

BEFORE THE GOVERNING BOARD
OF THE
SAN RAMON VALLEY UNIFIED SCHOOL DISTRICT

In the Matter of the Accusations against:

RICH ABERS, KRISTINE ACKERMANN,
LYNN ALAMILLO et al.,

OAH No. 2010020974

Respondents.

PROPOSED DECISION

Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, heard this matter in Danville, California, on April 26, 2010.

Robert E. Thurbon and Lindsay K. Moore, Thurbon & McHaney, represented complainant Steven Enoch, Superintendent, San Ramon Valley Unified School District.

Sarah Sandford-Smith and David Coleman, Beeson, Tayer & Bodine, represented the 80 respondents listed in Attachment A.

The 17 respondents listed in Attachment B were unrepresented and did not appear at the hearing or contest the accusations issued against them.

The matter was submitted on April 26, 2010.

FACTUAL FINDINGS

1. Complainant Steven Enoch, Superintendent, San Ramon Valley Unified School District (District), issued the accusation in his official capacity.

2. At all times mentioned herein the District has employed respondents¹ as certificated employees.

3. Each respondent was given written notice of his/her employment status, seniority date and credentials by posting and circulating the District certificated seniority list and was asked to verify his/her credentials and hire date. After a reasonable comment

¹ Unless otherwise specified, "respondents" refers to all respondents in this matter, as set forth in Attachments A and B.

period, the Governing Board of the San Ramon Valley Unified School District on February 9, 2010, passed Resolution No. 62-09/10, adopting a certificated employee seniority and credentials list. On March 9, 2010, the board passed Resolution No. 67-09/10, adopting a revised certificated employee seniority and credentials list.

4. On October 6, 2009, the board passed Resolution No. 26-09/10, adopting criteria for determining the order of seniority for employees with the same date of first paid probationary service. On February 9, 2010, the board passed Resolution No. 61-09/10, adopting revised criteria for determining the order of seniority for employees with the same date of first paid probationary service.

5. On March 9, 2010, the board adopted Resolution No. 68-09/10, in which it determined that it shall be necessary to reduce or discontinue particular kinds of services no later than the beginning of the 2010 – 2011 school year.

<u>Services</u>	<u>FTE² Reduction</u>
<ul style="list-style-type: none"> Discontinue K-3 20:1 class size reduction services resulting in consolidation and elimination of elementary classes. 28:1 staffing ratio <ul style="list-style-type: none"> Multiple Subject 	70.200
<ul style="list-style-type: none"> Increase middle and high school class size and discontinue 9th grade 20:1 class size reduction services resulting in a corresponding reduction of secondary teaching services <ul style="list-style-type: none"> Multiple Subject English Mathematics Physical Education German French Music Art Voc Ed/Auto Social Science 	2.600 3.800 3.000 2.233 .800 1.000 .900 1.000 1.000 1.000
<ul style="list-style-type: none"> Elimination of secondary counseling services <ul style="list-style-type: none"> Pupil Personnel Services Biological Science Chemistry Middle School Science Physical Education 	27.100 1.000 .400 .833 1.000

² Full-time equivalent.

Spanish	1.500
Multiple Subject	5.250
• Reduction in TSA Support Services	
Middle School Science	2.000
English	2.000
Multiple Subject	3.000
Computer Applications	1.000
• Reduction in Administrative Services	
English	1.000
Social Science	2.000
Math	.834
TOTAL	136.450

Resolution No. 68-09/10 also provided that it may be necessary to retain certificated employees who possess special certifications, service credentials, training or experience, which other certificated with more seniority do not possess, to teach a specific course of study and these needs may include special education, health educators (nurses), and independent study teachers.

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

6. The District timely notified respondents by March 15, 2010, that their services would be reduced and/or discontinued for the 2010 – 2011 school year, and that they had a right to a hearing, pursuant to Education Code section 44955.

7. Respondents timely requested a hearing pursuant to Education Code sections 44949 and 44955 to determine whether there is cause for not reemploying them for the 2010 – 2011 school year.

8. The District timely served respondents with an accusation, pursuant to Education Code sections 44949 and 44955, notifying them that their services would be reduced and/or discontinued for the 2010 – 2011 school year, and of their right to a hearing.

9. The respondents listed in Attachment A timely filed a Notice of Defense and a First Amended Notice of Defense.

10. The respondents listed in Attachment B each timely filed a Notice of Defense. They were unrepresented, did not appear at the hearing, and did not contest the accusations issued against them.

11. The parties at hearing stipulated that Christina Byers (seniority list #1315) became a permanent employee in a 0.6 FTE position effective the beginning of the 2009 – 2010 school year. The District notified Byers of the change in her classification on April 20, 2010.

