

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

In the Matter of the Accusation Against:

LINDA LEASURE GILL

Respondent.

OAH No. 2008031028

**PROPOSED DECISION**

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Fresno, California, on April 15, 2008.

Robert Piacente, Attorney at Law, represented the Caruthers Unified School District.

Ernest H. Tuttle III, Attorney at Law, represented respondent Linda Leasure Gill.

The matter was submitted on April 15, 2008.

**FACTUAL FINDINGS**

1. Dwight Miller, Superintendent of the Caruthers Unified School District, made and filed the Accusation in his official capacity.
2. Linda Leasure Gill is a certificated District employee.
3. On March 11, 2008, in accordance with Education Code sections 44949 and 44955, the Superintendent notified the Governing Board of the District (the Board) and Ms. Leasure Gill in writing of the Superintendent's recommendation that Ms. Leasure Gill be notified that her services would not be required for the ensuing school year. The Superintendent stated the reasons for the recommendation. The

recommendation that Ms. Leasure Gill be terminated from employment was not related to her competency as a teacher.

4. On March 12, 2008, a notice of termination was delivered to Ms. Leasure Gill by personal delivery. The written notice of termination specifically stated that Ms. Leasure Gill's services would not be required for the 2008-2009 school year. The notice set forth the reasons for the recommendation and included a copy of the Board Resolution authorizing the reduction in services. The notice advised Ms. Leasure Gill of her right to a hearing, that she had to deliver a request for a hearing in writing to the Superintendent by March 20, 2008, which was more than seven days after the notice of termination was served, and that the failure to request a hearing would constitute the waiver of the right to a hearing.

5. Ms. Leasure Gill timely filed a written request for a hearing to determine if there was cause for not re-employing her for the ensuing year. An Accusation was timely served on her and she timely filed a Notice of Defense. All pre-hearing jurisdictional requirements were met.

6. On March 10, 2008, the Board took action, through Resolution #2008-05, to discontinue or reduce certain particular kinds of services at the end of the 2007-2008 school year. The Board resolved to eliminate one full time equivalent music teacher. The designated music service was a particular kind of service that could be reduced or discontinued within the meaning of Education Code section 44955. The Board's decision to reduce or discontinue this particular kind of service was not arbitrary or capricious, but constituted a proper exercise of the Board's discretion.

7. The reduction or discontinuation of the particular kind of service related to the welfare of the District and its pupils. The Board was faced with significant budget cuts in the 2008-2009 school year. The Board determined that budget cuts necessitated that services be reduced. The Board determined to non-reelect certain teachers and not to fill positions vacated by resignations and retirements. Additionally, the Board determined that music services should be discontinued because there was declining enrollment in the music and band classes, and there were not enough students in these classes to justify retaining a music position for the ensuing school year. The Board determined that elimination of the music classes did not effect the District's State mandate to provide visual and performing arts education. The Board will retain high school art and drama classes that meet the State's requirements, and elementary school classroom teachers will provide music instruction in their self-contained classes.

8. Ms. Leasure Gill is the most senior employee in the District. Her seniority date is January 7, 1980. She holds a single subject credential in music and a supplemental authorization in photography.



9. No certificated employee is being retained to teach music or photography in the 2008-2009 school year. Therefore, no certificated employee junior to Ms. Leasure Gill is being retained to perform any of these services.

10. Ms. Leasure Gill maintains that she is certificated and competent to render services in alternative education. The District has two teacher openings in alternative education for the 2008-2009 school year. Both openings are in a new alternative education program, which merged continuation community high school and community day school. The incumbents will be teaching math and science, language arts and social sciences, and some physical education. The assigned teachers have to be very "versatile" in what they are authorized to teach.

11. The District maintains that Ms. Leasure Gill is not certificated to fill an alternative education teaching opening because she does not hold a multiple subject teaching credential. The alternative education classes are self-contained and four core subjects are taught. The program requires either a multiple subject credential or a single subject permit to teach self-contained classes. The incumbent teacher must possess certification as a highly qualified teacher under No Child Left Behind (NCLB), showing competency in core subject areas. Ms. Leasure Gill does not hold a multiple subject credential, a single subject permit to teach self-contained classes or a NCLB certification.

12. The District acknowledges that under the Education Code, any teacher with a credential can be assigned into an alternative education or continuing education class with their permission. The District acknowledges that it did not ask Ms. Leasure Gill if she wished to teach in the alternative program. The District did not do so, because it has "received clear direction from county credentialing" that teachers who fill positions in alternative education programs must be highly qualified under NCLB and must be credentialed to teach the core subject areas. Music is not a core subject area. Math, Sciences, Social Sciences and Language Arts are core subject areas.

13. Ms. Leasure Gill maintains that she can teach life skill classes currently taught by a junior certificated employee, Kelli Kuma. Ms. Kuma holds a multiple subject credential. This class is a required ninth grade course, consisting mostly of instruction in health. It has components in careers, health education, sex education, mental health, nutrition, substance abuse and other areas. The life skills teacher can hold a multiple subject credential, and it is unclear to the District whether a teacher with a single subject credential can teach this class. However, even if a teacher holds a single subject credential, the single subject must be "in line" with the curriculum of life skills. For instance, a teacher with a single subject in English, would not be certificated to teach life skills. Thus, the District believes it can not assign life skills classes to a holder of a single subject credential in music.



