555, 567, the court upheld a competency standard that required that an employee must have rendered a service or taught in a specific subject area for one year in the preceding 10 years to be considered “competent” to render that service for the purpose of “bumping” a junior employee.

20. In this case, the Board adopted a competency criterion in the PKS Resolution that requires that a music teacher must have taught secondary music in a permanent or probationary position in the District for one full semester in the past 10 years in order to bump a more junior secondary teacher. Neither Mr. Hales nor Ms. Beal meets this competency criterion. This competency criterion established by the Board is similar to that upheld by the *Duax* court, with one important difference – the Board’s PKS Resolution requires that the senior teacher’s teaching experience be in the District, while the school district in *Duax* did not include this limitation. But even if the Board’s criterion were expanded to eliminate the requirement that the senior teacher’s teaching experience could only be within the District, Ms. Beal and Mr. Hales would still not qualify. There was no evidence to indicate that either has taught music for one semester as a permanent or probationary teacher in a secondary school music position in the past 10 years in any school district. While there were differences in the testimony of the witnesses, when all the evidence is considered, it was not established that the Board acted in an arbitrary or capricious manner or abused its discretion when it adopted its competency criterion requiring prior secondary teaching experience in a permanent or probationary position in order for a senior elementary music teacher to bump a more junior secondary music teacher. Ms. Beal’s and Mr. Hales’ requests to bump more junior secondary music teachers must, therefore, be denied.

Competency Criteria for Bumping Into an Alternative Education Music Assignment

21. Paragraph 9 of the PKS Resolution provides:

A certificated employee receiving a preliminary layoff notice who: (1) has taught in alternative education (e.g., continuation high school, community day school) within the District for at least one full semester within the past ten school years (e.g., 2002-2003 or later) as a probationary or permanent employee; and (2) is highly qualified to teach the subjects of an assignment of a less senior teacher in an alternative education program; and (3) is willing to accept such assignment for the 2012-2013 year shall provide written notice of such consent to bump into alternative education at the time of filing a request for layoff hearing. The District shall provide notice of such opportunity in the preliminary layoff notices.

22. Ms. Beal provided written notice to the District that she is willing to accept a teaching assignment in alternative education for the 2012-2013 school year. But Ms. Beal does not meet the competency criteria set forth in the PKS Resolution because she has not

taught in an alternative education position in the District for one semester in the past 10 years.

23. Respondent Juan Alvarez currently holds a .2 FTE position teaching guitar at Cache Creek Continuation High School (Cache Creek), an alternative education school. Mr. Alvarez's seniority date is August 18, 2008.

24. Even though Ms. Beal does not meet the competency criteria set forth in the PKS Resolution, she believes that she is credentialed and competent to teach Mr. Alvarez's .2 FTE alternative education guitar class. Ms. Beal uses her guitar when teaching her elementary school music classes. She has worked with students with special needs and developmental disabilities in her current elementary music teaching position and in other school districts.⁵ Because Ms. Beal is more senior than Mr. Alvarez, she believes she should be allowed to bump into his .2 FTE alternative education guitar class.

25. Mr. Alvarez currently holds a 1.0 FTE at Cache Creek. The Seniority List indicates that he has single subject teaching credentials in foundational math, chemistry and physics, and that he is currently teaching .2 FTE of computer, and .6 FTE of math, in addition to .2 FTE of guitar. Mr. Alvarez does not have a music credential.

26. Olga Nevarez is the principal at Cache Creek. Cache Creek has approximately 180 students. There are currently 10 teachers and 1 counselor. The PKS Resolution reduces Cache Creek's 10 FTE for instructional services to 8 FTE. Ms. Nevarez testified that this reduction will impact Cache Creek "greatly." As a result, the class sizes at Cache Creek will be increasing. She does not know yet what courses will be offered at Cache Creek next year. In particular, she does not know whether the guitar class currently taught by Mr. Alvarez will be offered, because there is an art class being offered that satisfies the performing arts requirement for graduation. Because the guitar class currently has only 10 students, Ms. Nevarez is thinking about eliminating it for next year.

27. Mr. Alvarez is currently teaching algebra, geometry, word processing and guitar at Cache Creek. If the guitar class is eliminated, because Mr. Nevarez has a science credential, Ms. Nevarez is thinking about assigning him to teach a science course next year.

⁵ The challenged competency criteria for alternative education are set forth in both paragraphs 3 and 9 of the PKS Resolution. Respondents argued that, because the term "alternative education" is not defined in paragraph 3, the experience Ms. Beal has had teaching students with special needs and developmental disabilities should be deemed to be "alternative education." Respondents' arguments are not persuasive. "Alternative education" is a term of art, as used in the Education Code. (See e.g., Ed. Code, § 58500 et seq.) Paragraph 9 defines "alternative education" to include "continuation high school, community day school." Ms. Beal's work with students with special needs and developmental disabilities does not constitute work in "alternative education."

