

BEFORE THE
BOARD OF EDUCATION OF THE
SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusations Against:

Certain Certificated Employees of the
Saddleback Valley Unified School District,

Respondents.

OAH No. 2011020587

PROPOSED DECISION

Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 13, 2011, in Mission Viejo, California

Rutan & Tucker, LLP, by David C. Larsen, Attorney at Law, represented the Saddleback Valley Unified School District (District).

Reich, Adell & Cvitan, by Marianne Reinhold, Attorney at Law, represented all Respondent teachers except for Respondents Julia Peron, Lynn Alexander, and Chris Merino.¹ Respondent Peron was present at the hearing and represented herself. No appearance was made by Respondents Alexander and Merino.

Evidence was received by stipulation, documents, and testimony. The matter was submitted on April 13, 2011.

FACTUAL FINDINGS

1. Clint Harwick, Ed.D., is the Superintendent of the District. Margaret Lewis is the Assistant Superintendent of Personnel Services of the District. Their actions were taken in those official capacities. Ms. Lewis and her staff were responsible for the implementation of the technical aspects of the layoff.

¹ The names of the represented Respondent teachers are set forth in the List of Certificated Employees Represented by Reich, Adell & Cvitan, which was amended and admitted as Exhibit A at the hearing.

2. On March 8, 2011, the Board of Education of the District (Board) adopted Resolution No. 41:10-11 (Resolution), which proposed a layoff of 72.3 full-time equivalent (FTE) certificated employees. Specifically, the Resolution provided for the reduction or discontinuance of the following particular kinds of services:

<u>SERVICES OR PROGRAMS TO BE ELIMINATED OR REDUCED</u>	<u>POSITIONS (FTE)</u>
<u>Administration</u>	
Elementary Principal	1.00
<u>Special Ed and Pupil Services</u>	
SDC Non Severe	1.00
Counselors/Guidance Specialists	0.40
Psychologist	1.00
Speech and Language Pathologist	0.20
<u>Course Offerings/Instructional Program</u>	
<u>Elementary</u>	
Elementary K-6; Including changing CSR in K to Opt I model	18.50
<u>Secondary</u>	
English	7.40
Math	7.40
Social Science	8.00
Earth Science	1.00
Biology	1.60
Chemistry	1.00
Intermediate School Science	2.00
Spanish	3.60
French	1.00
German	1.60
PE	4.80
Health	1.60
Business Math	1.60
Art	2.00
Choral Music	0.40
Photo	1.00
Video	0.20
Auto	1.00
Wood	1.80
<u>K-12 Instruction</u>	
LAAP	0.20
BTSA/Induction Program	1.00

3. The Resolution established tiebreaker criteria for determining the relative seniority of certificated employees who first rendered paid service on the same date. It provided that the order of termination shall be based on the needs of the District and its students in accordance with the criteria stated therein. Specifically, the tiebreaker criteria provide for points to be awarded for, among other things, certain evaluations, degrees, credentials, certificates, positions, and services. The more points awarded to a teacher, the higher the seniority within the shared date of first paid service. In the event of a tie after reference to all listed criteria, a lottery would be held.

4. The Resolution was required because of the State's on-going budget crisis and the District's need to reduce or discontinue services in order to maintain a balanced budget and provide essential services.

5. The services identified in the Resolution are particular kinds of services that could be reduced or discontinued under Education Code section 44955. The Board's decision to reduce or discontinue the identified services was neither arbitrary nor capricious, and was a proper exercise of its discretion. The Board's decision was based on the welfare of the District and its pupils.

6. On or before March 15, 2011, the District served 67 certificated employees with written notice that it had been recommended that notice be given to them pursuant to Education Code sections 44949 and 44955 that their services would not be required for the 2011-2012 school year. Each notice set forth the reasons for the recommendation and noted that the Board determined to reduce or discontinue certain services or programs. Each notice also notified the employee of his or her right to request a hearing to determine if there is cause for not reemploying him or her for the ensuing school year, and that a written request for a hearing was due on or before March 17, 2011.