14. Ms. Leasure Gill taught life skills on a half time assignment for approximately 12 years. The last time she taught any life skills class was in the 1996-1997 school year. Ms. Leasure Gill also has taught other classes over her long tenure that she is not certificated to teach, such as English, reading, home economics, fabric design and food and nutrition. She maintains that she should be assigned to teach life skills in the 2008-2009 school year. The fact that the District assigned her to teach classes outside of her credential in the past is not pertinent to the issue of whether she is certificated and competent to teach life skills in the 2008-2009 school year. The subject areas covered by the life skill classes are not congruent with the area of Ms. Leasure Gill's certification. Thus, she is not certificated to teach these classes.

15. Ms. Leasure Gill maintains that she should be assigned to teach leadership classes. The District acknowledges there is no specific credential required to teach leadership, but maintains that the position requires a multiple subject credential because the subject is taught in the middle school in self-contained classrooms. Nevertheless, the District acknowledged that Tyson Lowery currently teaches leadership at approximately one third of his assignment. Mr. Lowry holds a single subject credential in social sciences and an administrative credential. He teaches social sciences and leadership in the high school, as well as filling the role of resource teacher. The evidence was equivocal as to whether the District is offering leadership classes in the high school in the 2008-2009 school year. Superintendent Miller testified that the District was not offering leadership in the 2008-2009 school year. Stella Ybara, the District's Human Resources Technician, acknowledged that a few periods of high school leadership may be offered. And there was no testimony that Mr. Lowry was reassigned or his .33 full time equivalent services teaching leadership were reduced for the 2008-2009 school year.

16. There was no evidence presented as to why Ms. Leasure Gill could not teach leadership in the high school if it is offered next year. She holds a single subject credential, as Mr. Lowry does. There was no evidence that leadership classes require certification in a core subject or certification as competent under NCLB. There was no evidence that Ms. Leasure Gill is not competent to teach leadership. In fact, there was no evidence as to what material leadership classes covered. Thus, the District may be retaining an employee junior to Ms. Leasure Gill to teach classes which she is certificated and competent to teach.

### LEGAL CONCLUSIONS

1. Ms. Leasure Gill has rendered valuable services to the District.
2. All notice and jurisdictional requirements set forth in Education Code sections 44949 and 44955 were met. The notices sent to respondent indicated the statutory basis for the reduction of services and, therefore, was sufficiently detailed to provide her due process. (*San Jose Teachers Association v. Allen* (1983) 144



Cal.App.3d 627; *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App.3d 831.) The description of service to be reduced, both in the Board Resolution and in the notice, adequately describe particular kinds of services. (*Zalac v. Ferndale USD* (2002) 98 Cal.App.4th 838, *Degener v. Governing Board* (1977) 67 Cal.App.3d 689.)

3. The service identified in Board Resolution No. #2008-05 is a particular kind of service that could be reduced or discontinued under section 44955. The Governing Board's decision to discontinue the identified service was neither arbitrary nor capricious, and was a proper exercise of its discretion. Cause exists to reduce the number of certificated employees of the District due to the discontinuation of music service. Cause for the discontinuation of services relates solely to the welfare of the District's schools and pupils within the meaning of section 44949.

4. A 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.)

5. Education Code section 44955, provides in pertinent part:

[¶]...[¶]

(b) Whenever in any school year ... whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, ...or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

[¶]...[¶]

6. Education Code section 44955 provides that when certificated employees face layoffs due to reduction or elimination of PKS, the District has an affirmative obligation to reassign senior teachers who are losing their positions into positions held by junior teachers, if the senior teacher has both the credentials and competence to occupy such positions. The intent of the Legislature is clearly to prevent Districts from laying off senior teachers while retaining junior teachers. Section 44955, subdivision (c) provides in pertinent part:


Services of such employees shall be terminated in the inverse of the order in which they were employed... The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render...

7. As set forth in Factual Findings 1 through 16, and the Legal Conclusions, the District has established that no employee junior to Ms. Leasure Gill is being retained to perform services which she is competent and certificated to render, except Mr. Tyson Lowery, to the extent that he is retained in the 2008 2009 school year to teach .33 full time equivalent leadership classes in the high school. It was not proved that Ms. Lesiure Gill is not certificated and competent to teach the .33 Leadership FTE Mr. Tyson is being retained to teach. Mr. Tyson is junior to Ms. Leasure Gill and has not been noticed for layoff. The layoff of Ms. Leasure Gill for .33 FTE fails as to the .33 FTE Leadership position, but was proved with respect to the remaining .67 of her 1.00 FTE.

#### RECOMMENDATION

Notice shall be given to Linda Leasure Gill that her services will be reduced by .67 full-time equivalent in the 2008-2009 school year, because of the discontinuance of music services.

Dated: April 29, 2008

  
ANN ELIZABETH SARLI  
Administrative Law Judge  
Office of Administrative Hearings