28. Ms. Nevarez testified that the Board adopted the competency criteria applicable to alternative education because of the unique nature of the alternative education program and the students in that program. Ms. Nevarez explained that the students at Cache Creek are the “most at-risk” students in the District and have a variety of individual needs. According to Ms. Nevarez, the District included the alternative education competency criteria in the PKS Resolution this year and in past years in order to protect the students in alternative education, and to ensure that the finest teachers will work with the most difficult students and alternative education will not become a “dumping ground” for other teachers. Ms. Nevarez explained that none of the alternative education teachers currently teach only one class.

29. During the hearing, the District asserted that the competency criteria set forth in the PKS Resolution prevents Ms. Beal from bumping into Mr. Alvarez’s .2 FTE alternative education guitar class. Ms. Nevarez’s testimony explaining Cache Creek’s unique challenges and needs for experienced alternative education teachers was persuasive. When all the evidence is considered, it was not established that the Board acted in an arbitrary or capricious manner or abused its discretion when it adopted its competency criteria requiring prior alternative education teaching experience in order for a senior teacher to bump a more junior alternative education teacher. Ms. Beal’s request to bump into Mr. Alvarez’s .2 FTE alternative education guitar class must, therefore, be denied.

Reductions in Physical Education

30. As set forth above, the PKS Resolution reduces release time PE in the elementary schools by 4.9 FTE. It reduces PE in the middle schools by .8 FTE, and in the high schools by 2.0 FTE. Respondents argue that, if these reductions are allowed to stand, the District will be unable to meet statutory mandates for PE.

31. The District must provide PE to elementary school students “for a total period of time of not less than 200 minutes each 10 schooldays, exclusive of recesses and the lunch period.” (Ed. Code, § 51210, subd. (g).) The District must provide PE to secondary school students “for a total period of time of not less than 400 minutes each 10 schooldays.” (Ed. Code, § 51222, subd. (a).)

32. The elementary “release time PE” slated for reduction in the PKS Resolution is now taught by teachers holding a PE single subject credential. Mr. Beno testified that, if this particular service is reduced, the District would still comply with the legal mandates for PE. He stated, however, that the District has not yet made a final decision as to how it will meet the legal mandates. The District is currently considering a number of options for ensuring that elementary students obtain sufficient PE instruction, including: (1) assigning teachers with supplementary authorizations to teach PE; and (2) having fourth to sixth grade teachers teach PE to their classes, reducing kindergarten to one-half day, and having the kindergarten teachers teach a class that falls within their credentialed areas to provide the fourth through sixth grade teachers with a release period. For secondary school students, the District is considering increasing the size of PE classes.

33. Respondents challenge the District's assertion that it intends to comply fully with the legal mandates for PE when the District had not yet finalized plans to do so. Respondents also assert that the District cannot increase the size of PE classes because such an increase would violate the terms of the collective bargaining agreement with the union.

34. Respondents did not establish that the Board's decision to reduce PE as set forth in the PKS Resolution was arbitrary or capricious, or an abuse of its discretion. The law grants the District the discretion to determine how and in what manner PE will be provided to students, so long as the District provides the statutorily-mandated amount of PE. (*Campbell Elementary Teachers Association v. Abbott* (1978) 76 Cal.App.3d 796, 811.) The question of whether any of the options the District is considering to comply with the statutory mandates for PE may violate the collective bargaining agreement is not an issue for determination in this proceeding. Respondents did not establish that the District will be unable to comply with the state's PE mandates if it reduces PE as it has proposed. In all, the evidence did not establish that the District should be ordered to rescind any of the preliminary layoff notices issued to PE teachers in order to ensure that the District will be able to comply with legal mandates governing PE.

35. There was no evidence presented at the hearing to indicate that the District has failed to properly take into consideration any positively assured attrition.

36. The District's reductions and eliminations of particular kinds of services relate solely to the welfare of the District's schools and pupils.

37. Any other assertions put forth by respondents and not addressed above are found to be without merit and are rejected.

LEGAL CONCLUSIONS

1. The District complied with all notice and jurisdictional requirements set forth in sections 44949 and 44955.

2. The services identified in the PKS Resolution are particular kinds of services that may be reduced or eliminated under section 44955. The Board's decision to reduce or eliminate the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause for the reduction or elimination of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

3. Cause exists to reduce certificated employees of the District due to the reduction or elimination of particular kinds of services.

4. No junior certificated employee is scheduled to be retained to perform services that a more senior respondent is certificated and competent to render.

5. Cause exists to give notice to respondents that their services will be reduced or will not be required for the 2012-2013 school year because of the reduction or elimination of particular kinds of services.

RECOMMENDATION

1. Cause exists to reduce or eliminate certificated positions no later than the beginning of the 2012-2013 school year in accordance with the PKS Resolution.

2. Notice may be given to respondents that their services will be reduced or will not be required for the 2012-2013 school year. Notice shall be given in inverse order of seniority.

DATED: April 26, 2012

KAREN J. BRANDT
Administrative Law Judge
Office of Administrative Hearings