7. Twenty-three certificated employees did not request a hearing and thereby waived their right to a hearing and cannot contest the recommendation of their non-reemployment by the District. (Ed. Code, § 44949, subd. (b).) The 23 certificated employees are: Debby Acquazzino; Karen Amos; Michael Burns; Eleanor Carmichael; Diane Garner; Sandra Hanneman; Olivia Hanning; Megan Jensen; Samantha Le; Christina Ledford; Lainie Martinez; Michael Mayoral; Kelly McAlister; Casey Moir; Sara Moore; Kristina Pacek; Luke Pine; Trevor Strickland; Allison Sucamele; Kenneth Tse; Christopher Watkins; Thomas Williams; and Jeffrey Young.

8. Forty-four certificated employees, referred to as Respondents, submitted timely written requests for a hearing to determine if there is cause for not reemploying them for the 2011-2012 school year. The Superintendent or his designee made and filed Accusations against each of the Respondents. The District served Respondents with an Accusation along with required accompanying documents and blank Notices of Defense. Several Respondents completed Notices of Defense that were submitted to the District. The District did not object to including as Respondents in the layoff proceeding those who failed

to submit a notice of defense and those who submitted a late notice of defense. All prehearing jurisdictional requirements have been met.

9. The Respondents in this proceeding are probationary or permanent certificated employees of the District. They are: Caroline Aldemir; Elizabeth Armstrong; Corrine Avila; Michael Burns; Deborah Carlson; Heidi Cascardo; Joseph Cecil; Lindsay Chappell; Christine Collins; Janice Dove; C. Bridget Down; Christine Egge; Monett Engel; Gazelle Ghafoori; Lauren Godfrey; Leslie Gonzalez; Judith Grieve; Andrew Hammond; Jon Hartl; Andrew Heppenstall; Jamie Heydenrych; David Hollaway; Navaz Kerawalla; Andrea Mahindrakar; Sarah McCance; Joseph Mitchell; Andrew Moriates; Maria Nadal; Kerry Nahas; Rana Najd; Lydia Neuman; Scott Orloff; Rajesh Rajadhyaksha; Joel Rubio, Jr.; Stephanie Sauer; Tia Shields; Richard Tinnelly, II; Libia Gomez-Willis; Karla Young; Susan Volas; Viji Janardan; Julia Peron; Lynn Alexander; and Chris Merino.²

10. The District maintains a seniority list which contains employees' seniority dates (first date of paid service), credential information, and current assignments.³

11. The District used the seniority list and developed staff reduction flow charts of the least senior certificated employees currently assigned in the particular kinds of services that it was seeking to reduce in this layoff proceeding. The District then determined how many certificated employees assigned in the particular kinds of services are retiring or resigning; whether the least senior certificated employees in these particular kinds of services hold other credentials, can perform in other service areas, and are entitled to bump other more junior certificated employees; whether certain certificated employees should be skipped and retained; how many certificated employees are bumping into each service area; and how many certificated employees in each service area must be reassigned or laid off.

12. The District determined to "skip" or exempt from layoff the certificated employees in the Two Way Language Immersion Program, which is a charter school in Spanish language immersion for elementary students within the District. Certificated employees assigned to the immersion program must be biliterate and possess either a BCLAD or BCC credential. Under Education Code section 44955, subdivision (d)(1), junior teachers may be given retention priority over senior teachers if the junior teachers possess special training and experience which their more senior counterparts lack. (*Santa Clara*

² On the District's RIF List (Exh. 1), the entry for Chris Merino includes the notation "Rescind Hearing Request."

³ Pursuant to a stipulation, and for purposes of this layoff proceeding only, the seniority date of September 7, 2010 shown on the seniority list (Exh. 32) is changed, in all instances, to September 13, 2010. Although September 7, 2010 was the first scheduled day of the 2010-2011 school year, the dates of September 7-10, 2010, were furlough days for the District's employees. For STRS purposes, the District's records will continue to show the seniority date for these employees as September 7, 2010. The change in seniority dates to September 13, 2010 does not affect the layoff status of any employees in this proceeding.