12. The parties at hearing stipulated that Patricia Whalen (seniority list #213) and Michelle Reardon-Simpson (seniority list #226) are certificated and competent to serve in psychology positions and therefore have rights to bump into psychology positions. There are currently two open psychology positions into which Whalen and Reardon-Simpson may be placed. Whalen and Reardon-Simpson will be employed by the District for the 2010 – 2011 school year in either psychology or counseling positions.

13. The parties at hearing stipulated that the layoff notice provided to Nancy Favreau (seniority list #1297) will be rescinded.

14. The parties at hearing stipulated that Vivian Srouji (seniority list #338) is certificated and competent to serve in an English position. There is currently an open English position into which Srouji may be placed. Srouji will be employed by the District for the 2010 – 2011 school year in either an English or a counseling position.

15. Andrea Frederickson (seniority list #1400) is shown on the District's seniority list with a seniority date of August 20, 2008. In June 2008, Frederickson was a newly hired second grade teacher in the District. Frederickson's school principal informed her about a grade-level meeting for the school's second grade teachers. The principal suggested that Frederickson ask the second grade teachers for the date of the meeting. Frederickson did not recall whether her principal told her she had to attend the meeting. On June 30, 2008, Frederickson attended the all-day meeting with her fellow second grade teachers. The purpose of the meeting was to prepare for the 2008 – 2009 school year, including by dividing up tasks such as yard duty and prep schedules. Frederickson was paid for the day, but she did not recall whether she received payment in a single check or as part of a larger paycheck. There was no documentary evidence regarding the form of Frederickson's pay for her attendance at the June 30, 2008 meeting. That date was outside the contract period for the 2008 – 2009 school year.

Richard Caldera, Director of Certificated Personnel, testified, and it is found, that a teacher's attendance at a meeting such as Frederickson attended on June 30, 2008, is traditionally on a voluntary basis, that attendance is not mandatory, and that the District does not consider attendance to be part of the teacher's paid service, although he acknowledged that teachers are sometimes paid "outside the contract" for their attendance.

16. For the 2008 – 2009 school year, the collective bargaining agreement between the District and its teachers provided for a "floating work day" before the first day of school on August 25, 2008. Under the agreement, teachers were required to select and work one day between August 11 and 21, 2008 (excluding the August 16 and 17 weekend). The

District deemed August 20, 2008, the first day of paid service for that school year no matter the date a teacher worked his or her floating work day.

The purpose of the floating work day was to provide teachers flexibility as they prepared for the new school year. The collective bargaining agreement between the District and its teachers has provided a floating work day for about seven years. There was no evidence that the District or the teachers' union intended to have a teacher's seniority date turn on the floating work day selected by a teacher.

17. Kathryn Murphy (seniority list #1446) and Barbara Weisbrod (seniority list #1356) both worked their floating work day on August 12, 2008. Both appear on the District's seniority list with a seniority date of August 20, 2008.

18. No permanent or probationary certificated employee with less seniority than a respondent is being retained to provide a service for which a respondent is credentialed and competent to render.

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

LEGAL CONCLUSIONS

1. Christina Byers (seniority list #1315) became a permanent employee in a 0.6 FTE (full-time equivalent) position effective the beginning of the 2009 – 2010 school year.

2. Patricia Whalen (seniority list #213) and Michelle Reardon-Simpson (seniority list #226) are certificated and competent to serve in psychology positions and therefore have rights to bump into psychology positions. The District will employ Whalen and Reardon-Simpson for the 2010 – 2011 school year in either psychology or counseling positions.

3. The layoff notice provided to Nancy Favreau (seniority list #1297) will be rescinded.

4. Vivian Srouji (seniority list #338) is certificated and competent to serve in an English position. The District will employ Srouji for the 2010 – 2011 school year in either an English or a counseling position.

5. Andrea Frederickson (seniority list #1400) attended and was paid for a grade-level teachers' meeting on June 30, 2008. It was not established, however, that her attendance at the meeting was mandatory or that her seniority date should be other than August 20, 2008, as shown on the District's seniority list.

6. The purpose of the floating work day was to provide teachers flexibility as they prepared for the new school year, not to have a teacher's seniority date turn on the floating work day selected by a teacher. To have seniority dates turn on the date of the

floating work day would defeat the intended purpose of the floating work day – flexibility – by providing an incentive for teachers to select the earliest floating day possible.

Although Kathryn Murphy (seniority list #1446) and Barbara Weisbrod (seniority list #1356) worked their floating work day on August 12, 2008, it was not established that their seniority dates should be other than August 20, 2008, as shown on the District's seniority list.

7. Because of the reduction or elimination of particular kinds of services set forth in Factual Finding 5, cause exists pursuant to Education Code section 44955 to give notice to respondents that their services will not be required for the 2010 – 2011 school year. This cause solely relates to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

ORDER

Except as set forth in Legal Conclusions 2, 3, and 4, notice may be given to respondents that their services will not be required for the 2010 – 2011 school year.

DATED: May 5, 2010

STEVEN C. OWYANG
Administrative Law Judge
Office of Administrative Hearings