Federation of Teachers, Local 2393 v. Governing Board of Santa Clara Unified School District (1981) 116 Cal.App.3d 831, 842-843.). The District has a specific need for these employees to teach in the immersion program. No claims were raised concerning the District's skipping of employees in the immersion program.

13. The District determined there are some particular kinds of services that were over-noticed for layoff. For example, the Resolution proposes a reduction of 7.40 FTE positions in secondary math. Because there are no retirements or resignations in this area, the District accounted for the 7.40 FTE reduction by layoff notices to Respondents who are the most junior secondary math teachers, i.e., Respondents Blanco (1.0 FTE), Peron (1.0 FTE), Kerwalla (1.0 FTE), Hammond (1.0 FTE), Egge (1.0 FTE), Down (0.60 FTE), Janardan (1.0 FTE), and Sauer (1.0 FTE), which leaves an over-noticed amount of 0.20 FTE. In service areas with over-noticing such as this, the District agrees that if it can fill over-noticed positions, it will do so on the basis of seniority and credentials.

14. 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.) Certain Respondents received a March 15 layoff notice due to the possible outcomes of the District's bumping and/or tiebreaking analyses. The District recommends rescinding some of those layoff notices if its tiebreaking and bumping analyses are upheld in this proceeding.

15. For example, the Resolution proposes a reduction of 7.40 FTE positions in secondary English. The District determined that two English teachers are retiring (2.0 FTE) but one teacher is bumping into secondary English (1.0 FTE), so that a net 6.40 FTE reduction must be accounted for. The District's flowchart (Exh. 10) shows the most junior teachers in secondary English. The District accounted for the 6.40 FTE reduction, in part, by the layoff notices to Carmichael (0.60 FTE), Alexander (1.0 FTE), Moriates (1.0 FTE), McAlister (0.40 FTE), Godfrey (1.0 FTE), Armstrong (1.0 FTE), and Aldermir (1.0 FTE). This left 0.40 FTE still to be accounted for among four teachers who share a seniority date of September 2, 2008. The District applied the tiebreaker criteria to the four teachers and determined that Respondent Corrine Avila would be laid off. The District recommends rescinding the layoff notices to the other three teachers -- Respondent Rana Najd, and certificated employees who did not request a hearing Christina Ledford and Allison Sucamele.

16. (A) As another example, in the area of secondary math, the District recommends rescinding the layoff notice to Respondent Susan Volas and the notice of reassignment for Francine Kim, both of whom have a seniority date of September 5, 2006. The possible bumping and tiebreaker scenario in math that prompted the notices to Volas and Kim did not materialize from the application of the tiebreaker criteria to two music teachers, one of whom has a supplemental authorization in math.

(B) Karla Young holds single subject credentials in French and music. She is the most junior French teacher and is subject to layoff for the 1.0 FTE reduction in secondary French. By her credentials, Young is authorized to teach music. (Exh. 19.) Janice Dove has a multiple subject credential with supplemental authorizations in music, math, and computer concepts. By her supplemental authorization, Dove is authorized to teach math. (Exh. 23.) Dove and Young share the seniority date of September 5, 2006, and both have the credentials or authorization to teach the music position currently assigned to Dove. The District applied the tiebreaker criteria to Dove and Young for the music position, and Dove scored a higher point total than Young. (Exh. 33.) The District recommends rescinding the layoff notice to Dove, and Young will be laid off in French. Further, since Dove will remain in music, there will not be a three-way tie in math among Dove, Kim, and Volas. The District recommends rescinding the layoff notice to Respondent Volas and the reassignment notice to Francine Kim.

(C) Further, the District recommends rescinding the layoff notice to Respondent David Hollaway because the possible bumping scenario that prompted his layoff notice did not materialize. Francine Kim, discussed above, received a notice of reassignment from her position in math. Kim holds a multiple subject credential, with several supplemental authorizations including, but not limited to, physical education. Hollaway is a physical education teacher with three years' less seniority than Kim. By her seniority and supplemental authorization, Kim may bump into the physical education position currently assigned to Hollaway. But since Kim is not being reassigned from math, Hollaway will not be bumped from his position in physical education. The District recommends rescinding the layoff notice to Respondent Hollaway.⁴

17. As another example, the Resolution proposes a reduction of 8.00 FTE positions in secondary social science. The District's flowchart (Exh. 12) shows the most junior social science teachers. The District accounted for the 8.00 FTE reduction, in part, by one retirement (1.0 FTE) and layoff notices to Carmichael (0.40 FTE), Pacek, Tombleson, Mahindrakar (0.60 FTE), and Heppenstall. This left a reduction of 3.00 FTE to be accounted for among six teachers with a shared seniority date of September 5, 2006. The District applied the tiebreaker criteria to the six teachers and determined that Respondents Heidi Cascardo, Kerry Nahas, and Lindsay Chappell are subject to lay off. The District recommends rescinding the layoff notices to the other three teachers -- Respondent Rajesh Rajadhyaksh, and certificated employees who did not request a hearing Luke Pine and Karen Amos.

⁴ Respondent Hollaway disputes his assigned seniority date of September 21, 2009, contending it should be changed to September 8, 2009. However, since the District recommends rescinding his layoff notice, Hollaway's employment status with the District is no longer at issue in this proceeding. His seniority date has no bearing on the lay off status of any other employee in this proceeding. Under these circumstances, the ALJ declines to make a determination as to Respondent Hollaway's seniority date.

18. The District agrees to rescind the lay off notice to Respondent Deborah Carlson as the bumping scenario that prompted her layoff notice will not materialize. Further, there is no over-noticing of 0.80 FTE in secondary German due to the correction on Exhibit 20 regarding Respondent Monett Engel's FTE assignment. Respondent Engel's status as an employee subject to lay off does not change.

19. No claims were raised by Respondents regarding the District's tiebreaking and bumping analyses. The District's evidence, which was unrefuted, established that it has followed the procedural rules and properly identified the certificated employees subject to layoff. Where appropriate, it recommends rescinding the layoff notice and/or dismissing the Accusation.

20. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render

LEGAL CONCLUSIONS

1. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. (Factual Findings 1-8.)

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

3. A school district may reduce services within the meaning of section 44955, subdivision (b), "either by determining that a certain type of service to students shall not, thereafter, be performed at all by anyone, or it may 'reduce services' by determining that proffered services shall be reduced in extent because fewer employees are made available to deal with the pupils involved." (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 178-179.)

4. Cause exists, pursuant to Education Code sections 44949 and 44955, to reduce the number of certificated employees of the District due to the reduction and discontinuation of particular kinds of services described in Factual Finding 2.

5. The Accusation shall be dismissed and the layoff notices rescinded as to Respondents Rajesh Rajadhyaksha, Rana Najd, Susan Volas, Janice Dove, David Hollaway, and Deborah Carlson, based on Factual Findings 14-19.

6. The layoff notices to certificated employees who did not request a hearing Karen Amos, Luke Pine, Christina Ledford, and Allison Sucamele shall be rescinded, based

on Factual Findings 14, 15, 17, and 19.⁵

7. No junior certificated employee is scheduled to be retained to perform services which a more senior employee is certificated and competent to render.

ORDER

1. Notice may be given to employees occupying 72.3 full-time equivalent certificated positions that their services will not be required for the 2011-2012 school year because of the reduction and discontinuance of particular kinds of services. Notice shall be given in inverse order of seniority. Except as provided in paragraph 2 of this Order, such notice may be given to the Respondents listed in Factual Finding 9 and to the certificated employees who did not request a hearing listed in Factual Finding 7.

2. The notice provided in paragraph 1 of this Order may not be given to Rajesh Rajadhyaksha, Rana Najd, Susan Volas, Janice Dove, David Hollaway, Deborah Carlson, Karen Amos, Luke Pine, Christina Ledford, and Allison Sucamele. The District shall rescind the layoff notices and/or dismiss the Accusation as to these individuals.

Dated: April ___, 2011

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings

⁵ Math teacher Francine Kim was served with a notice of reassignment, not a lay off notice. She was not served with an Accusation packet. The District agreed to rescind Kim's notice of reassignment.